

**Note to Media and the Law Seminar attendees:**

Below are descriptions of panel topics plus links to written materials that are available on the Media and the Law Seminar Web site: <https://law.ku.edu/media-law-seminar>

**New Media in a New Normal**

**34<sup>th</sup> Annual**

**Media and the Law Seminar**

**Thursday, April 28 - Friday, April 29, 2022**

**Panel 1 – Thursday, April 28, 8:10 – 9:00 a.m.**

***Breaking Your Publication's Network Security: Legal and Practical Concerns Facing Media Organizations When They Experience a Breach Event***

Breach events, and in particular, Ransomware events, have become nearly ubiquitous. This panel is designed to explore the unique ways in which such breach events impact media organizations. This panel will address the following, among others:

- How a breach event can jeopardize the confidentiality of sources;
  - Potential harm to the reputation of a media organization, and the provenance of its reporting;
  - How media organizations can better mitigate the impact of a breach event on its operations;
  - Notification requirements that are triggered by a breach event that exposes personally identifiable information;
  - Practical advice on recovery from a breach event, including how the process of recovery is conducted;
  - Issues for in-house counsel when internal, attorney-client communications are accessed by bad actors.
- I. "Updated Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments," U.S. Department of the Treasury  
[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwizrYz0ycv2AhVxknIEHfuQBXQQFnoECAMQAw&url=https%3A%2F%2Fhome.treasury.gov%2Fsystem%2Ffiles%2F126%2Fofac\\_ransomware\\_advisory.pdf&usg=AOvVaw3B2VvjS2O2BY49JxSvtEwD](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwizrYz0ycv2AhVxknIEHfuQBXQQFnoECAMQAw&url=https%3A%2F%2Fhome.treasury.gov%2Fsystem%2Ffiles%2F126%2Fofac_ransomware_advisory.pdf&usg=AOvVaw3B2VvjS2O2BY49JxSvtEwD)
    - A. Issued by the Office of Foreign Assets Control, which regulates economic and trade sanctions, to advise US companies that they could be subject to sanctions if they make ransomware payments, and to set forth mitigation strategies.
  - II. "China suspected in hack of journalists at News Corp,"  
<https://www.reuters.com/business/media-telecom/news-corp-says-one-its-network-systems-targeted-by-cyberattack-2022-02-04/>
    - A. Executives for News Corp, the publisher of the Wall Street Journal, told the press that data was stolen from the company's email accounts, most likely by foreign actors.
  - III. "US officials tell businesses to watch for potential ransomware attacks after Biden announces Russia sanctions," <https://www.cnn.com/2022/02/22/politics/russia-sanctions-fbi-cyber-threats-ransomware/index.html>
    - A. On February 22, 2022, the Biden administration warned that US businesses and governmental entities should be on high alert in the wake of Russia's invasion of Ukraine.

- IV. “Russian State-Sponsored Cyber Actors Gain Network Access by Exploiting Default Multifactor Authentication Protocols and ‘PrintNightmare’ Vulnerability,”  
<https://www.cisa.gov/uscert/ncas/alerts/aa22-074a>
- V. “Advisory on Ransomware and the Use of the Financial System to Facilitate Ransom Payments,” 2020 and 2021, Financial Crimes Enforcement Network (FinCEN).
  - A. FinCEN is the bureau of the United States Department of the Treasury that obtains and reviews information about financial transactions for investigative purposes.
    1. 2020 advisory: <https://www.fincen.gov/sites/default/files/advisory/2020-10-01/Advisory%20Ransomware%20FINAL%20508.pdf>
    2. 2021 advisory: [https://www.fincen.gov/sites/default/files/advisory/2021-11-08/FinCEN%20Ransomware%20Advisory\\_FINAL\\_508\\_.pdf](https://www.fincen.gov/sites/default/files/advisory/2021-11-08/FinCEN%20Ransomware%20Advisory_FINAL_508_.pdf)
      - a. Issued in large part in response to the [Colonial Pipeline ransomware attack](#), which was effectuated through compromising a single-factor authentication password, to advise businesses and governmental entities to strengthen their cybersecurity defenses.

**Panel 2 – Thursday, April 28, 10:00 – 10:50 a.m.**  
***WTF are NFTs? The Basics and Potential Risks of Non-Fungible Tokens***

Non-Fungible Tokens (NFTs) are the “hot topic” on the market these days. An increasing number of rightsholders and companies are exploring new ways to exploit their intellectual property as well as potential new marketing methods using NFTs. This panel explains what NFTs are and the possible opportunities and legal risks involved, including copyright, contract, royalties, security, counterfeiting, and other considerations. Panelists will also provide tips and advice regarding best practices when getting involved with NFTs. This Panel will explore:

- What are NFTs and how are they being used by media and entertainment companies?
  - What are “smart contracts” and how are they related to NFTs?
  - What legal exposures do NFTs present?
  - Is there any case law out on NFTs and what guidance does it provide?
  - Video game companies are particularly active in this area, what legal problems have been experienced in this regard?
  - NFTs are also popular in the worlds of art and music, what are the legal considerations in this area?
  - Are NFTs editorial or commercial speech? What First Amendment and free speech protections are they likely to be afforded?
  - How are NFTs being treated in the EU and other parts of the world?
  - Is insurance available for NFTs and if it is what is the appropriate coverage for them – media liability, Tech E&O, Cyber or general liability?
- I. How NFTs are used by Marketers—A Continually Updated List, <https://adage.com/live-blog/how-brands-marketers-use-nfts-updated-list>
    - A. A running tally of corporations’ evolving relationship with unique digital items known as non-fungible tokens, or NFTs.

- II. “An IP lawyer explains what counts as NFT theft when ‘stealing’ is as easy as right-click and save,” <https://fortune.com/2022/02/04/nft-theft-stealing-copying-right-click-save-law-lawyer/amp/>
  - A. Discusses copyright implications for NFT owners given that digital images online can be copied and saved to any user’s desktop.
- III. [Where Game Companies Stand On NFTs - GameSpot](#)
  - A. A roundup of the various stances in the gaming industry on NFTs, from skeptical (Xbox) to cautious (Nintendo) to unequivocally supportive (Ubisoft).
- IV. [Ubisoft's latest effort to convince employees that NFTs are good falls flat | PC Gamer](#)
  - A. NFTs not gaining traction in the video game industry?
- V. [Dapper-Labs-lawsuit-complaint.pdf \(dandodiary.com\)](#)
  - A. Do NFTs sold to investors in a digital platform violate securities laws if the sellers fail to file registration statements with the SEC?
- VI. [Letter to court from counsel for defendants](#), *Friel v. Dapper Labs, Inc., et al.*, No. 1:21-cv-05837-VM (S.D.N.Y.)
  - A. Letter contains the defendants’ account of settlement progress
- VII. [NFT Law: "Non-Fungible Token" Makes Its Appearance in a Case \(reason.com\)](#)
  - A. Quote from of November 13, 2021 opinion in *Playboy Enters. Int'l v. www.playboyrabbitars.app*, <https://casetext.com/case/playboy-enters-intl-v-wwwplayboyrabbitarsapp>
    - a. “Plaintiff Playboy Enterprises International, Inc. ... filed a complaint to stop the Defendants from counterfeiting the Playboy Marks in connection with the unauthorized sale of fake Playboy Rabbits non-fungible tokens ("NFTs") on www.playboyrabbitars.app and www.playboyrabbit.com (the "Counterfeit Websites")”
- VIII. [Tom Brady's NFT Platform Autograph Partners With Lionsgate and DraftKings - CoinDesk](#)
- IX. [Blockchain and Digital Assets News and Trends | Insights | DLA Piper Global Law Firm](#)
  - A. [Outlines risks for NFT investors](#), including NFT ownership, loss, fraud, and uncertainty in the regulatory sphere.
- X. [NFT makers are trying to build the next Disney - The Verge](#)
  - A. How NFTs facilitate fictional worldbuilding and the risk of investing in collectibles based on such worlds.
- XI. “Cutting a Banksy Into 10,000 (Digital) Pieces,” <https://www.nytimes.com/2021/12/01/arts/design/banksy-nft-loic-gouzer-particle.html?smid=em-share> (subscription required)
  - A. A former Christie’s executive has joined cryptocurrency experts to create a company that purchases art and sells the fragments as NFTs.
- XII. “Tarantino’s NFT Auction Goes Ahead Despite Miramax Copyright Lawsuit,” [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_MLRC.informz.net\\_z\\_cjUucD9taT0xMDM4MjlxOSZwPTEmdT0xMDEwODU3OTk0JmXpP\\_TkxODY4OTIw\\_index.html&d=DwMBaQ&c=tKpMelqUXaLZSw7URisCjoQfZNP1HiRnKhziL7iP\\_UG4&r=ZtWZRfDgHilGyXm5fhhpvWkrRKleWgPwOFWez9uY5wo&m=l4fVLCnfr0fIP\\_eLuZQOi\\_HGECc6XIQkdoOK90EPvtb03gfGETaoemuH4719v7aQu&s=EtSz-3FjHytrtD50lJcPeeMlo9F4UREP7jp6ZSoUNeg&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_MLRC.informz.net_z_cjUucD9taT0xMDM4MjlxOSZwPTEmdT0xMDEwODU3OTk0JmXpP_TkxODY4OTIw_index.html&d=DwMBaQ&c=tKpMelqUXaLZSw7URisCjoQfZNP1HiRnKhziL7iP_UG4&r=ZtWZRfDgHilGyXm5fhhpvWkrRKleWgPwOFWez9uY5wo&m=l4fVLCnfr0fIP_eLuZQOi_HGECc6XIQkdoOK90EPvtb03gfGETaoemuH4719v7aQu&s=EtSz-3FjHytrtD50lJcPeeMlo9F4UREP7jp6ZSoUNeg&e=)
  - A. Director on 1994 movie “Pulp Fiction” [announced auction to sell the script](#) for scenes that did not make the cut in the film, along with original audio commentary by the director, as NFTs.

- B. Movie studio filed suit alleging it has exclusive rights to sell NFTs related to the movie “Pulp Fiction” because the director/defendant assigned various rights to the studio in the course of making and promoting the film.
  - C. Tarantino [filed motion to dismiss](#) based on the NFTs’ relationship to the script, the rights to which he owns.
- XIII. [Cryptocurrency Enthusiasts Meet Their Match: Angry Gamers - The New York Times \(nytimes.com\)](#)
- A. Gamers criticized online against maker of popular video game as unreasonably profit-motivated when the sequel to the game would have included the sale of NFTs related to items in the game; company withdrew its plan to include NFTs in the sequel.
- XIV. [Crypto Collective Spent Millions on Copy of Dune Book Thinking It Gave Them IP Rights \(yahoo.com\)](#)
- XV. [Nike sues StockX over NFT shoes | Retail Dive](#)
- A. Defendant appropriated Nike’s trademarks, including the “swoosh,” to sell as NFTs.
- XVI. [McDonald’s McRib is now an NFT | Food News | Al Jazeera](#)
- A. The company gave away McRib NFTs to Twitter users as a promotion.
- XVII. *Playboy Enterprises Int’l, Inc. v. www.playboyrabbitars.app*, No. 21 CIV. 08932 (VM), 2021 WL 5299231, at \*1 (S.D.N.Y. Nov. 13, 2021), <https://casetext.com/case/playboy-enters-intl-v-wwwplayboyrabbitarsapp>
- A. Granted request for preliminary injunction and confirm seizure order for Plaintiff Playboy Enterprises International, Inc. which had filed a complaint to stop the Defendants from counterfeiting the Playboy Marks in connection with the unauthorized sale of fake Playboy Rabbitars non-fungible tokens ... on www.playboyrabbitars.app and www.playboyrabbit.com....
- XVIII. *Notorious B.I.G. LLC v. Yes. Snowboards*, No. CV 19-1946-JAK (KSX), 2021 WL 6752168 (C.D. Cal. Dec. 22, 2021), Report and Recommendation RE: Plaintiff’s Motion for Fees, <https://kautschlaw.com/wp-content/uploads/2022/04/report-and-recommendation-on-attorney-fees-122221.pdf>
- A. Briefly mentions NFTs
- XIX. Making Sense of the \$40B NFT Market, <https://www.rightclicksave.com/article/making-sense-of-the-40b-nft-market>
- A. Compares NFT market to other collectibles, particularly fine art.
- XX. “After Copyright: Pwning NFTs in a Clout Economy,” <https://deliverypdf.ssrn.com/delivery.php?ID=087089099092099113006016121000114005018043040037001065095010008113090100108025093067002010036056019123016101097004089099076020104087070023007102018025065026016099004020076113003126081119125126068120101091106097094012127024077095067008025076079105098&EXT=pdf&INDEX=TRUE>
- A. How the proliferation of NFTs expands the concept of copyright.

**Panel 3 – Thursday, April 28, 1:00 – 1:50 p.m.**

***Journalism on a Shoestring: Managing Media Risks in a Low-Resource World***

As legacy newsrooms shed staff in rounds of downsizing, reporters, and editors, driven by their journalists’ ideals and motives, are forming small newsrooms all over the country for online digital publishing. The range of their interests and reporting is the same as the larger newsrooms they left. Some pursue general local news, whether regional or hyperlocal. Some report general news, not for a locality, but for geographically dispersed interest or ethnic groups, such as the military or Native

Americans. Others focus on a single topic, maybe related to the environment, social justice, specific industries, or legal issues. Some publish regularly, some immerse themselves in a single story, publishing only when the story is done. Most are in digital print, but some are podcasts or videos. For all their variety, what they have in common is that they lack resources. This panel asks whether ambitious but impecunious journalism inherently creates increased media law risk, and if so, how do the newsrooms and their lawyers manage that risk? This Panel will explore:

- What are the journalistic and business factors driving the growth of small newsrooms?
- How are media law risks affected when journalists lack resources?
- What journalistic and legal issues are presented by a reliance on freelance writers?
- What legal issues arise when small newsrooms collaborate with other news organizations?
- How can low-resource media clients best be served by the media bar?
- What is the role of philanthropy in both the business model of the newsrooms and the delivery of legal services to them?

I. Industry Updates

- A. “Big news: LION’s Media Liability program expands to all US states,”  
<https://www.lionpublishers.com/big-news-lions-media-liability-program-expands-to-all-us-states/>
- B. [A federal subsidy for local journalists continues to advance ... but slowly](#)—Poynter
  - a. [Bill](#) effectively died when [Build Back Better failed](#) in December of 2021
- C. “A Cambrian explosion of news startups is coming,”  
<https://www.niemanlab.org/2021/12/a-cambrian-explosion-of-news-startups-is-coming/>
  - a. Shifting media landscape brings opportunity for local journalism
- D. [How Newpack is working to crack the code on local news](#)—Poynter
  - a. Local digital startups on the rise
- E. [More than 70 local newsrooms launched during the pandemic](#)—Poynter

II. Resources for small newsrooms

- A. A \$115,000 grant to continue the Public Media Journalists Association (PMJA) Editor Corps, which provides short-term editing assistance to public media newsrooms facing significant burdens, <https://pmja.org/pmja-editor-corps/>
- B. First Look Media Institute’s “Lawyers for Reporters” program provides pro bono legal services to local news organizations, working with seasoned media lawyers at major law firms across the country, <https://lawyers4reporters.org/what-we-do-1>
- C. The Institute for Nonprofit News (INN) offers a variety of legal services to non-profit news organizations, including flat fee (\$500) pre-publication review by lawyers at Sheppard Mullin, <https://archive.inn.org/inn-support-services/legal/>
- D. Legal Connect is a partnership between the Institute for Nonprofit News and the Media Law Resource Center, to help INN member organizations find affordable media law specialists for cases that exceed what they can access from pro bono legal services, state press or other news association services. These specialists will be experienced, young attorneys who will be supervised by the senior lawyers in their firms. See <https://form.jotform.com/83325670114956>
- E. The [Reporters Committee Legal Defense and FOIA Hotline](#) is available to journalists and media lawyers at any time, but nonemergency requests or questions about services and publications will be answered more promptly during normal office hours (9 a.m. to 6 p.m. Eastern time).

- F. The Reporters Committee's Pre-Publication Review Guide helps journalists better assess legal risks, <https://www.rcfp.org/resources/pre-publication-review-guide/>
- G. Libel law basics. What is libel law? How does it work? <https://www.freedomforuminstitute.org/first-amendment-center/primers/libellaw/>
- H. Practical tips on how to avoid being sued for libel, <https://www.dmlp.org/legal-guide/practical-tips-avoiding-liability-associated-harms-reputation>
- I. A free video training presented in 2019 by George Freeman, former newsroom counsel for The New York Times, and now the Executive Director of the Media Law Resource Center, <https://www.poynter.org/shop/business-work/how-to-avoid-being-sued/>
- J. Non-profit publications may be a valid corporate entity and may have journalists employed for them, but still may find themselves relying on citizens not only for tips for stories, but also, at times, for photos, video and such additions to stories, in order to stretch their staff's capabilities. This article discusses the issues that arise in such situations and how issues such as racial unrest have changed the impact of citizen journalists on this country, <https://journals.librarypublishing.arizona.edu/appellate/article/id/4834/>
- K. An analysis on the changing characteristics of the media in general, from 2011, <https://law2.wlu.edu/deptimages/law%20review/68-2jones.pdf>

**Panel 4 – Thursday, April 28, 3:00 – 3:50 p.m.**

***The Misinformation Wars: The Plans to Curtail § 230 Protections & The Likely New Legal Terrain in Distributor Liability***

Alarms over misinformation seen in all species of media have turned legislators of all political stripes and interests to the task of designing legislation to curtail the protections afforded by § 230 of the Communications Decency Act (CDA). Threats to cut back § 230 are not new, but the broad outcry against social media, the heated disputes over the pandemic and health measures, the growing distrust of the tech giants, and the mounting hostility to the press have all converged to push things to a tipping point for Congress. The proposed limitations aimed at § 230 could take a variety of forms. The question then follows as to how these plans might shape the new liability environment that would then confront internet publishers and platforms that feature user-generated content. This panel will explore:

- Current state of the law with respect to the spread of misinformation;
  - Current draft legislation to revise § 230, and suggested variations;
  - Restatement causes of action that could potentially be used by plaintiffs against misinformation and those who distribute it when 230 protections are narrowed;
  - Content moderation duties confronting online platforms following § 230 revision;
  - Alternatives to legislation to address the dissemination of misinformation;
  - Constitutional constraints;
  - Present European regimens and how they operate; and
  - Other regulation of misinformation that may follow.
- I. Slate – All of the congressional proposals to change Section 230, <https://slate.com/technology/2021/03/section-230-reform-legislative-tracker.html>
    - A. Most recent proposal involves removing 230 protection for hosting content that promotes sex trafficking

- II. False Accusation: The Unfounded Claim that Social Media Companies Censor Conservatives, [https://static1.squarespace.com/static/5b6df958f8370af3217d4178/t/60187b5f45762e708708c8e9/1612217185240/NYU+False+Accusation\\_2.pdf](https://static1.squarespace.com/static/5b6df958f8370af3217d4178/t/60187b5f45762e708708c8e9/1612217185240/NYU+False+Accusation_2.pdf)
  - A. No data to support conservative claims of censorship by “Big Tech”
- III. European Democracy and Counter-Disinformation: Toward a New Paradigm?, <https://carnegieeurope.eu/2021/12/14/european-democracy-and-counter-disinformation-toward-new-paradigm-pub-85931>
  - A. Why and how bad actors spread disinformation, and the steps European countries are taking to combat the spread, including passing laws to regulate misinformation surrounding elections and online hate speech.
- IV. 47 U.S.C. §230, <https://www.law.cornell.edu/uscode/text/47/230>

**Panel 5 – Friday, April 29, 8:10 – 9:00 a.m.**

***Sullivan Unsettled? Brainstorming the Future of Defamation Law in the Misinformation Age***

In the last three years, two Supreme Court minority opinions have raised doubts about the constitutionality and fairness of the “actual malice” standard required to prove defamation claims against “public officials” since *New York Times v. Sullivan* in 1964. Of particular concern among justices as well as scholars is the extent to which the high burden plaintiffs face to prove the “actual malice” contributes to a societal failure to counter the proliferation of misinformation. Even though the “actual malice” status quo is well worth defending from a liability standpoint, this panel will, among other things, brainstorm palatable alternative mechanisms to litigate defamation cases in the event *Sullivan* is eventually replaced. Issues to be discussed include the following:

- How does the prospect of litigating the “actual malice” standard both impact potential plaintiffs and influence the media’s publication/broadcast/online posting decisions?
- Does the definition of “public figure” developed following *Sullivan* unreasonably hinder the ability of plaintiffs in defamation lawsuits to combat misinformation?
- Would a community standard based on a professional standard of care, akin to how legal and medical malpractice cases are litigated, be a reasonable alternative to wholesale return to the common law? Presuming a return to the common law would be undesirable, what other alternative scienter requirements are possible alternatives to “actual malice”?
- What other reforms, such as revising Section 230 or re-examining the broad scope of the hyperbole defense, if any, would be as or more effective in combating the flow of misinformation than replacing *Sullivan*?

- I. Richard A. Epstein, “[Was New York Times v. Sullivan Wrong?](#),” 53 University of Chicago Law Review 782 (1986).
- II. [Mckee v. Cosby](#), 139 S.Ct. 675 (2019) (Thomas, J., concurring)
- III. David Logan, “[Rescuing our Democracy by Rethinking New York Times v. Sullivan](#),” 81 Ohio St. L.J. 759, 785 (2020)

- IV. David A. Anderson, "[Second Thoughts: A Response to David A. Logan's Rescuing Our Democracy by Rethinking \*New York Times v. Sullivan\*](#)," OSJ Online, vol. 82 (2021).
- V. [Berisha v. Lawson](#), 141 S.Ct. 2424 (2021) (Thomas, J. and Gorsuch, J., dissenting)
- VI. [Opinion, \*Palin v. NY Times\*](#), March 1, 2022
- VII. <https://www.forbes.com/sites/alisondurkee/2022/03/09/after-court-lets-fox-news-challenge-move-forward-heres-where-dominion-and-smartmatic-defamation-suits-stand-now-and-who-could-be-next/?sh=d8b3e53907f7>
- VIII. Freeman/Levine op ed: <https://www.washingtonpost.com/opinions/2022/03/08/libel-suit-increase-times-v-sullivan-news-media/> paper
- IX. Sullivan white paper: <https://live-medialaw.pantheonsite.io/wp-content/uploads/2022/03/nytsullivanwhitepaper.pdf>
- X. [https://www.courtlistener.com/docket/6081165/palin-v-the-new-york-times-company/?filed\\_after=&filed\\_before=&entry\\_gte=&entry\\_lte=&order\\_by=desc](https://www.courtlistener.com/docket/6081165/palin-v-the-new-york-times-company/?filed_after=&filed_before=&entry_gte=&entry_lte=&order_by=desc)
- XI. [Summary of \*Palin v. NY Times\*](#), Shullman Fugate PLLC
- XII. [Summary of \*Dominion v. My Pillow\*](#) (and related cases), Shullman Fugate PLLC

**Panel 6 – Friday, April 29, 10:00 – 10:50 a.m.**  
***Zooming into a New Age of Journalism***

From the notepad to the iPad, and the typewriter to the text message, the tools of the trade have changed a lot for journalists in recent years – and so have the legal risks. This panel explores some of the new risks created by video-conferencing and virtual tools to connect with sources and stories. Panelists will also look at what the traditional media can teach the new journalists coming up through the ranks in the digital age.

- What unique new legal risks are posed by interviewing sources with video-conferencing tools?
  - Are there legal and ethical considerations associated with attending court hearings or other public events “virtually?”
  - Can a journalist engage in newsgathering via virtual events without announcing their presence?
  - What can journalists who started in traditional media teach you influencers and new journalists in the digital age?
- I. “Encryption: How It Can Protect Journalists and the Free Press,” Committee to Protect Journalists (<https://www.internetsociety.org/wp-content/uploads/2020/03/Encryption-for-Journalists-Factsheet.pdf>)
  - II. “Authorities Claim They Accessed Encrypted Signal Chats to Charge Oath Keepers,” Gizmodo (<https://gizmodo.com/authorities-claim-they-accessed-encrypted-signal-chats-1848361100>)
  - III. “Pegasus spyware used in ‘jaw-dropping’ phone hacks on El Salvador journalists,” The Guardian (<https://www.theguardian.com/news/2022/jan/13/pegasus-spyware-target-journalists-activists-el-salvador>)
  - IV. “Social media poses ‘existential threat’ to traditional, trustworthy news: UNESCO” (<https://news.un.org/en/story/2022/03/1113702>)
  - V. “6 social media challenges for journalists,” International Journalists’ Network (<https://ijnet.org/en/story/6-social-media-challenges-journalists-2020>)



- VI. "Privacy Day 2021: what journalists need to know," [DataJournalism.com](https://datajournalism.com/read/longreads/privacy-day-security-guide)  
(<https://datajournalism.com/read/longreads/privacy-day-security-guide>)
- VII. Article and video of FBI raid on Project Veritas, The Daily Mail  
(<https://www.dailymail.co.uk/news/article-10617929/Project-Veritas-shares-video-FBI-raid-journalists-home-Ashley-Bidens-stolen-diary.html>)

**Panel 7 (two sections) – Friday, April 29, 1:00 p.m. to 1:25 p.m.  
and 1:25 p.m. to 1:50 p.m. (Ethics session .5 CLE)**  
***From the Workroom to the Work Zoom: Navigating Privacy Concerns  
in the New Remote Workplace***

**Section 1:**

An estimated one-fourth of Americans now work from home in the wake of the COVID-19 pandemic, and for many, the remote workplace is here to stay. Nearly half of employers plan to let employees work remotely full-time once the pandemic is over, and more than three-fourths have said they will be able to work from home at least one day a week. This panel will examine the legal and privacy risks stemming from the migration of employees to home offices, and how employers can continue to monitor employees effectively –but not creepily.

Among the potential privacy pitfalls, which this panel will help you to avoid, are:

- Security gaps in home environments
- Illegal or excessive monitoring of employees
- Inadvertent disclosures of documents/screen sharing
- Improper recording of meetings/calls
- Employee productivity losses / burnout
- Inadequately restricted access to calls and meetings
- Weak password protection and inappropriate access restrictions
- Misuse or lack of protection on personal devices

**Section 2: From the Workroom to the Work Zoom: Navigating Privacy Concerns in the New Remote Workplace (Ethics session .5 CLE)**

The panel will also address the legal ethics issues posed by remote work and its accompanying technology. A recent ABA survey found that only 31 percent of responding lawyers had an incident response plan in place for cyberattacks or inadvertent disclosures of personal data. The key Model Ethics Rules are 1.1 (Competence), 1.6 (Confidentiality) and 5.3 (Responsibility for Nonlawyer Assistants).

- I. US Department of Homeland Security – Cybersecurity & Infrastructure Security Agency (CISA)
  - a. CISA "4 Things You Can Do to Keep Yourself Cyber Safe" <https://www.cisa.gov/4-things-you-can-do-keep-yourself-cyber-safe>

- b. CISA Telework Reference Materials for Non-Federal Organizations <https://www.cisa.gov/telework-reference-materials-non-federal-organizations>
  - c. CISA Telework Reference Materials for the At-Home Worker <https://www.cisa.gov/telework-reference-materials-home-worker>
- II. ABA Model Ethics Rules regarding Technological Competency
- A. Model Ethics Rule 1.1  
(Competence) [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/)
    - 1. Comment to Model Ethics Rule
      - 1.1 [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/comment\\_on\\_rule\\_1\\_1/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/)
  - B. Model Ethics Rule 1.6  
(Confidentiality) [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_6\\_confidentiality\\_of\\_information/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/)
    - 1. Comment to Model Ethics Rule
      - 1.6 [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_6\\_confidentiality\\_of\\_information/comment\\_on\\_rule\\_1\\_6/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/comment_on_rule_1_6/)
  - C. Model Ethics Rule 5.3 (Responsibility for Nonlawyer Assistants) [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_3\\_responsibilities\\_regarding\\_nonlawyer\\_assistant/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_3_responsibilities_regarding_nonlawyer_assistant/)
    - 1. Comment to Model Ethics Rule
      - 5.3 [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_3\\_responsibilities\\_regarding\\_nonlawyer\\_assistant/comment\\_on\\_rule\\_5\\_3/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_3_responsibilities_regarding_nonlawyer_assistant/comment_on_rule_5_3/)