

Maurer School of Law: Indiana University
Digital Repository @ Maurer Law

Federal Communications Law
Journal

Volume 64 | Issue 3

Article 1

5-2012

Editor's Note

Sarah L. Kellogg

Indiana University Maurer School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/fclj>

 Part of the [Communications Law Commons](#)

Recommended Citation

Kellogg, Sarah L. (2012) "Editor's Note," *Federal Communications Law Journal*: Vol. 64: Iss. 3, Article 1.

Available at: <http://www.repository.law.indiana.edu/fclj/vol64/iss3/1>

This Special Feature is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Federal Communications Law Journal by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Welcome to the third and final Issue of the sixty-fourth Volume of the *Federal Communications Law Journal*, the nation's premier communications law journal and the official journal of the Federal Communications Bar Association. On behalf of the Volume 64 *Journal* staff, I am pleased to present the Articles and Notes of this Issue.

The Issue opens with a speech by University of Chicago professor Geoffrey Stone on the intersection of First Amendment jurisprudence and the prosecution of leakers of classified information. Delivered as part of the FCBA's Distinguished Speaker Series, Stone examines how the SHIELD Act applies both to leaks by government employees like Bradley Manning, and also to the dissemination of those leaks by news outlets like WikiLeaks. He concludes that the SHIELD Act violates the First Amendment if applied to news outlets, unless courts apply a version of the clear and present danger test famously articulated in *Schenck v. United States*.

Next, Michigan State University professor Adam Candeub and attorney Daniel McCartney tackle the FCC's recent Internet access regulations that would prohibit broadband service providers from discriminating against unaffiliated content providers. The Authors suggest that legal concepts of discrimination and equal treatment are ill-fitted to Internet traffic management engineering, and instead urge a "bottom up" approach to Internet regulation that would create a common law of acceptable network practice.

The Issue then turns to our Notes, written by members of the *Journal* staff. First, Jennifer Fujawa outlines the growing popularity of embedded advertising, arguing that increased regulation is necessary to protect consumers. Next, Rachel Lackert examines the implications of San Francisco Bay Area Rapid Transit's ("BART") August 2011 decision to cut off cell phone and Internet service to prevent a protest, and advocates recognition of a "virtual forum" in First Amendment jurisprudence. Third, Joanna Penn discusses the advent of "behavioral advertising," surveying various methods to protect Internet consumers from unbridled behavioral tracking. Meg Burton then illuminates the current dispute over retransmission consent regulations, recommending a combination of FCC proposals and legislative action to provide for interim carriage and mandatory arbitration mechanisms. Finally, Anna Wortham argues that both national and international law should recognize cyber exploitation as a threat or use of force.

The Issue concludes with a book review by Michigan State University professor Adam Candeub. In critiquing Barbara van Shewick's recent *Internet Architecture and Innovation*, Candeub argues that her book, while topical, demonstrates a one-sided, politicized use of economic theories, and that this tendency is endemic to legal scholarship. He concludes with general recommendations to elevate interdisciplinary research methodology.

As always, the Editorial Board thanks all of its authors for their thoughtful scholarship throughout the drafting and editing process. We also extend our gratitude to the Federal Communications Bar Association for its continued guidance and support. Finally, we thank the *Journal* editors and staff; without their tireless effort, this Issue would not have been possible.

The sixty-fourth Volume is unique in that it is the last to be hosted by the Indiana University Maurer School of Law. While we are confident that the *Journal* will find itself in capable hands, we are sorry to see it go. It has been an honor to host the *Journal* since 1993, and we look forward to following its continued excellence at the forefront of communications law and policy.

The *Journal* is committed to providing its readership with expansive coverage of topical communications law issues, and we appreciate the continued support of contributors and readers alike. Both this Issue and our archive are available at <http://law.indiana.edu/fclj>.

Sarah L. Kellogg
Editor-in-Chief