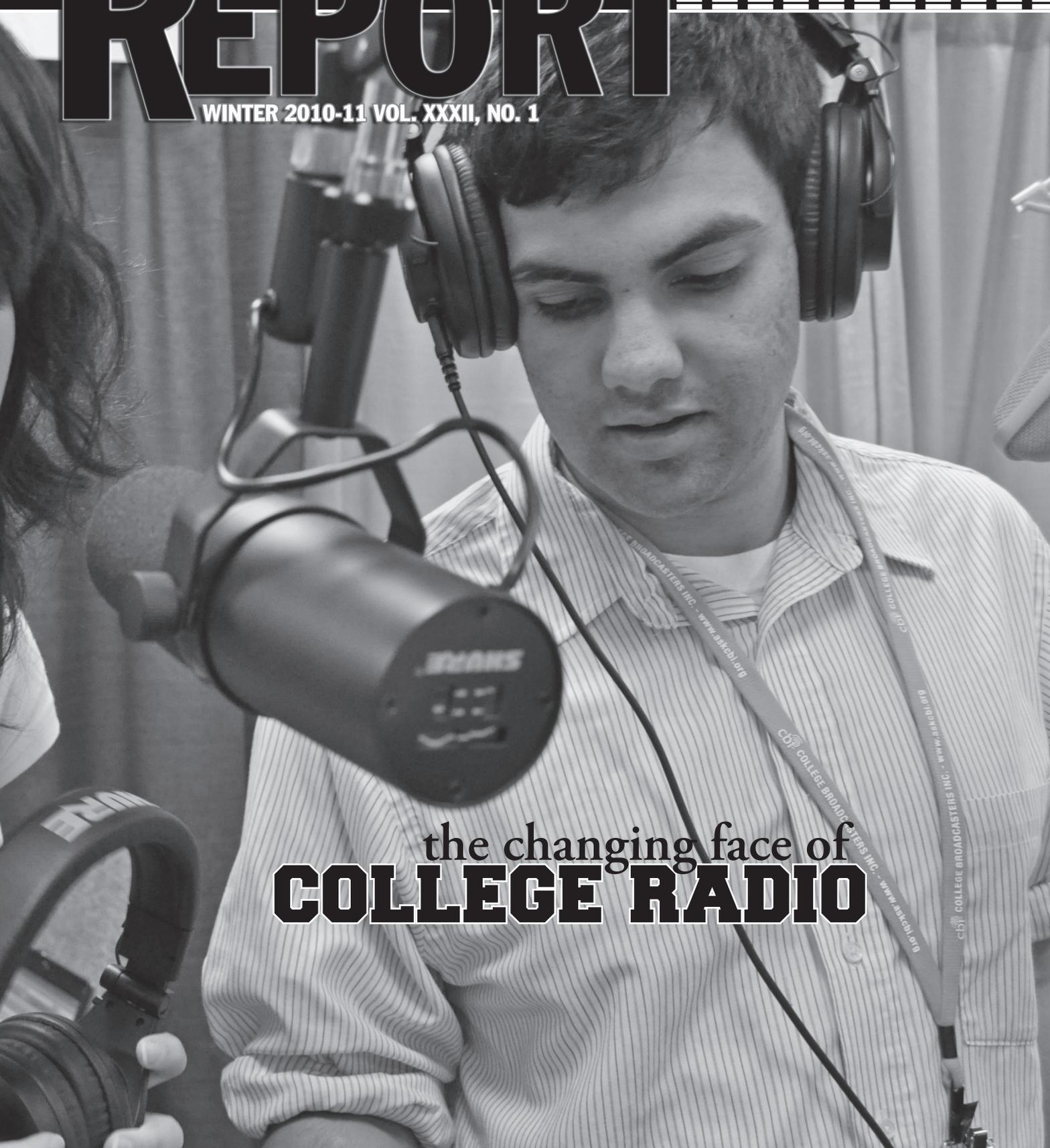


STUDENT PRESS LAW CENTER

REPORT

WINTER 2010-11 VOL. XXXII, NO. 1



the changing face of **COLLEGE RADIO**

INSIDE: Behind the headlines, new concerns about cyberbullying laws

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A student reporter at Purdue University was told by police not to take video of paramedics in a public building. An officer can be heard on the *Exponent* reporter's video threatening to detain the student for disobeying a police order.

Administrators at a private Catholic high school in Minnesota removed a column from the student newspaper's website in which a staff member describes his struggles as an openly gay teen. Officials also pulled an editorial criticizing a church-produced DVD on gay marriage.

The student newspaper at Milwaukee Area Technical College was pulled from the presses so that it could be proofread by the college's public relations staff. Administrators said they had no bad intentions and only wanted to improve grammar in the newspaper.

Eight news organizations sued the University of North Carolina at Chapel Hill for access to records related to the school's football program. The program is under investigation for possible improper benefits and academic dishonesty. The university denied the media's public records requests, citing federal student privacy law.

California Gov. Arnold Schwarzenegger vetoed legislation that would have made university foundations subject to the state's open records law. Schwarzenegger said the bill did not provide enough protection for the privacy of donors. Sen. Leland Yee reintroduced the bill in December; Schwarzenegger leaves office Jan. 3.

Western Carolina University shut down its student newspaper for five days after a plagiarism accusation from a local newspaper. Publication of a print issue was delayed and online publishing was also interrupted.

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Brian Schraum, McCormick Foundation Publications Fellow, received his master's degree in journalism from the University of Missouri, where he studied media law and policy. He graduated from Washington State University in 2007. Schraum previously interned for the First Amendment Center in Nashville and for newspapers in Washington and Missouri. He also initiated efforts to enact student press rights legislation in Washington and was a high school, community college and university student journalist.



Caitlin Byrnes, fall 2010 journalism intern, earned bachelor's degrees in journalism and international affairs from the University of Georgia in December 2009. During her studies, Caitlin worked for UGA's student daily, *The Red & Black*, and interned at both a weekly newspaper and a national non-profit. Prior to her time at the SPLC, Caitlin wrote for a travel blog.



James Heggen, fall 2010 journalism intern, graduated from Iowa State University in May 2010 with a degree in journalism and minors in political science and Spanish. He worked at the student newspaper, *The Iowa State Daily*, for three years, serving one year as a reporter and two as news editor. He interned at *Inside Higher Ed* in the summer of 2008.



Chelsea Keenan, fall 2010 journalism intern, received her bachelor's degree in journalism from the University of Florida in April 2010. She previously interned at the *Gainesville Sun* in Gainesville, Fla. She also worked for two years at the *Independent Florida Alligator*, the student-run newspaper at UF, serving as staff writer, section editor and editor in chief.



Contributors: Marisa Akers, Karen Elshout (Mo. Lawyers Media), Ben Miller (Education Sector), Laura Napoli, Adam Schulman, Bradley Wilson, VectorStock. **Cover photo by Marisa Akers.**

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Frank LoMonte with CapComm students Noelle Motley, Jummy Obayanju and Alisha Stewart.

Howard Univ. helps SPLC tap volunteer power

Over the past semester, the Student Press Law Center has benefited from the public-relations advice of a remarkably savvy team of Howard University students. As a “client” of the Howard CapComm laboratory program, the SPLC went through a thorough re-examination of how we communicate our message to our core audience and to the larger world.

You’ll be seeing a number of the Howard students’ suggestions becoming reality in the months to come at www.splc.org, including “testimonial” stories from those who’ve taken advantage of the SPLC’s free services, and public-service announcements for use by college radio stations.

One of the CapComm team’s wisest ideas was to make better use of the enthusiastic volunteer talent pool of students and educators who already support our work. We’re tapping into that pool in two ways, starting immediately.

First, we’re launching the Legislative Correspondents Network, a way to better serve our constituents by helping keep track of action at the statehouse level that impacts on the rights of student journalists and their advisers.

The Network grows out of our experience that bad legislation – closing off access to meetings and records, restricting students’ ability to use technology, expanding administrators’ disciplinary authority in dangerously open-ended ways – often sneaks into law because legislators are oblivious to the impact of their decisions on journalists. We hope to change that, by helping publicize significant legislative proposals – favorable and unfavorable – while there is still time for the concerns of scholastic journalism advocates to be heard.

The Network will draw on volunteers from Humboldt State University, the University of Tampa, Simpson College and several other partner schools around the country. We hope to expand upon this “pilot” class in 2012 and beyond toward a goal of 50-state coverage.

This is one opportunity for those who support the SPLC’s priorities – an uncensored student media with easy access to essential documents and meetings – to get engaged in our work. Another, growing directly out of the advice of Howard’s CapComm team, is a more formalized SPLC Speaker’s Bureau of surrogates to augment the outreach work of our legal staff.

We know that attaining a free student press starts with helping people outside of our immediate circle understand that an independent student voice is valuable, and that resources exist to help gain independence. Your help as an SPLC surrogate can exponentially multiply the reach of that message.

For those interested in helping spread the word about the services offered by the SPLC, and about the priorities that the SPLC exists to address, we’ve created a “talking points” packet available at www.splc.org/pdf/talking_points.pdf. And if you’d like to become involved in the SPLC’s work in any capacity, please contact us.

– Frank D. LoMonte
Executive Director

INSIDE

College

- 4 “Employee” status may pose risks to student editorial autonomy.
- 8 Becoming an ‘independent’ publication has its downsides.

Cover Story

With scarce bandwidth and available frequencies, college broadcasters are turning to HD radio and Internet streaming.

12

High School

- 16 Professional media outlets and private projects give students a voice outside of school.
- 20 Following several high-profile student deaths, states consider additional legislation to combat ‘cyberbullying.’

Internet

- 24 Online comments generate a range of legal questions, including how journalists should handle possible defamation.

Copyright

- 26 Misconceptions persist about who can use student photojournalists’ work and when.

Access

- 28 Students face threats, charges for photographing police and emergency workers in public.
- 32 Gaining access to records from student government can be a legal and practical challenge.

DEPARTMENTS

SPLC TipSheet

- 31 How to use student loan data to fuel important stories.

On the Docket

- 34 SCOTUS declines alcohol ads case; Medill memos released.

Legal Analysis

- 36 What the law suggests about ‘employing’ student journalists.

ON THEIR PAYROLL

Everyone likes getting paid. But what happens when the people you're supposed to cover are signing your checks?

BY JAMES HEGGEN

Many student journalists across the country are in a unique, and sometimes contentious, position of being an employee of the very entity on which they are supposed to report.

Few college student publications are 100 percent financially independent from their schools. As a result, compensation flowing to student staffers comes in whole or in part from institutional funds – which may lead the institution to classify those journalists as “employees.”

A typical arrangement is in place at the University Press, the student newspaper at Florida Atlantic University.

The publication receives its funding from the university by way of student fees, which are distributed by the student government. Not all of the staff is paid, Editor-in-Chief Karla Bowsher said, but the editing staff is, as well as some staff writers and photographers.

As of three years ago, she said, FAU began categorizing the paid students as university employees.



One of the issues with being classified as a university employee at a media outlet is who owns copyright to the work published. This issue has flared up at FAU before.

In 2008, a former student died on the campus, and a photographer took a picture of the body being taken in a stretcher by paramedics, according to Michael Koretzky, volunteer editorial adviser to FAU's *University Press*. A photographer for the *University Press* lived in the apartment building where the death took place and obtained exclusive photos of the scene. The *Press* posted a photo on its website, but a university official asked editors to pull it down. The editors refused, and then gave some unused photos to the *South Florida Sun Sentinel*. This sparked a debate about who actually owns the copyright to the paper, the *University Press* or the university.

Bowsher said another incident arose when student government officials wanted to distribute a poster using a photo that the *University Press* had taken. According to Koretzky, the poster used the photo without giving credit to the paper. When staff complained, the administration sided with student government,

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saying that content generated by the paper's staff belongs to the university because the staffers are employees.

Bowsher said she was first told that FAU itself owns the rights to student-generated content. That interpretation was then modified to say that the *Press* owns the copyright.

"But either way, they're saying that the individual does not – which is, you know, not the case," she said.

The university's ability to control the acts of student journalists also became an issue when Koretzky was fired from his paid adviser position in May 2010. Bowsher said FAU administrators threatened to discipline her for meeting with Koretzky on off-hours in his volunteer role. FAU officials claimed that, as a university employee, Bowsher was violating university policies by meeting with the now ex-employee. The university later backed down and imposed no discipline.

In addition to the power to control students, the question of whether student journalists can and should be classified as employees also raises a number of tricky business-side questions.

One college that has arrived at a type of compromise structure

is North Carolina State University.

At N.C. State, about 55 percent of funding for student media comes from student fees, while the other 45 percent is earned income, according to Martha Collins, administrative assistant at N.C. State Student Media.

About 260 students - including about 100 unpaid DJs – work in student media. The paid employees are classified as temporary university employees, but are also classified as exempt from the Family and Medical Leave Act, a federal employment law that governs the amount of leave employers must offer.

Collins said in an e-mail interview that student employees receive a flat salary, as opposed to an hourly wage. She said this setup had been in place for many years.

"A year or so after I came here, that became an issue with [the Human Resources office] because they got some new information and were trying to say that we were subject to FMLA," she said.

After doing some research, Collins said she convinced the university that in fact students were FMLA-exempt, because their work was similar to an internship, offering students experience in



Editors work on page design for Virginia Tech's independent student newspaper, where some student journalists hold paid positions through a private student media company.

PHOTO BY BRIAN SCHRAUM

their field of study.

"They're not here just to make money, they're here to gain experience so it is similar to an internship," she said. "We exist for the students to have the opportunity to explore, so it parallels an internship."

Collins said added there simply is not enough money in the budget to pay students an hourly wage.

As for copyright, Collins said the publication maintains exclusive rights to the material for 18 months. The rationale is to ensure works do not show up in other places before the yearbook comes out. During this period, students are still allowed to use the content for contest and resume purposes.

Paid student journalists also are classified as college employees at Louisiana State University, according to Pat Parish, associate director of student media and adviser to the student magazine *Legacy* and the yearbook *Gumbo*.

Parish said there are five different outlets of student media at LSU: a newspaper, magazine, radio station, television station and yearbook. Most students who work at these media are paid, except for hosts of specialty radio shows.

All outlets are funded the same way, with about half of the funding coming from student fees.

Parish said students who work at the paper have to sign at least some similar paperwork that other university employees have to sign. For example, all permanent staff must sign a state "loyalty oath."

"Every employee in the state of Louisiana has to sign a loyalty oath, that they will not do anything that's disloyal to the state of Louisiana," she said.

Although it may seem this could cause friction when giving negative coverage to the university, Parish said it hasn't been an issue. She said she's never heard of the loyalty oath being a problem with printing critical coverage about the university.

She said the university does not infringe on content, but does enforce standards for whom the news operations can and cannot hire. For example, students must be full-time and have a minimum 2.0 grade point average. Students are also not allowed to work for more than 20 hours a week.

Parish said disputes among student staff members are usually handled internally. However, if a problem persists, it can be resolved by going up the ladder to LSU's human resources office or the dean's office, just as would be the case for a non-student employee's complaint.

The copyright issue is currently in transition at LSU. The university used to insist on retaining copyright of student work done in the publication.

Parish said the newspaper's adviser, who had been in the professional journalism industry, did not like the ownership arrangement and pushed to change the policy. The administration appears to have agreed to disclaim any assertion of ownership, though contracts to carry out the change are not yet final.

"That is in flux, but so far, they seem to have backed down," she said.

Gayle Brown, director of student media at Northern Kentucky University, said her publication recently made the switch from paying students through stipends or scholarships. Students are classified as university employees, and their funding comes from student fees.

Brown said the paper used to operate as a volunteer staff, but if a student advanced into an editor or managerial position, they would receive a scholarship. However, it wasn't enough to cover tuition. Much of the staff is still volunteer.

"There's a big push on our campus to have hourly positions for our students," she said.

Brown said one of the perks of having hourly employees at the paper is that several staffers at the *Northerner* newspaper qualify for federal work-study funds. These funds don't come out of the paper's budget, but rather from the pool of federal work-study money available to the university.

Brown said copyright issues have not come up yet, but it is something she thinks about.

"None of that has come up, but I think that's because this is all so new," she said. "I'm worried about it, because we have arguments about content all the time."

She added she is "pretty vocal" about how paper should be run and what belongs to students and how it should be protected.

Brown said there are some restrictions on how much and when students can work, since they are classified as university employees. Generally, they can't work more than 20 hours a week. Students also can't be forced to work during an exam or finals.

Some publications have written safeguards in place to keep university officials from attempting to use their supervisory rank over student "employees" to interfere in news judgments.

Max McCoy, adviser to the *ESU Bulletin*, the student newspaper at Emporia State University, said the staff members are classified as university employees. However, a constitution that governs student media makes clear that the paper is able to operate free of administration control.

"The biggest safeguard that we have is in the constitution," McCoy said.

But this document came under fire last year, McCoy said, when the university tried to rescind the constitution.

McCoy said the university became unhappy with the content of the paper at this time, including a sharply worded editorial critical of the bidding process for campus banking services.

"My dean called me in...I had a lengthy conversation with him in which he voiced his displeasure...the administration wanted the student media board constitution rewritten," he said.

McCoy said the university wanted the paper to be more answerable to the student media board and student government. After a lot of pushback from the newspaper staff and their supporters, the university backed down, and McCoy said the situation has died down.

McCoy said in his experience as adviser, the university has not attempted to use students' employee status to direct their editorial judgments. Rather, he said, any pressure is indirect, exerted through the adviser or through resistance to public-records requests.

"The main thing that they cope with is attempting to make the administration and some of the readership to understand that their job is not PR, that their job is not to make the university look good to prospective students," he said. ■

“Every employee in the state of Louisiana has to sign a loyalty oath, that they will not doing anything that’s disloyal to the state of Louisiana.”

Pat Parish

associate director of student media,
Louisiana State University

“I’m worried about it (copyright) because we have arguments about content all the time.”

Gayle Brown

director of student media,
Northern Kentucky University

MORE INFORMATION...

For a detailed discussion of the legal issues related to employment and student journalists, see our Legal Analysis

on page **36**

BREAKING

Going independent brings financial freedom,

BY JAMES HEGGEN

Some see financial independence as the holy grail of student media, freeing editors from control or pressure from college administrators. But as appealing as the prospect sounds, getting there is not always easy.

For some, the process of becoming an independent publication can be long and drawn-out. For others, it can be quick.

In recent years, several college student publications have become independent or attempted to go independent, for varying reasons and taking varying paths. Sometimes, the push can be spawned out of controversy, where the college acts to distance itself from the publication. Other times, the publication may seek to divorce itself from its governing board to gain more editorial freedom. Still other times, it may just be time to move apart.

Student media at Colorado State University used to be its own department at the university. That changed after a controversial editorial was published in the student newspaper *The Rocky Mountain Collegian*. Soon after the editorial ran in September 2007, the university moved to divorce the paper from Colorado State.

University administration originally had a meeting with Gannett to sell the paper, which was done in a closed-door meeting, causing backlash. The university eventually changed course. In the spring of 2008, all student media at the university became the nonprofit Rocky Mountain Student Media Corporation.

Larry Steward, president of Rocky Mountain Student Media Corporation, has been in that position since its inception in 2008. Steward came out of retirement to run the company, having worked

17 years in the student media department until 2004.

Sean Reed was *The Collegian's* editorials editor when student media went independent. He also represented the paper on the Collegian Advisory Committee, which would eventually recommend becoming a non-profit organization under Section 501(c)(3) of the IRS code.

The official charge of the committee was to examine how student media operated at the university and propose models for improvement. However, some thought the committee was created specifically to sever ties with the university.

"There were really two steps to the process, and it actually happened a lot faster,

"I think the shortcoming of our process was that, once we made the decision to go 501(c)(3), all student input stopped."

Sean Reed

former editorials editor, *The Rocky Mountain Collegian*

at least, than I had thought," Reed said.

The first step was the committee. Reed compared it to a congressional committee that could make recommendations but not enact anything.

The board was made up of Reed, two student media heads from the television and radio stations, as well as professionals, representatives from the administration and several professors. The CSU general counsel also was a non-voting member.

"It was all very democratic," he said.

The university president approved the plan and Steward became the interim president of RMSMC at the board's recommendation.

"He basically did all of the legwork after that," Reed said.

Reed said the first part of the process was very inclusive where student voices were heard and considered.

"I think the shortcoming of our process was that, once we made the decision to go 501(c)(3), all student input stopped," he said.

Reed said Steward made several gestures to try to gather student input, but they were limited and non-binding. He

added students were not involved in writing the articles of incorporation or the by-laws.

"In retrospect...we probably should have made more effort to be involved in that," he said.

Reed also said he and several other students did not feel comfortable giving input because their expertise was limited.

Reed said if he could do it over again, he would want students to be involved in



but may also cause growing pains.

every step of the process, especially when spelling out the power structure. During the time student media was a department, if the university would try to lean on or influence editorial content, it was easy for staff to “cry foul.” This reflected poorly on the university because a government entity was trying to control the student press.

“Once the company became in charge, it was a little harder to make those arguments,” he said. (The First Amendment protects student media at the college level against intervention in newsroom decisions by state officials, but not by officials of a non-governmental corporation.)

Board members were also “hand-picked” by Steward, and Reed said they had very little knowledge about journalism, making it difficult to discuss possible changes to policies and how the paper worked.

Day-to-day operations didn’t see much of a change, Reed said. However, there was pressure put on the advisers to “lean more” on editorial judgment. He said higher-ups, even the adviser, became fearful of litigation from content printed in the paper. Reed said he perceived that support for investigative journalism dropped because of pressure from the top.

“I think more of the struggle that I had personally, and I know a lot of other members had, was just a feeling we didn’t own our own paper anymore....I know that I resented that personally and a lot of other people did,” he said.

He said he didn’t feel the staff had as much editorial control as it did when it was under the school.

“In terms of just the change in tone of our advisers and the like, I would almost say I prefer it the way it was when we were still part of the school,” Reed said.

David McSwane was the editor-in-chief of the paper when it became independent. He agreed there are challenges to student media becoming independent.

The biggest challenge, McSwane said, is finding a mechanism to govern those publications.

“It’s an independent organization but there’s sort of a *de facto* leadership now that’s not really run by students, it’s run by the general manager,” he said.

But McSwane still prefers being independent rather than being a part of the university.

“I think all newspapers should try to be independent at their universities. There’s just too much pressure coming down from administration on the advisers and the students themselves,” he said.

McSwane said the paper ran relatively the same as an independent paper.

“There was a sense among students that this was our product, this was something we need to fight for, and there was nothing the administration could do about it,” he said. Contrary to Reed’s perception, McSwane said he sensed less pressure from the advisers after the paper went independent, because the university wasn’t leaning on those advisers.

If a paper wants to go independent, McSwane said he recommends taking a lot of time figuring out how it will be run.

Steward said there are several benefits to now being an organization independent of the university. For one, he said student media is no longer involved so heavily in the bureaucracy of CSU. He said the by-laws include protection of free-speech rights and prohibit prior restraint by corporate management.

The challenges the corporation had, Steward said, were on the business side, in-

cluding creating a business model, being in charge of payroll, hiring legal counsel and leasing equipment.

“And we pay rent,” he said.

But the relationship between the university and student media remains close, Steward said. The professional staff still teaches as adjunct faculty and the publications still offer academic credit for working there.

“We have a very, very close working relationship,” he said.

Steward said going independent was best for the organization, but stopped short of saying it would be best for any organization. Many factors should be considered, but he said it is important to do the needed planning.

“Organizations should always try to avoid doing this in the heat of the moment,” he said.

Starting from scratch

The Montclarion, the student newspaper at Montclair State University, became semi-independent in 2008 after the student government froze its funding after a dispute.

Karl de Vries was the editor in chief of *The Montclarion* during the paper’s transition to independence. He was editor from late 2006 to May 2008.

He said papers should always be looking for independence, regardless of whether the relationship with the college is harmonious or not.

“First of all, I don’t believe it’s advantageous or desirable for any newspaper to be funded by a parent organization, let alone a student organization as *The Montclarion* was,” he said.

Shortly before de Vries became editor, he said his predecessor had struck an

THINGS TO CONSIDER



When a student media outlet goes independent, it's common to incorporate as a nonprofit corporation, which means designating a board of directors and officers, and adopting bylaws.

To protect the independence of student editors, bylaws can limit the ability of corporate directors to interfere in newsroom decisions. An example is the structure at Virginia Tech, where students work for the nonprofit Educational Media Corp. Its bylaws delegate editorial content decisions to a Management and Advisory Team of student editors and news directors, known as the MAT:

MAT will supervise and manage the publications and broadcast operations. All editorial and programming decisions will be made by the student division heads in each publication or broadcast station. All advertising policies related to content will be made by the division heads and top business officers in each division. MAT will ensure compliance with federal, state and local law in regard to the production and dissemination of the company's media.

For more information about becoming an IRS 501(c)(3) nonprofit, visit the IRS website at: <http://www.irs.gov/charities/>

agreement with the student government to set aside \$5,000 for legal fees. The paper's staff felt using the student government's own legal representation was a conflict of interest.

After the paper hired an attorney to advise whether the student government was subject to open meetings laws, the student government fired the attorney.

"Which we didn't protest, because they were paying for the attorney," de Vries said.

However, when the student government asked for the correspondence between newspaper staff and the attorney, the paper protested.

When the student government froze the paper's funding, it contacted the local chapter of the ACLU and threatened a lawsuit. Soon after, the university made the decision to allow the paper to separate from the student government.

The university decided the paper would still be a student organization but also would incorporate as a non-profit. The paper still receives its funding from the university, but no longer has to go through the student government to receive it.

De Vries said the paper had talked about going independent several times before, but was ultimately forced to after the student government's actions.

"I would say that's been a holy grail of my predecessors for years, decades," he said.

De Vries didn't think the actual process of going independent was a difficult one. Conflicts with the student government had dated back several years, but from the time the ACLU threatened a lawsuit, it took fewer than 24 hours for the university to decide to separate them from the student government. At that point, it had been a month since the paper's funding had been frozen. He said that, because the student government's actions raised such clear First

Amendment concerns, separating was a short and straightforward process.

"The act of separating was relatively clear cut and simple," he said.

What was challenging was the added responsibility put on the staff, as well as starting from scratch.

Bobby Melok worked at *The Montclairion* from spring of 2006 to July of 2009. He was on staff when the paper broke away from the student government. He was editor-in-chief from June 2008 to July 2009, during the first year of independence.

Overall, Melok didn't think the independence process was difficult. What was difficult was starting a new model.

"We... had to start pretty much from scratch in an empty office," he said.

Melok said not much changed in terms of editorial content after the break away from student government. He said the staff never shied away from criticizing student leaders, which he said may have led to the sour relationship in the first place.

What did change was the way the way the paper operated. After it became free from the student government, the staff was responsible for the direction and well-being of their own newspaper.

"That was a big responsibility in trying to figure what money goes where and how to save up for the future and all that sort of thing," he said.

A long road

Other attempts to become independent can be much longer and drawn-out than the situations at Montclair State and Colorado State. *The Hoya*, the student newspaper at Georgetown University, has been trying to go independent for several years.

Eamon O'Connor, editor-in-chief of *The Hoya*, said talks of going independent go back 20 years. O'Connor said a lengthy review in 2004 spelled out the goals for

independence and the reasons behind the desire to become independent. There was also a campus-wide movement called "Save *The Hoya*" during 2008-09 supporting the paper's quest for independence.

Although the university is rarely uncooperative with what *The Hoya* reports on and prints, O'Connor said not being an independent publication raises journalistic concerns.

"Journalistically it brings in some questions of conflict of interest, because we are under the university we're reporting on," he said.

With the goal of becoming independent, O'Connor said the staff is continually striving to professionalize the business operations of the newspaper.

O'Connor said *The Hoya* was set to become independent last year, but suffered a setback after controversy erupted over material in the paper's annual April Fools' edition. The Georgetown University Media Board sanctioned the paper, delaying independence for a year.

"That being said, at this point in time, there are still many things left for us to do, professionalizing our coverage, professionalizing our business side of things, that will help us move toward independent eventually," he said. "There's no timeline on that at the moment, though."

Not the magic bullet

Sally Renaud, president of College Media Advisers and associate professor of journalism at Eastern Illinois University, said the role of the adviser – regardless of whether a paper is fully independent, sponsored by the school, or somewhere in between – should stay the same, leaving editorial decisions up to the students.

"The role of the adviser, *per se*, would still be the same," she said.

Sometimes, she said, an adviser's role may expand with independence, with

On deadline?

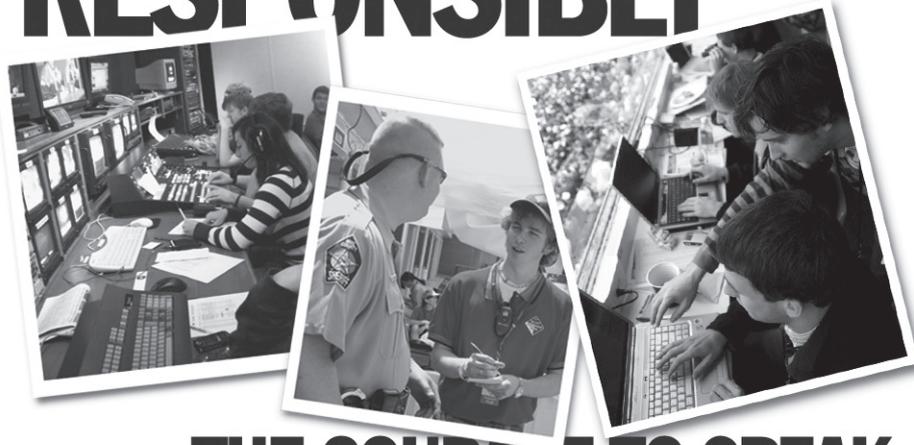
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some having to handle the business side of the operation once the college's finance and accounting staff is no longer involved.

Adam Goldstein, attorney advocate at the Student Press Law Center, said as a matter of First Amendment law, students at public colleges have essentially the same First Amendment rights whether they work for independent or college-sponsored media. (A possible exception is Indiana and Wisconsin, which are governed by the legal standards of a 7th U.S. Circuit Court of Appeals case suggesting reduced First Amendment rights at "curricular" college

publications).

Outside of Indiana and Wisconsin, public colleges are governed by the Supreme Court's *Tinker* standard, which means colleges can censor only when content is illegal or disrupts the physical operations of campus.

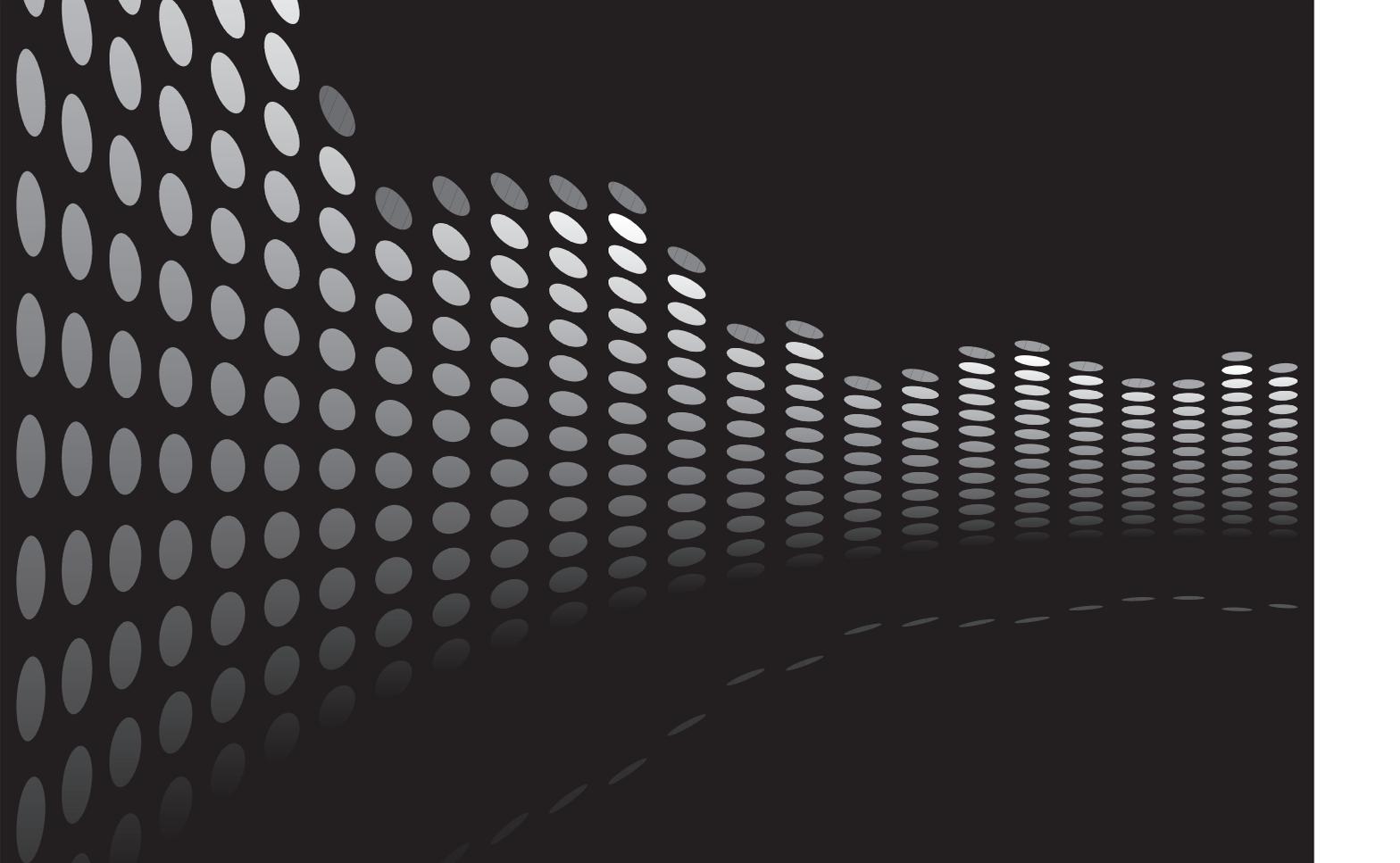
As a practical matter, independent publications can't safely print unlawful or substantially disruptive material either, Goldstein said. "It's hard to disrupt a campus without violating some other law," he said.

However, independent organizations

are not bound by the First Amendment in the same way that public university officials are.

"When you're separately incorporated, the directors of the corporation are bound only by the IRS requirements of their incorporation, which says nothing about your free speech," he said.

But Goldstein said independence still probably means a net reduction in censorship, because the board members of a nonprofit corporation will have much less motive to censor than college administrators will. ■



THE
CHANGING
FACE *OF* RADIO

College radio stations, facing financial and technical challenges, look at new options -- and new media

BY JAMES HEGGEN

One of higher education's signature student programs, the college radio station, is facing the prospect of dramatic change.

Several colleges recently began evaluating the longevity and practicality of student radio, prompting some to consider selling off their ability to broadcast over the air.

Rice University in Houston sold its radio station's FM broadcast license and radio tower in mid-October, citing a lack of listeners and the financial benefits. The sale, which had a price tag of \$9.5 million, is still awaiting FCC approval, and student staffers at the station have hired legal counsel to fight it.

The student station associated with Vanderbilt University in Nashville, Tenn., also announced plans to consider a similar deal. Although managers said the announcement was not meant as a definitive plan for the station, it was met with public outcry. The board governing student media at Vanderbilt announced at an October meeting it would not be making any decisions about the radio station until spring semester, at the earliest.

But even as the future of traditional stations grows uncertain, some schools are looking at other avenues to broadcast their signals in non-traditional ways.

The HD option

Warren Kozireski, general manager of WBSU at the College of Brockport and president of College Broadcasters, Inc., said there is a trend, especially in larger markets, to find ways to broadcast stations in ways other than terrestrial radio.

"Especially the larger markets, there aren't any radio frequencies available -- or if there are, they're going to cost you a few million dollars, which is out of the realm for a lot of college operations," he said.

Kozireski said several years ago, stations began turning to Internet-only broadcasting. In the last couple years, many stations have also been turning to another option: high definition radio.

HD radio is similar to HD television. It provides a higher quality signal, but is not available to everyone with a terrestrial radio. The stations are in-between the traditional frequencies, much like HD channels on television. For example, a standard radio station might be at 90.5 FM, while the HD channel could be at 90.5-2. In order to pick up the HD signal, a listener needs to have an HD receiver.

"It's still, for the most part, in its infancy in terms of the number of radio receivers out there," he said.

However, the medium continues to grow, with more and more new cars including the HD receiver. And as the receivers become more common, the potential audience continues to grow.

"Internet radio is a nice option for a lot of operations... [but] it's hard to generate any kind of audience consistently on that stuff, just because there's so many options," Kozireski said.

According to the HD Radio Alliance, there are currently more than 3 million HD Radio receivers in the marketplace and nearly 2,000 stations broadcasting in HD.

"It's hard to say [the potential audience is] larger, because the Internet is worldwide, but the incidence of people listening to

terrestrial is still greater than Internet radio," he said.

HD stations give several new avenues to those in markets that are already crowded. Kozireski said he has heard technicians say a station could have as many as five HD stations, although he's never seen a college with more than three.

Brett Farrar, station manager for Bulls Radio, the campus station at the University of South Florida, said his station entered into a three-year HD contract with WMNF about a year ago. The station has three different HD signals, and Bulls Radio occupies the second one. The station is splitting the cost with WMNF for the HD station.

The station had an FM signal in 1998 but only broadcast in the residence halls. It switched to AM in 1999, but only "reaches the corners" of the South Florida campus, Farrar said. The station streams online and is accessible on mobile devices. Bulls Radio is also on the WMNF iPhone app and is working to become part of the South Florida iPhone app.

Farrar said station officials saw the HD contract as a chance to expand the audience. The station gives Bulls Radio a 30-mile radius in the Tampa area. By January, there are plans to double that signal radius.

"It gave us the ability to reach more people," he said.

In addition to the extra exposure from partnering with WMNF as well as extra training

from personnel at the station, the price tag is much cheaper compared with buying an over-the-air broadcast license. The contract with WMNF costs Bulls Radio about \$35,000 a year.

"The price of FM -- not only the limited amount of channels, but just the price of getting an FM signal that reaches anywhere here -- isn't going to be in our student radio budget," he said.

The new HD signal has brought an increase to audience numbers for the students working at Bulls Radio. Farrar said the station has seen an increase in the number of applications, too. It has also legitimized the station's status, and Farrar said his staff has seen an increase in internship opportunities.

"It's increased our fan base size and our followings," he said.

Kozireski said he isn't sure what is going to happen in the future with college radio. He said he didn't think the HD trend would "skyrocket."

"I think it will be a steady rise as more people come aware of it," he said.

The other challenge, he said, is that the word "radio" has an "old-media connotation," which is why schools can justify selling their stations. However, he said radio's demise has been forecast wrongly several times before.

Kozireski said it's hard to tell which option is the more popular in trying to find new avenues for radio content. However, he did say the Internet has been the more popular option for new stations.

"But as the HD radios become more common place... terrestrial radio always moves in and takes over," he said.

Kozireski said 94 percent of Americans listens to terrestrial

The Internet doesn't have that same strong association with the local community.

Joey Yang
KTRU Station Manager



Students Alex Sanchez and Kieran Moreira chat during the National College Media Convention in Louisville, Ky. College stations nationwide are looking at new ways to innovate.

PHOTO BY MARISA AKERS

radio at least once a week. With numbers like that, Internet radio will have a hard time taking over.

“There’s no way the Internet will ever trump that,” he said.

Streaming

WLOY, the student radio station at Loyola University, went “on air” in 2003 -- but not with an FM signal.

Operations Manager John Devecka said the university had a student radio station from 1975 until the mid-1990s, when it went off the air. Talks for starting a new station began in 2001, the station was built in 2002, and it has been on the air since March 2003.

The station is designed to work like any other type of professional radio station, Devecka said, except that it does not broadcast on FM. The station streams online as well as on a low-power AM frequency.

Devecka said he tried to find an FM frequency for the station, but because of the size of the market in Baltimore, none were available.

“For us, it’s gone reasonably well,” he said.

One of the challenges he said the station has faced is with audience. He said the station does a lot of community events and sometimes people don’t grasp the concept of a radio station that is not on FM.

He added that they also miss a key target audience: the in-car listener.

“It can sometimes be a bit of a turnoff for people to have to do

something kind of non-traditional to listen to radio,” he said.

But the audience continues to grow. Devecka said the listeners for the online stream have been increasing; the station is seeing more followers on Facebook and Twitter. WLOY is also listed on iTunes and is available as an iPhone app.

“I’d trade it all if you could hand me an FM license,” he said, explaining that FM continues to be the most popular way to listen to radio.

“The biggest disadvantage is you are not instantly recognizable as a quote-unquote ‘real station’ by a typical listener,” he said.

But there are also some advantages. “The advantage is probably all financial and legal,” Devecka said.

Because Internet radio is not subject to the indecency regulations of the Federal Communications Commission, student broadcasters have more flexibility with content, and are not subject to fines when they make mistakes.

Devecka said he recently spoke with someone from another college radio station that had an FM signal. The station’s electric bill for the transmitter site alone is equal to the entire operational costs of WLOY, he said.

“In terms of operational costs, it’s pennies to millions,” he said.

Holding on to FM

The sale of Rice’s KTRU to the University of Houston is still pending FCC approval. If the sale does go through, KTRU would be forced to broadcast exclusively online.

Legal Tips: Taking your case to the FCC

Q: My university just decided to sell the license for our student radio station. What happens next?

A: First, whoever is buying the license must file an application with the Federal Communications Commission, which will then determine whether “the public interest, convenience, and necessity will be served by the granting of such application.” The law does not permit the FCC to consider whether another purchaser would better serve the “public interest, convenience or necessity.”

...

Q: But what can I do about it?

A: You can file a petition to deny the application. The FCC will issue a public notice once it has received the application, and you must file your objection within the next 30 days. Filings can be found online at <http://fjallfoss.fcc.gov/ecfs/>.

Any “party in interest” may challenge the transfer by filing a petition. A “party in interest” typically includes anyone who lives within the station’s service area, or who listens to it regularly. Any person can also submit an informal, signed letter. Final decisions of the FCC are appealable to the U.S. Court of Appeals for the D.C. Circuit.

...

Q: What are acceptable rationales for denying the sale of a license?

A: Some of the arguments that have been successful include:

- Sale would decrease diversification of ownership in newspapers and broadcast media in the same location (antitrust concerns).
- Direct misrepresentation or intentional omissions were made by the applicant.

Arguments that have often been unsuccessful include:

- Adverse economic impact on employees of the station.
- Sale would decrease diversity in entertainment formats.

compiled by Adam Schulman, SPLC legal fellow

“We’d lose a good portion of our listening audience, to be sure,” said Joey Yang, a student and station manager for KTRU.

Yang cited a recent study that examined the listening habits of the age group that makes up the audience of stations like KTRU, showing terrestrial radio is still relevant.

“It showed that the way that most people find out about new music is through the radio,” he said. “So radio isn’t dead.”

Yang conceded HD radio and Internet radio may be the future, but for now, FM is still important. He said losing the FM signal would result in a loss of influence as well.

“Over the Internet, it’s not as easy to become as widely available,” he said. “I mean you are widely available, but whether

or not you’re easy to find is an entirely different matter.”

When it comes to FCC compliance, Yang said the general manager – a non-student Rice staff member – handles most of the legal issues with the station’s FCC license. However, he said students are expected to do things such as compile on-air reports. He said working at an FCC-compliant station looks better on a resume when students are trying to get jobs and internships.

Yang added the station has a very strong connection to the community being on FM, exemplified by the support it has received when talks of the sale began.

“The Internet doesn’t have that same strong association with the local community,” he said. ■

JOURNALISM BEYOND THE CLASSROOM

Youth programs let students reach new audiences

BY CHELSEA KEENAN

Since the release of the 1974 Commission of Inquiry into High School Journalism report *Captive Voices*— which brought to light the issues of censorship and under-representation of minorities in high school papers— organizations have cropped up across the country with aims of correcting these shortcomings while teaching students about the importance of journalism.

In instances where student publications are heavily censored, programs offer opportunities for students to tackle difficult or controversial topics without fear of punishment. In areas where student publications simply don't exist, media organizations offer a refuge for voices that are not being heard.

And in either case, these programs allow students to reach an audience beyond their high school peers, which in turn, allows them to make an impact on the communities they live in.

The McCormick Foundation helps fund student journalism programs around the country as well as education, civics and human services to advance a free, democratic society.

According to its website, the journalism program supports non-profit organizations and educational institutions and has an annual budget of about \$6 million.

“Our challenge going forward is to find the right bridge between after-school programs and in-school programs,” said Clark Bell, program director for journalism.

He said this is important because students can use the skills they learn, such as reading, writing, thinking critically and working on a deadline, in college and later in life.

“We want to link and coordinate these projects so as many people who want to participate in journalism can,” Bell said.

The Youth Editorial Alliance, which is part of the Newspaper Association of America Foundation — the charitable arm of an association of about 2,000 newspapers across the U.S. and

Canada — helps professional papers develop programs for high school journalists.

Foundation manager Marina Hendricks said the origins of the Youth Editorial Alliance began in the late 1990s after three journalists who oversaw teen programs at different newspapers wanted to reach out to other journalists.

The NAA adopted the YEA in the early 2000s and has increased the number of participating papers and student journalists. Hendricks said it holds annual contests and conventions across the country.

Sandy Woodcock, the foundation's director, said the organization has created two sessions for the Poynter Institute's News University, which offers online training for journalists. One session offers advice and tips for papers that want to start a high school program and the second helps editors come up with story ideas and projects.

Woodcock said she is unsure how many papers associated with NAA have developed programs, especially since so many newsrooms have recently been restructured. However, she said during the program's height in 2002 there were around 200 programs.

Woodcock said papers with high school programs foster long-term readership, have cross-generational appeal and serve as a training ground for journalists.

“It's important for media organizations to reach out and tell [students] that they're an important audience,” she said.

Other professional papers, like the *Indianapolis Star*, have developed similar organizations that publish student work on a monthly, biweekly or weekly basis on their own.

Lynn Sygiel, director of Y-Press International, a non-profit organization based in Indianapolis, helps students produce work that is then published in the *Star* or aired on WFYI public radio.

Sygiel said the organization has been around in several different capacities since 1990. However, it didn't become an independent news bu-



Students participate in the Free Spirit Media program in Chicago. The program provides opportunities in journalism and media production for underserved youth in urban areas.

PHOTOS COURTESY OF FREE SPIRIT MEDIA



reau until 2004.

In addition to publishing student work in a mainstream paper or airing it on a public radio station, Y-Press International's website provides an outlet for multimedia pieces students produce.

"There's really a lot of different opportunities for their work to be showcased," she said.

The professional staff, which is comprised of a writing coach, radio and special projects director, and two executive directors, helps about 125 students from ages 10 to 18 develop their journalism skills each year.

Sygiel said students work on stories in teams and usually write stories relevant to their region, but they have also worked on national and international pieces.

She said Y-Press students have covered things all over the map from school violence and Internet bullying to the suburban immigrant youth in France — a project that allowed seven students to travel to Paris and learn more about the 2005 and 2007 riots that occurred in the city's suburbs.

"It opens up their world," Sygiel said. "Generally when they work for a high school paper they're looking at their own community. Here they have to know how to analyze material and write for the mainstream media. It's totally different."

In cities that have a large urban youth population, such as New York City and Chicago, organizations were founded to give a voice to what many feel is an under-represented population.

Youth Communication, located in New York City, produces two magazines — *NYC Teen Magazine* and *Foster Teen Magazine*.

Executive Director Keith Hefner said the organization started in 1980 after the *Captive Voices* report was released.

He said the report's findings identified two of the major problems in high school journalism: censorship and a lack of diversity.

"We started an independent city-wide youth magazine to get around all of those things," he said.

He said Youth Communication's main goal was to recruit a diverse group of teenagers and have them write about what is important to them. The organization and magazine were successful enough that Youth Communication was able to add a second youth-focused magazine in 1993 that is put together by teenagers in foster care.

Hefner said the writing staff consists of about 80 teenagers per year between the ages of 15 and 20, with five full-time professional employees.

The magazine tries to recruit students who are under-represented in the media and offers internship programs and school credit at partner schools throughout the city.

NYC Teen Magazine, which has a circulation of about 80,000 and is published about six times a year, has written about everything from teen sex and race relations to the economic recession and new technological products available.

"Our goal is to provide information to those who are not served well by the mainstream media," he said.

Hefner said student writers come to the office to meet in groups to talk about their stories, meet individually with editors to discuss stories and conduct research and interviews.

Hefner said the student press helps train both its writers and its readers to be better, more informed citizens.

"A democratic society relies on an informed populace," he said. "There is so much information available, and you need to

“*It's important for our young people to see themselves not just as **students** but as **citizens** and the stories they tell should not just be about what goes on within their school walls.*”

Jeff McCarter
executive director, Free Spirit Media

know what is credible and what is not. So if you want to train people to read effectively you should start by having them read things they're familiar with.”

Similarly, Free Spirit Media, based in Chicago, was created in 2000 after Executive Director Jeff McCarter, working as a broadcast journalist at the time, became discouraged by the lack of diversity in the stories the media was covering.

"I wanted to provide an opportunity for urban youth to make their own media that's relevant to their lives," he said.

McCarter said Free Spirit Media gives about 500 high-school-aged students hands-on opportunities to produce broadcast media.

Students put together public service announcements, documentaries and a weekly news show that includes sports, feature and news stories.

They recently completed a documentary called "Hungry for Change," which discussed "food deserts" -- communities that have little access to the foods needed for a healthy diet -- around Chicago.

"A story like that resonates with the residents of the community," he said. "But it also resonates with people who never really thought about the issue before."

McCarter said he lets his students take on their own stories based on what they're passionate about, and then provides them with the resources and information sources to complete their assignments.

Free Spirit Media offers three avenues for students to participate. They can take a class during school hours at one of Free Spirit Media's partner schools, take part in an after-school program at one its partner facilities and the most advanced students can take part in Free Spirit Media Productions, where students produce work for paying clients.

"It's important for our young people to see themselves not just as students but as citizens and the stories they tell should not just be about what goes on within their school walls," McCarter said. "It should be about their world, whether local or global, and the issues that are affecting their society."

Like Hefner, McCarter believes youth journalism helps the students who produce it become better citizens.

"In a nutshell— youth engagement in journalism and media makes a fantastic tool for empowerment and for youth to understand they matter," he said. "I think media is such a powerful influence in society, and giving them the ability to produce and not just consume, is a great strategy to engage youth as citizens." ■

Other youth media organizations

LA Youth - Los Angeles

"We have grown from a small, upstart publication produced at a kitchen table to an established non-profit with five full-time adult staff and more than 80+ teen staff members. A long list of funders and individual donors have supported our coverage of such tough issues as juvenile justice, foster care and sexuality. In addition to bringing these important topics to an audience of 350,000 youth in Los Angeles County through our newspaper and website L.A. Youth has been written up and had articles reprinted in other media from the Los Angeles Times to NPR."

New Expression - Chicago

"Students from various Chicago high schools contribute articles and produce a news magazine called New Expression. The publication is written and edited by teens covering current events, issues, college and career news, business, entertainment and sports. Since its inception, YCC has worked with over 3,750 Chicago youths."

Young D.C. - Washington, D.C.

"Launched in 1991, Young D.C. (YDC) has its roots in the Robert F. Kennedy Memorial study Captive Voices: the Report of the Commission of Inquiry into High School Journalism (1974). Commissioner Ann Therese Heintz and RFK fellow Craig Trygstad became leaders of Youth Communication, a youth journalism movement. Joining them was George Curry, the journalist who originated minority student journalism workshops in 1977. Youth Communication grew to a network of ten independent teen-produced newspapers (including Young D.C.) and the 13-bureau Youth News Service."

Columbia Links - Chicago

"A journalism skills-building and leadership development program for youth and teachers in Chicago Public Schools, housed at Columbia College Chicago. Through workshops, mentoring, and the creation of youth-produced publications, Links works to build expertise, relationships, skills and opportunities that connect students, teachers and volunteers through journalism, in the process revitalizing youth media in Chicago."

CAPTIVE VOICES

HIGH SCHOOL JOURNALISM IN AMERICA



Excerpts from the famous 1974 Jack Nelson book:

“The professional news media does not take seriously the First Amendment problems of high school journalists...”

...

“Censorship and the systematic lack of freedom to engage in open, responsible journalism characterize high school journalism.”

...

“Self-censorship, the result of years of unconstitutional administrative and faculty censorship, has created passivity among students and made them cynical about the guarantees of a free press...”

...

“Students who are members of racial, cultural, and ethnic minorities tend to face special problems in gaining access to high school journalism.”

THE STATE *of* CYBERBULLYING

As lawmakers try to keep the Internet safe, some worry they're sweeping up free speech in the process

BY CHELSEA KEENAN

Widely publicized suicides have once again shed light on the harm that bullying, especially with help from the Internet, can cause. But as schools and legislatures across the country update laws, or pass new ones, that attempt to regulate "cyberbullying," freedom of speech advocates worry students' rights could be in jeopardy.

At least 28 states have enacted legislation specifically targeting cyberbullying -- 22 of them within just the past four years, according to the National Coalition Against Censorship. And the recent student deaths have put the issue back on the minds of parents, journalists and lawmakers alike.

The U.S. Department of Education even felt the need to step in, sending out a memorandum at the end of October, reminding schools, colleges and universities that bullying may also violate federal law.

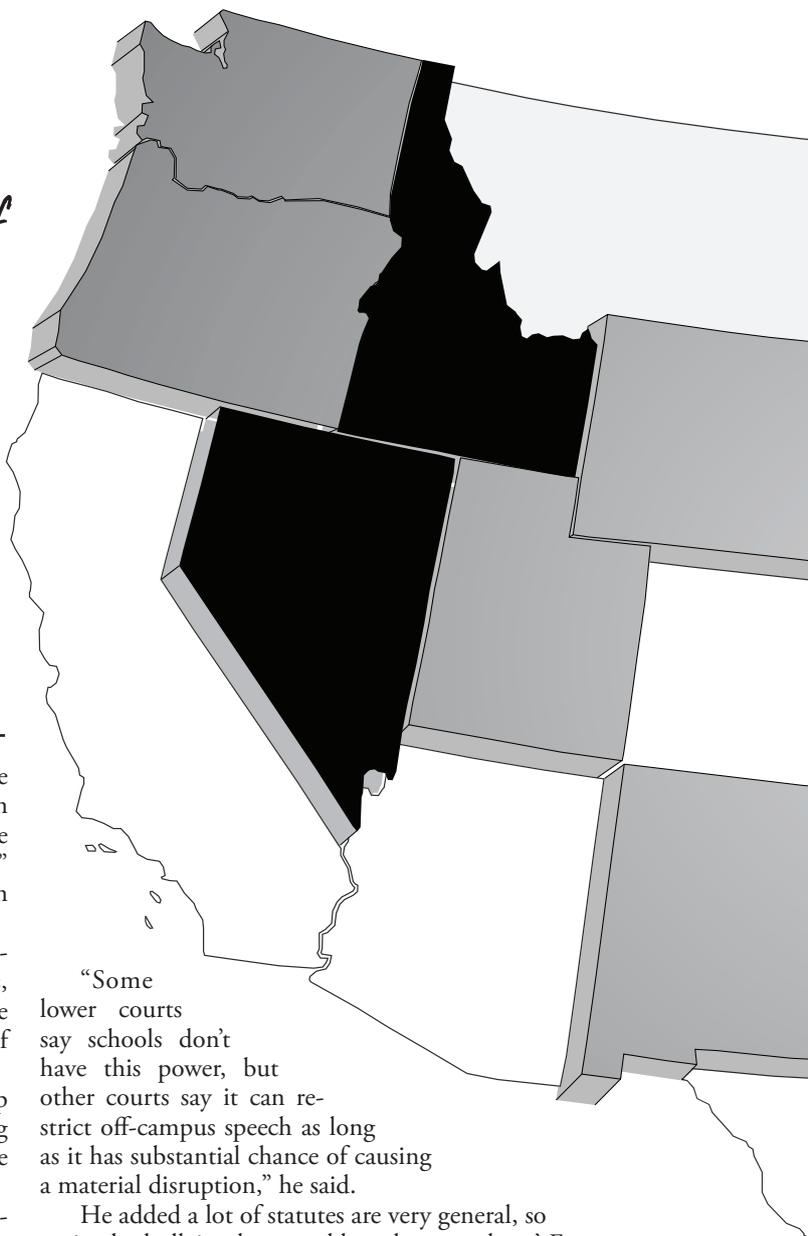
"I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights," wrote Assistant Secretary for Civil Rights Russlynn Ali in the letter.

Ali went on to write, "harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating."

There is broad agreement that schools should confront the problems bullying creates, but there is great potential for principals and teachers to abuse the power given to them when laws allow them to punish students for speech made off campus at a non-school-sponsored events.

Eugene Volokh, a professor at University of California Los Angeles School of Law who specializes in free speech law, said schools generally have a great deal of flexibility when it comes to regulating cyberbullying and Internet harassment.

He said the main question state laws have raised is to what extent schools have control over off-campus speech.



"Some lower courts say schools don't have this power, but other courts say it can restrict off-campus speech as long as it has substantial chance of causing a material disruption," he said.

He added a lot of statutes are very general, so anti-cyberbullying laws could apply to students' Facebook statuses, speech they make on newspapers' websites and other open forums on the Internet.

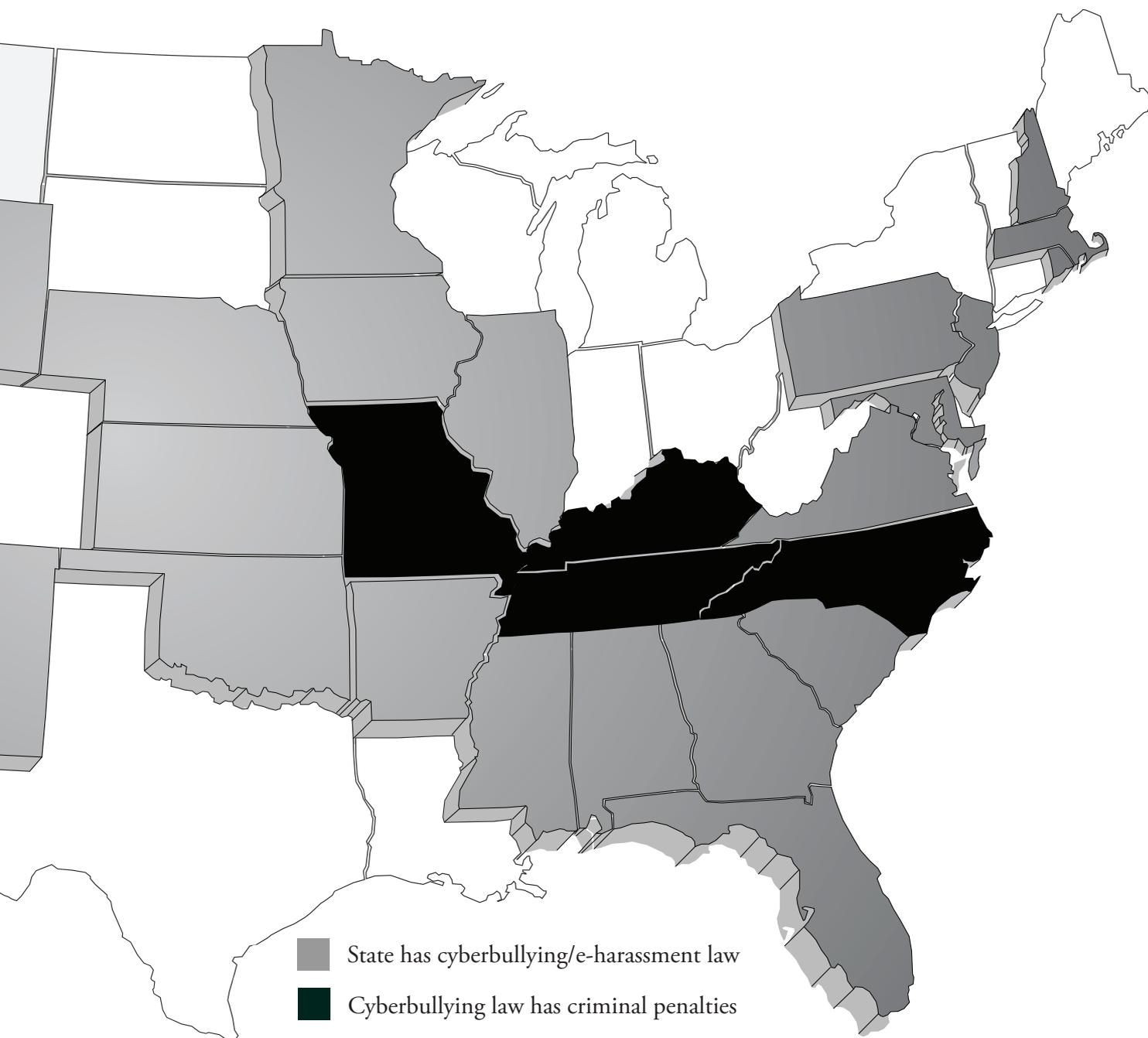
"[Those laws] would be almost certainly unconstitutional unless they were limited to things like threats or one-on-one communication," he said.

Regardless of whether states adopt anti-cyberbullying laws, Volokh said students' speech is limited at school.

"It doesn't take an anti-cyberbullying law for schools to restrict speech by their students in their administrative capacity," he said. "Even without such a law a principal can say 'look you're disrupting school, I'm going to suspend or expel you.' So it's not clear to me why you need a law for that unless you think that principals are not doing a sufficiently good job of protecting students."

So how should states go about regulating threatening speech made by student to other students?

Professor Justin Patchin, co-director of the Cyberbullying Research Center, an organization that provides information on the causes and consequences of cyberbullying, said the most important thing is to provide resources and education to administrators and teachers on how to deal with bullying.



SOURCE: CYBERBULLYING RESEARCH CENTER

Patchin, along with Professor Sameer Hinguja, began their research on cyberbullying in 2001, and the two launched a website in 2005 that aims to educate students, parents and educators about the dangers of cyberbullying.

As for state laws, Patchin pointed out that the majority of states instruct the department of education or individual school districts to include “bullying through technology” in their bullying policies. He said this is problematic because the laws often do not provide schools with additional resources or training.

He said without a clear definition of what constitutes cyberbullying and proposed actions on how to deal with it, regulating and enforcing bullying policies becomes difficult.

“The vast majority that have been passed just say schools have

to deal with it,” he said.

When it comes to states that have taken a more active approach to regulating cyberbullying, Patchin said he realizes administrators and teachers may abuse their powers.

“We certainly don’t advocate principals policing the Internet, but they should do something when they find out about it,” he said. “You don’t have the right to threaten anyone, no matter what.”

Despite the potential problems, state legislatures have still made attempts to put a stop to cyberbullying. Most of the existing laws simply require local school districts to adopt their own policies or provide education on the issue. A few, however, make a criminal offense.



The opening session of the Missouri House of Representatives in Jefferson City, Mo. The state passed its anti-cyberbullying statute in 2008 following the 2006 suicide of Megan Meier.

PHOTO BY KAREN ELSHOUT/MISSOURI LAWYERS MEDIA

Of the states that have some type of bullying law, five specifically address “cyberbullying” and 30 include some mention of “electronic harassment,” according to the Cyberbullying Research Center.

New Jersey

Following the death of Rutgers University freshman Tyler Clementi, who jumped off the George Washington Bridge after a clandestinely recorded sexual encounter with another male was broadcast over the Internet, New Jersey state legislators adopted the “Anti-Bullying Bill of Rights” on Nov. 22. The bill was awaiting Gov. Chris Christie’s signature or veto as of press time.

If signed, the bill would require and provide training about harassment for school and district administrators, teachers, school board members and school resource officers. It would also require public colleges and universities to add anti-bullying policies as well as enforcement plans.

The bill further states that the school district’s policy on harassment and bullying must include responses and actions to instances of bullying that occur off school grounds. The bill specifies that the harm a student may experience could be physical or emotional. It also adds to the definition that “the creation of a hostile environment at school and the infringement on the rights of the student at school” is considered bullying, while eliminating the requirement that the “disruption or interference” at school must be “substantial.”

New Hampshire

The law, which passed in July, gives schools permission to take action in response to cyberbullying that occurs either on school property or at a school-sponsored event. It also allows schools to take action if the bullying occurs off school property, provided the conduct interferes with a student’s education or causes a substantial disruption.

State Rep. Donna Schlachman (D-Exeter), who helped draft the legislation, said several parents contacted her after their children had been bullied at school. She realized the laws needed to be revamped and put together a committee to start work on the bill.

“We knew there were some curriculums that schools were using that were just bogus,” she said.

The bill also requires schools to provide annual training for school staff, which was a big fight, Schlachman said.

“Information is always changing,” she said. “We wanted it to be clear this was something they needed to do.”

Schlachman said sponsors chose to use the words “substantial disruption” in the bill to give administrators more power since bullying happens off campus so frequently. The Supreme Court’s *Tinker* standard enables administrators to prevent or punish speech in traditional school settings if it is substantially disruptive of school operations, so importing that standard for off-campus speech suggests that principals may police off-campus conduct

up to the constitutional limit for on-campus conduct.

As for whether principals or teachers may take advantage of the law, Schlachman said she had not given much thought to it.

“You know, that didn’t even come up on our radar,” she said. “This law was very much focused on kid-on-kid, serious harassment.”

Louisiana

In July, the state of Louisiana passed two laws dealing with cyberbullying.

The first makes cyberbullying someone under the age of 17 a crime. Under the new law, offenders can be punished for acting with the intent to “coerce, abuse, torment, intimidate, harass, embarrass, or cause emotional distress to a person under the age of seventeen.”

State Rep. Roy Burrell (D- Shreveport), who authored the legislation, said he wrote the bill as a proactive measure after he heard on the news about a number of incidents that involved bullying.

“I thought we needed to do something about this,” he said.

Burrell said a key element of Louisiana’s law is that it lays out two distinct courses of punishment: one for those under the age of 17 and one for those 18 and older.

Those over the age of 18 convicted of cyberbullying can be fined up to \$500 and receive up to six months in jail. On the third offense, the offender can be fined up to \$5,000 and receive up to three years in jail.

Burrell said it was important to have some kind of penalty for students, but he did not want the outcome to be jail. After talking to other legislators, Burrell added a clause stating that those 17 years old and younger must undergo counseling.

The second law, authored by Rep. John LaBruzzo (R-Metairie), makes schools review and update policies to specifically “address the nature, extent, causes, and consequences of cyberbullying.”

Additionally, the law prohibits cyberbullying on and off school campus.

Illinois

Illinois takes a less punitive approach with “The Internet Safety Act,” a law passed in 2009 that requires all students in third grade and above to attend an Internet safety class at least once a year.

The Illinois State Board of Education and the Attorney General worked together to produce the bill and a recommended curriculum for schools.

Matt Vanover, spokesman for the Illinois State Board of Education, said since the state saw a greater use of the Internet and its dangers, officials felt it was important to teach students how to use the Web safely.

Vanover said the state is leaving it up to individual school districts and schools to decide what to include in the safety classes, but the state department of education recommends the classes include sections on safe and responsible use of the Internet, the risks posed by online predators, identity theft, cyberbullying and harassment, and illegal downloading.

“It’s important because as the Internet becomes more and

more of a tool there is more and more of a likelihood it will be abused,” he said. “We have staff teach students drivers’ education and health, so it makes sense to teach something that is so prominent in your life.”

Missouri

The national spotlight was thrust on Missouri after a 13-year-old girl committed suicide in 2006 when her 49-year-old neighbor posed as a teenage boy and sent her harassing messages over MySpace.

In 2008, the state enacted a law that made harassment from computers, text messages and other electronic devices illegal. It also mandates that schools have a written policy requiring administrators to report crimes of harassment and stalking.

State Rep. Sara Lampe (D-Springfield) said the bill is a good start but still flawed.

“This law is a small piece of a bigger, larger, more complex issue,” she said.

Lampe, a former elementary school principal, proposed a more specific bill that included a clause with enumerated categories of people who should be protected from bullying -- students of a different race, ethnicity, religion or sexual orientation.

She said this was considered too controversial and voted down by the majority party, adding the party said all students need protecting so there is no need to have categories.

“It’s about keeping kids safe,” she said. “It comes back to having core decency and respect for humans, and that’s hard to legislate.”

Lampe also agreed that teachers and administrators should have more training on how to deal with bullying, both traditional and cyberbullying.

“Schools are supposed to be places where a kid can go and feel safe,” she said. “Our children deserve our protection.”

A First Amendment risk

Following Clementi’s death, greater focus has been placed on internet harassment at the college level. However, First Amendment experts warn that regulating expression by college students raises even greater free speech concerns.

“I think we’ll see more of it,” said David Hudson, a scholar the First Amendment Center in Nashville, Tenn. “I think it’s a little more troubling because there’s traditionally been a dichotomy between governmental control of secondary school student speech and those who are over the age of majority. So I think it’s a little more problematic.”

Hudson said legislators should confine cyberbullying statutes to existing case law, regulating only speech that’s truly threatening or falls into a recognized free speech exception. Otherwise, the laws risk being struck down by judges.

Ultimately, Hudson said the U.S. Supreme Court may provide some guidance on the issue.

“I do think the Court is going to take a student internet speech case for sure,” Hudson said. “I don’t know if it’ll be in the context of a cyberbullying case. But in my mind there’s no doubt that they’re going to have to take a student internet speech case because there’s just so much uncertainty and there’s a growing number of cases, and the legal landscape is quite muddled.” ■

Who cares about this story? Obama's a socialist.

**Online comments create more opportunities for discussion,
but may also generate new legal concerns**

BY CAITLIN BYRNES

Reader comment boards invite a cornucopia of opinions, from the well-informed to the ignorant. Student media publish in a campus echo chamber, where rumors can spread virally. Moderating reader comments can quickly become a bane for editors, who are forced to balance free speech with the need for sensitivity and class. It is not an easy task.

But what if commenters cross the line from tasteless and uninformed to potentially libelous? Since federal law – the Communications Decency Act – insulates the news organization itself from suit for the libelous comments of outsiders, when can the author himself be held legally responsible?

Because news sites' comment boards typically have not required posters to provide verified identities, "Cheese Eating Surrender Monkey" – the screen name of one commenter whose postings became part of a federal lawsuit – can fire away from the relative safety of anonymity. Some courts, however, have been willing to unmask unnamed commenters, forcing news organizations to decide whether (and how hard) they will fight to protect the identities of unnamed posters.

Defining defamation

Courts have applied the same standard principles of defamation law to online speech as to speech in any other medium. Under the commonly accepted legal standard, a claimant must prove that the material was "published," that it identified its target, that

it was false, that it caused harm, and that it was done with some level of fault.

"It's no different than defamation anywhere else," attorney Paul Alan Levy of Public Citizen said. "It's probably also true that the illusion of anonymity that posting online creates may be an incentive to speaking worse than you would do otherwise."

Publication

While the nature of the Internet may make some people feel like they aren't "publishing," a comment can be "published" even if shared with a small circle of readers only briefly.

"The Internet has the risk of making us casual about publication," Student Press Law Center attorney Frank LoMonte said. "Unfortunately, there is a perception that people don't need to edit themselves on chat boards or social networking sites in the same way they would in print."

LoMonte said lawsuits over comment-board postings often involve businesses that believe they've been unfairly criticized by irate consumers.

"For an ordinary person it's going to be hard to prove meaningful damages, but if you are a business you can show a loss of customers," he said. "It's pretty common for people to use the web to vent about restaurants or apartments where they've gotten bad service, but you want to be very careful about making specific factual charges. It's safe to say 'this is the worst hamburger I ever ate,' but if you say 'this restaurant is roach-infested,' that's potentially libelous."

In 2009, a former student sued Louisiana State

MARYLAND: It's time to defame the donuts

In 2006, anonymous commenters on a message board on the website NewsZap.com sharply criticized a Maryland donut shop, including remarks that the shop was "dirty" and "unsanitary" and had discharged pollutants in a public waterway. The business owner sued for defamation and demanded that the operator of NewsZap turn over identifying information behind the screen names of commenters such as "RockyRaccoonMd."

In a 2009 ruling, *Independent Newspaper v. Brodie*, Maryland's highest appeals court denied the business owner's request. The court found that the defamation complaint was defective because it failed to set forth the

essential factual allegations entitling the owner to prevail.

The court also issued guidance for future such disputes, adopting the five-part standard for disclosure of unnamed commenters that was first set forth in the New Jersey *Dendrite* case. Thus, before a website operator can be compelled to violate the anonymity of commenters, a court must consider whether the plaintiff has stated a valid case and must balance the interests of the affected parties. Also, websites must notify commenters that their information is subject to disclosure if subpoenaed.

TEXAS: No anonymity for ‘perverted’ authors

A Texas couple, acquitted of sexual assault charges in 2008, became the target of “flamers” on a discussion board on the news aggregation site Topix.com. Comment authors posted remarks that the couple described as “perverted, sick, vile, inhumane accusations.” The couple said that the accusations harmed them psychologically and also impacted their business.

In the case of *Leshner v. John & Jane Does*, a district court in Texas ruled in 2009 that the comments were sufficiently specific and factual to support a defamation case. (The comments included accusations of illegal drug use and venereal disease, among others.) The court ordered Topix to disclose information leading to the Internet addresses from which the allegedly defamatory posts originated. The court also directed Topix to post a notice of the order on its website, so that affected comment authors would have time to object.



University’s student newspaper, *The Daily Reveille*, over comments posted on a story about his legal dispute with the university. Commenters suggested that the former student was mentally unstable and violent.

A U.S. district court threw out the suit, ruling that the Communications Decency Act protects news outlets that do no more than offer a vehicle for unrelated third parties to post comments. Nevertheless, the *Reveille* later changed its policies to require editor pre-approval before comments can be seen.

End-running the CDA

So that people defamed by online comments are not left completely empty-handed, some judges have come up with standards allowing injured parties to get at the identities of the comment authors themselves.

One of the earliest and most influential cases was the *Dendrite* case, decided by a federal judge in New Jersey in 2001. In that case, a pharmaceutical software company alleged that a writer on Yahoo! comment boards defamed the company and revealed trade secrets, and tried to get a subpoena to obtain identifying information about the writer.

The judge refused to issue the subpoena, because *Dendrite* failed to show that the comments caused actual harm, an essential element of the case; in the days following the original post, stock in *Dendrite*’s company actually rose, and its business maintained.

The court came up with a multi-step test for future courts to use in deciding when to order a website to give over a commenter’s identity.

First, commenters must be notified and given time to oppose disclosure. The plaintiff must then show specific, actionably defamatory speech in the

post. The plaintiff must show all of the required elements of a defamation case. And finally, that case must be balanced against the speaker’s First Amendment rights.

“The trial court must consider and decide those applications by striking a balance between the well-established First Amendment right to speak anonymously, and the right of the plaintiff to protect its proprietary interests and reputation through the assertion of recognizable claims based on the actionable conduct of the anonymous, fictitiously-named defendants,” Judge Robert Fall wrote.

Levy said anonymity should be pierced only if the information can’t be obtained in another way. Sometimes, it can be. For instance, comments at times reveal that the author knows privileged information known only to a small group of individuals.

Public Citizen is encouraging courts to adopt a five-part standard similar to *Dendrite*, Levy said.

“We’ve argued that courts ought to formulate a standard which on the one hand considers the interest in vindicating reputation and on the other hand considers the interest in the right to remain anonymous when you’ve done nothing wrong,” Levy said. “The question is what sort of showing ought the courts insist on before the right to speak anonymously is taken away.”

Levy said he is concerned that if people are too easily identified, they will be susceptible to retaliation and thus be silenced. However, he said it is important for the media, as host to the marketplace of ideas, to make sure the discussion takes place within some standards.

“Anonymity is an important First Amendment value so long as the right to speak anonymously has not been abused,” Levy said. ■

my photos

principals, advisers and students face
misconceptions about who 'owns' student work

BY CHELSEA KEENAN

The debate over who owns a photo -- the school or the student who took it -- is one that comes up time and time again.

Principals generally fall back on two contentions for why the student's photo belongs to the school: the student took the photo with school equipment, and the student can be considered an employee of the school since he or she receives academic credit for class.

However, neither of these concepts are legitimate reasons for a principal to take a photo from a student or journalism program, experts say.

Adam Goldstein, attorney advocate for the Student Press Law Center, said when Congress rewrote the Copyright Act in 1976, it set the standard for who owns photos.

Generally, the person who creates a photo (or a news story or other creative work) owns the copyright to it. Goldstein said the only time a photo belongs to someone who did not create it is in the context of a traditional employment relationship or in the context of a "work made for hire" contract.

He explained further that under the previous definition of work for hire, it essentially meant someone who did something on behalf of someone else. This was a very broad concept, he said, and caused problems in the music industry because bands or musicians would sell hundreds of thousands of albums but not see any of the money because it would go to their producers.

"This happened frequently enough that they changed the definition," he said.

The act now specifically requires a written surrender of rights before the work of an "independent contractor," such as a photo

stringer, can become the property of the publication.

Regardless, there are still misconceptions about the amount of control school officials have with scholastic photojournalism around the country, according to Logan Aimone, executive director of the National Scholastic Press Association.

"I think there's a transfer of the idea that this is work created for a class and therefore somehow people think -- obviously wrongly -- that it should be property of the paper," he said.

Katie Wright, journalism adviser at Crete High School in Crete, Neb., came across an ownership issue when the school wanted to use one of her student's photos on a fundraising card for the school baseball team.

Wright said she told the company she needed to get student approval before handing over the pictures, but the principal said the pictures were the school's property in the first place since they were taken on school equipment and stored on the school's servers.

Wright said she found a model student media contract created by the SPLC that specifies when it's okay to use student work, and showed it to the principal.

After explaining how this would be an easy way for the students and the high school to reach an agreement for future projects, the principal conceded quickly, she said.

She said she explained to the principal that she wants her students to understand the issue of respecting others' work and the school should do the same for its students.

"For me, it was just about going through the right steps to show the kids that as much as we hold them accountable for not using others' work without permission and understanding property issues, we respect their work in the same regard," she said.



Wright said she also has a strict plagiarism policy she expects her students to abide by. Plagiarism, like copyright, is a property issue that she wants her students to be well versed on.

“I think it’s so important to show students how to and why we respect other people’s work, because it *is* a property issue,” she said. “They are instructed time and again on how to take others’ work and either give them credit or paraphrase it [or] recreate it to make it their own unique work. If they can’t see why that’s important, we go through the process of explaining how taking other people’s work without permission is stealing and cheating.”

Goldstein said administrators often don’t understand the nuances of copyright, adding it is a widespread misconception that schools automatically own photographs.

“It could actually be copyright infringement if the principal sells the photo without the student’s permission,” he said, adding the principal should hire a professional photographer if the principal wants to sell the photo and make money off of it.

“If there’s some legitimate reason schools need to use the work of their students, then they should ask the students for permission,” he said.

Goldstein said the copyright definition makes no mention of the rights to a photo or song belonging to the person or company that provided the equipment to produce the product.

“That literally does not matter,” he said. “If I steal your camera and take a bunch of pictures and then I get caught, go to jail and my pictures are used as evidence, they’re still my pictures.”

Aimone said he wants more journalism educators to consider the copyright issues in advance.

“I wish that they would be proactive and utilize some sort of

license agreement before they start the school year,” he said.

Not every situation is resolved as smoothly or as quickly as Wright’s.

In September, administrators made a student journalist from Kickapoo High School in Springfield, Mo., turn over his photos after another student was injured during a start-of-the-school-year event.

After Chase Snider, executive editor of *The Prairie News* and its companion website, was told to hand over his photos, he enlisted the SPLC’s help and was referred to Kansas City attorney Patrick Doran.

“My personal photos that were demanded from me by our administration and school district on September 1st, have still not been returned to my possession,” Snider wrote in an e-mail. “And I don’t know when they will be given back to me.”

Doran wrote in an e-mail that his “hope is that any of Chase Snider’s personal property that may be in the possession of the high school or school district will be returned to him and that reporters at the award-winning [*Prairie News*] can cover news stories, including breaking news, of interest to the Kickapoo community without undue interference from the administration.”

Snider is currently consulting with Doran about his legal options.

Goldstein said the main reason principals often attempt to gain control over student photos — especially if the photo is damaging to the school’s image — is because if they own a photo, they can get rid of the photo.

“Ownership is control,” he said. “If you own it, you have the right to not publish it or to destroy it.” ■

photographing law enforcement
can create confusion for both
police and student **journalists**

LENS FLARE

● REC

BY CAITLIN BYRNES

Student photographer Justin Kenward was in the newsroom the day before his school's weekly publication, *The Breeze*, went to print.

Outside the newsroom, an elderly man collapsed in the parking lot. An ambulance was called.

Passers stopped to check out the scene. Cars slowed down to take a look. Kenward ran outside with his camera, ready to take a picture of possible news.

"As far as I know the victim had absolutely no issue with me shooting the photos," Kenward said. "In fact, when he saw me he waved and smiled."

Kenward was slapped with two misdemeanor charges for his actions, and for his refusal to give those pictures to authorities. He was charged with interfering with and disobeying a firefighter.

Kenward took pictures of the scene from a distance after being asked to move, and then refused to later show or give pictures when police confronted him in the *Breeze* newsroom.

"I wanted to scream," he said of the Sept. 16, 2010 confrontation. "I just listened and signed the notice to appear in court."

Kenward's run-in with the law is only one of the many photographers around the nation – amateur and professional – are confronting.

National Press Photographers Association President Bob Carey said he hears every day about police attempting to restrict news photography of public places and events.

"As a photojournalist you have the right to document anything from public position where you are on public property so long as you are not in the road or distracting or dangerous," Carey said.

In plain sight

Quinnipiac University student Kenneth Hartford was arrested in September 2010 after filming the arrest of another student on a public street on his cell phone. In the video, one officer says "watch this" and does a dance, appearing to "perform" for the camera. Like Kenward, Hartford was charged with interfering with an official on duty.

Jim Brown, associate director for the Commission on the Accreditation for Law Enforcement Agencies, said on-duty non-federal police officers should be able to be photographed.

"They have in some cases used these things to cover up possible misconduct," Brown said. "But the normal police officer, state and local guys, you can photograph a lot. They wouldn't do anything nefarious with this — you (media) are just trying to do your job and they are trying to do their job."

He echoed the sentiments of many

journalists and court rulings in saying the public does not have a right to privacy in a public area.

"But you do have a right to not be exploited or intimidated," he said.

NPPA attorney Mickey Osterreicher went one step further, saying even private areas that appear to be public are safe grounds for photographs.

"If a reasonable person thinks they are on a public street, they can't prohibit photographs," he said.

Osterreicher said photographers do not need to get consent to take photos of people in public places.

Misunderstandings

While police cannot arrest someone for non-disruptively photographing in public, Osterreicher warned that it is still possible to be civilly liable for the misuse of a photo that was taken lawfully – for instance, using a photo of an overweight person in a story about morbid obesity, or selling a photo for use in an advertisement that falsely implies the person in the photo endorses the product.

"If you publish that picture and that person is clearly identifiable and you hold them up for public ridicule for being fat, then there might be another cause of action that person could weigh against you, but that still doesn't have anything to do about your First Amendment right to take the pictures," Osterreicher said. "People



Lt. Ben Franklin of the North Carolina State University Police Department commands cooperation during an emergency drill in Raleigh. Campus police at other schools have been a source of tension for photojournalists attempting to record news events in public locations.

PHOTO BY DUSTIN PATTERSON

need to be aware that just because you take the pictures and have a right to do it doesn't mean you might not be liable ... for doing something with that photograph once you have it."

Carey said misunderstandings about the scope of the right to privacy could be why Kenward and Hartford had trouble with the police.

"A lot of times I find that security people, especially private security people, are unknowledgeable about what the press rights and the public rights are for photographing," he said.

Osterreicher said particular problems

have arisen in covering public transit. He said the NPPA has fought on behalf of two photographers who were told it is illegal to take pictures in the Miami-Dade, Fla., metro system — something Osterreicher said is 100 percent false.

"Law enforcement or security officers believe a law that doesn't exist," he said. "They go ahead and enforce that when, in fact, there are no such restrictions... It is difficult to argue with someone who has a gun and a badge. At least at that place and time you are going to lose the argument."

He said many law enforcement officials he deals with discourage photography

under the rationale of homeland security.

"I hear about these issues on a weekly if not daily basis, from all over the country and it's pretty much the same sad story — that somebody has told the person with the camera that they can't take pictures because it I prohibited by law or that they are protecting against some sort of terrorist activity because it has to do with homeland security," he said.

At the scene of a crime or a public-safety emergency, as was in the case for both Kenward and Hartford, different concerns and priorities come into play.

"Preserving the crime scene is essen-

“I think it is very important to know your rights, but also don’t become confrontational.”

Bob Carey
president, National Press Photographers Association

“Authorities can’t uniquely single out journalists for discrimination.”

Frank LoMonte
executive director,
Student Press Law Center

“You are just trying to do your job and they are just trying to do [theirs].”

Jim Brown
associate director,
Commission for the Accreditation
of Law Enforcement Agencies

tial for successful prosecution,” said Chris Shoppmeyer, vice president for agency affairs for the Federal Law Enforcement Officers Association. “You wouldn’t necessarily want a photograph taken that could potentially compromise an investigation.”

He said press coverage could taint possible jurors and create a “trial by media.” For this reason, he said he does not think journalists should photograph evidence or anyone being interviewed by the police in relation to an investigation.

Along with prosecution concerns, Brown said officers often feel misrepresented and distorted in the media, and opt for a personal no-media policy. He said this can interfere with media trying to take pictures of officers on duty.

Moving pictures

When journalists use video rather than still photography, different legal considerations can come into play.

If a video includes audio, then making a recording can – if done improperly – lead to charges of wiretapping, which is the crime of unlawfully intercepting a conversation. It is illegal in twelve states — California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington — to tape without the consent of both parties. All other states, and federal law, apply “one-party consent,” meaning only one participant in a conversation (which can be the person doing the recording) needs to know about the taping.

Because state laws vary, similar fact situations can produce different legal outcomes depending on the state.

In a recently popularized Maryland case, defendant Anthony Graber recorded his traffic stop for speeding. The video shows an out-of-uniform officer in an unmarked car hop out, yell, and wave a gun. After uploading the video to YouTube, Graber’s camera was seized and he was charged with a violation of state wiretapping law. The case was eventually dropped.

In a 2001 Massachusetts case, police cursed Michael Hyde at a traffic stop, where Hyde was not issued with a citation. Six days later Hyde filed a harassment complaint with a videotape of the incident as evidence, at which time he was charged with illegal taping. He was found guilty.

“The defendant was not prosecuted for making the recording; he was prosecuted for doing so secretly,” the Massachusetts Supreme Judicial Court said in refusing to overturn Hyde’s conviction. The court noted that Hyde could have avoided charges either by asking express consent to tape or just by holding his concealed video recorder in plain sight so that consent could be implied.

In his defense, Hyde compared his situation to the now-famous 1991 Rodney King police beating in California, which was caught on video by a passerby and became national news, sparking days of public rioting.

“Had they occurred in Massachusetts, under today’s ruling [the Rodney King videographer] would have been exposed to criminal indictment rather than lauded for exposing an injustice,” a dissenting justice wrote in the *Hyde* case.

What the experts say

Carey said the important thing for journalists is to be patient.

“I think it is very important to know your rights but also don’t become confrontational. Just ask for a supervisor or a police information officer or a fire information officer who are going to generally be more knowledgeable and helpful,” he said.

Student Press Law Center attorney Frank LoMonte added it is important to avoid standing directly in the path of foot traffic while police, firefighters or paramedics are trying to manage a volatile situation. It may be legitimate for police to order photojournalists to step back from a dangerous scene, but it is never legitimate for authorities to seize photos, LoMonte said, and journalists should attempt to negotiate for time to call an editor, news director or lawyer before complying with a demand to surrender a tape or memory card.

“Remember that the First Amendment does not protect your right to stand in a particular spot near where news is happening, and it definitely does not give journalists any special, superior right to be near a crime scene,” he said. “At the same time, authorities can’t uniquely single out journalists for discrimination. If you’re being told that only the media is excluded from a crime scene but the public is not, there’s a good chance the police are overstepping the law.” ■



student loan repayment rates

In the 2009-10 school year, students took on \$106 billion worth of loans to cover the cost of college, a record-high amount. And the average student who borrows and earns a bachelor's degree at a public school now graduates owing nearly \$20,000. Despite all this money, we know very little about how students do when they enter the labor market. Are they able to repay their debt? Or are they struggling just to stay out of default?

what's out there...

The federal Student Right-to-Know Act requires all institutions – even private ones – to gather and report data annually about such things as the total cost of attending the college, the institution's financial aid policies, and the average indebtedness of students, including their average monthly debt payments. All of this information should be available to journalists, either through the U.S. Department of Education or directly from the school upon request.

The Department of Education regularly gathers and analyzes information about colleges' financial performance. In August 2010, the DOE released a database that reports student loan repayment rates for all colleges. This data set tracks the percentage of student loan borrowers who entered repayment sometime in the last four fiscal years and made enough payments to reduce the principal owed on their debt.

First, the DOE reports the number of borrowers and the number who successfully reduced their principal owed (paid down the balance, not just the interest). Next, the DOE reports the total dollars borrowed and the dollar amount borrowed by all students who reduced their principal owed.

Overall, the repayment rate figures paint a disappointing picture for student loan borrowers. Just 54 percent of borrower dollars at public colleges and 56 percent of those at private, nonprofit colleges were actively repaid. And the figures vary significantly by institution. Even some elite colleges present only so-so numbers—just 63 percent of loan dollars at Brown University were repaid.

...and how you can use it

The inability of students to actively repay their loans can be an indicator of whether they are leaving school drowning in a mountain of debt they cannot repay. Repayment rates also provide an objective way to evaluate post-college student success. The most recent table of annual repayment rates is available from the Department of Education at:

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/ge-cumulative-rates.xls>

The “cohort default rate” figure shows the percentage of student loan borrowers who defaulted on a loan within two years of leaving school. But the numbers can be misleadingly rosy. The DOE tracks graduates only for two years; anyone who defaults afterward isn't counted (though your school may be keeping its own statistics – and at a public college, those statistics are obtainable through an open-records request). Many students enter “forbearance” – stretching out a loan so that payments are not due, but interest keeps accruing. All of these flaws lower the default rate, making student outcomes seem better than they really are. Default figures are available at:

http://www.nslds.ed.gov/nslds_SA/defaultmanagement/search_cohort.cfm

Repayment rate information also presents opportunities for comparing institutions. Comparing repayment rates for institutions that otherwise seem similar might raise some previously hidden differences in outcomes. Schools with low repayment rates should also face some tough questions about what the college can do to help its students. Whether it's through better career services, financial aid packages, or even lowering tuition, it's worth asking what the school can do.

the news peg

Repayment rates are in the news because Congress is pressuring for-profit institutions (such as the University of Phoenix, Kaplan and many others) over the industry's high rate of student loan defaults. According to a widely reported August 2010 analysis of U.S. Department of Education data, the rate of federal loan repayment at private, for-profit schools was just 36 percent in 2009. Critics in Congress believe these rates suggest that students are receiving inadequate preparation for employment, or that institutions are accepting people who lack employment skills.

The information in this Tip Sheet comes from Education Sector, a nonprofit think-tank that issues reports and studies about trends in education. Their website, www.educationsector.org, provides explanatory white papers, charts and other resources that help journalists understand and explain complex education policy concepts.



journalists struggle with one of the most powerful, least transparent groups on campus: student government

BY CAITLIN BYRNES

The media’s role of covering government — from exposing scandal to highlighting when they get it right — is so well-accepted, the media is often called “the fourth estate.”

However, lack of clear legal guidance can hinder that same check at the college and high school levels. While student governments have been found to fall under open-records laws in some states, many of these bodies evade mandatory scrutiny, despite having some of the same decision-making, money-moving powers as their adult-world counterparts.

FOI 101

Every state has freedom-of-information legislation, extending the values of transparency to state and local governments. Often, application of the law is triggered by control over public funds or interests. Wisconsin was the first state to enact sunshine legislation — it did so shortly after becoming a state, even before Congress adopted its own law for the federal government. Many other states passed their own laws in the wake of the Watergate scandal.

The exact scope of the law varies from state to state. And while each state has deadline and fee restraints on open-records requests, they vary greatly.

Dave Cuillier, freedom of information committee chair at the Society of Professional Journalists, said it is clear open-government law should extend to student governments.

“We need to step back and look at the big picture,” said Cuillier, a University of Arizona journalism professor. “We need to say, ‘look, this is a group of people who are making decisions for students and their money, and that should be in the open.’ And if it’s not, that’s just un-American. That’s like Saddam Hussein or Stalin. Do we want to do it like Stalin?”

If sunshine legislation does extend to student governments, those bodies would typically be required to publish meeting minutes in a timely fashion, allow the public to watch meetings and votes, and provide documentation of its spending. If a student government denies access, it could face fines.

Cuillier said a university should be “a champion of good governance,” so pushing for such openness is not only sensible, but critical to students’ education.

Pressing for disclosure

Eric Ercanbrack, editor of Central Oregon Community College’s *The Broadside*, understands the struggle with student government disclosure. He recently finished going through the local district attorney to acquire student government records, and now fears the paper’s funding will be cut due to stories critical of the student government that were subsequently published.

“The process on how the funding is done is going to be changed,” Ercanbrack said.

One of the stories claimed that a student government official’s boyfriend made over \$19,000 for minimal public-relations duties including maintaining a Facebook page — more than twice the student fee-funded stipend of any student government official. A second story describes how that same official maintained her student government position despite dropping so many classes she was no longer considered a student; she later re-enrolled. Many students have called for a new student government administration.

“It’s been one year that we have been asking for records and not receiving them,” Ercanbrack said. He said there have probably been 15 separate requests. “In the past it was because the requests were too large or too big, too much for them to handle, but we are more specific now.”

The records he requested from the student government are basic — a monthly payroll, credit card receipts and bank account statements from the last fiscal year. If he was requesting the same documents from the college’s board of directors, they would be public by law as part of routine disclosure.

Ercanbrack said this round of requests is part of a strained history between the media and his school’s student government.

“There’s a lot of conflict of interest,” he said. He said he has questions on how student funds are being spent due to rumors of favoritism in spending — the exact type of story the professional media often covers.

Ercanbrack said one of the reasons for so much trouble is the student government is trying to understand its legal identity.

“They have been trying to understand if they fall under college policy as far as a public entity,” he said. He said student leaders claim student government is exempt from disclosure as a nonprofit entity rather than a government agency. “Right now the student government doesn’t know if they have to follow college policy



because there is nothing in their constitution or bylaws that says they have to follow college policy, so they think they don't have to follow public meeting law or public records law."

Under Oregon state law, any entity that recommends policy to a public body falls under public-meetings law. Since the Board of Higher Education is required to take into account student government recommendations when making policy decisions, Oregon student governments could be subject to all open-meetings and records requirements. The state attorney general has explicitly said student governments are a governing body subject to public-meetings law because they recommend fee assessments.

After *The Broadside* requested documents Sept. 23, Ercanbrack said the student government hired a lawyer -- but continued to withhold the records despite the lawyer reportedly advising otherwise.

"And that's a discrepancy in itself," he said. "They have hired a lawyer outside the school and are paying for this lawyer with student fee money."

Dustin Moore, COCC student government finance coordinator, said he doubts the newspaper's funding will end soon. He referred additional questions to a spokeswoman, who did not return multiple calls seeking comment.

"The truth is student government hasn't been very fair with people," Moore said. "At least not with *The Broadside*."

The FERPA rationale

Initially, *The Broadside* received one requested document — the overall budget — but all other recent requests were denied on the grounds of a student privacy law, the Family Educational Rights and Privacy Act. After talking to the college, the paper was able to obtain some additional records: bank accounts, credit card statements and payroll information. However, requests for details or receipts of spending, as well as a document detailing a student government trip to Washington, D.C., continue to be denied.

"What they did give us was a sort of overview and we don't know what exactly they spent this money on," Ercanbrack said.

COCC's student government is not the first to use FERPA as an excuse for non-disclosure, Student Press Law Center attorney Adam Goldstein said.

"I think it's a pretty transparent excuse," Goldstein said. "If we apply FERPA, it annihilates student governments. Names of peo-

ple in elections would be FERPA. They couldn't hold an election because the ballots and outcomes would be education records."

The *UWM Post* at University of Wisconsin-Milwaukee won a battle for open records when the school settled a lawsuit in February 2010 over documents about the Union Policy Board's agendas, minutes and recordings. The college had invoked FERPA, claiming that records of student officials deliberating on the board, or speaking before it, fell under FERPA's definition of private "education records."

Then-*UWM Post* Editor-in-Chief Jonathan Anderson went one step further, pressing the state attorney general to rule whether student-run governments are subject to open meetings law. While Attorney General J.B. Van Hollen's response did not refer to any specific student organizations, he said all organizations that exercise government functions are subject to the law. The amount of authority and responsibility will determine on a case-by-case basis if the law applies.

"Typically student governments are subject to state open records law because they allocate state funds, not because of their connection to an institution that takes [federal education] funds," he said.

FERPA requires institutions that receive funds from the U.S. Department of Education to give students access to and some control over the disclosure of personal records. It primarily covers student grades and discipline, but it is unclear how far the law reaches outside the classroom.

Goldstein said the only way to punish an entity for a FERPA violation is to withdraw federal funding; since student governments do not receive federal funding, they logically cannot be entities subject to FERPA.

Butch Oxendine, executive director of the American Student Government Association, said student government is "a whole different animal" than the university for purposes of confidentiality law.

"I don't see how that relates to student government in any capacity," he said.

A state of openness

Three states — California, Nevada and Washington — expressly state that university student governments must follow standard open-records law.

Oxendine said there is no norm in the way student governments treat openness — it depends on the state. He said California is the most progressive, with Florida and Wisconsin also putting value in disclosure.

In California, individual university systems apply state law through their written policies. The University of California (“UC”), California State and Community College systems all have their own openness policies. In the UC system, all standing and special subcommittees of the regents, which includes student government, must be open. In the State System, student legislative bodies and any committees created by those bodies must be open. Finally, the Community College System has said student governments are subject to the requirements of the Brown Act, the California legislation that guarantees citizens the right to attend and participate in public meetings.

In Washington, a state statute explicitly covers meetings of student associations at a public institution, and the attorney general has ruled this applies to committees as well. Student government representatives who attend a meeting in violation of the state sunshine law can face an individual \$100 fine.

“This isn’t some law passed by journalists,” said Cuillier, the Arizona professor and SPJ expert. “This was pushed by the presidents of the university student governments in the ‘70s.”

Washington’s student government openness has stuck because

it was the student governments, not the media, who pushed for the legislation, Cuillier said.

In Nevada, the state requires student government meetings to be open. The Board of Regents is required to maintain access regulations for student government, and the University and Community College System of Nevada explicitly state by regulation that student governments must be open.

Eighteen additional states have statutes that require a body receiving public dollars to disclose information and hold meetings in public, arguably including student agencies.

Private schools keep it private

Even in states with strong sunshine laws for student government, students at private schools have very little recourse. “They aren’t willing to air their dirty laundry,” Oxendine said.

SPLC Executive Director Frank LoMonte said that, while in limited situations a private agency can be subject to sunshine law if the agency is performing a function delegated by the state, he “can’t fathom making that case” for a private college’s student government.

However, LoMonte said private school students looking to obtain records may be able to acquire information through non-legal arguments.

“People who run for campus office do have some self interest in keeping in the headlines,” he said. “As a journalist, I would help them understand that when they ran for office, talking to the public is part of what they signed up for.”

Yale Daily News Editor-in-Chief Vivian Yee said her paper has

on the DOCKET

Supreme Court won’t review ban on alcohol ads in college newspapers

VIRGINIA -- The U.S. Supreme Court declined to hear a challenge to Virginia’s ban on alcohol advertising in college newspapers.

The high court’s Nov. 27 move keeps the ban in place, letting stand an April decision by the 4th U.S. Circuit Court of Appeals. There, the court found the state’s ban did not facially violate the First Amendment.

The case now returns to the district court to resolve two outstanding issues: Whether the ban, as applied specifically to the two college papers challenging it, infringes on press freedom, and whether it is unconstitutional because it targets only college media.

Virginia argues the regulation advances its interest in preventing underage drinking. Press advocates say the majority of campus readers are over 21, and the rule hurts the publications’ advertising revenue.

Court tosses teacher’s libel suit against high school publication

NEVADA -- A state court in August dismissed a libel suit filed against the Churchill County High School student newspaper editor and district officials.

District Judge William Rogers threw the case out under Nevada’s “anti-SLAPP” statute, which protects people from suits designed to stifle discussion of public issues.

Kathleen Archey, a music teacher at CCHS, sued over a news story in the school’s student newspaper, *The Flash*. The paper reported on allegations by parents that Archey did not forward some of her students’ audition tapes to a state choir competition, according to court records.

Rogers also held that public school teachers are considered public officials who must meet a high standard to win libel suits.

a long-standing good relationship with their student government, even though the private college is not bound by open-records or open-meetings statutes.

"In general they are forthcoming and very willing to work with us," she said. "I think they understand that it's important for their initiatives to be aired out in the open."

She said the *Daily News* student government beat reporter has regular meetings with the student government president, but still does have trouble getting documents. Recently, the newspaper was rebuffed when seeking information about a survey of student views concerning the ROTC.

"In general it's a friendly relationship, I wouldn't say very friendly, but we're certainly not in a position where they are a source of frustration," Yee said.

Oxendine said his organization teaches student governments the value of openness and encourages full disclosure regardless of public or private status.

"Whether it's a law or not, they need to be transparent as possible," he said. "We are certainly trying to teach that."

What to do

Oxendine said he thinks the first step in creating a better relationship with the media is getting student governments out of the business of funding the papers. Student governments sometimes dictate the spending of student activities fees, the pot where many school papers draw funds. He said that only opens the way for editorial backlash, and unfair spending cuts. He said papers should strive for independence, or at least a way out of the stu-

“Real governments operate in the open and are accountable. And if they don't do that, they should be blown off as a playhouse government.”

Dave Cuillier

SPJ FOI Committee Chairman

dent government's change purse.

In the opposite direction, Cuillier said the answer to a lack of openness may be lack of coverage.

"If I were a student paper, I wouldn't cover [closed student governments]," Cuillier said. "They're not real. Real governments operate in the open and are accountable. And if they don't do that, they should be blown off as a playhouse government."

He said in the past he has advised students of the strategy with great success.

"If the university wants to delegate real authority to the students and give them some power, then these students are accountable to the public," Cuillier said. ■

An update on the latest legal developments of importance to student journalists

Ill. censorship struck down in first test of state 'anti-Hosty' law

ILLINOIS -- For the first time a federal court has ruled that Illinois college newspapers are protected from administrative censorship under state law.

The decision allows former Chicago State University *Tempo* editor George Providence II and adviser Gerian Moore to continue their First Amendment lawsuit against the university. It was the first test of Illinois' 2007 College Campus Press Act.

The judge also ruled that because Providence might consider attending the school at a later time, he retained standing, or the legal ability to sue.

This principle could have major implications in student press law, enabling a student to drop out or transfer away from a harassing administration while retaining the ability to fight the problem in court as long as he or she does not graduate.

Internal memos from Medill student journalists released over objections

ILLINOIS -- Prosecutors succeeded in gaining access to the primary documents they sought from the files of student journalists enrolled in the Medill Innocence Project investigative reporting class at Northwestern University.

Prosecutors subpoenaed all of the journalistic work product of students who investigated the 20-year-old murder conviction of Anthony McKinney, who is seeking a new trial. Northwestern argued that the material was protected from disclosure by the reporter's privilege. But the school backed down from that argument after determining that memos written by student journalists to instructor David Protes had been shared with McKinney's legal team, which – in the eyes of Judge Diane Cannon – waived any claim of privilege.

An undisclosed number of student documents were turned over to prosecutors in November.

Work for hire?

A guide to the legal issues involved when student journalists become ‘employees’

BY LAURA NAPOLI

Each day throughout the country, thousands of college students show up for work at the newsroom or the broadcast station. Some of these students are working for academic credit, others for pay and others simply for the experience. In many ways these students resemble employees. They work, often 40-plus hours per week, to create a product that benefits their school and community and may enhance their long-term career prospects. Yet these individuals are also students who balance their commitment to student media with classes, papers, exams and other activities.

Are these students employees, independent contractors, or something else entirely? The answer can have wide-reaching implications for student journalists and their schools. This article will highlight some of the legal issues raised by how students are classified for employment purposes. Specifically, this article aims to illustrate how it can be disadvantageous to try to squeeze students into categories where they do not neatly fit.

Employees or contractors?

It is not easy to figure out how to classify student journalists. As will be explained more fully below, treating student journalists as employees is inconsistent with their treatment under the First Amendment and can also result in schools having to address a barrage of other issues, from workers’ compensation to tort liability. Yet labeling student journalists as independent contractors or freelancers may risk depriving them of much-needed resources and may not make sense in the context of management-level editors. As a consequence, students do not always fit comfortably within the definitions of either an employee or an independent contractor.

The Supreme Court has recognized that there is no clear-cut definition that solves every problem associated with employment law and has stressed that whether an individual should be classified as an employee depends on all of the circumstances.¹ Despite this, “control” has emerged as an important factor in determining an employer-employee relationship. Specifically, an individual typically is labeled an “employee” if the employer can control what work will be done and how it will be done.² In contrast, an individual is an independent contractor if the person for whom he or she is working can control only the *result* of the work rather than the means and methods of accomplishing that result.³

This guidance seems to indicate that student journalists should not be classified as employees. The courts have forbidden public colleges and universities from controlling the editorial operations of their student media.⁴ Additionally, students in similar situations as student journalists have not been designated school employees. For example, most courts have refused to classify student athletes playing on scholarship as employees of the school even when giving those students employee status would have benefited them.⁵ Similarly, graduate assistants often perform work that is relevant to their careers and that provides benefits to their schools;

however, these individuals are routinely not classified as school employees.⁶

Another factor that often helps determine employment status is the way in which individuals are paid. For example, paying workers by the hour may indicate that they are employees, while paying workers on a per-project basis may indicate that they should be classified as independent contractors.⁷ While the method of payment is not the only factor that determines an individual’s employment classification, it is important for schools to pay attention to how they are paying students workers. For example, many papers pay student journalists on a per-project basis but refer to the projects as “hours worked.” Unless students are genuinely being paid by the hours worked and not by the project, this practice could make the process of deciding how to classify student journalists more confusing.

Classifying student journalists as pure independent contractors can have drawbacks as well. For example, typically independent contractors are expected to use their own supplies and tools to complete their work. In contrast, students often do not have the equipment necessary to run a publication or broadcast, and therefore depend on the use of school equipment. Additionally, independent contractors typically are not assigned office space that is exclusively theirs to use. Although these factors are not determinative, particularly if other factors point toward independent contractor status, classifying certain students as independent contractors could be particularly disadvantageous. Specifically, senior editors are typically expected to keep regular office hours, much as employees are expected to keep regular work hours and report in at designated times. Furthermore, senior editors frequently have specific duties, such as exercising supervisory authority over other students, that differentiate them from ordinary freelancers. Thus, the employment status of senior editors may need to be classified differently from that of junior staffers.

For the reasons discussed, it does not seem right for student journalists to be given blanket classifications as either employees or independent contractors. The following sections examine how different classifications of student journalists can have effects on specific areas of the law.

The First Amendment

Classifying student journalists as school employees is inconsistent with First Amendment principles. The Supreme Court has held that the First Amendment does not protect public employees for statements they make pursuant to their official duties.⁸ If “employee” status were strictly applied, then a student journalist “employee” would have no First Amendment right to criticize the college in an editorial column. This result clearly is unsustainable under the Supreme Court’s decision in *Tinker v. Des Moines Independent Community School District*, which held that students have comprehensive free speech protection under the First Amendment and administrators may punish or prohibit student speech only in very limited circumstances.⁹ The Court emphatically stated

that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹⁰ In contrast, public employees do shed many of their rights to free expression when they go to work. By steering clear of classifying student journalists as “employees,” schools can avoid creating this internal contradiction that invites temptation to censor unlawfully.

Another related issue raised by classifying student journalists as employees is whether and how they can be fired. The default employer-employee relationship in the United States is at-will employment, meaning that an employee can be fired for any reason or even for no reason at all. In contrast, the First Amendment provides that schools cannot fire their student journalists based on a viewpoint taken in the student media.¹¹ For this reason, the typical at-will employment situation simply cannot function in the context of student media.

Treating student journalists as school employees raises inconsistencies with the protections established for them by the courts and the First Amendment. By classifying student journalists as public employees schools risk uncertainty as to whether and to what extent these students’ First Amendment rights are protected. If student journalists are unsure of their rights they may refrain from publishing articles they believe the school would find offensive. It is therefore possible that classifying student journalists as employees would have the effect of chilling speech.

“*Treating student journalists as school employees raises inconsistencies with the protections established for them by the courts and the **First Amendment.***”

Who is liable?

Aside from the First Amendment implications, classifying student journalists as employees could open up a new range of liability for the schools that employ them. Because “employees” create work at the direction of their employers, employers may be held liable for the wrongful acts (referred to in the legal system as “torts”) of their employees.

As a general rule, tort liability is directly connected to whether one party has a right to control the conduct of the other. This means that public schools and student media advisers will not be held liable for the content of their student press as long as they do not censor articles or exercise any form of content control.¹² This remains the rule even if the university provides financial assistance to the paper: courts have held that actions such as furnishing money, office space, supplies and even school credit for newsroom activities are merely a form of financial aid and not an indicator of an employer-employee relationship such that the school has the right to control the paper’s content.¹³

Labeling student journalists as “employees” threatens to blur this clear no-liability line, because employers typically do have the right to regulate the content of their employees’ work. Courts tend to favor a case-by-case approach for determining whether a student newspaper’s act can properly be attributed to a school for purposes of determining liability.¹⁴ It is therefore possible that classifying student journalists as “employees” could make it more likely for courts to hold schools liable for student expression, particularly if the classification gives the impression that the schools are somehow controlling the students’ work.

Who owns the copyright?

Intellectual property ownership—figuring out who owns a particular article, video or photograph—is another issue that may depend on how students are classified. In general, the creator of a work owns the copyright to that work.¹⁵ Even if the work is part of a larger collection (like a newspaper or yearbook), the copyright owner in the collective work usually has the rights to use the student’s contribution only as part of the collective work and not for any other purpose.¹⁶

In the employment context however, a special exception applies. Under the “work made for hire” doctrine, employers own and control the copyright on works their employees create while on the job. Thus, classifying student journalists as employees can give the impression that any work they create becomes the property of the university.¹⁷

In contrast, independent contractors or freelancers typically own the copyright in the works they create and can control future uses of the work, such as granting permission to have the work reprinted. In the education context, this would mean that a student newspaper or yearbook looking to reprint student work years later might have to spend time tracking down student authors and photographers for permission. For this reason many schools believe it is advantageous for the school to own the copyright in the work.

Giving the school the copyright does not mean that a student should be classified as an employee, however. Instead, given that

students are often looking to use their student media work to help them find permanent jobs, schools should enter into written agreements with their student journalists to create rules that can allow both the school and the student to use the work within reasonable limits. For example, a school or publication may retain the copyright in a student journalist’s work but give the student limited reproduction rights, such as the right to use the work in portfolios or for other career advancement purposes. Alternatively, an agreement could allow the school the right of first refusal for any student-created works. These examples are not meant to be all-encompassing. Instead, there are plenty of possibilities for students and their schools to create an agreement that benefits all parties.¹⁸ The important point is to have an agreement in place before the student begins work.

Using school equipment

Although classifying students as employees could have dangerous implications for their First Amendment rights and for the school’s liability for their actions, labeling student journalists as independent contractors may be problematic as well. As previously mentioned, independent contractors typically provide their own equipment and use their own work space. In contrast, many student journalists depend on school-provided equipment and office space. Classifying student journalists as independent contractors may therefore risk depriving them of needed resources.

Of course, students do not necessarily forfeit their independent contractor status by relying on the use of school equipment and office space. This is particularly true if other factors, such as



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Download our model copyright agreement for campus media outlets and student staffers -- a simple, balanced contract laying out who owns what.

the school's lack of control over the student's work, point toward labeling the student as an independent contractor.

Some schools, such as Virginia Tech, have avoided any risk that students will be deprived of school resources by setting up an independent entity under which student journalists are employed, and having the entity contract with the university for office space and equipment. Others, such as Penn State, have avoided the appearance of direct university payment to student journalists by buying subscriptions to the newspaper for the benefit of the campus community, in exchange for the media organization's payment of rent for university office space. In that way, the relationship is structured more like a vendor relationship and less like an employment relationship.

Alternatively, the school may treat the provision of office space and equipment as a form of financial aid that the school provides to students enrolled in its journalism program. Just as courts have characterized these amenities as financial aid in the tort liability context, schools may be able to claim they are a form of financial aid in order to avoid classifying their students as school employees.

A related issue is whether schools should provide legal counsel to student journalists.¹⁹ If the university regularly provides legal counsel or assistance to its employees, and if student journalists are classified as employees by the school, the college or university may have to provide legal counsel. In practice, although some student media organizations do provide students with legal counsel, it is unusual for a school to provide a student journalist with counsel. Nevertheless, the possibility that the school may have to do so if it classifies its student journalists as employees is one that should not be taken lightly.

Other considerations

Classifying student journalists as either employees or independent contractors can have implications beyond those specific to student media. It is therefore important to have some idea of the consequences that can result from labeling students one way or the other. A full discussion of these issues is outside the scope of this article, but they are mentioned here to provide an idea of other considerations that must be addressed when determining the classification of student journalists.

Compensation

The decision to compensate students for their work on student media can provide them with much-needed financial help and allow them to contribute more fully than they might be able to do as volunteers. Nevertheless, schools often wonder whether their student workers must be paid the minimum wage. In the student journalist situation, the answer is clear: the Department of Labor's Wage and Hour Division, which administers the Fair Labor Standards Act (the federal minimum wage act), has held in multiple advisory opinions that student journalists are not "employees" for purposes of the Act.²⁰ As long as student me-

dia programs are closely affiliated with an educational institution and provide educational experience to students, student journalists are exempt from the federal minimum wage requirement. This includes students working for independent student media organizations, as long as the publication can demonstrate that it provides training and educational experience for its student staff. Therefore, because the Labor Department has acknowledged that student journalists should not be classified as employees, student media organizations that compensate their students need not be concerned with federal minimum wage requirements.

Taxes

The tax treatment of student journalists depends directly on whether they are classified as employees or independent contractors. Generally, employers must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee, while individuals who hire independent contractors generally do not have to withhold or pay any taxes (although the contractors of course must pay tax on their earnings).²¹ Although paid students must be classified one way or the other for tax purposes, classification depends on the totality of the circumstances. As long as schools document each of the factors used in coming up with the determination, they need not be concerned that using the term "employee" or "independent contractor" for tax purposes necessarily is binding for all purposes.

Workers' Compensation

An individual's entitlement to workers' compensation benefits tends to turn on his or her employment classification. Although employers may elect to provide workers' compensation coverage for individuals who are not classified as their employees, they are not required to do so.²² Thus, independent contractors typically must look either to their own insurance or to the entity that employs them for coverage, while a salaried employee has the right to resort to the employer's coverage. Thus, the employee/contractor decision may impact whether a college must carry students on its workers' compensation policy and must cover them for any work-related injuries.

Although salaried employment generally triggers eligibility for workers' compensation coverage, even an unsalaried worker might be eligible in the school context. At least two state appellate courts have found unpaid student interns to be covered under workers' compensation insurance provided by their universities.²³ Notably, however, the universities in both disputes had purchased workers' compensation insurance that explicitly covered the students.

Conclusion

As this article has demonstrated, in many contexts, it is often disadvantageous to classify student journalists as employees. At the same time, a pure independent contractor relationship is not always a neat fit with what student journalists are doing, particu-

larly those who have control over the use of college facilities and property. Schools may be best-advised to resolve the classification dilemma by creating a hybrid relationship. One example of such a relationship is where the student is treated for many purposes as an independent contractor, but receives some added benefits—such as use of school equipment—by virtue of student status, analogous to a form of financial aid.

The importance of memorializing this relationship in a written agreement cannot be stressed enough. An agreement may take the form of an actual employment contract, or may also take the form of a handbook of rules that all workers attest to having read and received before they begin employment. And the level of sophistication can vary with the intensity of the relationship—more detail may be desirable in hiring an editor-in-chief, and less in hiring a one-time photo stringer. Written agreements can provide a clearer picture of the desired relationship, and should things turn sour down the line, courts will look to these agreements to enhance their understanding of how the case ought to turn out. Although hammering out an agreement may sound tedious, it is the best way to ensure that the rights of both schools and students are well-established and protected.

Laura Napoli is the Student Press Law Center's Legal Fellow. She is a graduate of the University of Chicago Law School.

Endnotes

1) Fair Labor Standards Act Advisor, *Independent Contractors*, UNITED STATES DEPARTMENT OF LABOR, <http://www.dol.gov/elaws/esa/flsa/scope/ee14.asp>. The Court most recently considered how to classify students for tax purposes in *Mayo Foundation v. United States*, No. 09-837 (U.S. filed Sept. 2010). The Court heard oral arguments on November 8, 2010, and a decision is forthcoming.

2) *Independent Contractor (Self-Employed) or Employee?*, IRS.GOV (Aug. 3, 2010), <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>.

3) *Id.*

4) LAW OF THE STUDENT PRESS 283 (Student Press Law Center 2008).

5) Specifically, a student-athlete attending school on an athletic scholarship is not an employee for the purpose of obtaining workers' compensation benefits. See Adam A. Milani, *Can I Play?: The Dilemma of the Disabled Athlete in Interscholastic Sports*, 49 ALA. L. REV. 817, 841 n.69 (1998) (citing cases).

6) Martin H. Malin, *Implementing the Illinois Educational Labor Relations Act*, 61 CHI.-KENT L. REV. 101, 111-12 (1985).

7) See, e.g., *Marco v. Accent Publ'g Co., Inc.*, 969 F.2d 1547 (3d Cir. 1992) (finding that freelance photographer was an independent contractor where evidence showed that, among other things, he was paid by the job).

8) *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

9) 393 U.S. 503 (1969).

10) *Id.* at 506.

11) See, e.g., *Thonen v. Jenkins*, 491 F.2d 722 (4th Cir. 1973) (per curiam) (ordering that student editor be reinstated after editor was expelled for publishing a controversial letter-to-the-ed-

itor); *Schiff v. Williams*, 519 F.2d 257 (5th Cir. 1975) (holding that president could not censor or fire student editors after they published embarrassing stories about the school).

12) See, e.g., *Milliner v. Turner*, 436 So.2d 1300 (La. Ct. App. 1983) (holding that university could not be held liable for content in student newspaper because it did not have the authority to control the newspaper's content); *Mazart v. State*, 441 N.Y.S.2d 600 (N.Y. Ct. Cl. 1981) (holding that university could not be liable for letter published in student newspaper because it could not control the content of the newspaper and therefore could not establish an agency relationship).

13) LAW OF THE STUDENT PRESS at 283.

14) See, e.g., *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 472 (Minn. Ct. App. 2005) (discussing how the Eighth Circuit prefers a case-by-case approach).

15) SPLC Blog, "Back to School Checklist: Who owns what?" Sept. 10, 2010, <http://www.splc.org/wordpress/?p=1134>.

16) Collective work owners can also use the work as part of a revision of the collective work, or as part of any later collective work in the same series. See 17 U.S.C. § 201(c).

17) In the copyright context, the Supreme Court has identified several factors to determine whether to classify someone as an employee or an independent contractor. These factors include the amount of skill required to perform the work, the source of supplies, the location of the work, the duration of the relationship, the hiring party's ability to assign additional projects, the creator's discretion, and the tax treatment of the creator. For a full discussion of these factors, see *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989).

18) The Student Press Law Center has created a model contract to divvy up the rights in student-created articles, artwork, photos and other copyright-protected property. A copy of the agreement is available at <http://www.splc.org/pdf/copyrightagreement.pdf>.

19) This issue recently arose in Ohio after a college photographer at Ohio State was detained and handcuffed by campus police after photographing cows that had escaped on his college campus. Ohio State has told the student that it will not provide him with legal counsel or money for an attorney. For full details on the story, see Michelle Sullivan, *Photographer: 'I'm on my own.'* THE LANTERN (May 3, 2010), <http://www.thelantern.com/campus/photographer-i-m-on-my-own-1.1471087>.

20) For a discussion of these opinion letters, see David C. Yamada, *The Employment Law Rights of Student Interns*, 35 CONN. L. REV. 215, 227-30 (2002); see also U.S. Dept. of Labor, Wage and Hour Division Field Operations Handbook, 10b24, 10b03(e) (Oct. 1993).

21) *Independent Contractor (Self-Employed) or Employee?*, IRS.GOV (Aug. 3, 2010), <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>.

22) *Id.* at 252.

23) *Id.* at 252-53. As described in the article, in one case, the New York State Appellate Division determined that training was "the equivalent of wages," and therefore, the student could receive workers' compensation. In the other, the Colorado Court of Appeals held that a student who was injured during an internship in a university-sponsored internship program was an employee for purposes of receiving workers' comp.

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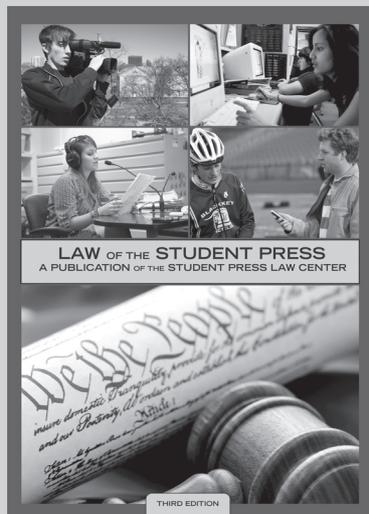
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