

*Law and Media Technology:
How Law Shapes Our Use and Development of Mass Media*

Abstract

A Summer Faculty Research Grant would enable me to forego the supplemental income of summer teaching in order to expedite the completion of my current book project, under contract with Peter Lang for a final manuscript submission date of February 2011. This case/textbook, *Mass Media Law: The Printing Press to the Internet*, will in turn lay the foundation for my related monograph: *Law and Media Technology: How Law Shapes Our Use and Development of Mass Media*.

Specifically, the research and writing of two unique chapters for *Mass Media Law* will enable me to test my theses and foster *Law and Media Technology's* goal: to illuminate contemporary controversies over how best to regulate new media and their industries by exploring—in their social and historical contexts—the public policy values that have supported laws affecting the operation of the printing press, post office, telegraph, photography, radio, cinema, television, cable, satellite, computers and the Internet. The seminal chapters will be: (i) “Concepts, Theories and Legal Doctrines,” which will compare and contrast mass communication/media studies theories and concepts with media law doctrines and theories; and (ii) “History of Mass Media Technology, Law & Regulation 1789-2010: Promoting the Free Exchange of Ideas and Information in a Democratic Republic.” Building upon the blueprint of these chapters, I intend to submit *Law and Media Technology* to the same publisher, Peter Lang, by late 2013.

Background

As an associate professor of communications and media studies with a degree in law, my research interests include journalism studies, First Amendment doctrine and theory, democratic discourse theory, and the intersection of mass media law and mass media technologies. *Mass Media Law* and *Law and Media Technology* will draw upon both facets of my background to unite these interests and make a unique contribution at the intersection of mass media law and mass media technologies.

To this date, I have written encyclopedia articles dedicated solely to mass media law: “Freedom of the Press: The modern period, 1917-present,” Finkleman, P. (Ed.) *Encyclopedia of American Civil Liberties*. NY: Routledge. Taylor & Francis Group, 2006, and “The Legal system and the media.” In Donald H. Johnston (Ed.). *Encyclopedia of International Media and Communications*. San Diego, CA: Academic Press/Elsevier Science, 2003). Meanwhile, my first book, *Press Critics are the Fifth Estate: Media Watchdogs in America*, takes an interdisciplinary approach by applying Robert C. Post’s (Yale Law School) constitutional concept of public discourse to defend uncivil and ideologically driven press critics. It is in recognition of my scholarship in both arenas that Peter Lang awarded me the contract for *Mass Media Law*, the successful publication of which I hope to capitalize on to also bring *Law and Media Technology* to press and prominent use among academics, policy-makers and industry practitioners.

The potential stemming from the synergy of these two texts is substantial. First, no current text targeting undergraduate communication majors integrates the social history of mass media, law and policy, even though this integration is at the cutting edge of research in the field. MIT’s Ithiel de Sola Pool’s *Technologies of Freedom* (1983) is the seminal book on the subject. In recent years a small but growing number of scholars

have continued the analysis from a social-historical perspective largely because of how the emergence of digital technology has called into question the courts and policymakers' traditional approach to mass media. For example, Menahem Blondheim's "Rehearsal for Media Regulation: Congress Versus the Telegraph-News Monopoly, 1866-1900," *Federal Communications Law Journal*, 56, 299-327 (2004), "...reconstructs a prominent, generation-long debate over government regulation of the telegraph ('the Victorian Internet') and the newswire services (America's first national media enterprise) in the Gilded Age." Princeton sociologist Paul Starr's *The Creation of the Media: Political Origins of Modern Communications* (2004) documents how political and legal choices as much as technological invention led to the development of modern mass media.

Consequently, the textbook I propose would aid in advancing pedagogy in this field.

Second, however, is that—just as students of communications and media studies will need *Mass Media Law* to stay well informed about current research—my academic counterparts will also benefit from *Law and Media Technology*'s advance of that research. Despite Pool and Starr's respective scholarship, the nexus of law and technology in understanding the evolution of and prospects for media remains an arena populated by a handful of researchers. This arena of academic and professional interest can benefit from a text that has the broad policy-level embrace of *Technologies of Freedom* and *The Creation of the Media*, while possessing the fine detail of a technology-by-technology examination of the impact of case law, legislation and regulatory action.

Contribution

Mass Media Law will break with the traditional approach of writing solely for the aspiring political science and journalism scholar on this subject, an approach authors have adopted ever since Dwight L. Teeter, Jr. & Harold L. Nelson published *Law of Mass Communications* in 1969. Instead it will more appropriately address the needs of such

texts' most common audience—the mass communication and media studies major—by taking a media technology-centric approach to bridge the gap between legal doctrine and media/communication analysis. This innovative, integrated approach will allow a mass communication major to build upon his or her own discipline to understand the historic connections among U.S. case law, statutes and regulations, the dominant and emerging mass media technologies and their related business operations, and the social contexts in which those connections were created.

Although my publisher and peer reviewers prefer that I present this new material in two, broad-embracing chapters, the critical contribution of my monograph *Law and Media Technology* will be to provide the more sophisticated scholar with a first-ever comprehensive chronicle of the impact statutory, common and regulatory law in the US has had on the development of each mass media technology starting with the printing press, and how the legal and legislative systems have reacted to new media. As such, it will do for each mass media technology and related industry what Lee Grieveson's *Policing Cinema: Movies and Censorship in Early-Twentieth Century America* did for cinema. My monograph, however, will take on an historic scope that precedes the scope of Grieveson's work, brings the reader to the present, while examining copyright, privacy, common carrier, antitrust and First Amendment law, and FCC regulation.

Broadly speaking, there are two major schools of thought regarding regulation of mass media technologies. There are those who advocate as little government interference as possible because they argue that the marketplace and nature of the technology itself—particularly interactive digital technologies—protect and promote free expression values. The opposing camp, however, argues that neither technology or the economic marketplace guarantees that free expression interests—or for that matter, other civil liberties such as privacy—will be protected. Consequently, government intervention

through law, subsidies and regulation are necessary to promote the free flow of information and to protect other fundamental rights, they argue. The interpretive historical account compiled in *Law and Media Technology* will allow me to weigh in on this debate, judge the merits of the opposing camps and perhaps offer my own model for mass media law and policy. Of course, a fully informed historical perspective does not guarantee a wise vision of the future but as Tim Wu notes (“A Brief History of American Telecommunications Regulation”): “Ironically, today’s debates over network neutrality and discriminatory carriage echo the same concerns that first prompted calls to regulate telegraph companies in the 19th century.”

Conclusion

The publication of *Mass Media Law: The Printing Press to the Internet* would (i) place me in the company of media law scholars and textbook authors such as Teeter, Calvert Clay and Susan Dente and (ii) aid me in building the foundation for an arguably seminal work in the interdisciplinary field of law and mass media/communication studies—*Law and Media Technology: How Law Shapes Our Use and Development of Mass Media*. As I am not eligible for a faculty fellowship until fall 2011, a Summer FRG in 2010 will prove critical to meeting my publishing deadline. I am grateful for the Faculty Fellowship I received in 2007, during which I did most of the research and writing that resulted in my July 2008 book publication, *Press Critics are the Fifth Estate: Media Watchdogs in America*, which earned recognition as a finalist for the AEJMC’s 2009 Tankard Book Award. According to a review in *Choice*, “Hayes (Fordham Univ.) provides a sophisticated analysis of relatively recent criticism of the press. . . . Endnote documentation is extensive. Highly recommended.” I look forward to the opportunity to complete my current, even more ambitious endeavor with a summer dedicated solely to research and writing through the support of a Fordham Faculty Research Grant.