
COMMUNICATION LAW IN AMERICA

PAUL SIEGEL

FOURTH
EDITION



Communication Law in America

Fourth Edition

PAUL SIEGEL

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Communication Law in America

*To Ketan Bulsara,
Without whom neither this nor any subsequent editions
of the book would be possible.*

Preface to the Fourth Edition

I am writing these words in the fall of 2013, a couple of months before *Time* magazine is to announce its “Person of the Year.” While I am not much of a soothsayer, I can report with confidence that Edward Snowden will at least be among a short list of finalists. Snowden, you likely know, is the former government contractor (working indirectly for the National Security Agency) who leaked an enormous trove of classified documents to the press. Documents already revealed detail the government’s surveillance of millions of Americans’ phone, e-mail, and online search records. Mr. Snowden is still living in Russia, hoping to find another country that will embrace him and deny U.S. requests to extradite him for prosecution. [Update: Oops. Snowden lost out to Pope Francis.]

The Snowden revelations are probably the most newsworthy event relevant to communication law since the previous edition of *Communication Law in America*, and we are beginning to see federal courts struggle to deal with the constitutional implications of the leaks and the government behaviors revealed by them. Undoubtedly all branches of the federal government will continue to react to Snowden’s revelations for many years to come.

The three years since publication of our third edition have not been marked with *monumental* Supreme Court decisions affecting communication law, though we certainly have seen a large number of noteworthy decisions. Since our last edition, the Court has ruled on the following:

- The government may not require organizations receiving government funding to fight such diseases as AIDS and tuberculosis to create policy expressly opposing prostitution.¹
- States may refuse to honor freedom of information requests from other states.²
- State departments of motor vehicles should likely not have provided attorneys the

1. *Agency for International Development v. Alliance for Open Society International*, 133 S. Ct. 2321 (2013).

2. *McBurney v. Young*, 133 S. Ct. 1709 (2013).

names and contact information of persons for the purpose of soliciting their participation in a possible lawsuit against car manufacturers.³

- The government may not punish individuals who lie about having received a Medal of Honor.⁴
- Individual states may not place limits on independent expenditures by corporations on behalf of political candidates.⁵
- The FCC's application of rules against broadcast indecency to "fleeting" expletives and very brief shots of nudity violated broadcasters' due process rights.⁶
- A California law prohibiting the sale of violent video games to minors was a violation of the First Amendment.⁷
- Vermont could not prohibit data miners from marketing lists of which physicians most frequently prescribed which medications.⁸
- Nevada could demand that a city council member recuse himself from voting on a matter in which he had a potential financial conflict of interest.⁹
- A civil suit against antigay protestors at a military funeral would be a violation of the First Amendment.¹⁰
- The Freedom of Information Act's personal privacy exemption does not cover the "privacy" of corporations.¹¹

Beyond explication of these high-court decisions, the fourth edition boasts over 330 new citations to court cases, statutes, and secondary sources, 35 of those with new visuals, and over 20 of them are demonstrated more fully with videotapes of the relevant artifacts on my website (www.paulsiegelcommmlaw.com). These suits involve such movies as *Alien v. Predator*, *The Blues*, *Brüno*, *Central Park Five*, *Hangover II*, *Midnight in Paris*, *Joan Rivers: A Piece of Work*, *Saving Private Ryan*, and *Soul Men*, and TV shows like *Brick City*, *COPS*, *CSI*, and *Touch*. Throughout the text you will see the icon shown in the margin whenever a video associated with a court case can be seen at my website.



This edition also provides, in chapter 2, a new section on First Amendment limita-

3. *Maracich v. Spears*, 133 S. Ct. 2191 (2013).

4. *U.S. v. Alvarez*, 132 S. Ct. 2537 (2012).

5. *American Tradition Partnership v. Bullock*, 132 S. Ct. 2490 (2012). The decision was a natural extension of the logic from the *Citizens United v. Federal Election Commission* decision, 558 U.S. 310 (2013). In the first week of its 2013–2014 term, the Court heard oral arguments in a case that might result in the removal of limitations on individuals' total contributions to political campaigns. The decision in *McCutcheon v. Federal Election Commission* is expected by June 2014. The lower court ruling, upholding the limits, is found at 893 F. Supp. 2d 133 (D.D.C. 2012).

6. *F.C.C. v. Fox Television Stations*, 132 S. Ct. 2307 (2012).

7. *Brown v. Entertainment Merchants Association*, 131 S. Ct. 2729 (2011).

8. *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (2011).

9. *Nevada Commission on Ethics v. Carrigan*, 131 S. Ct. 2343 (2011).

10. *Snyder v. Phelps*, 131 S. Ct. 1207 (2011).

11. *F.C.C. v. AT&T*, 131 S. Ct. 1177 (2011). As was predicted in an early update to the third edition, the Supreme Court here indeed did overturn an appellate court decision to the contrary.

tions in special settings—schools, government employment in general, and the military. In part to make room for this section and the many new examples and visuals, previous chapters on broadcasting and on the Internet have been combined into a single chapter on electronic media. I believe the condensation is justified by the continuing deregulation of electronic media, such that many scholars predict that we may be just a generation away from experiencing the logical implications of media convergence: one-size-fits-all communication law across all platforms.

Numerous individuals' assistance has, as always, been invaluable in the preparation of this edition. Often that assistance has taken the form of busy professionals taking time out to track down and provide to me, gratis, higher-resolution images of courtroom artifacts than I would otherwise be able to obtain on my own. Thanks are thus due to Bryce Albu, Linda Bean, James E. Beasley Jr., J. Michael Hayes, Mike Kuznet-sky, Allen P. Lohse, Phuong Luu, John McCabe-Juhnke, Brian Turany, and Steven D. Zansberg.

Sometimes the assistance has instead manifested itself in cogent advice, sometimes encouraging me to pursue an idea, and other times very appropriately pointing to the error in my ways. For both kinds of counsel, I am grateful to Robert Alpert, Steven Busch, Mark Cistulli, Roxane Coche, Leonard D. Van Slyke, Jane Kirtley, Vance R. Koven, Jamison M. Mark, Kathleen Olson, Jim Sernoe, Leonard D. Van Slyke, and John C. Watson. Ashley Messenger, who teaches courses I used to teach at American University (they are good students, there, aren't they, Ashley?), and whose "real" day job is with National Public Radio, has been most generous, especially in that she is author of a competing text in the field (*A Practical Guide to Media Law*). Careful readers of the text will know that I am an NPR junkie. As such, I really need to send a special shout out to John Dankosky and Colin McEnroe at WNPR in Hartford, simply for saying such clever things and not taking umbrage when I steal shamelessly from them.

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