

NEW NORMAL

JUST AHEAD



New Media in the New Normal

April 28 & 29, 2022

Featuring

- Breaking Your Publication's Network Security: Legal and Practical Concerns Facing Media Organizations When They Experience a Breach Event
- WTF are NFTs? The Basics and Potential Risks of Non-Fungible Tokens
- Journalism on a Shoestring: Managing Media Risks in a Low-Resource World
- The Misinformation Wars: The Plans to Curtail § 230 Protections & the Likely New Legal Terrain in Distributor Liability
- Sullivan Unsettled? Brainstorming the Future of Defamation Law in the Misinformation Age
- Zooming into a New Age of Journalism
- From the Workroom to the Work Zoom: Navigating Privacy Concerns in the New Remote Workplace

34th Annual

MEDIA
and the
LAW

Seminar

law.ku.edu/media-law-seminar

New Media in the New Normal

April 28 & 29, 2022 • Virtual Seminar

Program Overview

We live in a dynamic world, which for those of us who've been around awhile, is a vastly different environment compared to the one in which we humbly hosted our first conference more than three decades ago. If we had mentioned the Internet, "following" trends, tweets, Zoom calls, and COVID shutdowns, the audience would have thought we were discussing a science fiction novel. Since then, journalism, the law, and insurance have evolved along with the world, for better and for worse. As recent times have opened up a "Pandora's box" of new technologies, emerging risks, and legal

issues, this year's seminar will examine what lies ahead for journalists, lawyers, and insurers and how we can combine the best aspects of the past practices with the evolution of a changing world. Topics will include what today's "influencers" can learn from traditional journalists; what legal risks can arise with the use of avant-garde newsgathering technologies; how AI technologies may impact privacy law; what role the media plays in the spread of misinformation; what the legal landscape would look like if the Supreme Court revisited *Sullivan*; and more.

CLE Credit

A total of **Eight CLE credit hours**, including **.5 hour of ethics**, approved by the Kansas CLE Commission, as well as in Missouri, New York and California. The seminar support staff will provide on-site assistance to attendees who plan to apply for CLE credit from other jurisdictions.

Please note: to receive the full eight hours of CLE credit, attendees must be logged into all sessions and be fully engaged. Each panel will contain a unique questions attendees must answer to register their involvement.

Sponsors

- The Kansas City Metropolitan Bar Association Media Law Committee
- University of Kansas School of Law

Contributors

- AXIS Insurance
- Ballard Spahr LLP
- Bryan Cave Leighton Paisner LLP
- Haynes and Boone LLP
- Katten Muchin Rosenman LLP
- Klaris Law PLLC
- Lathrop GPM LLP
- Stevens & Brand LLP
- Vedder Price P.C.

Coordinated by



Thursday, April 28

8 a.m. **WELCOME**
(CST) **Nathan Waddell**, Chair, Media and the Law Committee, JD, AVP, Cyber Technology Practice, Kansas City, MO

8:10 a.m. **PANEL 1**
(CST) **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.

Moderator:

Richard Sheridan, SVP and Chief Claims Officer, Berkley Cyber Risk Solutions, Morristown, NJ

Panelist:

Bryan Clark, Attorney, Vedder Price, Chicago, IL

Scott Swift, VP, Cyber Reinsurance Underwriter, Swiss Re, Kansas City, MO

Sam Sica, Partner, Mullen Coughlin LLC, Devon, PA

9 a.m. **PANEL 1 Q&A**

10 a.m. **PANEL 2**
(CST) **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?

Moderator:

Jennifer A. Dukarski, Shareholder, Butzel Long, Ann Arbor, MI

Panelists:

Andrew P. Bridges, Partner Emeritus, Fenwick & West LLP, San Francisco, CA

Dan D. Nabel, Associate General Counsel, Riot Games, Los Angeles, CA

Dan Shefet, Founder and Principal, Cabinet Shefet, Paris, France

10:50 a.m. **PANEL 2 Q&A**

1 p.m. **PANEL 3**
(CST) **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?

Moderator:

Nike Okediji, Deputy General Counsel, GBH, Boston, MA

Panelists:

Kelsey Ryan, Founder/Publisher, The Kansas City Beacon and The Wichita Beacon, Kansas City, MO

Juliet Sorensen, Executive Director, Injustice Watch, Clinical Professor of Law, Northwestern University School of Law, Chicago, IL

Steve Zansberg, Law Office of Steven D. Zansberg LLC, Denver, CO

1:50 p.m.

PANEL 3 Q&A

3 p.m.

PANEL 4

(CST)

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
- Other regulation of misinformation that may follow

Moderator:

David Korzenik, Partner, Miller Korzenik Sommers Rayman LLP, New York, NY

Panelists:

Len Niehoff, Professor, University of Michigan Law School, Ann Arbor, MI

Caitlin Vogus, Deputy Director of CDT's Free Expression Project, Center for Democracy & Technology, Washington, DC

3:50 p.m.

PANEL 4 Q&A

4 p.m.

ADJOURN

(CST)

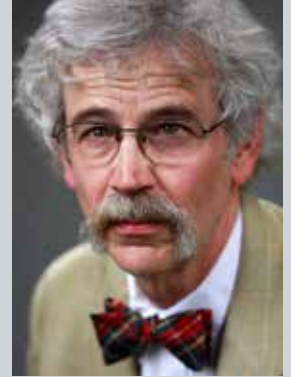
Virtual Speaker's Dinner

Art Cullen is a Pulitzer Prize-winning journalist, editor of *The Storm Lake Times* (a family-run weekly newspaper in small-town Iowa), and author of the new book, *Storm Lake: A Chronicle of Change, Resilience, and Hope from a Heartland Newspaper*.

April 28, 2022 at 5 p.m. CST (Presentation begins 5:30 p.m. CST)

The speaker's dinner event is traditionally hosted by AXIS Insurance on the night before the seminar, following the bonus session. All seminar panelists and attendees are invited to join. This year, due to the virtual nature of the seminar, the speaker's dinner will be hosted by AXIS virtually at 5 p.m. (CST) on Thursday, April 28. Prior to the featured speaker's presentation, attendees are invited to participate in networking and discussion time.

Art has made it his life's work to ask the big questions, speak truth to power, and share the struggles and successes of his unique community of Storm Lake, Iowa (Census pop. 10,076). His new book is part cultural history, part memoir — it explores the themes of family, community, immigration and diversity, the meaning of home, and the Heartland's turbulent history and promising progressive future. Drawing from the stories of one special small town on the "broken prairie," and his family's perspectives from their small-town newspaper business, Art hopes to inspire a broader sense of dialogue, renewal and understanding of rural places. In politically divisive times, when Americans from Red States and Blue States often feel estranged from each other, Art Cullen's book attempts to show an optimistic way forward — that there is still abundant hope in the Heartland. This is a book that America needs now, written by a small-town newspaper editor who has earned journalism's highest honor.



Friday, April 29

8 a.m. **WELCOME**
(CST) **Nathan Waddell**, Chair, Media and the Law Committee, JD, AVP, Cyber Technology Practice, Kansas City, MO

8:10 a.m. **PANEL 5**
(CST) **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 if 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?
- If the Supreme Court were to signal that it planned to overrule or otherwise depart from *Sullivan*, should the media take an all-or-nothing stance and object to any change to the status quo whatsoever?
- 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? How would the application of such standards impact litigation strategy? 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*?

Moderator:

Lyrissa Lidsky, School of Law, University of Missouri, Columbia, MO

Panelists:

George Freeman, Executive Director, Media Law Resource Center, New York, NY

RonNell Anderson Jones, Professor, University of Utah, S.J. Quinney College of Law, Salt Lake City, UT

Deanna K. Shullman, Attorney, Shullman Fugate PLLC, West Palm Beach, FL

9 a.m.
10 a.m.
(CST)

PANEL 5 Q&A

PANEL 6

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?

Moderator:

Rob Harvey, Partner, Waller Law, Nashville, TN

Panelists:

Genelle I. Belmas, Associate Professor, William Allen White School of Journalism & Mass Communications, University of Kansas, Lawrence, KS

Diana Fuentes, Executive Director, Investigative Reporters & Editors, San Antonio, TX

Kathryn Lucchesi, Assistant Professor, University of Missouri School of Journalism, Columbia, Mo

10:50 a.m.
1 p.m.
(CST)

PANEL 6 Q&A

PANEL 7 (2 Sections)

Section 1: From the Workroom to the Work Zoom: Navigating Privacy Concerns in the New Remote Workplace

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

1:25 p.m.
(CST)

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).

Moderator:

Tedrick Housh, Chair, Cybersecurity & Data Privacy Practice, Lathrop GPM, Kansas City, MO

Panelists:

Lischen Reeves, Privacy Counsel, Cerner Corporation, Kansas City, MO

Eric Walters, Director, Cybersecurity & IT Infrastructure, Burns & McDonnell, Kansas City, MO

1:50 p.m..
2 p.m.
(CST)

PANEL 7 Q&A

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