

JOURNAL ON TELECOMMUNICATIONS & HIGH TECHNOLOGY LAW

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FROM THE EDITOR

With this issue, we celebrate ten years of publishing some of the most cutting-edge and thought-provoking work in technology law and policy. Over the years, JTHTL has made important contributions to the dialogue on telecommunications and technology policy with seminal articles such as Tim Wu's *Network Neutrality, Broadband Discrimination*;¹ Michael K. Powell's *Preserving Internet Freedom: Guiding Principles for the Industry*;² Douglas C. Sicker & Joshua L. Mindel's *Refinements of a Layered Model for Telecommunications Policy*;³ and Jonathan Neuchterlein's *Antitrust Oversight of An Antitrust Dispute: An Institutional Perspective on Net Neutrality Debate*.⁴ These pieces, among others, have been widely cited and have helped to build a foundation for the development of telecommunications and technology policy.

The current issue continues the tradition of outstanding technology policy scholarship with several papers from the Digital Broadband Migration Conference: The Dynamics of Disruptive Innovation. The conference explored the role of the Internet in facilitating disruptive innovation. Vint Cerf opened the conference with a talk on the future of Internet security. He argued that the original design of the Internet allowed for "permissionless innovation." U.S. Department of Commerce Assistant Secretary for Communications and Information Lawrence E. Strickling presented the closing address and spoke of the need for robust multi-stakeholder processes when considering the future of the Internet. Peter Swire argues in his paper, *Why the Federal Government Should Have a Privacy Policy Office*, that establishing a privacy policy office either within the Department of Commerce or the Executive Office of the President will lead to better-informed privacy policy decisions by the administration. In the final publication from the conference, Marc Berejka advocates for government facilitation of a multi-stakeholder framework to promote Internet-based innovation.

Additionally, this issue includes two other papers that we are proud to publish. First, Daniel Gervais and Daniel Hyndman's *Cloud Control: Copyright, Global Memes and Privacy* explores privacy and copyright issues in the Cloud. Second, Daxton Stewart contributed his piece, *Can I Use This Photo I Found on Facebook?*, which presents an

1. Tim Wu, *Network Neutrality, Broadband Discrimination*, 2 J. ON TELECOMM. & HIGH TECH. L. 141 (2003).

2. Michael K. Powell, *Preserving Internet Freedom: Guiding Principles for the Industry*, 3 J. ON TELECOMM. & HIGH TECH. L. 5 (2004).

3. Douglas C. Sicker & Joshua L. Mindel, *Refinements of a Layered Model for Telecommunications Policy*, 1 J. ON TELECOMM. & HIGH TECH. L. 69 (2002).

4. Jonathan Neuchterlein, *Antitrust Oversight of An Antitrust Dispute: An Institutional Perspective on Net Neutrality Debate*, 7 J. ON TELECOMM. & HIGH TECH. L. 19 (2009).

in-depth analysis of fair use as it applies to photographs on social networking sites.

Finally, I am immensely proud of the students from the University of Colorado Law School who are publishing their notes in this issue. Kristin Bailey tackles the tension between renewable energy investment and federal securities laws. David Cline presents an important argument for increasing competition in the wireless carrier market. Janna Fischer explores the iPad's effect on newspapers, and William Fischer takes a look at state-level implementation of the United Nations Convention on Biodiversity.

I would like to thank Managing Editor Brent Owen and Executive Editor Janna Fischer for all their help keeping this ship afloat throughout the semester. Production Editors Kendria Alt and William Fischer deserve high praise and gratitude for all their hard work getting this issue to print. Lisa Fischer has done an excellent job as Resources Editor. Articles Editors Doug Brake, Zak Brown, Angela Coleman, Chris Cook, and John Zwick were crucial in getting all of these articles ready for publication. Student Note Editors Kristin Bailey, Candyce Choi, David Cline, Jeff Graves, and Jessica Morgan were generous with their time helping the new members develop their student notes. Associate Editors Damion LeeNatali and Sara Radke saved the day on more than one occasion. I appreciate everyone's efforts and dedication to this publication. I would like to give a special thanks to Lauren Boesel, Associate Symposium Editor, who did an incredible job putting together the Economics of Privacy conference this December, which produced some incredible papers that I look forward to publishing in the spring. Thanks to Martina Hinojosa, Symposium Editor, for all her hard work on the upcoming Digital Broadband Migration Conference: The Challenges of Internet Law and Governance. I appreciate the contributions of all our members and am indebted to them for all their hard work.

Thanks to our faculty advisors, Paul Ohm and Harry Surden, for their continued efforts in making this an incredible publication. As well, I appreciate all the guidance from other faculty members who have taken time to lend support to our members who are working on their student notes, in particular Brad Bernthal, Andrew Crain, Andrew Hartman, Preston Padden, and Philip J. Weiser. Our journal office manager, Martha Utchenik, has been an invaluable support and source of institutional memory. We wish her all the best for her retirement and in her new adventures. I would like to recognize the work of the Silicon Flatirons Center, in particular Anna Noschese, Jamie Stewart, and the Silicon Flatirons Fellows, whose contributions are the foundation of many of the articles in the JTHTL.

Finally, I would like to dedicate this issue to our founder and new Dean of the Law School, Philip J. Weiser. Without his vision and

guidance, we would not have had one year of the JTHTL, much less these ten years under our belt. We are honored that he is now lending his considerable talents to leading the law school, and we look forward to his continued support of the journal.

Madelaine Maior
Editor-in-Chief

THE JOURNAL OF TELECOMMUNICATIONS AND HIGH TECHNOLOGY LAW TURNS TEN

Philip J. Weiser*

Just over ten years ago, a group of dedicated students founded the Journal on Telecommunications and High Technology Law at the Dark Horse, an iconic Boulder bar. When I went to law school in the early 1990s, few such journals existed; few courses in the area were offered; and I had yet to discover my own passion for the field. In my case, I caught the technology bug while an attorney at the Justice Department's Antitrust Division. After joining the faculty at Colorado Law, I found a new passion: bringing technology law to the classroom.

That night at the Dark Horse, the students who came to discuss founding a journal on technology law recognized an opportunity to build something special. With admirable gumption and strong aspirations, they set out on a new course—just as I was about to take a leave of absence. Their interest in telecommunications policy, innovation, technology, and entrepreneurship led them to create the Journal, using the flagship conference held by the Silicon Flatirons as a launching pad. In the winter of 2000, the first Silicon Flatirons flagship conference, *Telecommunications Law for the Twenty First Century*, generated a symposium issue of the University of Colorado Law Review.¹ That conference, which launched the Silicon Flatirons Center, demonstrates the interest of nationally-known commenters to come to Colorado to discuss their thoughts on cutting-edge technology policy issues.

After the Journal began, it published the proceedings of the annual Silicon Flatirons winter conference, now called the “Digital Broadband Migration” conference. The first issue memorialized a conference discussion that drew an impressive group of thought-leaders from academia to the University of Colorado Law School, including Kevin Werbach, Doug C. Sicker, James B. Speta, and Ellen P. Goodman. Leaders in government also attended that year and every year thereafter, delivering important addresses, like that given by the Federal Communications Chairman (FCC) Michael Powell in 2004.² By publishing the papers and speeches of these leaders, the Journal emerged as an attractive venue for academics, government officials, and industry leaders to engage with one another in the spirit of intellectual honesty

* Dean, University of Colorado School of Law; Executive Director and Founder, Silicon Flatirons Center for Law, Technology, and Entrepreneurship. Thanks to Therese Kerfoot for outstanding research assistance and the editors at JTHTL for their usual superb work.

1. For my overview essay of that issue, see Phil Weiser, *Paradigm Changes in Telecommunications Regulation*, 71 U. COLO. L. REV. 819 (2000).

2. See, e.g., Michael Powell, *Preserving the Internet Freedom: Guiding Principles for the Industry*, 3 J. ON TELECOMM. & HIGH TECH. L. 5 (2004).

and rigor, for which the annual Digital Broadband Migration conference has become known.

From the perspective of the students, the opportunity to interact so closely with giants of academia, government, and industry provided them with unique opportunities. Nick Alexander, who was one of those who helped to found the Journal, moved on to leadership positions at the FCC. James Wooll, the first Editor-in-Chief, and Rudy Verner, the first Managing Editor, have successful litigation practices in Colorado and continue to demonstrate the leadership they harnessed in bringing the journal to life. Subsequent Editors-in-Chief went on to technology companies, intellectual property practices at law firms, and the FCC, among other interesting opportunities. In all such cases, contacts made working on the Journal provided the students with a valuable springboard for their careers.

I am proud to say that many of the Journal alums return each year to participate in the Digital Broadband Migration conference discussion that continues to elevate the Journal's national reputation and raise the plane of technology policy discourse through significant and thought-provoking material. In 2002, we debated regulation of information platforms across the intersecting legal fields of telecommunication, antitrust, intellectual property, and First Amendment law in light of technological innovations permitted by the Internet and information technologies.³ Today, technological innovation continues to be a principal driver of hotly debated governance issues that span numerous areas of law; notably, the themes discussed at that 2002 conference remain relevant a decade later. Silicon Flatirons also now sponsors a yearly privacy conference that provides yet more intellectual leadership,⁴ reflecting the vision and energy of Professor Paul Ohm, who spearheads our Information Technology and Intellectual Property Initiative.

Over the course of its short history the Journal has published some of the most thoughtful, provocative, and interesting articles in the technology policy field. Consider, for example, "network neutrality," a term that first appeared in the Journal in Tim Wu's article *Network Neutrality, Broadband Discrimination*,⁵ which was critiqued thoroughly by Christopher Yoo,⁶ and launched as a policy initiative by FCC

3. See, e.g., Philip J. Weiser, *Law and Information Platforms*, 1 J. ON TELECOMM. & HIGH TECH. L. 1 (2002).

4. For an example of the high quality scholarship presented at the annual privacy conference, see, e.g., Jeffrey Rosen, *Free Speech, Privacy, and the Web that Never Forgets*, 9 J. ON TELECOMM. & HIGH TECH. L. 345 (2011).

5. Tim Wu, *Network Neutrality, Broadband Discrimination*, 2 J. ON TELECOMM. & HIGH TECH. L. 141 (2003).

6. Christopher Yoo, *Would Mandating Broadband Network Neutrality Help or Hurt Competition? A Comment on the End-to-End Debate*, 3 J. ON TELECOMM. & HIGH TECH. L. 23 (2004).

Chairman Michael Powell.⁷ Other notable contributions include Kevin Werbach, Doug Sicker, and Josh Mindel’s discussion of a “layered model” of telecommunications regulation,⁸ and regulatory icon Alfred P. Kahn’s examination of the deregulation of the telecommunications industry.⁹ But, the technology revolution addressed in the Journal is not limited to the Internet, the information technology sector, or entrepreneurship. Rather, articles by leading commentators and our students’ scholarly Notes have probed various privacy issues, biotech debates, and intellectual property matters.

With so many influential articles and driven, dedicated students to edit and write them, the Journal has far exceeded my expectations. In the years ahead, the Journal will capably address a series of significant challenges related to the nature and structure of government oversight of the Internet and emerging technologies. By 2022, the concept of a “digital broadband migration” will no longer be a question, or even a work-in-progress, but a concept whose time will have come. Consider, for example, that the FCC’s Technology Advisory Council—with our own Dale Hatfield providing sage counsel—has begun calling for the day when IP networks replace the traditional telecommunications networks entirely.¹⁰ To a periodical on technology founded on the heels of the dot-com bust, when many called the Internet into question, this challenge is an opportunity.

With technology policy, the need for a Journal that elevates our understanding of cutting-edge issues will never go out of fashion. Now that I am the Dean of Colorado Law, I am doubly proud that we have such a great publication to carry this banner.

7. Michael K. Powell, *The Digital Migration: Toward a New Telecom Act*, 4 J. ON TELECOMM. & HIGH TECH. L. 5 (2005).

8. Kevin Werbach, *A Layered Model for Internet Policy*, 1 J. ON TELECOMM. & HIGH TECH. L. 37 (2002); Douglas C. Sicker & Joshua L. Mindel, 1 J. ON TELECOMM. & HIGH TECH. L. 69 (2002).

9. Alfred P. Kahn, *Telecommunication: The Transition from Regulation to Antitrust*, 5 J. ON TELECOMM. & HIGH TECH. L. 159 (2006).

10. FCC’S TECHNOLOGY ADVISORY COUNCIL, TECHNOLOGY ADVISORY COUNCIL CHAIRMAN’S REPORT (Apr. 22, 2011), available at http://www.fcc.gov/encyclopedia/technology-advisory-council#technological_report.

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