

PERSPECTIVES: FIRST AMENDMENT ANALYSES
OF COMMUNICATIONS POLICY ISSUES

**The New Media and the First Amendment:
Where Are the Champions?**

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The Consumer Electronics Show in Las Vegas is a lot of things every year, including one of the country's largest trade shows. Above all, it is a colossal extravaganza of glitz and gadgetry that promises to empower us, liberate us, boost our status, and enhance the quality of our lives by giving us ever more ways to send and receive information (mostly of the entertainment variety).

But even as some 10,000 new products designed to further our freedom of expression are introduced here annually, there is one perennial wallflower at this Vegas party that seems oddly quaint and not a little uneasy amid all the digital debutantes: the First Amendment.

How can it be that the constitutional underpinning that makes freedom of expression possible is so little in evidence here, at what may be the country's biggest celebration of free speech -- even at the seminars and panels that comprise the educational portion of this mega-event?

There are reasons, to be sure, that go beyond this show and get to the heart of the new Internet-driven media themselves. But, anew each year, this tech fest brings into focus a stark reality that First Amendment advocates must acknowledge: Too many players in the new generation of digital media either do not understand the First Amendment, or think the First Amendment is irrelevant to their piece of the digital action, or both.

This is a dangerous situation. Think about it: Many of those who have the strongest incentive (*i.e.*, an economic interest in speech) to protect and advance the First Amendment are indifferent toward it. And these digital gurus are the future of America's media. What does this bode for the future of free speech and free press as we know it?

Let's step back and look at how we got here. First, there is ample evidence that many of the players in the digital revolution do not have an accurate understanding of what the First Amendment does and does not protect. How many believe that the First Amendment is a personal guarantee that one can say or post anything one desires without being stifled by anyone? (Of course, the First Amendment protects only against government censorship of speech.) How many view it as a rationale for downloading or even pirating copyrighted material? ("Hey, speech isn't free if you have to pay for it!")

Second, there is a tendency among the Internet-driven media to marginalize the First Amendment as something irrelevant to their interests. And just what are those interests? Technological innovation, software and hardware applications, content availability, distribution

platforms, consumer acceptance, cost per unit ... business considerations wherein technology and the marketplace trump policy concerns. Even among the more policy savvy, one is lucky to find more than a vague recollection that free speech on the Internet was guaranteed somehow by the courts a few years ago. Case closed. No need to worry about the First Amendment.

As the media become increasingly digital and Internet-centric, who will step forward to champion freedom of speech? And who will champion freedom of the press, at a time when the “press” is becoming more decentralized and more amorphous by the day?

These are important questions, because the “free speech” status of the Internet is something that no one can take for granted. Restrictions on Internet speech are only one misguided law away. The courts can and will step in, one trusts, but it can take years to clean up a First Amendment debacle.

Right now, the equipment manufacturers appear to be the standard bearers for the First Amendment rights of the new media. More precisely (and the Vegas show notwithstanding), the equipment makers’ Washington reps aren’t afraid to invoke free-speech arguments in policy circles. But even within this industry, and certainly among the new media generally, we have yet to see emerge an entrepreneur or company head willing to lead the First Amendment fight in the way that William Paley championed freedom of speech in an earlier era.

We need a new generation of First Amendment champions. They must, of necessity, be recruited widely from the ranks of the new media. Before they can be champions, however, they must be educated about the First Amendment. They must realize that the First Amendment will prove utterly and crucially relevant to all manner of digital media in coming years. And they must be willing to embrace our cherished constitutional guarantee of free speech and free press as their unqualified ally.

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