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After four decades as the nation’s only legal assistance agency devoted to teaching student journalists about their First Amendment rights, the Student Press Law Center has no plans of letting up. Executive Director Frank LoMonte said he wants to focus on larger policy issues which would allow student journalists to do their jobs with fewer barriers.

By Dani Kass

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Journalism schools have been likened to “teaching hospitals,” fulfilling communities’ needs for information the same way medical schools fulfill the need for health care. If that’s the case, then student-staffed state capitol bureaus are the emergency room’s critical-care unit. Because the professional media’s coverage of state government news is flatlining.

An eye-popping July 2014 report from the Pew Research Journalism Project, “America’s Shifting Statehouse Press,” documents the near-extinction of the statehouse press corps across America: Since 2003 – and state governments were undercovered even then – the number of full-time reporters working in state Capitols is down 35 percent.

Perhaps most notably, 14 percent of the reporters assigned to cover statehouses – one out of eight – is a student. In four states – Arizona, Kansas, Missouri and Nevada – student reporters actually outnumber full-time professional ones.

State government is the level of government with the greatest impact on citizens’ lives, because it’s where the big decisions about education, criminal justice and the workings of the legal system are made. This is doubly so in today’s era of gridlocked political control in Washington. State legislatures move with the nimbleness of Olympic gymnasts next to the lumbering mastodon that is Congress.

There is a real cost when statehouses are left unwatched. Lunatic-fringe proposals – like North Carolina’s statute saying kids who ridicule school employees online can go to jail for a year – that once would be derailed by public ridicule now pass into law unremarked. When combined with the erosion of state press associations, hollowed by the same economic realities afflicting their members, there has never been a time in modern history when the public was so defenseless against legislative boneheadery.

It has never made sense to give student journalists second-class legal protection, since they are the journalists most vulnerable to government coercion. But now these rights are no longer a “niche” concern for those working in scholastic media; they are a concern for everyone who benefits from an independent journalistic voice keeping watch over more than $700 billion that state governments spend each year. A concern, in short, for everyone.

Unpaid students are statutorily disqualified from claiming the reporter’s privilege to protect their sources in at least seven states: Delaware, Florida, Indiana, Louisiana, Nevada, New York and Texas (although courts in New York have concluded that there is a privilege implicit in the First Amendment broad enough to cover students). This distinction is nonsensical.

The work being done by staffers at the Daily Texan in Austin, the Indiana Daily Student in Bloomington, Ind., or the Daily Reveille in Baton Rouge exceeds in quality all but the largest metropolitan dailies in their states. Yet a reporter for a 3,000-circulation weekly in a Texas backwater might be entitled to protect confidences that a reporter for the 12,000-circulation Texan could be compelled to reveal.

At least four of the nation’s 12 geographic federal appeals courts – the Seventh, Eighth, Tenth and Eleventh Circuits – have ruled that the First Amendment rights of college students are circumscribed by the Supreme Court’s errant Hazelwood standard. This, too, must change. The consensus is now firmly established that Hazelwood is far too much censorship authority even in K-12 schools, where the 1988 case originated, let alone at colleges where almost every journalist and reader is a legal adult.

While the journalism education field can’t change outdated laws alone, one concrete step toward reform would be including an “anti-Hazelwood” requirement for any college or school of journalism to receive accreditation from the field’s standard-setting body, the Association for Educators in Journalism & Mass Communication. In accordance with the AEJMC’s own denunciation of the bankrupt Hazelwood standard in a 2013 resolution, no journalism program should be accredited unless it certifies that it is “Hazelwood-free” (or is taking concrete steps to get its administration there).

Many of the nation’s best colleges for journalism – including Ball State University and Indiana University – have designated their student media as “public forums” immune from the suffocating level of administrative involvement contemplated in Hazelwood. Students providing the foundational coverage on which a functioning democracy depends should never have to labor in fear of a government official’s finger on the “delete” key.
FERPA Fact

FERPA Fact is an SPLC project to fact check the use of FERPA — the Family Educational Rights and Privacy Act — when denying access to public records. Sometimes, the records are legitimately protected by FERPA. Sometimes the records are protected by other privacy laws. And sometimes, schools just don’t want to release the records.

In June, a 12-year-old Beaver Ridge Central School student was arrested and charged with third-degree assault. He’s accused of stabbing a classmate in the back with a pencil, according to WNYF, the local Fox News affiliate. The school district’s superintendent told reporters she couldn’t say whether the student was disciplined because of FERPA, the Family Educational Rights and Privacy Act.

Attorney Advocate Adam Goldstein: I guess this is a legitimate use of FERPA, at least in the same way that using a baseball bat to open a jar of peanuts is a legitimate use of a baseball bat: it’s not a good idea, and it wasn’t the intended purpose when it was created, but it swings the same way no matter how illegitimate the target.

Let me back up. It used to be the case that, in all institutions, you couldn’t disclose the outcome of disciplinary hearings to the public. That changed for postsecondary institutions in 1998, when Congress amended FERPA to exempt the final outcomes of disciplinary proceedings for crimes of violence that are also violations of institutional rules. (See 20 U.S.C. Sec. 1232g(b)(6)(B) and 34 CFR Part 99.31(a)(14)).

So if your child tells you that someone got stabbed in the back with a pencil in his classroom, you’re entitled to know the disciplinary outcome (assuming the assailant was disciplined) if your child is a 17- or 18-year-old college freshman, but not if he or she is a 17- or 18-year-old high school senior.

Which strikes me as completely idiotic. If it is the position of the Department of Education that stabbing someone is childhood shenanigans in high school but turns into serious business in college, I think there is no evidence to support that assertion.

But that’s not the school’s fault. This is a place where the black-letter law of FERPA looks like it was written by an anti-social lunatic with a vendetta against minors.

We rate this: One Arne Duncan

In July, University of Utah’s president announced changes to the university’s fight song, “Utah Man.” Among the changes, “man” has been replaced with “fan.” The Salt Lake Tribune requested copies of nearly 1,300 emails sent by students, faculty and alumni regarding the changes. Citing FERPA, the university redacted the names of students who submitted comments.

Executive Director Frank LoMonte:

We may not live forever on this jolly good old sphere,
But while we do we’ll live a life of merriment and cheer.
And when our college days are o’er and night is drawing nigh,
With parting breath we’ll sing that song:
A Utah Man am I!

Seriously, that’s the way the song ends. It’s about dying. And not just dying, but singing your college fight song while dying. Unless you’re actually killed at the game, who does that? (Is this how nursing homes in Utah know it’s time to gather the family? “Better come quick, Maude, he’s on the third verse.”)

Okay, where were we? The FERPA thing. Yeah, that’s just stupid. Emails commenting on matters of public controversy on a college campus aren’t confidential education records. Anybody can send a complaint to a college, so there’s nothing “student-y” about an email. FERPA applies to documents that a college archives as part of a student’s record. If your college’s response to input on a disputed policy decision is to print a copy of the email and stick it in your permanent file, you might want to reconsider whether NSA University is really right for you.

I guess an email about a campus dispute could be a confidential education record. If the email says, “I hope that you will give special weight to my opinion in light of my recent ‘A’ grade in Western Philosophy, as documented in my attached transcript.”

On second thought, nah.

We rate this: Three Arne Duncans
Anonymous sources often play a crucial role in the hardest-hitting journalism. But in stories where they are used, student reporters must first consider ethics, laws and institutional policies.

**BY DANI KASS**

It took Adelina Colaku weeks to convince her teachers and administrators to trust she wasn’t going to name them in a story for the student newspaper.

Colaku, then a senior at Northern Highlands Regional High School in New Jersey, had been reporting on complaints about the district superintendent’s behavior — claiming he created an unhealthy work environment and harassed teachers and staff members — which department supervisors brought up in public school board meetings. As Colaku met with several teachers on background, she confirmed other complaints, including the existence of a letter from the superintendent’s wife trying to intimidate several tenured administrators and department supervisors.

Colaku didn’t take the issue of using anonymous sources lightly, but she knew the story was too important to go untold. She confirmed her information with multiple sources and tried to persuade them to go on the record.

But when jobs were on the line, building up enough trust with teachers to talk — even off the record — took time and persistent effort.

“A lot of teachers knew I was the girl who wasn't scared of speaking up and teachers treated me differently,” she said. “They were careful of what they said around me. No teacher reached out to me willingly.”

When Colaku gave the story to her principal for prior review, it didn’t pass, in part because she used anonymous sources.

“The teachers I talked to were untenured,” she said. “They’re scared of retaliation from the school board.”

In the end, Colaku persuaded them to let her identify them as teachers and eventually one agreed to go on the record. She was allowed to publish in June — three months after submitting her first draft.

“What anonymous sources gave me was explosive and showed how corrupt our school is,” Colaku said.

Most journalists avoid using anonymous sources, with many schools discouraging it in nearly all situations. But, like Colaku, student journalists often find that the only way to attack controversial or sensitive — but significant — issues in schools, is to turn to anonymous sources.

**Student protections not defined**

The Society of Professional Journalists acknowledges that using anonymous sources is one of the profession’s murkiest legal and ethical areas.

In some instances, a journalist can be sent to jail if they refuse to name their sources when asked by a court. Most states and Washington, D.C., have shield laws, which prevent reporters from having to reveal their sources, or court precedents that protect journalists. And though a federal shield law was introduced in the Senate in 2013, it hasn’t been voted on.

West Virginia’s shield law, however, is the only one that explicitly protects student journalists; the laws in most states are open to interpretation and don’t explicitly deny students protection. Delaware, Florida, Indiana, Louisiana, Nevada, New York and Texas have shield laws that protect only paid journalists.

In its current state, the proposed federal shield law would cover college journalists, but not high schoolers. However, Student Press Law Center Executive Director Frank LoMonte said he “can’t even fathom a federal prosecution in which a high school student’s testimony would be demanded.”

LoMonte said he could count on one hand how many times high school journalists have had to go to court for not revealing anonymous sources. But legal issues aside, students have to make the ethical decisions whether to use them.

By allowing a crucial source to remain anonymous, reporters risk a perception of unreliability because readers can’t trace where the information came from. And if their source is wrong,
**UNDER THE DOME**

DELAWARE – Gov. Jack Markell approved a bill in July that requires the University of Delaware and Delaware State University to produce records related to proposals or contracts that spend public funds. Contrary to the bill’s initial intentions, the legislation largely preserved public records and open meetings exemptions for the “state-related” universities, which receive considerable funding from private donors.

PENNSYLVANIA – The Pennsylvania Senate is considering a bill that would require four public universities to disclose more under the state’s public records law. While the amendment would increase the number of records the universities must disclose, it is worded far more narrowly than previous efforts to repeal the public-records exemption that enables Penn State University and other colleges to avoid responding to open-records requests.

WASHINGTON, D.C. — Legislation introduced in the U.S. Senate in July would amend the Family Educational Rights and Privacy Act in an effort to better protect student data held by third-party companies that could sell or monetize student data. Unlike an earlier draft of the legislation, the proposed bill did not aim to redefine what records schools can withhold under FERPA, an issue that worried journalism and open-government advocates. In the draft bill, institutions would have been prohibited from releasing any personally identifiable information it held, including information not contained in or obtained from education records.

NORTH CAROLINA — As part of an effort to save universities money while still letting students work to help pay for rising tuition costs, Rep. Mark Meadows, a Republican, wrote a bill that would exempt student workers from the Affordable Care Act. The Act would require any employer with more than 50 full-time workers or equivalents to offer health insurance to employees who average 30 hours per week, or pay a fine, beginning in 2016.

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“If you’re doing your job as an ethical, accurate journalist, you need to have those names on hand a vast majority of the time.”

**Mica Mulloy, The Roundup adviser**

reporters are the only ones to blame, hurting their credibility.

But sometimes anonymous sources are necessary, especially in Washington, D.C., where Fred Brown, vice chairman of SPJ’s Ethics Committee, said reporters can’t operate without them.

“Anonymous sources are sometimes the only key to unlocking that big story, throwing back the curtain on corruption, fulfilling the journalistic missions of watchdog on the government and informant to the citizens,” according to an SPJ ethics position paper.

Little has been written on the role of anonymous sources in high school journalism, where some teachers and advisers argue that sources need greater protection in the media so they don’t admit something that could follow them for the rest of their lives. Still, many student newspapers use anonymous sources to tackle stories on issues like sex and drugs that could otherwise get students in trouble with administrators or even the police, but still pose large enough problems in the school that they have to be addressed.

But Kevin Smith, chairman of SPJ’s Ethics Committee, said student journalists should follow the same rules as those working in the professional world. Before using an anonymous source, Smith said reporters should first consider a source’s motives and whether the information can be obtained anywhere else. The Ethics Committee is updating the code now to suggest reporters should not use anonymous sources for the “sole purpose of criticizing someone,” Smith said.

In high school, editors also need to keep in mind that they could be writing about minors who may not understand the effects of talking to a reporter. Brown said that sometimes when talking about sensitive matters, reporters should explicitly ask if a student wants to be named.

“If you’re a high school journalist, you need to be aware that sometimes your age cohort is not as circumspect about thinking about the implications of letting everything hang out there,” Brown said.

**Small community**

Claire Burke is the adviser for The Lion’s Tale, the student newspaper at Charles E. Smith Jewish Day School in Rockville, Maryland, which enrolls about 550 students in seventh through 12th grade.

“My students are conscious of embarrassing their fellow students,” she said. “Everybody’s family knows everybody else.”

But that doesn’t stop them from tackling controversial issues that affect their community. In the past two years, students have written about cheating in school, the pressure of relationships and sex in such a small community, drinking and texting while driving — where a student admitted to doing
both — and battling ADHD. In each case, reporters relied on anonymous sources to show how these issues affected the school.

“Even things like the student relationship story could be potentially embarrassing and we take that seriously,” Burke said. “You say something and you can’t take it back.”

Burke said that she is also more cautious because the school is private, giving administrators more power over the press if they wish to take it. However, administrators normally grant the paper the freedom to publish without prior review no matter what they’re reporting on. She still tries to keep them in the loop.

Burke said she can’t imagine her principal telling her not to run a story or to change one, but if they did she said she would try and get them to discuss their concerns with students and compromise.

Additionally, the administrators have never stopped the paper from publishing a controversial story because it doesn’t mesh with Judaism, even though it’s a religious school, Burke said of her three years as an advisor.

Protecting parents

In 2010, the Support Our Law Enforcement and Safe Neighborhoods Act — or what The New York Times called “the nation’s toughest bill on illegal immigration” — passed in Arizona. Ulises Araiza, then a senior at Brophy College Preparatory in Phoenix, knew he had to localize it.

The bill required non-citizens to carry immigration documents and allowed police to detain anyone they suspected of being in the country illegally.

He was able to find several students who were affected by the bill, but none would go on the record out of fear their parents could face legal consequences, he said.

Administrators agreed the issue was important enough to justify using anonymous sources and gave Araiza their support. Mica Mulloy, who has been advisor of the student newspaper, The Roundup, for seven years, said this is the only time he has ever allowed them.

Araiza, his editor and one administrator knew the identity of the source — a student whose father was in the country illegally — and made an agreement with him that, if there was any kind of investigation where they were told to release the name by law, they would do so.

The principal promised Mulloy the full legal support of the school.

Mulloy reiterated to anyone who knew the identity to be very careful. “Don’t tell your buddies at lunch, it defeats the purpose,” he said, trying to make them understand the gravity of the situation.

He wasn’t sure if law enforcement or immigration officers would try to investigate if they saw the story.

“There was some tension there at that point, especially with Hispanic students, because they didn’t know what was going to happen,” Mulloy said.

The newspaper received backlash from other students when it published the story on the front page of that month’s issue. Araiza said students spent the rest of the semester trying to get him to reveal the identity.

However, the point of contention was the issue itself more than the use of anonymous sources, he said.

Law enforcement and immigration officials didn’t reach out to identify the student, Mulloy said.

Students have asked to use anonymous sources several times while Mulloy has been advisor. Often students being interviewed assume they can be anonymous without reason because they see unnamed sources in mainstream media, he said.

“As a teacher that’s a challenge I face with students, in that we have to break down this preconceived notion that anonymous sources are what you do and that’s OK,” Mulloy said. “In fact, the opposite is true. If you’re doing your job as an ethical, accurate journalist, you need to have those names on hand a vast majority of the time.”

While doing stories on sensitive subjects, like drug use, for The Roundup, student reporters have found peers to go on the record. But, Mulloy said there’s a
bigger issue at stake that school newspaper advisors face during these stories than just finding someone to write about and stopping them from getting in trouble.

“If the students know there’s a student using drugs who can be a voice as a story, I have to ask myself, at what point am I a journalist and at what point am I a teacher?” Mulloy said. “What responsibility do I have to that minor student to get them help instead of using them as a story?”

Protecting sexual assault victims

In February, student journalists at Fond du Lac High School in Wisconsin published an article called “The Rape Joke,” which told the story of three students who had been raped or sexually assaulted. The article explored how the common use of rape jokes in the school hurt those who had been sexually assaulted and couldn’t speak up for themselves without facing stigma.

Reporters and editors changed the names of all students involved and didn’t include identifying details of the men the women said raped or sexually assaulted them.

“I was very serious about keeping those sources anonymous and they stayed that way,” said Tanvi Kumar, then editor-in-chief of the school’s student newspaper, Cardinal Columns. “Even after all the attention that caught on and people were poking around to figure out who they were, I don’t think they had any idea.”

Following publication, the school’s administrators established a prior review policy, which the students fought. In an article discussing the student’s disapproval of the policy, a student who was raped was quoted by name — with her consent. Administrators asked the student editors to not reveal her name and then asked them to remove the quote fully. In September, administrators adopted a policy that returned editorial control to the student journalists and the newspaper’s adviser.

This wasn’t the only time the Cardinal Columns used anonymous sources. The editors also found it necessary when talking to a student who was selling drugs to other students.

“Those are stories that you wouldn’t typically get in a high school,” Kumar said. “How often would you be able to inform people on such an issue because that information isn’t really available to the public? It’s pretty secret. A story like that can be really enlightening when you read them.”

Proceed with caution

If student reporters aren’t careful about using anonymous sources only when there’s no other choice it can “open the door to more of that irresponsible behavior,” Smith said.

Burke said she had to rein in her students when they wanted to do a story on marijuana, where they “were being sensational because of the security of anonymity.”

Smith said the strong prevalence of rumors meant to hurt others in schools is something journalists need to pay attention to. Student reporters have to be careful not to be an outlet for gossip.

“We know how hurtful and destructive rumors can be and a lot of times they’re based on the idea that those telling the rumors are anonymous,” Smith said. “You have to guard against that.”

Mulloy said he keeps an eye out for sources with a “possible vendetta” or any reason to not be truthful. Smith said to be wary of sources who are “mean spirited” and “have an ax to grind.” He said it’s human nature to lie when something can’t be traced back to a specific person.

Echoing the students of JDS, the small community of a high school where everyone “pretty much knows what’s going on in each other’s lives,” means student journalists have to be extra aware of the effect of what they’re printing, Brown said.

“It’s like a small town — a high school, even a very large high school, it’s still a closed community,” Brown said.

Shield laws

In most ways, journalists are not treated any differently than the average citizen. But most states do have a reporter’s privilege, which protects journalists from having to reveal to a court their confidential sources. The breadth of these laws vary by jurisdiction.

50

Number of states and District of Columbia with shield laws or operate under a court-recognized privilege. Wyoming is the only state that does not offer protections to reporters and sources.

7

Numbers of states where unpaid students are statutorily disqualified from claiming the reporter’s privilege to protect their sources. The states include Delaware, Florida, Indiana, Louisiana, Nevada, New York and Texas.

0

A federal shield law does not exist. While one was last proposed in the Senate in 2013, it hasn’t been voted on.
As colleges sell off their radio stations, student deejays grapple with their identities in the digital age.

BY JENNA SPOONT

In early May, Alayna Fabricius and other leaders of the student-run radio station at Georgia State University were called into a meeting with university administrators, where they were informed about the university’s new partnership with Georgia Public Broadcasting. The students lost more than half of their airtime on the analog station because of the deal that was made without their knowledge.

The Album 88 radio students at Georgia State were told that 14 hours of their airtime on WRAS-FM was sold to GPB for $150,000 for the first two years of the partnership, and a minimum of $100,000 in succeeding years, plus some internship opportunities.

“The opportunities to work with this professional company are not necessary for us,” said Fabricius, the station’s general manager.

College radio stations, home to aspiring broadcast journalists and deejays, have reached an existential crisis — whether or not terrestrial radio, or analog, benefits their organizations any longer.

Students at Georgia State are not alone. In the past few years, radio deejays at Rice University, Vanderbilt University and the University of San Francisco, among others, were told that their frequencies were being sold to other universities or organizations.

Muting the airwaves

As colleges sell off their radio stations, student deejays grapple with their identities in the digital age.

BY JENNA SPOONT

Georgia State University graduates pose with their families outside the Georgia Dome to support #SaveWRAS’s efforts to maintain student control of the radio station’s daytime programming after protesting the format change at graduation on May 10. Chris Shattuck/ The Signal
While the universities have no legal obligation to consult students on the sales, concerns from student deejays — whose livelihoods the sales directly affect — are being left out of the equation.

“When there’s a change, there’s going to be a public outcry,” Fabricius said. “In the future, there needs to be a dialogue with the students. Give us the courtesy of having the professional attitude that we’ve had.”

Radio sale recap

In 2010, Rice University sold their radio station’s FM frequency to the University of Houston for $9.5 million. Rice radio students at KTRU were not told about the sale of the radio station until the deal was complete. KUHF, a National Public Radio affiliate that operates the University of Houston’s broadcast station, took over the FM station.

Sal Tijerina, KTRU’s station manager, was a freshman when Rice secured the deal.

“I don’t have anything against the University of Houston,” Tijerina said. “But it was sad to see because our station was one of the best stations in Houston before the sale, especially because it was the only indie, underexposed, eclectic station.”

He said the radio students began to distrust the school’s administration after the deal, adding that “public broadcast takeovers of the station are a detriment to the culture of the community.”

In 2000, when two student radio hosts at KTRU played music over the broadcast of the second half of a women’s basketball game in protest of a new policy that required additional athletics coverage, the station risked a loss in airtime. The station was temporarily shut down by administrators and the airtime was replaced by programming from the World Radio Network. But when a new accountability policy was formed between the students and the school’s administration, the students were allowed to resume broadcasting.

Under the new policy, a committee made up of students, faculty and an alumnus were responsible for changing station programming.

At Vanderbilt University in 2011, the school’s board of directors at Vanderbilt Student Communications sold WRVU’s FM frequency to Nashville Public Radio for $3.5 million and moved the student station to an online-only format. The deal was made without the students’ knowledge.

Logan Wilke, general manager at the Vanderbilt station, said people were “pretty riled up” when the students lost their FM frequency. He said their only option was to go digital and they are currently conforming to online broadcasting practices.

“We’re trying to focus on the DJ community and focus on the people, because that’s what we have and that’s why the people listen,” Wilke said.

Wilke explained that although the situations at Vanderbilt and Georgia State are unfortunate, the only way to move past the frustration is “building our brand” around the online listenership.

Neal Cotter, former general manager of the Vanderbilt station, joined the radio station in the spring of his freshman year, the same semester when the student FM broadcasting capabilities were taken away. He said that under his leadership, the station focused on “forming positive relationships” rather than allowing the sale to deteriorate the station.

“People were definitely worried about losing listenership,” Cotter said. “You’re definitely giving something up if you lose your transmitter, but there’s still a lot left to work with.”

In 2011, the University of San Francisco sold the student-run radio station, KUSF, to Classical Public Radio Network for $3.75 million in 2011. This deal was also created behind closed doors and without student input.

Steve Runyon, general manager emeritus at the station, bought the station’s FM signal from Simpson Bible College back in 1973 and managed the station until August 2014. He said that he knew about the sale of KUSF to CPRN four to six months in advance, but he was not permitted “to divulge any information” relating to the deal.

The administration “told me as soon as the contracts were signed and they knew I couldn’t do anything, which gave me time to try to structure what we were going to do,” Runyon said. “It was awkward, as you can imagine.”

Miranda Morris, coordinator at KUSF, said that on the day of the FM transfer, university administrators walked into the station while the broadcast mid-song and “turned the transmitter off.” The doors of the station were locked and eventually the station’s headquarters was relocated to another room to broadcast on an online stream. The space that housed the radio station was turned into student housing.

The station moved to an online-only format and some station volunteers formed an independent station called “KUSF In Exile.”

“It’s unfortunate that people are able to get into the left-hand side of the dial to get into these frequencies that were kind of left alone for years,” Morris said. “I do think, unfortunately, the fall of KUSF, WRVU and KTRU massively made people aware of the importance of college radio. It had to take three major falls to do it.”

Fightint to ‘save’ stations

With all three “falls” came “Save” movements for each radio station. “Save KTRU,” “Save WRVU,” “Save KUSF” and now “Save WRAS” are organizations that fight against the sale or partnerships of radio stations.

“Save’ and the station’s call letters are just a major call to action because if you’re over 30, you probably grew up listening to ‘W something’ or ‘K something,’” Morris said. “That too means some local independent music is being broadcast from a station that you wouldn’t hear anywhere else.”

At Georgia State, the deal was also conducted without the students’ knowledge. Mike McDougald, chairman of Georgia Public Telecommunications Commission, said the deal dates back...
about eight years. He explained that GPB did not want to involve
the public with this decision. According to the minutes from a
GPB Board of Directors meeting, the GSU-GPB partnership was
never discussed in board meetings before the partnership was
announced.

“Well, think about it just a minute,” McDougald said. “Thirty-
thousand students you’re just going to slip around and ‘oh
yes, here are all the details.’ That’s not the way you handle the
business.”

Teya Ryan, GPB’s president, announced the partnership to
the organization’s board of directors in an email on May 6, the
same day the student radio leaders were notified in the meeting
with university administrators and GPB representatives. She
attached a press release in the email explaining the details of the
agreement.

Under the GSU-GPB partnership, Album 88 students have FM
broadcast time between the hours of 7 p.m. and 5 a.m.

“All of those hours would be much less important to us and the
daytime hours not as important to the students,” McDougald
said. “At night, that’s a big time. So they’ve got full control of
it. Broadcast whatever they wish all night long. It’s not bad, it’s
pretty darn good.”

The university promised the students an HD channel, which
has technical difficulties and was not functioning when the
students were promised, at the time of the broadcast switchover.
The HD channel serves as an alternative station to the main
analog frequency, but requires certain technology, such as
an HD radio, that provides listeners the HD signal. Under the
agreement, the students were also promised a continued use of
the online stream.

GPB will also broadcast one 10-second public service
announcement about Georgia State each hour during their 14
hours of airtime each day. A Georgia State professor will have a
10-minute weekly segment to discuss public interest issues and
the students will produce a weekly half-hour music program.
The partnership also comes with internship opportunities for
students.

Garrett Martin, an Atlanta resident who wrote an article for
Salon titled, “College radio is dying — and we need to save it,”
talked about how technology has changed the need for terrestrial
radio. He wrote about his opposition to the GSU-GPB partnership
because he only listens to WRAS on analog radio.

Although GSU does own the frequency, “it does have a
much broader impact throughout the community than just the
university itself,” Martin said.

Zachary Lancaster, the president of Album 88 Alumni, a
group of former WRAS leaders and deejays, said the partnership
inhibits the students’ learning experience. He said that following
Federal Communications Commission regulations and meeting
deadlines is part of the job and “makes you a more competitive
applicant” for future jobs.

McDougald disagrees that possessing the FM frequency serves
as a lab for students. He said that students “do their experiments
in the station,” and FM frequency is not necessary for that.

He also noted that Georgia Public Broadcasting has looked
at colleges in the past as “an ongoing movement to further the
improvement and the aims” of the company in order to create
a “tremendous market.” He cited the time when GPB tried but
failed to acquire airtime on Georgia Tech University’s station,

Gregory Weston, president of College Broadcasters Inc., an
organization that is committed to student media endeavors,
said he was disappointed by Georgia State and GPB’s “lack of
transparency.” CBI issued a statement that explained their
support for Album 88, especially on the grounds that the students
did not know about the decision.

“The students seemed to be blindsided,” Weston said. “It’s a
little disingenuous for GPB to say, ‘Well, you’re still broadcasting
on the Internet.’”

For 50 years, student programming from Indiana State
University dominated the airwaves of 89.7 FM in Terre Haute.
But in September, the content was replaced with public affairs
programming and news from an Indianapolis-based NPR
affiliate.

Following the new partnership with WFYI Public Media, the
NPR affiliate, the student-produced programming was moved to

After Georgia State’s May 10 commencement ceremony, graduates
posed with members of #SaveWRAS to protest the new GPB format
change on the FM station. Chris Shattuck/The Signal
90.7 FM, a station with a weaker signal and less reach.

But Richard Green, the general manager of the student-run radio station, said students were excited for the opportunity to “rebrand the station.”

Currently facing the threat of sale is KCPR, the student-run radio station at California Polytechnic State University in San Luis Obispo. The station could lose its FM frequency after two radio hosts of a sex talk show created a “sexy Snapchat” fundraiser for the station. A post on the Facebook page of the talk show, “Getting It In,” offered that for $20, the hosts would send sexually explicit photos to anyone who donated. Only one person donated to the fundraiser and the money was later returned.

Approximately a month after the April 21 post, the students began to feel the backlash of the fundraiser. Their show was taken off the broadcast schedule and the hosts removed their Facebook page.

In an email sent on May 19, Douglas Epperson, dean of the college of liberal arts, expressed his concern about KCPR and mentioned that the university has had an offer to sell the FM frequency.

“I am beginning to believe that we should sell the radio license,” Epperson wrote. “What were they thinking and how could it go so far with faculty completely unaware!”

Epperson commented in an interview regarding the email he sent. He said that the consideration to sell the station “is not a reactive situation. This is a situation where we're truly trying to chart the course that will be of optimal benefit to the program and its students.”

He added that Cal Poly “is in the process of undergoing thorough review” of the station, by calling in KCPR and Cal Poly alumni to “wrestle with this and make recommendations.” Epperson said that he probably will not have a decision made “until the near end of the calendar year.” He explained that there is an array of options: let the students keep the station, form a partnership with an NPR affiliate (similar to the WRAS situation) or sell the FM signal entirely.

Logan Cooper, one of the students responsible for the fundraiser, said he thinks “it’s certainly an overreaction” if the university decides to sell their 310-watt FM frequency. He explained that the fundraiser was not an official KCPR-sponsored event and thought it would add “something fun, risque, unique to our show.”

Students at the station have “mentioned since I’ve been at KCPR that other college stations have sold out their licenses for quick money,” Cooper said.

**A switch to online streaming**

Students at the University of Pennsylvania’s radio station, WQHS, have a bit of a different story regarding the loss of their radio frequency. The FCC would not renew WXPN-FM, the radio station at the time, because of “several instances of offensive material going on-air,” according to WQHS’ website.

WXPN became its own professional entity and is still owned by Penn. WQHS kept the AM frequency, but the Student Activities Council eventually cut funding and the station moved to an online-only format.

Lauren Marquez, general manager of WQHS, never experienced having an analog frequency. She said she believes that not as many people tune into the radio when it is broadcast over the Internet.

“We definitely have a following on campus, but its not as widespread as we would like it to be,” Marquez said.

A majority of student radio stations, whether they have an FM signal or not, offer online streaming and can be accessed on cell phones, computers and tablets through iTunes or applications such as iHeartRadio and TuneIn.

Radio stations broadcast their online streams through SoundExchange. Henry French, license manager at the independent digital performance rights organization, said that the baseline annual fee for a non-commercial educational license costs $500. The radio organization can pay an extra $100 per year for a waiver to opt out of submitting monthly reports. SoundExchange has more than 2,500 customers and French said they do not have any competition in the industry.

French added that despite rumors, there is not a cap of listeners through this service — everyone should be able to tune in to the stations that they want to listen to, no matter how many other listeners log on.

The radio station at DePaul University in Illinois is an online-only campus radio station. General Manager Joe Lanzerotti said that his university has considered obtaining an FM license from the FCC, but ultimately decided not to apply during the open opportunity for low power FM stations. LPFMs are meant for “noncommercial educational broadcasting” and are competitive to obtain, according to the FCC’s website.

“It took a lot of thought between the faculty manager and I and the dean of the college,” Lanzerotti said. “Do we want to change our identity as an online-only station? It would definitely boost the number of people, but I don’t know that it would help our programming.”

Gracie Golden, the general manager of WJHU at Johns Hopkins University, agrees that the online-only station benefits the community beyond just the campus and the surrounding area, adding that while the station may not have much of a local presence, “we get hits from lots of different countries.”

Similarly, Radio DePaul formed partnerships with college radio stations in Ireland and the United Kingdom. Lanzerotti said international connections build listenership.

Golden explained that online stations have their pitfalls. “It is definitely a struggle to keep a presence and to be heard because nobody’s just going to stumble on our station by turning the dial,” Golden said.

Boston University’s campus radio station, WBRU, has a low-power FM signal that broadcasts to a radius of approximately
one mile from the campus. John-Michael Sedor, general manager of WBRU, mentioned that the station advertises its online station rather than its FM number.

“It’s so easy to go on Twitter and send a link out. It’s almost not worth it to spend the money [on an FM signal],” Sedor said.

Foraging ahead with FM

Ninety-two percent of Americans listen to traditional AM/FM radio, according to a Pew Research Center study from 2012. However, only about 17 percent tune in for online-streamed services.

Weston, who also serves as the general manager of the University of Pittsburgh’s radio station, WPTS-FM, said that possessing an FM signal benefits student broadcasters. Learning to comply with FCC regulations, including the prohibition of profanity and a limitation on dead airtime, serves as a learning opportunity for students, he said.

FCC officials did not return multiple phone calls and emails requesting a comment.

Malvin Massey, an employee at the University of Memphis and general manager of WUMR, the school’s radio station, said the experience of listening to the radio in the car “keeps radio so much alive.”

“People say radio is dying, no, no, no,” Massey said. “You can’t look at TV in the car. Texting in the car will get you killed. Very little you can do in the car, but you can listen to the radio.”

The switchover from student FM broadcasting at WRAS to online airtime has turned some people off to college radio in general. Martin, writer of the Salon article, talked about his personal experience listening to WRAS growing up.

“Universities themselves are no longer prioritizing college radio, but also personally, I know that it is true that the way technology has changed. I think younger people don’t really grow up with that need for college radio,” Martin said.

Jennifer Waits, co-founder of RadioSurvivor.com, follows news related to campus radio stations across the nation. Waits thinks that FM radio will experience a resurgence in popularity among college students.

Morris, from KUSF in San Francisco, said terrestrial radio is “completely magical” and digital radio could reach that potential once its available “on the dashboard of every major car.”

“You can put a signal up for the same price to reach 50 people as you can to reach 50,000 people,” Morris said regarding FM radio.

Despite the changes that have been occurring in the college radio environment, Connor Spielmaker, CBI student representative and station manager of Spinnaker Television at University of North Florida, said that “at the end of the day, we’re trying to get music, news and information to the people.”

“Even a student without a voice needs a microphone to be heard sometimes,” Spielmaker said. “If you want to take over a college radio station, please talk to the students. Students can make decisions on what’s best for us, our education, our future.”

ON THE DOCKET

NEW YORK — A law criminalizing cyberbullying violated the First Amendment because it was so overbroad, the New York State Court of Appeals ruled in July. This was the first time a court has ruled on the constitutional validity of this kind of law, though they have been enacted in more than a dozen states. The 2010 Albany County law defined the crime of cyberbullying as electronic communication with “no legitimate private, personal or public purpose with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate or otherwise inflict significant emotional harm on another person.”

INDIANA — The Purdue Exponent filed suit against Purdue University in August after the institution denied the newspaper access to surveilance video footage that purportedly shows police manhandling a student photojournalist after he tried to report on a fatal shooting on campus. In February, Exponent officials filed a public records request with the university asking for a copy of the footage. In March, university officials said they would not release a copy of the records, citing an exeption in Indiana’s public records law that excludes the disclosure of the investigatory records of law enforcement agencies. Shortly after announcing the lawsuit, however, the university released footage of the incident on its website.

OHIO — Attorney General Mike DeWine asked the Ohio Supreme Court to side with an Otterbein University student journalist who is seeking a court order to compel the private university’s police force to disclose arrest records. In a friend-of-the-court brief, DeWine said “The Otterbein P.D. is a fully empowered police department, and the records of law enforcement functions at this level are not private records — they are the people’s records.”

CALIFORNIA — The Los Angeles Unified School District does not have to release the names of individual teachers in records about teacher performance, a California appeals court ruled in July. The decision was reached after the Los Angeles Times asked the school district for three years of data connecting teachers, by name, with their students’ state standardized test scores. The newspaper sued in 2012 when the data listed teachers by codes, not by name.

NORTH CAROLINA — After nearly two years, a Wake County Superior Court judge unsealed search warrants and 911 calls related to the homicide of a University of North Carolina at Chapel Hill student.
In an ideal future, the Student Press Law Center would cease to exist. The office phones would sit silently in storage, covered in dust, as student journalists across the country called sources, not attorneys.

The only way that could happen is if the SPLC became irrelevant, SPLC Project Attorney Mike Hiestand said. In that scenario, students would have full freedom of the press, rendering SPLC’s services useless.

“I really hope that at some point there is no need for the SPLC — that the value of young voices is finally and clearly realized,” said Hiestand. “Young people have a voice and they see the world in a different way. They’re willing to look at things from a different perspective and we need to hear that voice.”

But as the SPLC celebrates its 40th anniversary this year, Executive Director Frank LoMonte said there are too many goals he needs to reach before he can even consider stopping. He said he wants to focus on larger policy issues which would allow student journalists across the country to do their jobs with fewer barriers.

“It’s not enough to sit back and respond to individual calls for help,” LoMonte said. “We can do that all day long and play defense...
and at the end of the day if all you do is play defense, then you're never going to score any goals. And we have to score some goals. We have to put some points on the board. We have to move the law affirmatively in a better direction for the protection of all journalists.”

But for now, that doesn’t stop the SPLC from helping students and advisors every day. In its 40 years, LoMonte estimates the SPLC has taken 60,000 phone calls, a service many students say has been invaluable in fighting censorship and keeping their media organizations open.

Zach Cohen, who was editor-in-chief of The Eagle, the student newspaper at American University, from 2012 to 2013, said he didn’t wait for a major issue to arise before calling the SPLC. He knew that establishing that relationship early and getting advice from LoMonte would make his job easier.

“I’m 21 years old, I’ve never run a newspaper before in my life,” Cohen said. “Frank has the benefit of having worked with so many college newspapers that he knows the best practices in general.”

Recognizing a need

The SPLC’s start wasn’t easy. In 1974, Pulitzer prize-winning journalist Jack Nelson, famous for his coverage of the Watergate scandal and the civil rights movement, released a study about the state of high school journalism. The report, “Captive Voices,” argued that censorship in schools needed to end and identified the need for an organization that would stand up for students’ First Amendment rights.

The Robert F. Kennedy Memorial — which commissioned the report — partnered with the Reporters Committee for Freedom of the Press to create the Student Press Law Center. The RFK Memorial would pay the salary of the director and the Reporters Committee would take the SPLC under its wing.

But while the SPLC existed in theory, it didn’t have a director who would focus on making its mission a reality until Chris Fager — then an attorney at a law firm in Washington D.C., focusing on communications law — took over in 1975.

“The bottom line is that it was hard to do the project because no one cared,” Fager said.

One of Fager’s friends from law school became the lead attorney at the Reporters Committee and tried to recruit him to the SPLC. He wasn’t sold on the job until — while standing in the Reporters Committee offices trying to decide whether to get on board — he got his first call. On the phone was Stephen Bates, a high school student from Texas. Bates’ school was preventing him from releasing an independent literary magazine and he asked Fager for help.

“What happened to me personally — all the experiences of the oppression of high school — came back to me, and I thought, ‘this is going to be fun,’” Fager said, speaking of his general feelings during high school.

While helping students, Fager worked to build the SPLC’s reputation and influence. He formed an advisory committee of journalism educators, developed an attorney referral network and raised money.

He succeeded at getting the SPLC on the national radar — and on the front page of The Washington Post — when defending a student whose high school censored an article about students having unprotected sex.

“It became a national story,” he said. “The phones started ringing off the hook and we were overwhelmed.”

Fager left to practice law in 1978. Four new executive directors came and left.

In 1983, Marc Abrams, who was two years out of law school and held a master’s degree in journalism, took over. He had been driving cross country, from where he was temporarily teaching at the University of Oregon to the John F. Kennedy School of Government at Harvard University, where he was going to get another master’s degree, when his friend put up a job notice for the SPLC. He decided to skip Harvard.

“I knew this was my job,” Abrams said.

During Abrams’ two years at the SPLC he received about 800 calls from 48 states — all but Alaska and “for some bizarre reason” Arkansas, he said. He also focused on fundraising. The SPLC had been struggling financially, but Abrams left with $70,000 in the organization’s bank account.

At that point, the SPLC offices were “glamorous,” Abrams said sarcastically.

It was “two rooms that added up to the size of a medium living room, cluttered with second-hand desks and dented grey file cabinets and an IBM selectric, inside the Reporters Committee’s office,” in downtown Washington D.C., “above a really crappy Chinese restaurant whose smells we smelled all day and whose cockroaches we received all day,” Abrams said.

In 1985, Goodman, who Abrams said, “stayed there for three geological epochs.” When Abrams left in 1985, Goodman, who was a summer intern finishing law school, took over as executive director for the next 22 years.

“It was very clear for me from the first few weeks I was there as an intern, that what I was doing actually mattered,” Goodman said. “I was helping people who didn’t have many places to go for that kind of assistance.”
Under Goodman's leadership, the SPLC countered the effects of *Hazelwood School District v. Kuhlmeier*, the 1988 Supreme Court case ruling that high school journalists have less First Amendment protection than independent publications, making it easier for schools to censor student newspapers.

The SPLC became the “voice of opposition” by rallying national journalism education associations to vocally reject the ruling, Goodman said.

“It’s an odd achievement because it was achieved as a result of a loss,” Goodman said. “The best we could do was make sure the battle continued even after the loss occurred.”

In 2012, under LoMonte’s leadership, the SPLC started a “Cure Hazelwood” campaign to continue fighting against the court ruling’s effects on student journalism.

LoMonte took over for Goodman in 2008. He had worked for nine years as a journalist at newspapers in Florida, Georgia and Washington, D.C., and then as an attorney in Georgia, often working with renewable energy companies that were fighting against larger utility companies. He sees a clear parallel between those cases and what he does at the SPLC.

“I never really liked being the lawyer for the big incumbent guy,” he said. “I always liked being the lawyer for the scrappy, upstart challenger and I think you have to bring that mentality to that work. You have to be the champion of the underdog, you have to believe in the power of the little guy.”

**Empowering students**

In 1989, Traci Bauer was a sophomore at Southwest Missouri State University and the editor of the institution’s student newspaper, *The Standard*, when she learned her campus security was hiding police reports.

She had answered an anonymous phone call asking why she didn’t write about a reported rape involving a basketball player, but information about the attack wasn’t among the stack of police reports that she received from campus security each week.

After she confronted security about it, they stopped giving her any reports, citing the federal Family Educational Rights and Privacy Act.

“I had no money and didn’t know what to do next, so I called the SPLC,” she said.

Goodman took up her case and referred her to an attorney in Missouri who helped her pro bono. Goodman continued to provide support over the telephone and testified as an expert witness during her trial. A retired judge and another attorney volunteered to join her cause, and in the end she won.

“SPLC was there every step of the way,” Bauer said. “Mark was so awesome about letting me know that he was always there and he was there for moral support as well as legal support. It was very helpful, from that very first phone call until the day they had announced we had won.”

The movement for legislation to release campus crime information was already underway, but she said she believes her case helped it gain traction. She would later speak on panels with Goodman and the parents of Jeanne Clery, whose 1986 rape and murder at Lehigh University in Bethlehem, Pennsylvania, led to enough backlash to form the federal Clery Act. Under the act, any school that receives federal financial aid must release information to the public about crimes that happened on or near campus.

Bauer, who is now the vice president of digital strategy and development at the *Democrat and Chronicle* in Rochester, New York, said her case was an example of a school trying to avoid embarrassment. It was in the process of changing its name to Missouri State University and the basketball team was going to the NCAA championship, so it wanted to avoid bad press.

In 2011, Clare Polke, editor-in-chief of *The Famuan* at Florida A&M University, broke the story of the murder of a marching band drum major and kept following the story. The university wanted to write off the incident as a “tragic accident,” Polke said, and as a punishment for their coverage the school cut a significant portion of funding from *The Famuan*.

The Student Government Association also tried to appoint a “newsroom liaison to monitor the newsroom.”

When she reached out to LoMonte and SPLC attorney Adam Goldstein, they connected her to a volunteer attorney, Rob Rivas. Rivas wrote a letter defending the legality of the student journalists’ actions and Polke sent it to “every high-ranking official at my university.”

Polke, who is now a reporter at the *Pittsburgh Post-Gazette*, said the threat of legal action tempered the situation and the paper was able to keep their funding for that semester.

“When the SPLC did for me was to help me learn and respect the critical role the press plays and to guard and honor that truth at all costs,” she said in an email. “The SPLC taught me to fight any person or
entity who would dare stifle or censor a voice because they didn’t like what was being said.”

Bates, the first student the SPLC helped, tried to create an independent literary magazine when he was 16 years old and spread it around the school, and administrators tried to stop him. In 1975, he called Fager, who wrote a letter explaining his rights and drew up a complainant. Bates never filed a lawsuit, but one of the school board members was upset enough at the ruling that he gave Bates the money to produce the first issue to distribute off campus.

Since then, Bates’ life has come full circle. He now teaches First Amendment law at the University of Nevada, Las Vegas, and said he still believes that students need to be able to express themselves freely.

“Student journalists learn what kind of troublemaking and rabble-rousing they can pull off starting in high school and what’s a problem,” he said. “In the years since, I’ve been struck that public schools are intended in part to train people to be good citizens and they do that by restricting people’s rights as citizens in enormous ways because they want to retain good order in a nice environment, which is exactly what the First Amendment said you shouldn’t do. The First Amendment is about disorder and messiness.”

Cohen, the editor from American University, is now a web producer for the National Journal Hotline, a daily political briefing, located in The Watergate complex in Washington, D.C.

“It’s funny being in a place that’s the epitome of the public’s right to know,” he said

Although Cohen never faced explicit legal threats, he said it was reassuring to learn that there are people willing to help students deal with legal and ethical issues.

“They taught me you don’t need to figure out everything on your own,” Cohen said.

Protectors of the underdog

LoMonte first realized the power student journalists have when his college newspaper sued the University of Florida in 1983 over access to public meetings. The newspaper had a volunteer attorney on hand, so they didn’t have to call the SPLC. But he said he sees a direct line from that moment in his life to where he is now.

“I remember very vividly going to the state court of appeals in Tallahassee and watching our volunteer lawyer argue that case for us, and coming away just blown away by the fact that our little pipsqueak lawyer could stand on equal footing with one of the most famous and expensive lawyers in America on the other side, that the law was this great equalizer — so that at least for 40 minutes in a courtroom, we were on equal footing with the University of Florida and had an equal chance to win,” he said. “That was such a rush to me.”

LoMonte said one of his goals is to empower students to be able to defend themselves against authority, an idea echoed by SPLC board member Mark Stencel, who is also the former managing editor for NPR Digital.

“It’s kind of a good thing in a way — that universities behave in that way from time to time — because it really does bring out the best in student journalists and makes us much more aggressive in our career,” Stencel said.

Goodman said it’s also a matter of proving to students that what they learn in school matters.

“In the process of representing students, we showed them that
the Constitution has meaning and that it’s for everyone,” he said. “I always thought the worst thing a school district could do is teach about the Constitution in 10th grade civics class and then deny it exists the second it conflicts with real life. That would take our best and brightest and make them pretty damn cynical. That would be a tragedy. We sustain faith in the Constitution and that’s of incalculable value.”

Sommer Ingram, who has seen every side of the SPLC at work — in high school and college she watched her advisors deal with censorship, she worked at the SPLC as a summer intern and now while going to law school at Georgetown and interning with The Washington Post’s legal team, she serves as a board member — said she wants to make sure people understand and remember the overall mission.

“I hope the SPLC can be a voice of positivity,” she said. “I think often when we are involved — we submit briefs for litigation or we come out denouncing censorship — that it seems like our message is only negative, but I hope we can continue to work to promote the positive message that the SPLC is all about.”

Ernest Sotomayor, an SPLC board member and dean of student affairs at the Columbia Graduate School of Journalism, reiterated the importance of the SPLC’s mission.

“It is the encouragement of the next generation coming up,” he said. “There will always be another generation. SPLC encourages them to have the courage to stand up for the principles of journalism, which is really what it’s all about. It’s talking truth to power and having the courage to mull ahead and try to tell the truth about the things that are going on in their communities.”

Fighting for transparency

When LoMonte talks about the need for transparency in schools nationwide, his voice changes from friendly to demanding. His speech transforms from simple conversation to impassioned rants, citing example after example of the people he feels have been wronged.

He knows what he wants and isn’t willing to compromise.

He’s starting by working to reform FERPA and fighting against its misuse. When the federal law was established in 1974, it was meant to protect student’s education records, but schools have used it to hide any information involving students, LoMonte said.

“When you talk to any journalist that covers education, one of their single biggest frustrations is the misuse of student privacy as an excuse to conceal embarrassing information and it is a constant, constant obstruction for journalists of all levels,” LoMonte said.

He credits the SPLC with bringing the misuse of FERPA to the national radar, leading to discussion about it across the country.

He also wants to end the secrecy behind college presidential searches, where students, faculty and the public aren’t allowed to give input into who controls their institutions.

“Right now we have a bunch of politicians sitting on boards of trustees who are stealing and hijacking that process,” he said. “They have hijacked that process because they want the presidents to feel accountable only to the trustees and not to the students and the faculty.”

His final push against secrecy is to make police records at private institutions available to the public, saying, “it’s outlandish that we have police officers running around with guns and badges arresting people without having to explain why.”

LoMonte also said he wants to tone down the “hysteria” surrounding social media, where students are being suspended and expelled for what they say online. He cited legislation introduced in Indiana in 2012 that would have allowed schools to discipline students for saying anything online that administrators deemed inappropriate. The SPLC stepped in and LoMonte explained to legislators the authority they were about to give administrators. Ultimately, the legislation was scrapped.

“They were about to give principals the ability to pass judgement on whether a student was being sufficiently polite on Facebook, on a Saturday afternoon in July,” he said.

It’s a lot of issues to tackle, but LoMonte, who usually works 12 hours days, seven days a week, doesn’t seem shaken.

“We don’t have the luxury of being frustrated. Literally,” he said. “We can mourn the dead after we win the war, but right now there is a war to be won and we do not have the luxury of being frustrated or tired or angry, we just don’t.”

This inability to stop is a unifying trait in several of the SPLC’s former directors.

“One of the challenging things when you work on a project like the SPLC is turning out the lights and going home, because it’s never done,” Fager said. “We worked like farm animals on projects all the time, working because there was just no end to that. It was sweeping back the ocean. I think we wanted to help as many people as we could.”

Abrams said being an editor of a student newspaper is “one of the biggest signs of success in the future” Being able to protect those students was what drove him to work so hard, he said.

“I’ve got all the faith in the world that without student censorship, the Constitution has meaning and that it’s for everyone,” he said. “I always thought the worst thing a school district could do is teach about the Constitution in 10th grade civics class and then deny it exists the second it conflicts with real life. That would take our best and brightest and make them pretty damn cynical. That would be a tragedy. We sustain faith in the Constitution and that’s of incalculable value.”

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“We don’t have the luxury of being frustrated. Literally,” he said. “We can mourn the dead after we win the war, but right now there is a war to be won and we do not have the luxury of being frustrated or tired or angry, we just don’t.”

This inability to stop is a unifying trait in several of the SPLC’s former directors.

“One of the challenging things when you work on a project like the SPLC is turning out the lights and going home, because it’s never done,” Fager said. “We worked like farm animals on projects all the time, working because there was just no end to that. It was sweeping back the ocean. I think we wanted to help as many people as we could.”

Abrams said being an editor of a student newspaper is “one of the biggest signs of success in the future” Being able to protect those students was what drove him to work so hard, he said.

“I’ve got all the faith in the world that without student censorship, the Constitution has meaning and that it’s for everyone,” he said. “I always thought the worst thing a school district could do is teach about the Constitution in 10th grade civics class and then deny it exists the second it conflicts with real life. That would take our best and brightest and make them pretty damn cynical. That would be a tragedy. We sustain faith in the Constitution and that’s of incalculable value.”

“We can mourn the dead after we win the war, but right now there is a war to be won and we do not have the luxury of being frustrated or tired or angry.”

Frank LoMonte, SPLC executive director
On Oct. 16, at the National Press Club in Washington, D.C., the Student Press Law Center will celebrate a big birthday. Please join us in commemorating 40 years of free legal aid to high school journalists, college journalists and educators everywhere. The event will kick off at 6 p.m.

NPR’s Audie Cornish will emcee the event, featuring keynote speaker Barton Gellman, part of the Washington Post’s Pulitzer-winning NSA reporting team (and a former SPLC journalism intern).

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Protecting passwords
As school officials work to counter cyberbullying, state lawmakers ensure student off-campus privacy isn’t trampled

BY BEATRIZ COSTA-LIMA

When Riley Stratton was called into the principal’s office, school officials didn’t search her backpack or her cellphone — they searched her Facebook account.

A parent had complained to the school that her son and Stratton, who was in sixth grade at the time, had talked about sex on Facebook. In response, school officials questioned Stratton about the conversation and demanded she turn over her username and password; they searched her account, including Facebook messages and quizzes she’d taken on the social-networking site.

While school officials often say such searches are necessary to combat cyberbullying and other illegal activity, several lawmakers and free speech advocates argue such efforts to regulate off-campus speech are an invasion of students’ privacy.

The American Civil Liberties Union of Minnesota filed a lawsuit in 2012 against Minnewaska School District on behalf of Stratton. The lawsuit was settled in March and, in addition to paying $70,000 in damages, the school agreed to change its policy regarding student privacy, according to documents filed with the U.S. District Court in Minnesota.

While technology and the way students communicate can change quickly, the law hasn’t always changed at the same pace, said Oamie Amarasingham, public policy counsel at the American Civil Liberties Union of Maine.

“Social media and other personal internet accounts are in a gray area,” Amarasingham said. “People have an expectation of privacy in the same way they would with their diaries or regular mail, but the law is not so clear.”

Currently, 12 states have laws that say school officials cannot require students to provide access to social media accounts, and in some cases email accounts and other forms of electronic communication. Louisiana and Wisconsin were the latest states to enact password-protection laws for students, both establishing their own versions in 2014.

Similar legislation has been proposed in 11 other states, but was unsuccessful. Nineteen states have laws that prohibit employers from requiring passwords from employees and job applicants.

Issue finds state-level support
In 2011, former Maryland corrections officer Robert Collins tried to obtain recertification for his job after taking a leave of absence. In the process, his boss asked for his Facebook username and password during a recertification interview.

Collins approached the American Civil Liberties Union of Maryland after the incident, and nearly a year later, Maryland became the first state to prohibit employers from requiring that their employees hand over social-media account information and passwords.

Following a burst of media coverage about the issue, social media privacy laws began to take off, said Jay Stanley, a senior policy analyst at the ACLU.

Sen. Ronald Young, a Democrat from Maryland, also tried to pass legislation that would have extended the law to students and schools, but the bill never made it to a vote.

However, Collins’ story and the new law in Maryland, along with multiple stories of student athletes having to turn over account information, sparked a slew of similar bills in state legislatures nationwide, said Ed Yohnka, Director of Communications and Public Policy at the ACLU of Illinois.

“The genesis of these laws came in a couple of things that coalesced together,” Yohnka said.

In Illinois, a password protection law for employees followed media coverage of the issue and constituents raising concerns to Rep. La Shawn Ford, a Democrat. It was his bill that inspired a similar bill protecting students, Yohnka said.

“When the employee bill was being debated, in the classic legislative process the topic of students was brought up,” Yohnka said. “As an advocate, it’s what you like to see because legislators involved themselves in the issue, they found other areas that they
Social media laws

Twelve states have laws that say school officials cannot require students to provide access to social media accounts, and in some cases email accounts and other forms of electronic communication. More than half of student password-protection laws, however, only protect college students. Similar legislation has been proposed in 11 other states, but was unsuccessful.

But the issue became clear when school administrators expressed opposition to the law in Maine, she said. School officials argued the bill raised safety concerns.

During a committee hearing, Elaine Tomaszewski, associate executive director of the Maine School Management Association, said the bill would prevent schools from asking students or teachers for access to their social media or email accounts “when we believe a student is at risk of harm, or when a tragedy, like a school shooting, has occurred.”

While officials with the Wisconsin Association of School Boards didn’t oppose a law safeguarding job applicants’ social media accounts, the restrictions on access to students’ accounts brought some worry, said WASB Spokesman Dan Rossmiller.

“We did have a strong concern in the competing interests between privacy and protecting children,” Rossmiller said, adding that the law “could hamper schools’ ability to investigate student misconducts such as cyberbullying.”

Tomaszewski made a similar argument in her testimony, arguing that the legislation would make cyberbullying investigations very one-sided.

Rossmiller said that he didn’t see any reason school officials should be barred from asking for passwords in situations where there would be no penalty for the student providing access, or in other words, asking the victims of cyberbullying for access.

“It would be a different thing if we were asking the perpetrators of the misconduct,” Rossmiller said.

However, Amarasingham said that giving administrators the right to access students’ social media accounts not only
compromises that student’s privacy, but also the privacy of anyone they communicated with.

“To give schools carte-blanche power to say, ‘someone accused you of something, we need to see your account,’ compromises every aspect of that student’s privacy,” Amarasingham said.

Stanley, the ACLU policy analyst, said people have an expectation of privacy when it comes to their personal internet account passwords.

“I think there is a belief that it would be beyond the pale,” Stanley said. “If administrators shouldn’t be allowed to ask to read diaries or listen into private conversations of students to all of their friends, they shouldn’t be allowed to do the electronic equivalent of that.”

While many of the laws prohibit officials from asking or requiring access to accounts, they don’t prohibit students from printing out copies of messages or posts they’ve received, or willingly showing them to official.

Password-protection laws shouldn’t be viewed solely as a way to take away power from schools, said Bradley Shear, a Maryland-based attorney who specializes in social media law and helped write the Maryland law. While they do protect students from having to turn over passwords, they also take some of the burden off schools that feel they have to monitor everything.

“The goal of this legislation was to protect students and employees but it was also to protect schools and employers,” Shear said. “If schools don’t have the legal duty to scan this stuff, then they can’t get in trouble for not doing it. It works as a legal liability shield. My whole idea was to create legislation that was a win-win for both sides.”

Shear said that ultimately, the way to improve students’ behavior on the internet is through education, not monitoring their accounts.

“You have new technologies where educators and school districts can’t control them,” Shear said. “When you don’t know about something, you try to control it.”

Vermont’s password-protection bill failed after being proposed in 2012, but the issue will probably rise again in the coming years, said Dan Barrett, staff attorney at the ACLU of Vermont.

Barrett said that as schools battle cyberbullying, there is an overall concern that school administrators try to be online police. While educators need to address concerns of cyberbullying, they shouldn’t be overstepping their bounds, Amarasingham said.

“It doesn’t make sense for schools to have access to things that the police would need a warrant for,” Amarasingham said.

### High-schoolers not protected

While password protection laws are a step in the right direction, not all of them protect every student, Yohnka said.

Currently, more than half of student password-protection laws only protect college students, leaving younger students vulnerable.

“I find it troubling that we are not extending these same protections to high school students,” Yohnka said. The feeling of “being watched or controlled” in high school, he said, “is not good for society as a whole.”

Yohnka said that if state legislators in Illinois proposed legislation protecting younger students, it probably wouldn’t garner the same level of support that the other bill, which provided protection for college students.

“But allowing the persistence of policies that violate students’ privacy can send the wrong message,” Barrett said.

“When you subject young people, our future voters to situations of pervasive surveillance, you habituate them to the idea that their expression is going to be constantly monitored,” Barrett said, “That gives them the message that Americans don’t question their government.”

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**Law of the Student Press**

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Access denied. Now what?

While guidelines for media credentials vary, student news organizations struggle with access to newsmakers and newsworthy events. But remedies do exist.

BY BEATRIZ COSTA-LIMA

Once or twice a semester, student journalists at the the Daily Texan, the student newspaper at the University of Texas, come across a familiar situation.

They ask for press credentials to cover an event, but the organizations giving out the passes say that they don’t give credentials to students, Editor-in-Chief Riley Brands said.

“It’s incredibly frustrating and demoralizing,” Brands said. “Usually, it’s because they’ve had one bad experience with college media so they blacklist all college media.”

Denial of media credentials to students isn’t new, but it’s more concerning now that student media has become more vital for local news coverage, said Dan Reimold, a journalism professor at Saint Joseph’s University in Philadelphia who also writes the College Media Matters blog.

As daily newspapers around the nation downsize their staffs, student journalists have become more important in communities as college papers pick up the slack in local news coverage, Reimold said.

As professional news outlets close shop or downsize their reporting staffs, “students are stepping up and filling that gap to a greater degree,” Reimold said. “Students are increasingly expanding beyond the confines of their campus.”

Credentialing standards vary

One in five journalists have been denied a media credential, according to a survey the Berkman Center for Internet & Society and the Shorenstein Center on Media, Politics and Public Policy released in June.

The survey didn’t focus on student journalists’ struggles with credentialing, but student reporters are often unable to secure access on and off campus because they don’t receive the same recognition as professional media, Reimold said.

“It’s been a struggle for many years for government agencies and extra-government agencies to define what it means to do journalism and the people doing it,” said Jonathan Peters, University of Kansas media-law professor and Columbia Journalism Review correspondent.

Organizations that issue media credentials use a “bewildering variety of credentialing standards,” Hermes said, such as news outlet affiliation, employment and frequency of publication.

Some organizations require journalists to work full-time at a news outlet or to earn a substantial portion of their salary from journalism in order to be eligible for a credential — requirements most student journalists fail to meet, Peters said.

Sometimes, the credentialing rules use vague wording such as “bona fide” or “legitimate” journalists.

“My guess is that the drafters of that kind of language, the intent was to separate, in their mind, the people who do real journalism — so called ‘real journalism’ — from ‘non-real’ journalism,” Peters said. “But how you apply that to practice, I have no idea.”

A “bright line rule,” such as an employment requirement, make it easier for organizations to decide who is eligible for a press credential, but it is not always the best way to make a decision, said Jeff Hermes, director of the Digital Media Law Project and the lead author of the credentialing survey.

“A standard which relies on employment tends to disregard the important news gathering functions of other people in the journalism community,” Hermes said.

When a reporter’s media credential request is denied, little recourse is available. One of the only ways to challenge the legality of a media credential denial would be to do so on constitutional grounds, Hermes said, where a journalist could claim unlawful discrimination.

But he said those cases are difficult to prove because specific evidence is necessary to prove discrimination based on a viewpoint existed.

“The First Amendment only goes so far in the access that it gives you to government locations,” Peters said. “In order to get access beyond that, you have to have the credential. That’s why it matters.
Student journalists often struggle to obtain the same recognition and access that traditional media professionals enjoy, said Reimold, the Saint Joseph’s University journalism professor, adding that distrust can stem from a belief that student journalists are unable to cover the news with the same level of professionalism.

“I think there’s probably an underlying concern about journalists of a certain age covering a topic that agencies or organizations think might be above them,” Reimold said. “It’s four words in question form: ‘Who are these kids?’ Then typically there’s the follow-up: ‘Who do they think they are?’”

In September 2004, two student reporters from the Ohio Daily Kent Stater were arrested and detained while covering a protest at the Republican National Convention after New York Police Department officials denied their self-made press passes as valid media credentials.

In October 2004 in Boston, the Massachusetts State Police denied press credentials for student journalists at Boston College because they didn’t fit a full-time employee standard because their newspaper didn’t publish daily.

Brands, The Daily Texan editor, denied a perception that student journalists are unable to work with professionalism.

“Everyone who works at the Texan is very serious about what they do,” Brands said. “It’s not a joke or some side gig. We put our hearts and soul into what we do.”

The word “student” in “student journalist,” can sometimes be enough for someone to brush off a reporter, said Kyle Plantz, editor-in-chief of The Daily Free Press at Boston University.

Plantz encourages his staff members to not identify themselves as student journalists when talking to sources, and instead just focus on the fact that they’re journalists for The Daily Free Press.

“If they ask about it, I tell them we are BU’s newspaper, but I try not to use the word student because sometimes they might talk to us a little differently and they really should just talk to us like any other journalist,” said Plantz. “Sometimes, people will flat out say no, they don’t want to talk to us because they feel like we’ll be unprofessional, whereas they’d talk to someone at the Globe because they feel they’d be more competent.”

Alternative options used

Since it is difficult to pursue a legal action to remedy a media-credential denial, student journalists often find other ways to gain access.

Reimold said one example he’s heard from some newspapers at smaller schools have used physical copies of their print editions in lieu of press passes.

“They literally have to show ‘this is what we do,’” Reimold said. “Not even to necessarily have them read through it, but just have them look at it and see ‘I am valid. This is real. We’re not just kids making this up or playing around.’ It just goes to show how formal and messed up the whole student media access process is.”

When Natalie Williams was photo editor of The Vermont Cynic in 2011, she had difficulty obtaining credentials from the University of Vermont athletics department.

Williams said staff members from previous Cynic staffs weren’t always as professional as her staff was, and Williams had to fight the bad reputation to obtain the press passes she needed.

To solve her credentialing problem, Williams and her fellow editors met with athletic department officials in the hopes of rebuilding a relationship, she said.

“Communication was key. We talked with her about what our goals were and explained that we’d shown we could be responsible and that it affecting our coverage” to not have passes, she said. “So, our relationship with the athletic department was rough at first but it’s very good now.”

Jessica Clary, the adviser at The Connector and SCAN magazine at Savannah College of Art and Design, said her staff has an issue, not with credentialing, but with access.

When student journalists at the college ask to attend or to photograph a campus event, the answer is often no, Clary said, if they’re given an answer at all.

“A lot of times I think we’re just not top-of-mind for them,” Clary said. “I think a lot of times our college’s PR department, because they’re trying to get something like The Today Show, they’re not really thinking about us.”

To work around the limited access, Clary said the organization applies student-centered angles to their coverage since there aren’t any barriers on student interviews.

“We usually try to go for the reaction story because we know that we can get that and we know that nobody else is going to try and get that,” Clary said. “We kind of spin it as a positive in that we’ll do the thing that no one else will do.”

Clary said that although the situation may not be optimal, since SCAD is a private school, there isn’t much they can do.

“It’s one of those things that we’ve kind of come to accept because our students do get to run everything themselves, I don’t prior review a single thing, and it’s a private school so they can make us do that,” Clary said. “They could subject us to a lot more rules and scrutiny than they do, so I think it’s a small price to pay to kind of stay off their radar on that.”

But credentialing is a problem that needs to be fought on more than just a case-by-case basis, Reimold said. Student journalists are almost never included in conversations of media credentialing in the industry as a whole, Reimold said.

“It’s probably on a level even below afterthought at this point,” Reimold said. “It’s simply not something, as someone who follows this stuff pretty closely, that’s being talked about in any sustained or formal way, shape or form.”

Ultimately, it comes down to a need for greater awareness that students journalists are capable of covering news, Reimold said.

“Students are covering important issues and newsworthy events just as well if not better than the professional press counterparts,” Reimold said. “Let the student voice enter the arena.”
Since lawmakers passed a rule 40 years ago that prevents schools from releasing certain records about their students, open records advocates, journalists and educators have debated just how far the statute should reach.

Now, as the prevalence of student data collection in educational institutions increases, the federal Family Educational Rights and Privacy Act’s use is once again in question. Attempts to change FERPA are of concern to journalists who often seek information from schools when reporting. And while the proposed changes may not further restrict journalists’ access records, they also don’t alleviate any challenges.

In 1974 President Gerald Ford approved FERPA, which prohibits any federally funded K-12 school or college from releasing confidential “education records” to anyone other than the student or the student’s parents if he or she is less than 18 years old.

In July, Sens. Edward Markey, D-Mass., and Orrin Hatch, R-Utah, released a bill to amend FERPA that would establish “security safeguards to ensure greater transparency and access to stored information for students and parents,” Hatch said in news release in July.

The bill sets in place a number of “safeguards” for student data privacy. Under the bill, the commercial use of personally identifiable information would be permitted. It would also require institutions to disclose which outside companies it uses to collect student data. The bill proposed by Markey and Hatch, creates safeguards for student data and requires the state board of education to list what data is collected and why it is being collected.

The American Legislative Exchange Council provided a model bill template, which closely resembles the Oklahoma bill, to state legislators around the country.

The proposed FERPA amendment is part of an effort to update student-privacy laws for the 21st century, said Giselle Barry, a spokeswoman for Markey, who has worked on student-privacy issues for more than a decade.

“The senator believes now is the time for Congress to act before sensitive student data becomes compromised,” Barry said in an email.

Nearly 25 percent of school districts with cloud computing services informed parents of the services and 20 percent didn’t have policies to govern the use of online services, according to the study by Fordham Law School’s Center on Law and Information Policy. The study, released in 2013, was part of what sparked the bill, Hatch spokesman Matthew Harakal said.

Markey is now working to advance the bill with bipartisan support, Barry said in an email.

**Changes focus on ed-tech companies**

While data collection in schools isn’t new, it’s only now coming into the forefront of conversation, said Paige Kowalski, director of state policy and advocacy at Data Quality Campaign, an organization that promotes effective use of data in education.

For some educators and parents, sufficient enough information about data and its purposes was not available, Kowalski said, and it caused confusion and concern.

“Naturally they have a lot of questions,” Kowalski said. “I
think we’ve all dropped the ball on thinking about how to communicate all this to them.”

Much of the concern isn’t necessarily data collection itself, but the institutions’ use of education technology, or “ed-tech,” companies to store or analyze student data, said Kaliah Barnes, director of the Electronic Privacy Information Center’s Student Privacy Initiative. In its current form, FERPA does not specify how information given to these companies is regulated, she said. In some cases, companies like Google have used student data for some kind of commercial purpose, such as personalized advertisements or marketing, Barnes said.

“Now we’re in the current environment where more individuals outside of the school compact have access to student records,” Barnes said. “Student records should not be used for advertising purposes for monetary gain.”

Barnes said schools should use techniques like data minimization, where institutions and boards of education only keep vital data and even delete student information after a period of time, which is also addressed in the Markey-Hatch bill.

However, much of the concern with data privacy are knee-jerk reactions to recent data breaches or problems with a few institutions and ed-tech companies, said Tom Murray, the state and district digital learning policy and advocacy director with the Alliance for Excellence in Education, a Washington, D.C.-based national policy and advocacy organization.

Murray cited the data breach at Target last year, where hackers accessed credit card information from customers.

“The solution is not to ban credit cards across the nation,” Murray said. “The solution is to have high levels of standards for everybody to make sure that everybody follows the law. Not to say, ‘sorry somebody breached the data so no one can ever use credit cards again.’”

Murray said the Target breach is comparable to schools. Instead of overarching bills that could hinder good uses for data collection, schools could use common sense solutions, such as encryption, limiting who has access to data, and better train educators on how to safeguard data, he said.

Earlier this year, both Indiana University and the University of Maryland experienced data breaches within the same week. The data breaches exposed student information such as names, addresses and Social Security numbers.

Changes concern journalism advocates

As legislators and privacy advocates examine data collection and how to better protect student data, the possible effect these policies could have on journalists are usually not part of the conversation.

Institutions often struggle to determine what ‘education records’ are exempt from public records laws under FERPA, which often hinders journalists’ access to crucial information, said Emily Grannis, a legal fellow at the Reporters Committee for Freedom of the Press.

“The fear was that suddenly everything would be considered an education record. Now, we’re at least maintaining the status quo.”

Emily Grannis, Legal fellow at the Reporters Committee for Freedom of the Press

“There’s no issue or question that there should be protection for certain types of student records,” Grannis said. “The problem is, schools are expanding this way beyond student records, beyond grades. It has taken on a life of its own.”

When Markey and Hatch released a discussion draft of their bill in May, journalism and open-government advocates worried language in the bill could have widened the definition of education records under FERPA, further limiting the information institutions could release.

Currently, confidential records include education records or personally identifiable information within those records. Under the draft bill, however, institutions would have been prohibited from releasing information regardless of whether it was contained within an education record.

While the legislation may have been well-intentioned as written in the draft, the bill could give school officials additional leverage to shield access to public information, said Kevin Goldberg, legal counsel for the American Society of News Editors.

“People are somewhat unaware as to how difficult it is to get information from colleges and high schools,” Goldberg said.

In June, the Student Press Law Center, ASNE, RCFP, the Society of Professional Journalists, OpenTheGovernment.org and Californians Aware sent a letter to Markey and Hatch detailing concerns with the bill. When Markey and Hatch introduced the legislation on July 30, the bill’s provision to widen the definition of education records was changed.

“It was really nice to see that the senators’ staffs had obviously listened,” Grannis said. “The fear was that suddenly everything would be considered an education record. Now, we’re at least maintaining the status quo, which is not great but we definitely didn’t want to expand the definition.”

Additionally, the bill states that schools must “require each outside party to whom personally identifiable information from education records is disclosed” must comply with the same FERPA regulations that the institutions follow.

The wording in that paragraph could pose problems as well, since “any outside party” is vague, said Mark Goodman, a media-law professor at Kent State University and a former SPLC
executive director. While it seems that the intention was to protect against companies the school contracts, the language could encompass more, he said.

In his interpretation, Goodman said anybody who gets access to an education record, “independent of how they got access to it, even if they got it from someone other than the institution itself — that somehow they are bound by these regulations as well.”

Other changes still necessary

Along with expressing concern with the language in the bill, the letter the journalism advocates sent Markey and Hatch also proposed ideas on how FERPA should be amended. While over-sharing information could potentially harm students, Goodman said, so can too much secrecy.

He said legislators thinking of amending the law need to consider the conflict created between the current practice of FERPA and freedom of information rights.

“If they don’t take into account that conflict, then they’re really missing the boat,” Goodman said. “One of the biggest problems with FERPA that I have seen in its history is it is definitely used to thwart public oversight of educational institutions. That was not the intention behind the law but that is the way that schools have been able to use it.”

Some student data privacy advocates as well as open government advocates agree that changes to FERPA are necessary, Murray said. One area where both privacy and open government advocates can find common ground is that the enforcement of FERPA is flawed.

In its current form, schools that violate FERPA risk losing all federal funding. However, the punishment, sometimes called the “nuclear option,” has never been used to punish an institution since the law was created.

“We would prefer some type of private right of action but you don’t have a private right of action,” Barnes said. “That would be something that could make the law stronger, although that would be hard to implement.”

Barnes said some other options could also help, such as the education department disclosing the names of schools or other agencies that have violated FERPA.

However, Grannis said legislators should encourage correct application of the law instead of scaring institutions into hiding too much information.

“The concept of losing every penny of your federal funding is a death sentence,” Grannis said. “There should be some incentive to share information with the public and messing up once, particularly in a small way, should not mean a death sentence.”

Grannis said the U.S. Department of Education could solve some of the confusion with FERPA’s application even without new legislation. For example, the DOE could release guidelines that explain a few types of records that would not fall under federal law, she said.

Any opening to try and discuss changes to FERPA is important since there are so few efforts to change the law, Goldberg said.

“FERPA, while it may not be as sexy as the shield law, is a really important issue, especially for local reporters,” Goldberg said. “FERPA is often being used to prevent access to information.”

Even within the journalism community, it can be difficult to a coordinated effort to make changes to FERPA, Grannis said, because public records requests often come from student journalists or reporters in small media markets.

IN BRIEF

Pennsylvania — Tara Huber, the adviser to The Playwickian, the student newspaper at Nashaminy High School, was suspended for two days in September amid a battle with administrators for editorial control after student editors said they would no longer publish the word “Redskins.” Additionally, Gillian McGoldrick, the newspaper’s editor-in-chief, received a one-month suspension from her position.

Pennsylvania — A new policy agreement at the University of Pittsburgh could require faculty to sign their intellectual property rights over to the administration. But after the agreement received criticism, a deadline administrators set for faculty to sign the agreement was delayed without a new deadline being established.

New York — An image depicting men in dolphin costumes pretending to assault women in underwear prompted a student-led petition calling for the School of Visual Arts administration to remove the image from display. After declining to remove the image, college officials held a forum to address concerns with the exhibit.

Wisconsin — Fond du Lac High School’s student news organization returned to business as usual this academic year with new guidelines, after a prior review policy caused friction between administrators and student journalists in the previous school year.

Indiana — Indiana State University in August announced a partnership with the Indianapolis-based National Public Radio affiliate and moved the student-produced programming to a weaker signal.

Alabama — A year after The Crimson White published a story about the persistence of racial segregation in sorority recruiting, the University of Alabama released guidelines preventing media from speaking with representatives from UA Greek Affairs, the Panhellenic Executive Council or any of the sororities during Sorority Recruitment Week. A university spokeswoman said the institution was not attempting to restrict communications between news media and students.
Cady Zuvich wanted to dig deeper. The university had been planning to build a massive power plant with a private company without telling the public.

But when she tried to pursue the story, she ran into a roadblock, similar to other times *The Review*, the student newspaper at the University of Delaware, pursued an investigative story but fell short. She blamed a Delaware Freedom of Information Act exemption for the state’s two publicly funded universities, UD and Delaware State University.

“It’s frustrating from a journalist-in-training perspective because you want to have experience with using FOIA and knowing what you can get out of FOIA,” Zuvich said. “We hit a lot of roadblocks in stories because we can’t get the information we need.”

Delaware and Pennsylvania are the only states with open records exemptions for “publicly funded” or “state-related” universities — institutions that receive taxpayer dollars but receive a majority of their funding from private donors. The laws permit UD, Delaware State and four other institutions — University of Pittsburgh, Pennsylvania State University, Temple University and Lincoln University — to limit what information the public has access to.

Similar to other public entities, these colleges are subjected to the state’s open records laws, except when dealing with certain reports and disclosing information about privately-funded university contracts and agreements.

While lawmakers in both states have worked to end the exemptions, university resistance has prevented legislators from amending the laws to allow for more transparency.

With limited access to information, working on the power plant story “taught us the importance of going beneath the surface as journalists,” Zuvich said, “which I think will elevate our content throughout the next couple of years.”

**Delaware legislators pass a new law**

State Rep. John Kowalko, a Democrat from Delaware, had received complaints from his constituents about the construction of the 279-megawatt power plant that was to be built on a UD campus in the middle of his district. They were upset about the lack of public knowledge regarding its construction, Kowalko said, so he reacted with legislation.

“If they had these discussions earlier in public, it may not have been as contentious as it ended up being,” Kowalko said.

The public complained that the university denied requests to access the lease agreement between UD and the private contractor. The university ultimately decided to terminate the agreement, because the facility’s plans “are not a good fit” for the development of the campus, according to a statement from the university.

Kowalko said he is glad UD cancelled their plans to build the power plant.

“You make a decision, then you’re responsible for that decision,” Kowalko said. “Healthy, open dialogue will result in a more successful outcome.”

Nancy Willing, who writes for the blog Delaware Way, joined the Newark Residents Against the Powerplant organization, which filed public records requests for a year regarding the power plant lease. Willing said the group has been both successful and unsuccessful in receiving responses, adding that the exemption does not benefit “the public good.”

Because Delaware is one of only two states with the exemptions, public institutions in the other 48 states “somehow don’t feel like it’s the end of the world if they have to comply with FOIA,” Willing said.

Kowalko said UD did not operate transparently when it announced in 2011 — without public input — that its men’s track and cross country teams would become club sports and no longer compete in the National Collegiate Athletic Association.

According to a statement from UD, “When the university spends public funds, it has the same disclosure obligations as state agencies: all documents ‘relating to the expenditure of public funds’ are ‘public records’ and are subject to disclosure.” The statement...
also said that the university “receives 11 percent of its budget from the state” and the rest is from other sources, including private philanthropy.

Officials at Delaware State declined to comment when contacted by the Student Press Law Center. The editor-in-chief and faculty adviser at Delaware State’s student newspaper, *The Hornet*, were unable to be reached for comment.

Mike Grieco, the father of a UD track athlete, explained his frustration with the Freedom of Information exemption since his son was no longer allowed to play track for the school once the team was cut.

“I believe that things were done in subcommittee with minutes that aren’t available,” Grieco said.

In the past, UD has faced public outcry regarding their open records exemptions. The university’s president, Patrick Harker, was selected by the board of trustees’ executive committee in 2006. According to the attorney general at the time, since the full board of trustees did not convene to choose the president, the university is not legally required to release the records.

Delaware’s Freedom of Information Act was created in 1977. The exemptions for UD were made that same year. Delaware State became exempt in 1990.

State legislators in Delaware have attempted and failed two previous times to end the exemption. One of the bills, introduced in 1997, didn’t specifically name either university but would have applied the records law to institutions receiving at least $75 million in public aid. At the time, UD was the only institution that would have been affected.

More recently, in 2011, the state House of Representatives considered legislation that would include UD and Delaware State, as well as their “respective Board of Trustees” under the definitions of “public body,” “public record” and “meeting,” but the bill was tabled in committee. Kowalko co-sponsored that bill.

So Kowalko decided to write another bill that would eliminate the public records exemptions for the two universities. He spent the past few months trying to pass House Bill 331. The original intent of the legislation was altered with an amendment and barely changed university open records protocol.

Gov. Jack Markell signed the bill along with the amendment into law July 15. The addition to the law says universities must indicate that proposals or bids are public information when an expenditure is made out of public funds. Under the legislation, meetings of the full Board of Trustees are still the only events where university decisions must be made public.

Markell’s spokeswoman, Kelly Bachman, said that the bill aligns with the governor’s priority to promote government transparency.

The importance of the bill is “requiring the University of Delaware and Delaware State University to provide clear disclosure of projects that disburse public funds,” Bachman said. “He was happy to sign it into law.”

The governor did not have a further comment regarding whether he would support ending the exemptions for the two universities in Delaware.

In 2011, Markell signed an executive order to amend the state’s public records law that reduced copying costs, simplified request forms and required each executive agency to have a “FOIA Coordinator.” It did not, however, change the open records exemption for “publicly funded” universities.

Bachman said the executive order was about “improving responses to FOIA from executive branch agencies.” Markell can only encourage other “branches of government, state and local governments, or Delaware universities” to follow such an order, Bachman said.

“That order encouraged, but did not require, other governmental entities in Delaware to evaluate adopting similar policies,” Bachman said.

Kowalko said he remains committed to removing the exemptions for UD and Delaware State.

“I’m going to bring a lot of this stuff back next year,” Kowalko said. “Transparency and openness is really the way to achieve consensus and good results.”

Looking forward for Delaware

Mark Fowser, president of the Delaware Press Association, said the exemptions make it more difficult for student journalists to do their jobs.

“It puts another hurdle in the way of trying to spread awareness...
and get to the bottom of an issue,” Fowser said.

Jan Blits, a professor in UD’s honors program, said he is against changes to Delaware’s Freedom of Information Law because additional transparency could force faculty to give up some of the privacy that they are used to having, including emails on university accounts.

Additionally, changes to the law would have “no effect on what the university administration would reveal,” Blits said, because “they have ways of avoiding such laws when they want to.”

John Flaherty, president of the Delaware Coalition for Open Government, believes that passing House Bill 331, even with the amendment, made progress in Delaware, since “this is the first time this issue has made it to the floor of the House.”

“Fifty percent of something is better than 100 percent of nothing,” Flaherty said. “I hope this will have a bigger discussion and find out why the University of Delaware feels that it’s going to be negatively impacted by this,” Flaherty said.

UD did not respond to phone calls and emails requesting a comment on the Kowalko legislation.

In Pennsylvania, a similar story

State-related universities in Pennsylvania get “hundreds of millions of dollars from the state every year,” said Erik Arneson, a spokesman for Sen. Dominic Pileggi. However, he said these institutions do not have to comply to the same public records laws as public universities.

“A strong case can be made that there should be additional disclosure,” Arneson said.

In response, Pileggi wrote Senate Bill 444, which would require police departments at the four state-related institutions to disclose records in the same way as any municipal department.

The legislation would also require Pitt, Penn State and Temple to disclose the salaries of the institution’s highest-paid employees; current law requires the salaries of the 25 highest-paid employees to be disclosed. All public meeting minutes would be available online and in print for a minimum of 20 years.

The bill passed unanimously on the Senate floor and will subsequently be reviewed by the state’s House.

Melissa Melewsky, media law counsel at the Pennsylvania NewsMedia Association, explained that her organization lobbies against the exemption.

“The reason we advocate for full inclusion is because [the universities] receive a significant amount of public funds and have control of millions of lives of many Pennsylvanians,” Melewsky said.

Eugene DePasquale, the Pennsylvania auditor general and a former state representative, had a difficult time talking to his constituents back in 2011 about the benefits of their tax dollars, knowing that four universities in the state are exempt from revealing certain information.

Despite the changes, however, DePasquale said he was unable to get rid of the state-related university exemptions that were put into law in 2008.

“It was something I was disappointed not to get done,” DePasquale said.

He had helped revise the Right-to-Know law in 2008, which had not been revamped since 1957. DePasquale explained that Pennsylvania had one of the weakest Right-to-Know laws in the nation before it was altered.

Terry Mutchler, executive director of the Pennsylvania Office of Open Records, said that under the 2008 update, “every record in the Commonwealth of Pennsylvania held by an agency was presumed open and available for inspection.”

Previously, “citizens had the burden to prove why a record was available,” she said. The 2008 law also created the OOR as an independent agency, which has jurisdiction over which documents can be revealed if a citizen is denied a record.

“This model of government where you have a very strong Right-to-Know Law, an independent agency reviews records and a binding authority is extremely successful,” Mutchler said.

Mutchler added that “state-related universities were the primary push in ensuring that they controlled the release of information in 2008.”

So DePasquale wrote a bill in 2011 that he hoped would have changed the new exemption for the universities. He said that at the time, the legislators that were against it “didn’t want to open up the open records law again and rehash that debate.”

“What public interest do you have in not having publicly funded universities not part of the state’s Right-to-Know Law? I believe that the exemption serves zero public interest,” DePasquale said.

The emergence of DePasquale’s bill happened to appear around the time of the Jerry Sandusky sex abuse controversy at Penn State. Sandusky, a former assistant football coach, was convicted of child molestation. DePasquale said that the incident was not the trigger of his legislation because it was a “new bill, not a new idea.”
**The debate in Pennsylvania**

Sam Janesch, editor-in-chief of *The Daily Collegian*, the student newspaper at Penn State, said that the newspaper staff has difficulty accessing public records from the university, adding that their main way of getting information is through the university’s public relations office.

But if Pileggi’s bill is passed into law, Janesch said student reporters would have more access to information about campus crimes and complaints.

“We get the police logs every day and they give us minimal information,” Janesch said. “At some points, we have had trouble dealing with them in terms of what they can say.”

Penn State responded to the legislation in a statement from university spokeswoman Lisa Powers. She explained that the university supports the change to have campus police “treated like a municipal police force”

Mahita Gajanan, interim editor-in-chief of *The Pitt News*, the student newspaper at the University of Pittsburgh, said she has not experienced issues obtaining open records from the university, adding that the communication director usually points her in the right direction to access information.

“I hope that universities can work to make things more transparent and just kind of make it easier because really we just want to know what’s going on and I don’t think anyone has ulterior motives,” Gajanan said.

Gajanan gets frustrated by the minimal amount of information that the university police department provides student journalists, she said.

“Other than what they send us in the blotter, I don’t think they really give out any information,” Gajanan said. “It is kind of difficult to get.”

Natalie Daher, incoming editor-in-chief of *The Pitt News*, added that she typically sends reporters to open meetings, rather than relying on minutes from the university. She said that she has not experienced “any trouble with the laws that are currently in place,” but supports “anything that could bridge administrative decisions and the student body.”

Pitt’s Vice Chancellor of Communications, Kenneth Service, said in a statement that that the university makes “a great deal of information about the University of Pittsburgh available to the public in a convenient and accessible manner.”

He added that the university supports the potential to change the legal requirements of the campus police force.

The editor-in-chiefs at Temple’s student newspaper, *Temple News*, and Lincoln’s student newspaper, *The Lincolnian*, were unable to be reached for comment.

Hillel Hoffmann, a spokesman for Temple, said the institution “would follow the proposed changes with the same rigor as it follows current law.”

Robert Richards, a journalism professor at Penn State, as well as the co-founder of the Pennsylvania Center for the First Amendment and the vice president of the Pennsylvania Freedom of Information Coalition, said state-related universities are “a different animal,” adding that he understands the four universities’ argument. Even if Penn State did not have the public records exemption, he said news on the Sandusky scandal may not have been released any sooner.

“The only thing we would’ve had is Jerry Sandusky’s salary,” Richards said. “Personnel records have an exemption as it is. I don’t think it would have changed at all.”

Sara Ganim, current CNN correspondent who broke the Sandusky story for the *Patriot-News* in 2011 and won a Pulitzer Prize for her crime investigation, agreed and said that writing the story did not require public records.

“When you’re looking for police records, you can always attempt to go through the victims, who usually have access to their own cases,” Ganim said.

She added that as a crime reporter for *The Daily Collegian* during college, she did not run into too many roadblocks dealing with the university police. She added that public records do help “provide a fantastic story,” but she turns “to people and their experiences”

“The problem is that every situation is different,” Ganim said. “You have to think creatively.”

**More action needed**

Student journalists working at college papers whose universities are exempt from releasing certain public records have agreed that the law negatively impacts the quality of their journalism.

By finding out more information about special projects, police records and the spending of funds, Zuvich said that her paper at UD can avoid “he said, she said” journalism and focus on investigative pieces.

“It’s frustrating that the minority of universities don’t [give us] access to information that FOIA laws guarantee us,” Zuvich said. DePasquale, Pennsylvania auditor general, said that he treats students journalists “at the same level as constituents.”

“Students have a more direct impact,” DePasquale said. “Those taxpayer dollars are meant to impact their educational experience. Make sure those dollars are used.”

Blits, a UD professor, supports transparency, but doesn’t think Kowalko’s specific bill achieves that.

“I would be very glad if the administration and the board were more open, but I don’t think this change in the law is going to do anything,” Blits said. “They have ways of getting away with non-disclosure.”

Fowser, president of the Delaware Press Association, said that, ultimately, information is what journalists need to practice good journalism.

“Information is what we deal with,” Fowser said. “Without access to information, our ability to interact with audiences, to inform our audiences is impaired and I think it holds back civic engagement to put up hurdles like this, to have exemptions like this. The best idea is to just knock them down one by one.”
Legal Analysis

Copyright Registration or Creative Commons License?

By Carolyn Schurr Levin, Esq.

Much has been said, written and debated about the shortcomings of copyright law. The criticism often includes the obvious - that laws arising out of a fifteenth century technology (the printing press) cannot possibly remain relevant in the digital age. Experts have opined in books (How to Fix Copyright, by William Patry, Remix and others by Lawrence Lessig, to name just two), articles (“Copyright Strangulation,” by Mike Konrad on the American Thinker blog), blogs (The Becker-Posner Blog), and elsewhere about the antiquated nature of copyright laws, and the need for either a complete overhaul of the old model, or something entirely new. Although every year over a half-million applicants still seek copyright registrations for their works, indicating that many creators believe that registering their copyrights remains a valuable endeavor, the vast majority of creators do not routinely register the copyright in their works.

In the past decade, alternatives to the traditional “all rights reserved” methodology of traditional copyright law have arisen. One of those alternatives, Creative Commons, was founded in 2001, as “a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools.” The various Creative Commons licenses provide a tool for creators to give the public permission to share and use their creative work. Since the launch of its first license in 2002, thousands of creators have used Creative Commons licenses, “amassing a selection of over half a billion CC-licensed works, spanning the worlds of education, art, academia, data, science, and much more.”

With this now-available alternative to the traditional “all rights reserved” approach of the federal copyright law, how does a writer, or other creator, know whether to register the copyright in his or her work, to apply for a Creative Commons license, or to do neither, or possibly both? According to intellectual property attorney and Creative Commons expert Samuel Bayard of Davis Wright Tremaine LLP in New York City, although Creative Commons is very well known within (in his words) “techy, nerdy, internet culture,” there is not widespread awareness about it elsewhere. This article aims to clarify the fundamental differences between copyright registration and Creative Commons licenses, and provide a guide as to when a Creative Commons license may be the right step.

Federal Copyright Registration

Under the federal copyright law, the creator of an original work owns the copyright in that work, immediately upon creation. Registration is not necessary for ownership. In fact, registration is just a legal formality intended to make a public record of the basic facts of a particular copyright. Although registration is not a condition of copyright protection, there are several inducements to encourage copyright owners to register their works. The most frequently mentioned inducement is that before a copyright owner can file a lawsuit against an infringer, registration of the work is necessary. The registration will provide evidence in an infringement case of the validity of the copyright, and will also allow the copyright owner to seek certain damages and attorney’s fees from the infringer.

The registration procedure is quite straightforward. The forms are available online at www.copyright.gov. The fee is modest, starting at $35 for a single work. The U.S. Copyright Office’s website offers answers to a host of questions, ranging from “Can I copyright my website?” to “Can I register a diary I found in my grandmother’s attic?” to “How do I protect my sighting of Elvis?” (Reaching a representative at the Copyright Office with more specific, targeted questions is not as straightforward. A call to the Copyright Office in connection with this article led to being placed on hold for 31 minutes, transferred to a different office, and then disconnected.)

Once a copyright application is filed, registration is, in most situations, nearly automatic, although not immediate. According to the 2011 annual report of the Copyright
Office, the most recent one available on its website, the average processing time for applications filed in 2011 was 94 days.9

The law provides that copyright-protected material may be republished only by the copyright owner, unless the defense of “fair use” applies. Thus, under the federal law, in general, for a third party to adapt, derive, remix, or redistribute the material, permission from the copyright owner must be sought and obtained, a potentially onerous process.

Creative Commons Licenses

Creative Commons seeks to eliminate the uncertainty and delay in the permission process, and to allow creators to make their work freely available under certain parameters. The Creative Commons licenses are based upon the premise that the digital world requires flexibility so that authors can protect their work while still sharing it with others online. The licenses provide a method for these authors to give permission to others to reuse, derive, adapt, and remix their work, while still retaining the underlying copyright.

A common misconception about Creative Commons is that it replaces copyright. That is simply not the case. A Creative Commons license requires that the underlying work be subject to copyright. However, copyright registration is not a requirement, and is the exception rather than the rule for most Creative Commons users. Diane Peters, the General Counsel of Creative Commons, stated that, as a general matter, few people register their copyrights, other than big media companies, and that “the incentives for registering are very low in the United States.” Yet, there is no impediment to registering the copyright in a work and at the same time seeking to disseminate it through a Creative Commons license.

The first Creative Commons license, version 1.0, was released in December 2002, and the various licenses have evolved since that time. The most recent iteration, Version 4.0 License Suite, was finalized and published on November 25, 2013. Today, there are six varieties of Creative Commons licenses, all providing, to varying degrees, a release by the owner of creative works of some of the exclusive rights in those works, while retaining other rights. The six licenses are10:

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- Attribution-NonCommercial-NoDerivs: CC BY-NC-ND: This license is the most restrictive of the six main licenses, allowing others only to download the work and share it as long as they credit the author, but without changing it in any way or using it commercially.

The Creative Commons website offers what is termed a “simple License Chooser” to assist in the process of choosing an appropriate license.11

The attribution requirement, according to attorney Ba-yard, is common to all of the licenses. The biggest differentiator among the licenses, he stated, is the commercial use component. Some of the licenses permit solely non-commercial use of the work, and others permit commercial use as well. The commercial use limitation, however, has been an area of uncertainty for some users because the term “commercial” does not have a stable meaning. In certain contexts, such as First Amendment use and the right of publicity, a commercial use is a use solely in connection with advertising. In other contexts, however, such as in the copyright arena, “commercial” has been held to...
encompass anything use for profit, Bayard explained. Peters, however, clarified what is meant by a noncommercial Creative Commons license.

She explained that noncommercial is defined in version 4.0 as follows:

“NonCommercial means not primarily intended for or directed towards commercial advantage or monetary compensation. For purposes of this Public License, the exchange of the Licensed Material for other material subject to Copyright and Similar Rights by digital file-sharing or similar means is NonCommercial provided there is no payment of monetary compensation in connection with the exchange.”

Note that in the context of educational student media, almost all of which are run on a “not-for-profit” basis, the fact that ads are sold or that (as in the case of a yearbook) the publication itself may be sold to the school community does not automatically transform the user into a “commercial” user. As long as the publication is associated with an educational institution and is operated for educational purposes – as opposed to a community magazine that happens to be run by college students but is otherwise a for-profit business operation – the publication should qualify as “noncommercial.”

The “share alike” feature is another potentially formidable provision of some of the licenses. Under this feature, whoever uses the work must license their new work under the same terms as the original share alike license. For instance, Bayard explained, if you use a photograph with a share alike license and put it into a larger work, you are obligated to distribute your larger work under the same share alike license.

Benefits of Creative Commons Licenses

Broad Dissemination: The biggest benefit of acquiring a Creative Commons license, according to Creative Commons attorney Peters, is that “if you want to be read, if you want your work to travel far and wide, and if you want attribution,” a Creative Commons license is far better than “all rights reserved.” Without such a license, third parties may stop before redistributing a work because of the time, and potential expense, of obtaining permission.

Bayard added that Creative Commons licenses are “a new way of thinking about intellectual property.” They are used by people who desire to share and make their work useful for others, he continued. “The ethos is that it’s a nicer way to deal with the world when it comes to intellectual property,” he said.

Cost: A second benefit is that Creative Commons licenses are free. Although relatively low, there is a monetary cost to copyright registration (starting at the $35 filing fee for a single application, single author, one work).

In terms of time, rather than monetary cost, however, it is a tossup. In the case of Creative Commons, one must figure out which license works best. Although the “simple License Chooser” is provided online, “simple” may be a misnomer for first time users and others without copyright expertise. On the other hand, in the case of registering a copyright, time must be spent finding the appropriate online form, completing and filing the paperwork. Today, when “everything is so fast,” Bayard stated, filing a copyright registration simply may not “fit with the way that people create and publish.”

Pitfalls of Creative Commons Licenses

Who are My Re-users?: Despite the potential for free, broad dissemination, Creative Commons licenses do have limitations. First, as of today, there is no mechanism to see who is using your work under the licenses, or how extensively it is being used. As Peters put it, “we are not a registration system.” An author can, of course, do a Web search for his or her name, title, and Creative Commons license to find instances of people using the work. However, even Peters conceded that such a search “is not perfect,” and she indicated that Creative Commons is working now on a “tracking back” mechanism to solve this potential pitfall.

If, for instance, a work is taken and used in connection with a site that is, for whatever reason, undesirable to the creator, the creator would have no recourse against the user, provided that the user has complied with the terms of the Creative Commons license. Creative Commons licenses are irrevocable. To the extent that you want to retain a sense of control over your work, Creative Commons will not provide you with that control, Bayard emphasized.

What if there is a breach?: The second potential drawback to a Creative Commons license is that it’s not entirely clear how the courts will respond if the owner brings a claim against a user who breaches the license (by a commercial instead of a non-commercial use, or improper or no attribution given, for example). Because proof of ownership may be an essential part of establishing a breach of the agreement, the owner probably will need to show proof of copyright ownership, which means registering
the copyright. That means enforcement of a Creative Commons agreement may not be much simpler than pursuing a traditional copyright infringement claim, which also requires proof that the copyright was registered at the time of the lawsuit.

This may not be a problem for those who wish to widely disseminate their works, either with or without a Creative Commons license, but it is a consideration for creators before they choose to bypass the traditional copyright registration process. Litigation for Creative Commons license breaches, according to Peters, is a rare occurrence\(^\text{11}\), and in the handful of cases that have been brought, she stated, the licenses have been enforced. They “operate robustly in a court of law.”

“For the most part” though, Peters said, this is not a big concern to Creative Commons licensors. “People reusing Creative Commons licenses tend to do a good job [of abiding by the license terms].” Although the licenses are irrevocable\(^\text{12}\), they terminate automatically if violated. However, starting with the 4.0 licenses, the license reinstates if the violator corrects the breach within 30 day of discovering it, Peters stated.

And, yet, copyright registration does not provide a panacea for a breach either. Bayard explained that even if you do register your copyright and try to enforce it, you cannot necessarily control “the bad actors who are going to take your work and do what they want with it.” In other words, people infringe copyrights. The time and expense of going after those infringers is often prohibitive for many copyright owners, and so copyright holders may not have the resources, in terms of either time or expense, to exercise the rights available to them based upon their registrations.

**Conclusion**

The Creative Commons licenses depend on the existence of copyright, or, as the University of Minnesota, a Creative Commons user, explains on its website, “Creative Commons is not ‘anti-copyright’, or even an alternative to copyright - it’s just an option of a different way to share works, and it fundamentally relies on copyright - you must own a copyright in a work in order to make it available under a Creative Commons licenses.”\(^\text{13}\) Yet, creators who choose a Creative Commons license, or other similar, available pre-prepared licenses, over a more traditional “all rights reserved” approach with a federal copyright registration, should be aware of both the benefits and the pitfalls, and make informed decisions about the dissemination and protection of their original works.

Attorney Carolyn Schurr Levin, a lecturer at Stoney Brook University School of Journalism and LIU Post School of Visual and Performing Arts, is a former vice president and general counsel at Newsday and a veteran college newspaper adviser.

**Endnotes:**
2. According to economist Gary Becker and federal judge Richard Posner on their University of Chicago Law School Blog, http://www.becker-posner-blog.com/2012/09/do-patent-and-copyright-law-restrict-competition-and-creativity-excessively-posner.html, “copyright protection seems on the whole too extensive. . . The most serious problem with copyright law is the length of copyright protection, which for most works is now from the creation of the work to 70 years after the author’s death. . . The copyright term should be shorter . . . The next most serious problem is the courts’ narrow interpretation of ‘fair use.’ The fair use defense to copyright infringement permits the copying of short excerpts from a copyrighted work without a license, since the transaction costs of negotiating a license for a short excerpt would tend to exceed the value of the license. The problem is that the boundaries of fair use are ill defined, and copyright owners try to narrow them as much as possible, insisting for example that even minute excerpts from a film cannot be reproduced without a license. Intellectual creativity in fact if not in legend is rarely a matter of creation ex nihilo; it is much more often incremental improvement on existing, often copyrighted, work, so that a narrow interpretation of fair use can have very damaging effects on creativity. . . The need for reform . . . is sufficiently acute to warrant serious attention from Congress and the courts.”
3. According to the statement of Acting Register of Copyrights, Maria A. Pallante, before the Subcommittee on Legislative Branch Committee on Appropriations, United States House of Representatives, 112th Congress, 1st Session, March 11, 2011, in fiscal year 2010, the U.S. Copyright Office received 522,796 new claims and processed 682,148 (counting claims carried over from prior years), out of which it registered 636,527 claims.
4. http://creativecommons.org/about
10. http://creativecommons.org/licenses/
11. http://creativecommons.org/choose/
12. http://wiki.creativecommons.org/Case_Law
13. http://wiki.creativecommons.org/FAQ#When_do_Creative_Commons_licenses_expire?
The Student Press Law Center gratefully acknowledges the generous support of the following institutions and individuals who have joined in our effort to defend the rights of student journalists.

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