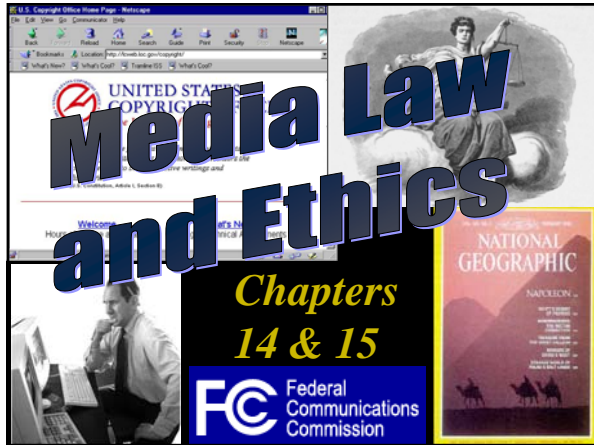


Announcements and today's schedule

- ❏ Quiz Today – May 2, 2005 Chapter 12
- ❏ Final: Wednesday, May 18, 3–5p.m., this room, similar format (study guide by May 11)
- ❏ Test will cover Chapters 12, 14, 15, 16, plus questions from videos
- ❏ Final homework due Wednesday, May 11



Media Law and Ethics

Chapters
14 & 15



A few definitions

- ❏ **Policy:** structures regulation
 - Government and public consideration of how to structure and regulate media
- ❏ **Ethics:** what “should” be
 - How professionals should behave in situations that may have negative effects on others
- ❏ **Self-regulation:** industry codes of behavior for media professionals, non-legal
- ❏ **Law:** what “must” be; binding rules of state
- ❏ **Standards:** technical issues (e.g., number of lines on TV screen)

First Amendment: the foundation for a free press

- ✦ “Congress shall make no law ... abridging the freedom of speech, or of the press ...”
- ✦ *Marketplace of ideas* needed for open society so truth can emerge
- ✦ Protecting political speech
 - Wide circulation of many ideas
 - John Peter Zenger trial established that truth is not libelous



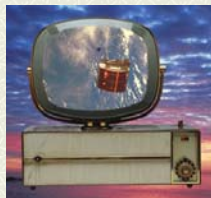
Non-protected speech

- ✦ *Defamation*: untrue statement about someone that damages his/her reputation
 - *Libel* = printed; *slander* = spoken
- ✦ *Indecency*: depiction of sex/excretion in electronic media
 - *Pacifica* decision / Safe harbor (Carlin's "Filthy Words")
- ✦ *Obscenity*: lewd, lascivious, prurient, licentious
 - *Miller v. California* (1973): average person, applying community standards, finds that as a whole it appeals to prurient interest and lacks serious literary, artistic, political or scientific value



Broadcasting is regulated *more than print!!!*

- ✦ *Major concept*: Two-tiered system of regulation!
- ✦ Same content written in print and aired in broadcast will have more protection in print
 - But Internet regulated same as print right now
- ✦ Broadcast regulated more because:
 - Chaos (government regulates frequencies)
 - Public resource
 - Intrusiveness
 - Impact on children
- ✦ Do you agree?



Broadcasting regulations

- ✦ **Section 315: equal time for political candidates**
 - If station sells airtime for ads to one candidate, must sell to all candidates for that office at same price and during similar time of day
- ✦ **Fairness Doctrine (1949-87)**
 - Stations should produce programs on controversial issues and provide opposing views and right of reply
 - Most avoided controversial stuff rather than give out free airtime to all sides
 - 1987: no more enforcement (no more scarcity)



Online porn

- ✦ Internet is decentralized; no one in charge of content
- ✦ **Communications Decency Act of 1996**
 - Online indecency targeted
 - Definition of indecency too broad—“Breast” indecent on porn sites but not in discussion of breast cancer
- ✦ **Child Online Protection Act of 1998**
 - Limited to commercial sites requiring age verification; also overturned
- ✦ **Children’s Internet Protection Act of 2000**
 - Required filtering software for schools and libraries to keep federal funding



V-chip

- ✦ Under pressure, industry agreed to “voluntary” age-based rating system
 - If industry leaders had not done it, Congress would have done it for them
- ✦ Provision of Telecom Act of 1996
 - Microchip reads embedded code
 - Blocks programs parents find inappropriate
 - Ratings for violence and sexual content added to rating system later



The Fourth Amendment and privacy issues

- Right of privacy not clearly established
 - "Privacy" does not exist in Constitution
 - Constitution protects from *government*, not media
- Threats from *private sources* (databases and data mining)
 - "...To protect the privacy of every American citizen, we must have an *electronic bill of rights* to protect privacy in the electronic age"— Vice President Al Gore
- Children's Online Privacy Protection Act*: restrict gathering of data from children 12 and under without parental OK



Privacy in the online age



- European Union's Data Protection Directives*
 - U.S. moving towards industry self-regulation, considered inadequate by European Union
 - U.S. companies with European subsidies could be sanctioned
- Encrypting email*: law enforcement wants keys put into escrow
 - Court order needed to use key to decode mail
- Spamming, cookies, clickstream data
- Electronic Communications Privacy Act (1987)*
 - Stopped government from monitoring electronic communication without a court warrant

Copyright: protecting intellectual property

- Includes patents and copyright; king's grant of publishing license
- Constitution, Article 1, Section 8
 - "Promote the Progress of science and the useful Arts, by securing for limited time to the author...the exclusive right to their ... writings"
- Unauthorized copying is a crime
- Fair use doctrine* permits some legal copying
- Bono Copyright Term Extension Act*: author's life plus 70 years



Patent vs. copyright law

- ⌘ Patents are superior to copyright, better protection
- ⌘ Computer software considered patented; program is mental process rather than device
 - Prevents reverse engineering 
- ⌘ Copyright protects:
 - Program code from being copied
 - Screen display and general “look and feel”
- ⌘ Patents now extend to business processes
 - Amazon.com’s “one-click” shopping 
 - Priceline.com reverse auction

Napster



- ⌘ *Peer-to-peer file-sharing software*: most music shared is pirated
- ⌘ Metallica and music industry group sued to stop Napster
 - Napster argued that Audio Home Recording Act of 1992 gives consumers right to copy records and tapes that they purchase
 - No way for Napster to know what was copyrighted
- ⌘ Napster forced to remove songs that were illegally being copied
- ⌘ New “baby Napsters” arose: KaZaA, LimeWire, Morpheus

Challenges to copyright

- ⌘ *Digital Millennium Copyright Act of 1998*
 - First challenge came with *DeCSS*, a program that breaks anti-copying technology used on DVDs
 - DeCSS found to be infringing DMCA’s anticircumvention provisions
- ⌘ Videos, CDs, and software are major U.S. exports
 - U.S. and China have been attempting to negotiate an end to copyright violations
- ⌘ *World Intellectual Property Organization* agreements extended copyright protection to digital music and films



Ownership issues

- ⚡ **Monopoly:** one company controls industry
 - Standard Oil, Microsoft: potential abuse of power
 - *Sherman Antitrust Act of 1890* attempted to control monopolies
- ⚡ **Oligopoly:** few companies dominate industry
 - Auto industry
 - Sometimes leads to price fixing
- ⚡ **Natural monopolies:** phone company, cable company
 - Too expensive to expect alternatives be established



Conglomerate ownership

- ⚡ **Media company owned by a company involved in businesses other than media**
 - General Electric: involved in manufacturing, real-estate, financial services, but owns NBC
- ⚡ **Competition and convergence**
 - Media companies are driven by profit and convergence
 - Mergers will help them compete in new media **BUT** fear of a mass reduction of “voices”

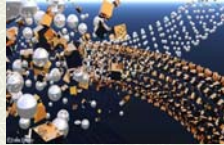


Kinds of integration

- ⚡ **Vertical integration:** companies that control several aspects of single media industry such as production and distribution
 - AOL/Time Warner: Warner Bros. produces “Felicity,” WB Network distributes, Warner cable delivers to TV
- ⚡ **Horizontal integration:** business that owns or controls companies in same media
 - Radio ownership: ClearChannel Communication operates/is affiliated with 1170+ radio stations
- ⚡ **Joint operating agreement (not monopolistic):** two competing newspapers agree to share business and ad facilities

New ownership rules

- ✦ **TV station ownership**
 - Before Telecom Act of 1996, limited to 12 stations
 - Act removed limit on number of stations that could be owned; limit based on potential audience size (35% of nation's homes)
- ✦ **TV networks can establish new networks**
 - NBC could open NBC2 but not buy ABC
- ✦ **Radio station ownership**
 - Was 20 AM and 20 FM
 - Now depends on market size
- ✦ **Cross-ownership allowed**



Universal service

- ✦ Policy that all U.S. households should have telephone service (basic telephone, 911)
- ✦ Telecom Act of 1996 mandates universal telephone service
- ✦ Which new media deserves universal service requirements?
 - Telecom Act of 1996 mandates subsidy for online access for schools/libraries ("*e-rate*")
 - Did not approach issue of Internet access for all households



Spectrum management

- ✦ **Frequency allocation: license broadcasters**
 - Started in 1920s to reduce station interference
- ✦ **Public interest (*PICAN*) is main criterion**
 - FCC tried to promote localism, reserve some licenses for education
- ✦ **Scarcity argument dropped by FCC in 1980s**
 - Pick applications by lottery or auction frequencies
- ✦ **International regulators**
 - International Telecommunications Union (ITU) and World Administrative Radio Congress (WARC)

Federal regulation and policymaking: agencies

- ✦ **Federal Communications Commission**
 - Five commissioners nominated by president and confirmed by Senate
 - **Capture theory**: regulatory agencies end up controlled by industry they administer
- ✦ **Federal Trade Commission**
 - Trade practices and advertising
 - Restraint of trade
 - Deceptive or unfair advertising
 - Anticompetitive practices (Microsoft)



Federal regulation and policymaking: administrative and judicial

- ✦ **National Telecommunications and Information Administration (NTIA)**
 - Advisory capacity on telecommunication policy
 - Part of Commerce Department
- ✦ **Justice Department** administers Sherman Antitrust Act
- ✦ **Courts** interpret and enforce laws
 - Free speech, right of privacy
 - Concern for monopolistic behavior (AT&T, Microsoft)
- ✦ State public utilities commissions oversee rates

Influencing the law

- ✦ **Lobbies** influence how laws are written
 - Lobbyists are both conservative and liberal
 - National Association of Broadcasters (NAB)
 - Political Action Committees
 - MPAA: Motion Picture Association of America
 - NAACP
- ✦ **Media as a lobby: "Fifth Estate"** (electronic media)
 - Media reporting of policymaking process



A few ethical approaches...

- ✦ **Aristotle's Golden Mean**
 - Between two extremes, moderation and balance
- ✦ **Kant's Categorical Imperative**
 - Act on what you want to be a universal law
- ✦ **Situation ethics**
 - Rules can be broken if overall purpose is good
- ✦ **Mill's Principle of Utility**
 - Greatest good for greatest number



Codes of ethics: fear of media power

- ✦ 1947 *Hutchins Commission* issued report: "Free and Responsible Press" with five recommendations
 - Truthful account of the day's events
 - Forum for comment and criticism
 - Representative picture of groups in society
 - Presentation of goals and values of society
 - Full access to day's intelligence
- ✦ *Society of Professional Journalists' Code of Ethics*: voluntary code
 - Seek truth and report it
 - Minimize harm
 - Act independently
 - Be accountable





Ethical issues

⚡ Fairness and responsibility

- *Matt Drudge*, Internet columnist, reported that Clinton advisor Sidney Blumenthal was charged with spousal abuse; charge was false, Drudge was sued for defamation

⚡ Confidentiality of sources

- Reporters need to protect sources of information
- Leaks as trial balloons (common th government)

⚡ Privacy

- Electronic mail, wire tapping