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 …"
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- Marketplace of ideas needed for open society so truth can emerge
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- 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

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

- *Readers Digest* advertisement: “We’re Trusting in God...”
- *Time Magazine* advertisement: “Miracle in Iowa”
## 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 throughout government)

**Privacy**
- Electronic mail, wire tapping