

# JOURNAL ON TELECOMMUNICATIONS & HIGH TECHNOLOGY LAW

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## FROM THE EDITOR

The image of a wild ecosystem has become a popular metaphor for an Internet economy that in many ways resembles a rainforest or coral reef. In a rich and interdependent world where many forms of life coexist, complex relationships arise, and changing circumstances may upset the balance. Like environmentalists and gamekeepers, telecommunications regulators face the challenge of preserving conditions where life can thrive without defying natural selection through excessive meddling. But is today's commercial Internet a pristine wilderness that functions best when left alone, or is it more like a threatened habitat requiring protection from imminent harm? Should regulators think of themselves as kings of the jungle actively maintaining order in the Internet ecosystem, or as detached observers whose job is to step back and let nature run its course?

These questions sparked a lively debate at the Silicon Flatirons Center's 10th annual Digital Broadband Migration conference January 31-February 1, 2010, at the University of Colorado at Boulder. Titled *Examining the Internet's Ecosystem*, the conference allowed academics, government officials, business executives, and other thought leaders to compare perspectives on the nature of the Internet and the best way to ensure that it remains a dynamic environment for communication, innovation, and creative expression for years to come. The *Journal on Telecommunications and High Technology Law* is pleased to include in this issue eight pieces from conference participants, as well as three notes from student editors.

Professor Phil Weiser, the founding advisor of the *Journal* and a trusted mentor even while on leave to serve in the federal government, opens the discussion with a piece on entrepreneurship and antitrust policy. Silicon Flatirons Fellow Mark Cooper follows with an analysis of structured viral communications in politics and the recording industry. Professor Ellen Goodman and Anne Chen call for a revitalization of public media in the digital age, while Professor Mark Lemley provides a humorous critique of the content industries' history of opposing new technologies. Silicon Flatirons Fellow Pierre de Vries then shifts the discussion to Internet governance with a piece on principles of effective regulation. Professor A. Michael Froomkin continues with an analysis of the 2009 Affirmation of Commitments between ICANN and the U.S. government, and Professor Frank Pasquale argues for increased transparency among proprietary algorithms compiling personal data. Lawrence E. Strickling, Assistant Secretary for Communications and Information at the U.S. Department of Commerce, provides a final counterpoint to the idea of the Internet as a self-sustaining ecosystem, arguing that government plays an essential role in maintaining public

trust in the system.

Fellow *Journal* editor Jake Adkins offers a student note arguing against blanket denial of Internet access as a condition of criminal sentencing, and Shirin Chahal discusses the imbalance of access to social networks by defense attorneys during criminal discovery. Finally, my own student note explores the application of the hot news misappropriation doctrine to news content on the Internet.

I am grateful to the *Journal's* editorial board and staff for their enthusiasm for this material and hard work producing this issue. In particular, I thank Articles Editors Jennifer McDonald, Shirin Chahal, Angela Morrison, and Meredith Simmons for their thoughtful revisions, as well as Production Editors Therese Kerfoot and Jake Adkins for their sharp eyes and technical expertise. Managing Editor Alison Jensen capably oversaw the *Journal's* financial operations, Executive Editor Catherine Holtgrewe built positive relationships among the staff, and Resource Editor Christian Alexander diligently located obscure source materials. Student Note Editors Kimberly West, Desta Asfaw, Kazuyo Morita, Rebecca Siska-Salkin, and Angela Wade served as mentors helping staff members write quality papers for the next volume of the *Journal*. Associate Editors Vlad Ettinger, Tawnya Ferbiak, Christine Rinke, and Todd Spivak also proved invaluable in helping keep the production process on track. I appreciate the efforts of the entire staff to bring this issue to press, but Symposium Editor Madelaine Maior and Associate Symposium Editor Janna Fischer deserve special commendation for their hard work organizing conferences that will produce papers for future issues of the *Journal*.

Between the Colorado Law faculty and the staff and fellows of the Silicon Flatirons Center, the *Journal* is fortunate to draw upon a wealth of experience in the technology and telecommunications fields. I am indebted to Professors Paul Ohm and Harry Surden for their assistance as our advisors, and to Professors Brad Bernthal, Preston Padden, Andy Hartman, and Phil Weiser for their input and guidance throughout the year. The *Journal's* relationship with Silicon Flatirons is among its greatest assets, and it has been a pleasure to work with Anna Noschese, Jamie Stewart, and the rest of the Center's distinguished contributors. I also am grateful to office manager Martha Utchenik for her institutional knowledge and dedication to the *Journal*, as well as to the members and editors of the *University of Colorado Law Review* and *Colorado Journal of International Environmental Law and Policy* for their cooperation and collegiality.

Finally, I dedicate this issue to Professor Dale Hatfield, whose leadership as Executive Director of the Silicon Flatirons Center and well-deserved reputation as a legend in the field make the University of Colorado a truly special place to study telecommunications law. At a

dinner following the 2010 Digital Broadband Migration conference, speakers ranging from former students to current members of the Federal Communications Commission shared story after story about Dale's intellectual curiosity, unpretentious humility, and genuine concern for the public interest. In the relatively short time I have known Dale, I also have appreciated his selfless commitment to students and encouragement to carry on the work he started. I hope this issue of the *Journal* makes a small but worthy contribution to that legacy.

*Eric P. Schmidt*  
*Editor-in-Chief*





## CONTENTS

### INNOVATION & ANTITRUST

|   |   |
|---|---|
| INNOVATION, ENTREPRENEURSHIP, AND THE<br>INFORMATION AGE<br><i>PHILIP J. WEISER</i> ..... | 1 |
|---|---|

### MEDIA & CONTENT INDUSTRIES

|   |     |
|---|-----|
| STRUCTURED VIRAL COMMUNICATIONS: THE POLITICAL<br>ECONOMY AND SOCIAL ORGANIZATION OF DIGITAL<br>DISINTERMEDIATION<br><i>MARK COOPER</i> .....         | 15  |
| DIGITAL PUBLIC SERVICE MEDIA NETWORKS TO<br>ADVANCE BROADBAND AND ENRICH CONNECTED<br>COMMUNITIES<br><i>ELLEN P. GOODMAN &amp; ANNE H. CHEN</i> ..... | 81  |
| IS THE SKY FALLING ON THE CONTENT INDUSTRIES?<br><i>MARK A. LEMLEY</i> .....  | 125 |

### INTERNET GOVERNANCE

|  |     |
|--|-----|
| THE RESILIENCE PRINCIPLES: A FRAMEWORK FOR NEW<br>ICT GOVERNANCE<br><i>PIERRE DE VRIES</i> .....                         | 137 |
| ALMOST FREE: AN ANALYSIS OF ICANN'S 'AFFIRMATION<br>OF COMMITMENTS'<br><i>A. MICHAEL FROMKIN</i> .....                   | 187 |
| RESTORING TRANSPARENCY TO AUTOMATED AUTHORITY<br><i>FRANK PASQUALE</i> .....   | 235 |
| REMARKS AT THE DIGITAL BROADBAND MIGRATION:<br>EXAMINING THE INTERNET'S ECOSYSTEM<br><i>LAWRENCE E. STRICKLING</i> ..... | 255 |

### STUDENT NOTES

|  |     |
|--|-----|
| UNFRIENDED FELONS: REEVALUATING THE INTERNET'S<br>ROLE FOR THE PURPOSE OF SPECIAL CONDITIONS IN<br>SENTENCING IN A POST-FACEBOOK WORLD<br><i>JAKE ADKINS</i> ..... | 263 |
| BALANCING THE SCALES OF JUSTICE: UNDERCOVER<br>INVESTIGATIONS ON SOCIAL NETWORKING SITES<br><i>SHIRIN CHAHAL</i> .....   | 285 |
| HOT NEWS MISAPPROPRIATION IN THE INTERNET AGE<br><i>ERIC P. SCHMIDT</i> .....  | 313 |

