

The Historical Society of the New York Courts
The 2013 David A. Garfinkel Essay Contest

Cyberspace and the Law: What are Our Rights and Responsibilities?

Most people agree that modern society has benefitted in countless ways from the development of the Internet and other digital technologies. Cyberspace is such a valuable part of our everyday lives that we seldom stop to think about how our constitutional rights are impacted by it. Nonetheless, we are at a defining moment in history and decisions made today concerning the application of our Federal and State constitutional rights to cyberspace will impact our lives and those of future generations for better or for worse. *The Historical Society of the New York Courts* is pleased to announce:

The 2013 David A. Garfinkel Essay Contest

Cyberspace and the Law: What are Our Rights and Responsibilities?

Cyberbullying is the first issue we examine. In March 2012, former Rutgers freshman Dharun Ravi was found guilty of a hate crime based upon his use of a webcam to spy on his college roommate and his subsequent broadcast on iChat of the video of his roommate in a sexual encounter with another man. Shortly afterward, his roommate, 18-year-old Tyler Clementi, indicated in a Facebook post that he intended to jump from the George Washington Bridge. Clementi's body was found in the Hudson River the following day. Ravi was prosecuted in the New Jersey Superior Court, found guilty and sentenced to jail. Unfortunately, the Tyler Clementi-type tragedy is all too common and many young people have taken their lives as a result of cyberbullying. A great number of others have suffered serious psychological harm. Cyberbullying is now one of the top challenges facing schools and colleges.

Digital Piracy is the second issue and involves the misappropriation of copyrighted digital files. In May 2012, the Supreme Court of the United States refused to hear a constitutional challenge by a Boston University PhD student to a \$675,000 penalty imposed on him by the courts for illegally downloading and sharing 30 songs. Joel Tenenbaum had been warned that his downloading and file sharing activities could lead to trouble—by his father in 2002, his college in 2003, and the Recording Industry Association of America in 2005. Despite these warnings, Tenenbaum continued to download and distribute copyrighted materials and was sued by the music companies (Sony BMG Music Entertainment et al. v Tenenbaum). Industry sources indicate that copyright infringement costs billions of dollars in lost sales and has led to the loss of thousands of jobs. While the media companies may be suffering harm from digital piracy, consumers too have been negatively impacted by conditions the industry imposes when downloads are purchased. Unlike the ownership rights we have in CD, DVD and book formats,

purchasing digital downloads provides us only with a non-transferable right to possess a copy of the digital file. When we no longer want it, we can't pass it along to a friend, sell it on the "used goods" market or bequeath it in our wills. Bruce Willis, who has a huge digital music library that he wants to leave to his daughters, is planning to sue Apple over the terms and conditions it imposes at the time a download is purchased.

The Right to Privacy is the third issue. In New York, the right to privacy was first raised by Abigail Roberson, a very pretty 18-year-old from Rochester, New York, who sat for a studio portrait. She showed the beautiful photograph to her boyfriend, who asked to "borrow" it. The photograph was used (without her consent) in an advertising campaign for baking flour. Abigail sued, but New York's highest court, the Court of Appeals, held that the common law did not recognize a right of privacy (Roberson v Rochester Folding Box Company). Shortly afterward, the New York State Legislature enacted sections 50 and 51 of the New York Civil Rights Law that prohibit the unauthorized use of an individual's picture for advertising or trade without the person's written consent. Today, businesses monitor our online behavior through cookies installed on our computers. Cookies track us as we search, browse or buy online. This tracking information, often acquired without our knowledge or consent, is compiled into a profile that is sold to other businesses. Consumers are increasingly concerned that, just like Abigail Roberson in her day, an aspect of their personal privacy, their digital profiles, are being purloined.

The use of electronic surveillance by law enforcement and other governmental authorities is the fourth issue. The right of a citizen to be free from unwarranted search and seizure is enshrined in the Fourth Amendment to the United States Constitution. As Justice Brandeis stated, "as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Today, new technologies such as surveillance cameras, drones, facial recognition software, automatic license plate recognition systems, and smart phone GPS records threaten our expectation of privacy in public spaces. In the 2009 case of People v Weaver, the New York Court of Appeals addressed the issue of GPS monitoring through a tracking device attached to a vehicle. In 2012, the United States Supreme Court heard a similar case, U.S. v Jones. Nowadays, due to technological developments, law enforcement no longer needs to attach an actual tracking device to collect GPS data. Our "right to be let alone" may be in jeopardy.

Resources

To assist you in your research for your essay, *The Historical Society of the New York Courts* has set up a website with useful links. To access the website, please click [here](#).

Prizes and Awards

This year, in recognition of New York's two great Community College systems, the CUNY Community Colleges and the SUNY Community Colleges, *The Historical Society of the New York Courts* has established prizes named in their honor. All essays submitted will be reviewed by our judges to determine the best overall essay. That student will be awarded *The David A. Garfinkel New York Community Colleges Essay Prize*. Next, our judges will determine the best essay submitted by a student attending a CUNY Community College—that student will be awarded the *The David A. Garfinkel CUNY Community Colleges Essay Prize*, and the best essay submitted by a student attending a SUNY Community College—that student will be awarded *The David A. Garfinkel SUNY Community Colleges Essay Prize*.

The David A. Garfinkel New York Community Colleges Essay Prize: \$1,500

The David A. Garfinkel CUNY Community Colleges Essay Prize: \$1,000

The David A. Garfinkel SUNY Community Colleges Essay Prize: \$1,000

The winners will be honored at the Law Day ceremony at Court of Appeals Hall in Albany, an event at which the Chief Judge of the State of New York presides and State dignitaries attend. Following the ceremony, *The Historical Society of the New York Courts* will host a luncheon for the prize winners and their families. The professors who mentor the prize winners and their college presidents will also be invited to attend the Law Day ceremony and luncheon. The prize-winning essays will be published on the website of *The Historical Society of the New York Courts*.

Honorable Mention Awards

The names of the students receiving *Honorable Mention* awards will be included in an Honor Roll on the website of *The Historical Society of the New York Courts*.

ESSAY COMPETITION INSTRUCTIONS

Listed below are four questions related to *Cyberspace and the Law: What are Our Rights and Responsibilities?*

Pick one of these questions as the focus of your essay.

- ▶ **Cyberbullying:** Examine the newly-enacted New York law governing cyberbullying and analyze current research on cyberbullying prevention. How do we balance the First Amendment free speech rights of students with the need to prevent the harm (including death) to students who are the targets of cyberbullies?
- ▶ **Digital Piracy:** One of the benefits of cyberspace is the ease with which we can maintain contact with our friends and share important aspects of our lives. However, sometimes the things we'd

like to share are copyrighted artistic works and file-sharing would run afoul of copyright laws. How can we ensure that the rights of both the copyright owners and those of lawful download owners are fair and balanced?

- ▶ **Privacy in Peril:** Privacy is the power to control how much other people know about us. Few of us realize the extent to which our Internet activities are tracked or know that our digital footprints remain traceable, often for long periods of time. How can we balance our digital lives and our personal privacy?
- ▶ **Government Surveillance:** The right to be free of unwarranted search and seizure is enshrined in the Fourth Amendment of the U.S. Constitution. But new technologies—such as manufacturer-installed GPS systems in cars, cell phone tracking and the introduction of surveillance drones in the United States—have made widespread law enforcement and governmental surveillance of the American population possible. Is this technology eroding our Fourth Amendment rights and forcing us to change our expectations about privacy in public spaces?

Requirements

- ▶ The writer must be a student registered at a Community College within the SUNY or CUNY systems during the Fall semester of 2012 or the Spring semester of 2013.
- ▶ The essay must be an original work of scholarship.
- ▶ The essay must be at least 1,500 words in length and should not exceed 5,500 words. It must be written in English, double spaced, and formatted for 8-1/2" by 11" paper. **Neither the essay nor the title page may contain any identifying information** (i.e. do not include your name, your professor's name or the name of the school).
- ▶ The essay must be sent by e-mail attachment (PDF, Word or WordPerfect) to: History@nycourts.gov and **the body of the e-mail must contain (1) your name, (2) phone number, (3) home address, (4) the name of the college you attend and (5) the name of your professor.**
- ▶ All entries must be submitted to *The Historical Society of the New York Courts* by **April 5, 2013.**

Judging the Competition

A panel of members of the New York Bench and Bar will select the winning essays. Essays will be judged on:

- ▶ Understanding of the subject
- ▶ Effective presentation of a point of view
- ▶ Good literary style and technique

The Historical Society of the New York Courts is an education corporation chartered by the Board of Regents of The University of the State of New York.