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## Media Law & Ethics Enter the 21st century, Introduction to Symposium

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## INTRODUCTION

*Richard J. Peltz\**

*Our destiny rules over us, even when we are not yet aware of it; it is the future that makes laws for our today.<sup>1</sup>*

In 1947, a "Commission on Freedom of the Press," under the direction of University of Chicago Chancellor Robert M. Hutchins, imagined the future of news.<sup>2</sup> Families around the breakfast table, the Commission supposed, would take advantage of wireless, FM transmissions and the latest in facsimile technology.<sup>3</sup> At 5 a.m. each day, table-top machines would deliver a daily dose of news from local radio stations and generate a newspaper—folded, just like the old-fashioned black and white.<sup>4</sup> It seemed safe to say, in 1947, that if you were a press operator, a delivery truck driver, a newsstand seller, or a paperboy, you ought to be learning other skills.

Now, in the year 2000, we can say with some conviction that the Commission was wrong. Newspapers still arrive by bouncing against our doors. Radio stations are seeking their niche in the new information order, but as a general rule, they still broadcast voices, not data streams. Faxes, it turns out, are found more often in the office than in the home, and the machines that make them are connected to the wall with ordinary wires. Maybe we have not come so far.

Or maybe the Hutchins Commission was not wrong so much as premature. Most people today do tune their TVs for news before turning to newspapers.<sup>5</sup> More and more, people are going online.<sup>6</sup> They

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1. FRIEDRICH NIETZSCHE, *HUMAN, ALL-TOO-HUMAN* ch. 7 (Helen Zimmern trans., 1909-13) (1878), reprinted in Paul Douglas, *Preface to Human, All-Too-Human* (abridged HTML ed.) (visited Sept. 4, 2000) <[http://www.inquiria.com/nz/hah/hah\\_preface.html](http://www.inquiria.com/nz/hah/hah_preface.html)>. Quotation suggested to this author by Christopher C. Crenshaw.

2. For a thorough retrospective of the Hutchins Commission, including the reason for its assembly and its poor reception in the journalism community, see volume 3, number 2 of *COMMUNICATIONS LAW & POLICY*, Spring 1998.

3. See *THE COMMISSION ON FREEDOM OF THE PRESS, A FREE AND RESPONSIBLE PRESS: A GENERAL REPORT ON MASS COMMUNICATION: NEWSPAPERS, RADIO, MOTION PICTURES, AND BOOKS 34-35* (1947) [hereinafter *HUTCHINS COMMISSION*].

4. See *id.*

5. See, e.g., The Pew Research Center for People and the Press, *1998 Media Consumption: Section 3* (visited Sept. 4, 2000) <<http://www.people-press.org/medsec3.htm>>.

6. See, e.g., The Pew Research Center for People and the Press, *Technology 1998:*

can read headlines, link to items of particular interest, and print out stories they like. Television and the Internet are on a collision course,<sup>7</sup> and delivering the customized content the reader/viewer wants most is all the rage.<sup>8</sup> A web-linked television to sit atop your breakfast table is hardly fantastic. You can buy one at Kmart.<sup>9</sup>

The Hutchins Commission was right about so much else. Television would allow "[p]eople in remote parts of the globe . . . face-to-face observation of each other," the Commission predicted.<sup>10</sup> As yet, our toaster ovens do not double as "facsimile newspaper"<sup>11</sup> vendors. But with cable TV on the ground and satellite communications beamed from space, it is true that "[t]he farmer and the city dweller . . . have access to news of the same quality."<sup>12</sup> The Commission anticipated that "[t]he speed, quantity, and variety of mass communication will continue to increase . . . . [T]he citizen, who has always had to sift the material he has received, will now have a more complicated task than ever."<sup>13</sup> We do.<sup>14</sup>

Despite this "greater diversity of communication,"<sup>15</sup> the Commission contemplated a dramatic "concentration," or consolidation, of media power in few corporate hands, both in nationwide chains and in local monopolies.<sup>16</sup> Thus the Commission wondered: With the

*Summary* (visited Sept. 4, 2000) <<http://www.people-press.org/tech98sum.htm>>; The Pew Research Center for People and the Press, *1998 Media Consumption: Section 1* (visited Sept. 4, 2000) <<http://www.people-press.org/medsec1.htm>>.

7. See, e.g., DIRECTV, Inc., *DIRECTV: Microsoft, DIRECTV and THOMSON Multimedia Join Forces to Make Television More Personal and Interactive* (visited Sept. 4, 2000) <<http://www.directv.com/press/pressdel/0,1112,330,00.html>>; WebTV Networks, Inc., *Microsoft WebTV Networks, Inc.* (visited Sept. 4, 2000) <<http://www.webtv.net>>; Real Networks, Inc., *Real Broadcast Network—About* (visited Sept. 4, 2000) <<http://www.realnworks.com/rbn/about.html?src=realnetworks,nosrc>>.

8. See The Pew Research Center for People and the Press, *Technology 1998: Summary*, *supra* note 6; DIRECTV, Inc., *supra* note 7; see also, e.g., Microsoft Corp., *Welcome to MSN.com* <<http://www.msn.com/personalize/main.asp?CAT=2>>.

9. See WebTV Networks, Inc., *Products: Store Locator* (visited Sept. 4, 2000) <<http://www.webtv.com/products/lookup/find.asp>>.

10. HUTCHINS COMMISSION, *supra* note 3, at 35.

11. *Id.* at 34.

12. *Id.* at 35.

13. *Id.* at 36.

14. See, e.g., The Pew Research Center for People and the Press, *Technology 1998: Summary*, *supra* note 6.

15. HUTCHINS COMMISSION, *supra* note 3, at 36.

16. *Id.* at 37-44. Consolidation also characterizes today's media. See, e.g., Steven Brill, *Must Merge TV*, BRILL'S CONTENT (Feb. 1999) <[http://www.brillscontent.com/features/merge\\_0299.html](http://www.brillscontent.com/features/merge_0299.html)>; see also Calvin Trillin, *A Little Too Cool*, BRILL'S CONTENT (Sept. 2000) at 55 (wondering whatever we might fear from "two mega-

immeasurable power of burgeoning technologies increasingly concentrated in profit-oriented big businesses, would the press “rise to its responsibility” to “a world of nations seeking understanding?”<sup>17</sup> Or would “irresponsibility deprive it of its freedom?”<sup>18</sup>

Today we find ourselves in a world where the once fantastic has become commonplace. We can search worldwide catalogs of libraries,<sup>19</sup> listen to radio from foreign countries,<sup>20</sup> and tour the wonders of the world,<sup>21</sup> all from our home computers. We talk on wireless telephones and in virtual “rooms” to people the world over about everything from aardvark poetry<sup>22</sup> to ZZ Top.<sup>23</sup> We watch the movies we want when we want them<sup>24</sup> without having to go to a theater to pay too much for popcorn<sup>25</sup>—even though sometimes we go because the screen is bigger and the butter tastes better. We expect—not hope, not merely desire, but expect—to watch Olympic events in Australia as they happen, or when we wake up in the morning, whichever we choose.<sup>26</sup> Our science fiction today shows us a future in cyberspace where we can not only read and “chat,” but live and die.<sup>27</sup> In the year 2000 we have completed

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corporations in a hair-pulling match”). The fallout from consolidation is not pretty. See, e.g., Elizabeth Lesly Stevens, *Mouse\*ke\*feer*, BRILL'S CONTENT (Dec. 1998/Jan. 1999) <[http://www.brillscontent.com/featuresmouse\\_0199.html](http://www.brillscontent.com/featuresmouse_0199.html)> (inquiring whether Disney-owned ABC News killed a story about its corporate parent).

17. HUTCHINS COMMISSION, *supra* note 3, at 51.

18. *Id.*

19. See, e.g., Online Computer Library Center, Inc., *OCLC: A Global Library Cooperative, Serving Libraries Since 1967* (visited Sept. 4, 2000) <<http://www.oclc.org/oclc/about/brief.htm>>.

20. See, e.g., Brian Buckley, *Live Radio on the Internet: Thousands of Live Radio Stations Broadcasting Straight to YOUR Computer!* (visited Sept. 4, 2000) <<http://www.live-radio.net/info.shtml>>.

21. See, e.g., Cable News Network, Inc., *Destination: The Seven Wonders of the Ancient World* (visited Sept. 4, 2000) <<http://www.cnn.com/TRAVEL/DESTINATIONS/9705/seven.wonders/>>.

22. See Yahoo! Inc., *Yahoo! Clubs aardvarkspoetsite* (visited Sept. 4, 2000) <<http://clubs.yahoo.com/clubs/aardvarkspoetsite>>. Admittedly, the connection to aardvarks is vague.

23. See Yahoo! Inc., *Yahoo! Clubs zztotforever* (visited Sept. 4, 2000) <<http://clubs.yahoo.com/clubs/zztotforever>> (fan club).

24. See, e.g., DIRECTV, Inc., *DIRECTV: Movies This Month on DIRECTTICKET Pay Per View* (visited Sept. 4, 2000) <<http://www.directv.com/movics/moviespages/0,1100,136,00.html>>.

25. See E! Online, *Theater Popcorn, Soda Prices Godzilla-Sized* (visited Sept. 4, 2000) <<http://209.185.102.201/News/Items/0,1,3326,00.html>>.

26. See Randall E. Stross, *Be a Sport, NBC: How Could a Real Olympics Webcast Hurt?*, U.S. NEWS & WORLD REPORT (Aug. 21, 2000) <<http://www.usnews.com/usnews/issue/000821/21domain.htm>>.

27. See, e.g., THE MATRIX (Warner Bros. 1999).

a transition that after World War II had only just begun: Instead of technology surprising us with possibilities we had not imagined, we now expect technology to make our dreams come true.

Yet at this millennial threshold, we find ourselves asking the same question that was so pertinent to the Hutchins Commission more than fifty years ago. It bears repeating: With the immeasurable power of burgeoning technologies increasingly concentrated in profit-oriented big businesses, will media rise to their responsibility to a world of nations seeking understanding? Or will irresponsibility deprive media of their freedom?

Thus for the Ben J. Altheimer Symposium in the year 2000, we gathered media experts of various specialties and interests to talk about the convergence of media law, ethics, and new technologies at century's end. The complex interaction of these topics is at the heart of every issue the media face in the information age. No question of either media law or ethics can be answered without reference to the other; moreover, to address any such question is futile unless one also considers the impact of new technologies. For examples:

Should the media be held liable at law in the latest wave of tort litigation under theories unrelated to publication, such as fraud and breach of contract? How far should constitutional protections extend? These legal questions cannot be answered without considering ethical responsibilities to subject and audience. Have the media gone too far? Should they be reined in by law, as the Hutchins Commission feared would be necessary absent self-restraint?<sup>28</sup> And what of new technologies that make invasive reporting that much easier and image manipulation that much more credible?

Has journalism yet become a profession? Should it? Must it? This perennial quandary in ethics cannot be discussed without reference to the legal implications. Will any attempt at journalistic self-restraint be co-opted by plaintiffs to abridge expressive freedom? Or does the free marketplace of ideas condemn media ethics to the least common denominator? As new technologies make it so much easier for information providers to cater to public tastes, or lack of tastes, will ethics be left behind, an antiquated ideal?

Our symposium keynote speaker, David Broder, gave us insights into the complex dance of law and media, and how technology is changing the steps. In our first panel, Robert Drechsel and Don Tomlinson addressed media responsibility in the information age,

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28. See HUTCHINS COMMISSION, *supra* note 3, at 90.

sharing their visions of how to distinguish ethical responsibility and legal liability. In our second panel, Eric Easton, Dennis Hale, and Sandra Chance examined how law, technology, and social trends are shaping the way journalists do their jobs, and what must be done to preserve the interests of journalists and the public alike. Our third panel took on tort law. David Logan and Susan Gilles looked at how the media fare in tort litigation and suggested how they ought to fare in an age when information fast and furious means big money, but plaintiffs are eager to combat inaccuracy and offensive conduct. Joseph Beard demonstrated the power of digital manipulation in advertising and entertainment, and how the law must be employed to deter exploitation. And in our final panel, Jane Kirtley, Robert Trager, and Michael Geist painted an international picture. They each pondered, from a different perspective, the significance of our national debates over media law and ethics when new technology assures that a global media culture lies right around the corner.

In newsrooms, there is a saying: "Nothing happens for the first time."<sup>29</sup> That means that when the city commissioner is caught taking a bribe, he is not the first commissioner ever to take a bribe, and it might not even be the first bribe he ever took. Journalists are supposed to be mindful of the past, to maintain the public's institutional memory; that makes for effective reporting. But there is more at stake. We count on media to give us a sense of belonging and understanding by putting new information in the context of our common social and cultural history.

We stand now on the verge of the twenty-first century: an artificial construct yes, but a culturally significant time nonetheless.<sup>30</sup> We are the world the Hutchins Commission foresaw: the world of nations seeking understanding, seeking destiny. We will not predict the future with perfect accuracy, though we will try, because that is our nature. In our effort, we must be mindful that the questions we are asking are not new; they have been asked before and will be asked again. But let us see what we have to say about them today.

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29. I learned this saying from Professors Brian E. Richardson and Hampden H. Smith at Washington & Lee University, but I do not know its origin. Possibly it was never said for the first time.

30. See generally STEPHEN JAY GOULD, *QUESTIONING THE MILLENNIUM: A RATIONALIST'S GUIDE TO A PRECISELY ARBITRARY COUNTDOWN* (rev. ed. 1999).