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INTRODUCTION

EMERGING ISSUES IN MEDIA AND COMMUNICATIONS LAW

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When I graduated from the University of Florida College of Law in 1998 and entered the practice of law, focusing on media law litigation, I certainly could not have imagined the whole host of new and emerging technological issues that would need to be addressed under traditional constitutional and statutory laws, as reflected in this issue of the *University of Florida Journal of Law and Public Policy* and other scholarly journals around the country. Without a doubt, not only in practice but since becoming a professor of both Media Law and First Amendment Law, these issues have presented immense challenges for me. It is often like placing the traditional square peg into a round hole. In any event, that square peg has to be adapted to fit.

Having been a frequent teacher of Media and Communications Law, I have found more and more in recent years that students' concerns and questions about media and First Amendment Law issues often take me well outside of the case law and examples in current textbooks. Just like the Founding Fathers did not fathom the reach of free speech when they drafted the Bill of Rights, we as professors and practitioners could not have fathomed the need to stretch existing concepts to unimaginable technological advances, as little as ten years ago. This issue of the *University of Florida Journal of Law and Public Policy* contains articles touching on a number of these emerging issues and how they may potentially fit within the existing media and First Amendment law jurisprudence.

A good example of this is use by practitioners, judges and litigants of social networking sites such as Facebook and Twitter. One particularly high profile example of this emerging phenomenon is the *State of Florida v. George Zimmerman* case, involving the shooting death of Trayvon Martin. Professional ethics rules and rules governing litigation are often insufficiently drafted to completely cover the use of social-networking sites during pending cases. Nonetheless, ethical and

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legal principles need to be complied with in this rapidly advancing technological world. Certainly, practitioners and others have a free speech right to access and use such sites, but they present a whole host of new ethical challenges. Courts are struggling with these issues as more and more judges, jurors and practitioners use such resources for both personal and professional purposes. The struggle is exemplified by what the use of such sites by government practitioners such as myself means for compliance with the state's strong public records and open meetings laws.

Even a concept as old in First Amendment terms as prior restraint requires a reexamination in light of new technology and new ways of both gathering and publishing news. In fact, as discussed in this issue of the *Journal*, the traditional prior restraint verses subsequent punishment doctrine reflected in decades-old case law may be insufficient, as policy distinctions between prior restraints and subsequent punishments are simply no longer applicable in this rapidly changing world. Both prior restraint by the government and subsequent punishment through existing laws have the same major impact on free speech, as evidenced by the recent Wikileaks case. Certainly, concerns over national security are highly magnified in this landscape where almost anyone can be an instant publisher of secrets, as the WikiLeaks phenomenon demonstrated. The government's critical interest in protecting the nation is all the more in conflict with the public's interest in free speech and holding the government accountable. Traditional focus on established legal doctrine will often not be sufficient to address these ever changing conflicting interests.

Shield laws, often called the journalist's privilege, are another good example of the difficulty in their application to new media, as discussed in this issue. How and whether to extend existing shield law protection to bloggers and other digital newsgatherers is a critical issue in today's new media world, if traditional principles of free speech are to be protected. Even so, extending such laws too far tips the balance unfairly to one side. In fact, as discussed in this issue, online media are often excluded from journalist's privilege and shield law protection in many states, despite its growing importance in terms of how the vast majority of the public receives information. The lack of legislative recognition of digital newsgathering creates challenges for newsgatherers seeking protection as well as for courts that must assess whether bloggers and other online reporters should be able to invoke the privilege. Without such protection, the public's right to know could be seriously impacted. Too much protection, and the line between professional journalist and consumer ceases to exist.

Forty states have shield laws and they are not uniform to cover new forms of media, which often stretch beyond any borders, making for

inconsistent application of any journalist's privilege. Several courts have attempted to address whether and how to apply the existing privilege laws to news websites and bloggers, with inherently inconsistent results. One author in this issue addresses a more newsgathering-focused model for deciding when to apply the privilege, as opposed to focusing on the medium; but even deciding when something is "newsgathering" can be increasingly difficult given the proliferation of new forms of media.

Overall, as this issue of the *University of Florida Journal of Law and Public Policy* amply demonstrates, the host of emerging technological issues, of which this introduction provides merely a few examples, demonstrates that the law affecting media and the First Amendment is far from static as reflected in rapidly aging textbooks. Both the practice and teaching of law have had to adapt to this ever changing media world, and certainly more First Amendment and statutory challenges await as new engines of information gathering challenge our way of thinking how existing laws, meant for newspapers and more traditional forms of newsgathering, will apply to how information is gathered and disseminated to the media and public in the 21st Century.