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COMMUNICATION LAW AND POLICY RESEARCH IN NON-LAW PEER-REVIEWED JOURNALS, 2010-2019: TRENDS AND OBSERVATIONS

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Started in 1995, Communication Law and Policy is a premier outlet for peer-reviewed research on communication law and policy. But what other outlets are there for research on communication law and policy topics? In particular, which non-law, peer-reviewed journals are publishing articles on communication law and policy? And what topics do these journals cover? The purpose of this essay is to examine communication law and policy research that is being published in non-law, peer-reviewed journals. Examining the past ten years of publications in thirty-six journals, the essay documents the journals that have published research on communication law and policy topics and attempts to analyze these articles to provide a snap shot of the state of research in these journals. Finally, the essay attempts — albeit briefly — to address the direction in which communication law and policy research seems to be progressing in this set of journals and to detail some of the trends we see.

When *Communication Law and Policy* was launched in 1995, there were few peer-reviewed journals reviewing, accepting and publishing articles on communication law and policy. One of the purposes of starting the journal was to give members of the (then-called) Law Division of the (then-called) Association for Education in Journalism a place to have peer-reviewed work published. Today, *Communication Law and Policy*, the journal of the (now-called) Law and Policy Division of the (now-called) Association for Education in Journalism and Mass Communication, publishes a wide range of peer-reviewed articles from

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members and non-members on topics related to communication law and policy. The journal's "aims and scope" state:

The societal, cultural, economic, and political dimensions of communication, including the freedoms of speech and press, are undergoing dramatic global changes. The convergence of the mass media, telecommunications, and computers has raised important questions reflected in analyses of modern communication law, policy, and regulation. Serving as a forum for discussions of these continuing and emerging questions, *Communication Law and Policy* considers traditional and contemporary problems of freedom of expression and dissemination, including theoretical, conceptual, and methodological issues inherent in the special conditions presented by new media and information technologies.¹

But what other outlets are there for peer-reviewed research on communication law and policy? What is the state of peer-reviewed research on these topics?

For the twenty-fifth anniversary of *Communication Law and Policy*, our colleague and friend Wat Hopkins, the editor of the journal, asked us to provide an analysis of how communication law and policy research is being handled by non-law, peer-reviewed journals. The purpose of this essay is to present a kind of "state of the legal publishing world" for communication law and policy research that is being published in these journals.² The essay has two goals. First, it provides a list of non-law, peer-reviewed journals that have published research on communication law and policy over the last ten years in an attempt to determine what outlets are publishing this sort of work. For many communication law and policy scholars, we must be cognizant of publishing in two worlds. As legal scholars, it is important to have our work read by judges and policy makers, individuals who do not regularly read general peer-reviewed journals.³ These individuals

¹*Aims and Scope*, COMM. L. AND POL'Y, available at <https://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=hclw20> (last visited Mar. 31, 2020).

²This essay thus does not include research published in peer-reviewed publications that are devoted to communication law and policy issues, such as the *Journal of Media Law & Ethics*, *First Amendment Studies*, and the *Journal of Civic Information*. We focused our analysis on general peer-reviewed journals – that is, peer-reviewed publications that publish a wide range of topics and aren't devoted to communication law and policy topics exclusively.

³See Clay Calvert, *The State of Research on Communication and First Amendment Law in Traditional Law Journals: An Evaluative and Instructional Take*, *supra*, for a summary of the state of publication in law reviews.

are frequently the target of our scholarship and the ones most likely to cite our work. Therefore, it is important for communication law and policy scholars to communicate their research beyond traditional academia to the wider audiences that read law reviews such as professors in law schools and judges. Many of us, however, work at institutions or in units that require us to publish in peer-reviewed journals.⁴ Thus, it is important that young legal scholars demonstrate the ability to publish in peer-reviewed journals. Furthermore, it is important to have a diversity of journals on one's curriculum vita. This essay thus attempts to provide readers with a resource of peer-reviewed journals where their work might be published. Second, the essay attempts to analyze these articles published over the last ten years thematically to address what kinds of research are being published on communication law and policy topics in non-law peer-reviewed journals – to, as noted above, provide a snap shot of the state of research in these non-law journals. Finally, the essay attempts — albeit briefly — to address the direction in which communication law research seems to be progressing in this set of journals and to document some of the trends we see.

To these ends, we examined ten years of scholarship in thirty-six non-law, peer-reviewed journals.⁵ Every article in every edition of the journals published from January 1, 2010, to December 31, 2019, was examined to determine if the research in the article addressed a topic related to communication law or policy. We found 152 articles published in the journals examined during this time frame that contained research on communication law and policy topics. An article was included in our findings if it addressed a topic related to communication and included at least some information about law and policy related to that topic. Thus, if an article examined pornography or attitudes about pornography, but did not have a section on laws and policy related to pornography, we did not include the article in our analysis. If, however, the work included a discussion about attitudes towards

⁴Indeed, in writing letters of recommendation for tenure and promotion, at least one of us has expressed concern if a scholar never published his legal research in a law review and would also express concern if a scholar had no publications in peer-reviewed journals. While many department and college tenure and promotion committees are starting to recognize that law professors achieve tenure most often solely based on the submission and acceptance of articles to law reviews affiliated with law schools, which generally are edited by law students, other tenure and promotion committees are still focused on peer-reviewed journals and want pre-tenured faculty in communication and media programs to focus their attention on peer-reviewed journals. Junior faculty should be acutely aware of the requirements at their institution.

⁵See [Table 1](#) for a list of journals reviewed for this article.

pornography *and* a section on current laws or policies regarding pornography, we included this article in our analysis.

This essay begins with a section that outlines the names of the journals where we found research on communication law and policy and, perhaps as importantly, notes the journals that published no research on communication law and policy over the ten-year period. Our work found that many leading communication journals have published no work focusing on communication law or policy topics over the last ten years. The next section of the essay explores the wide variety of topics, methods and theoretical approaches used in these articles, focusing primarily on topics that averaged at least one article written per year on the topic across the journals we analyzed. We were impressed by the breadth of topics and approaches to communication law and policy being published in these journals. The essay concludes with our thoughts about the articles we examined and recommendations for the future.

ARTICLES BY JOURNAL

For this essay, we selected journals using a number of criteria. We examined journals associated with AEJMC, the International Communication Association, and the National Communication Association. We also consulted colleagues in journalism, communication, and media programs for information about non-law journals in which they had published. Finally, we consulted colleagues in political science for insight about journals in that discipline that publish research on communication law and policy topics. The journals we examined and the number of communication law and policy articles published in each are listed in [Table 1](#).

New Media & Society published the most communication law and policy articles (twenty-four) during the time frame we examined. The journal, “[E]ngages in critical discussions of the key issues arising from the scale and speed of new media development, drawing on a wide range of disciplinary perspectives and on both theoretical and empirical research.”⁶ The journal published articles on a wide range of communication law and policy topics, including Internet privacy, internet regulation, press freedom, the self-regulation of social media/search engines, and copyright. *Communication, Culture & Critique* published the next highest number of articles, publishing nineteen

⁶*About The Journal*, NEW MEDIA & SOC’Y, available at <https://journals.sagepub.com/home/nms> (last visited Mar. 31, 2020).

TABLE 1.
Number of Communication Law and Policy Articles Published, by Journal

| Journal | Number of Articles About Law and Policy Published, 2010-19 |
|--|--|
| New Media & Society | 24 |
| Communication, Culture & Critique | 19 |
| Telematics and Informatics | 14 |
| Journalism & Mass Communication Quarterly | 12 |
| Critical Studies in Media Communication | 11 |
| Journalism History | 10 |
| Journalism & Mass Communication Monographs | 7 |
| Journalism Studies | 6 |
| Newspaper Research Journal | 6 |
| Journal of Media Ethics | 5 |
| Political Research Quarterly | 5 |
| American Politics Research | 4 |
| Digital Journalism | 4 |
| Communication and Critical/Cultural Studies | 3 |
| Communication Theory | 3 |
| Journal of Computer-Mediated Communication | 3 |
| Mass Communication and Society | 3 |
| Journal of Communication Inquiry | 2 |
| Visual Communication Quarterly | 2 |
| Quarterly Journal of Speech | 2 |
| Annals of International Communication Association | 1 |
| Communication Research | 1 |
| Community Journalism | 1 |
| Journal of Media and Religion | 1 |
| Journal of International & Intercultural Communication | 1 |
| Journal of Sports Media | 1 |
| Journalism | 1 |
| Communication Monographs | 0 |
| Electronic News | 0 |
| Human Communication Research | 0 |
| Journal of Applied Communication Research | 0 |
| Journal of Communication | 0 |
| Journal of Public Relations Research | 0 |
| PS: Political Science & Politics | 0 |
| Public Opinion Quarterly | 0 |
| The Review of Communication | 0 |

over the ten-year period. *Communication, Culture & Critique*, an ICA journal, “[P]rovides an international forum for critical research in communication, media, and cultural studies.”⁷ Six of the nineteen articles in the journal came from a 2013 special issue on “Policy, Politics, and Discourse,” while three were published in a 2010 special issue on media governance. Media law and policy articles published in the journal included research on film censorship, television regulations, press freedom, video game regulations, copyright, media ownership, internet regulations, and articles that examined broad issues related to media policy.

Telematics and Informatics, published by Elsevier, “is an interdisciplinary journal publishing innovative theoretical and methodological research on the social, economic, geographic, political, and cultural impacts of digital technologies.”⁸ The journal published fourteen articles between 2010 and 2019 on communication law and policy topics. The articles often focused on technical aspects of regulations, such as broadband infrastructure, growth, and distribution.⁹ In addition, none of the articles examined focused exclusively on the United States, although two studies compared the United States to another country, something that should be of particular interest to our colleagues who conduct comparative legal research.¹⁰ Articles also examined a number of issues related to technology or digital media, including television regulations, broad examinations of media policy, copyright and internet regulations. *Journalism & Mass Communication Quarterly*, the flagship journal of AEJMC, published the fourth most articles during the time period we studied, twelve articles during the ten-year period. Topics published included copyright, Supreme Court justices’ articulation of the

⁷*About The Journal*, COMM., CULTURE & CRITIQUE, available at <https://academic.oup.com/ccc> (last visited Mar. 31, 2020).

⁸*Telematics and Informatics*, available at <https://www.journals.elsevier.com/telematics-and-informatics> (last visited Mar. 31, 2020).

⁹According to its Web site:

Application areas [of the journal] include smart cities, sensors and information fusion, the digital society and digital platforms, internet of things (IoT), cyber-physical technologies, privacy, knowledge management, distributed work, emergency response and hazards, mobile and wireless communications, health informatics, psychosocial effects of social media, ICT for sustainable development, blockchain, e-commerce, and e-government.

Id.

¹⁰Hanlong Fu & David Atkin, *DTV Standards and Transition: A Comparative Policy Analysis*, 30 *TELEMATICS AND INFORMATICS* 381 (2013); Yoonmo Sang, Jeong-Ki Lee, Yeora Kim & Hyung-Jin Woo, *Understanding the Intentions Behind Illegal Downloading: A Comparative Study of American and Korean College Students*, 32 *TELEMATICS AND INFORMATICS* 333 (2015).

original understanding of the First Amendment, student expression, defamation, privacy (including online), appropriation, freedom of information, television regulations and journalists' privilege. The journal also published an article that synthesized the legal research that had been published over time in *Journalism & Mass Communication Quarterly*.¹¹

Critical Studies in Media Communication published the next most articles (eleven) over the ten-year period. Most of these (seven) were published in a 2014 issue devoted to "Internet Policy Crises." Previously known as *Critical Studies in Mass Communication*, the journal is a peer-reviewed publication of NCA. The journal "publishes original scholarship in mediated and mass communication from a cultural studies and/or critical perspective. It particularly welcomes submissions that enrich debates among various critical traditions, methodological and analytical approaches, and theoretical standpoints."¹² Articles on communication law and policy published in the journal included pieces on media policy, internet policy and copyright. *Journalism History* published ten articles over the ten-year period on communication law and policy. *Journalism History* is the official peer-reviewed journal of the History Division of AEJMC,¹³ and many members of the Law and Policy Division are also members of the division. Legal topics appearing in *Journalism History* included press freedom, copyright, free press/fair trial and freedom of information.

After *Critical Studies in Media Communication* and *Journalism History*, the number of articles published by each journal dropped, with the rest of the journals publishing an average of fewer than one article per year on a communication law and policy topic. *Journalism & Mass Communication Monographs* had seven. It is important to note, however, that each issue of *Journalism & Mass Communication Monographs* typically features only one lengthy article, or monograph, per issue. *Journalism Studies* and *Newspaper Research Journal* published six articles on communication law and policy topics, and both the *Journal of Media Ethics* and *Political Research Quarterly* published five. *Political Research Quarterly*, a publication of the Western Political Science

¹¹Edward L. Carter, *Mass Communication Law and Policy Research and the Values of Free Expression*, 94 JOURNALISM & MASS COMM. Q. 641 (2017).

¹²Critical Studies in Media Communication, Journal Information, available at <https://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=rasm20> (last visited Mar. 31, 2020).

¹³About, JOURNALISM HIST., available at <https://journalism-history.org/about/> (last visited Mar. 31, 2020).

Association,¹⁴ published articles on pornography, campaign speech/campaign finance laws and press freedom. *American Politics Research*, a bi-monthly publication that publishes social science-based research from any discipline,¹⁵ published four articles. *Communication and Critical Cultural/Studies*, *Communication Theory*, the *Journal of Computer-Mediated Communication*, and *Mass Communication and Society* each published three articles addressing communication law and policy topics over the ten-year period. The *Journal of Communication Inquiry*, *Visual Communication Quarterly*, and *Quarterly Journal of Speech* each published two articles. Finally, the *Annals of International Communication Association*, *Community Journalism*, *Journal of Sports Media*, *Journalism*, and *Communication Research* each published one communication law and policy article between 2010 and 2019.

A number of journals in our analysis did not publish any articles on communication law and policy topics during this time. These included journals focused on political science and communication. *PS: Political Science & Politics*, *Public Opinion Quarterly*, *Communication Monographs*, *Journal of Applied Communication Research*, *Review of Communication*, *Human Communication Research*, *Electronic News*, *Journal of Public Relations Research*, and *Journal of Communication* did not publish any articles that focused on communication law and policy

¹⁴*Journal Description*, POL. RES. Q., available at <https://journals.sagepub.com/description/PRQ> (last visited Mar. 31, 2020). Again, because readers might not be as familiar with this journal as others discussed in this essay:

Political Research Quarterly is a peer-reviewed journal that publishes original research on all aspects of politics. Among the leading generalist journals of political science, *PRQ* seeks to publish significant contributions to knowledge which engage readers across multiple fields of scholarship, as well as exceptional contributions within specialized fields. Our authors and reviewers come from all over the world and from across the spectrum of methodological and substantive expertise. Both the journal and its host organization, the Western Political Science Association, have a reputation for showcasing pluralistic and intellectually innovative research, with special emphasis on transcending the boundaries that conventionally separate subfields, methods, and specializations.

Id.

¹⁵*About This Journal*, AM. POL. RES., available at <https://journals.sagepub.com/home/apr>.

The purpose of *American Politics Research* is to promote and disseminate high-quality research in all areas of American politics, including local, state, and national. *American Politics Research* will publish significant studies concerning American political behavior, political parties, public opinion, legislative behavior, courts and the legal process, executive and administrative politics, public policy, and all other topics appropriate to our understanding of American government and politics.

Aims and Scope, <https://journals.sagepub.com/aims-scope/APR> (last visited Mar. 31, 2020).

topics between January 2010 and the end of 2019. We were surprised that the communication journals in particular did not publish even a single article on a communication law and policy topic over a ten-year period.

ARTICLES BY TOPIC

The 152 articles covered a wide range of topics, used a variety of methods, and examined communication law and policy *via* a multitude of theoretical frameworks. Some of these topics were similar to work being published in *Communication Law and Policy*, while some were different. Similarly, while some of the articles used a traditional legal analysis — the predominant method used by articles published in *Communication Law and Policy* — many used different methods, such as survey research or interviews. If an article covered more than one topic, we counted it for multiple categories. For example, because Professor Patrick C. File's 2019 article in *Journalism & Mass Communication Quarterly* covered defamation, journalists' privilege, and press freedom more broadly, it was coded into all three categories.¹⁶ Therefore, the articles by topic add up to more than 152. The topics of the articles and numbers for each are listed in Table 2. The top six categories — press freedom/freedom of expression, copyright, Internet regulations, TV regulations, media policy and Internet privacy — all had an average of at least one article published on the topic per year over the ten-year period we examined. After these six, however, on average less than one article per topic per year was published in the thirty-six journals we reviewed. Eleven topics had only a single article each published during the period examined.

Press Freedom/Freedom of Expression

The most frequently addressed topic was press freedom and/or freedom of expression broadly defined. This included articles that used a variety of methods, including surveys, interviews and policy analyses to examine how a country's press freedom shaped the use of the Internet for protest and participation,¹⁷ the use of social media sites for protests after government crackdowns on media organizations,¹⁸

¹⁶Patrick C. File, *Journalism, Public, Policy: An Institutional View of the Press's Legal Discourse at the End of the 19th Century*, 96 JOURNALISM & MASS COMM. Q. 830 (2019).

¹⁷See Saifuddin Ahmed & Jaeho Cho, *The Internet and Political (In)equality in the Arab World: A Multi-country Study of the Relationship between Internet News Use, Press Freedom, and Protest Participation*, 21 NEW MEDIA & SOC'Y 1065 (2019).

¹⁸See Lisa Parks, Hannah Goodwin & Lisa Han, "I Have the Government in My Pocket ...": *Social Media Users in Turkey Transmit-trap Dynamics, and Struggles over Internet Freedom*, 10 COMM., CULTURE & CRITIQUE 57 (2017).

TABLE 2.
Number of Communication Law and Policy Articles, 2010-2019, By Topic

| Topic | Number of Articles Per Topic 2010-2019 |
|---|---|
| Press freedom/freedom of expression | 30 |
| Copyright | 25 |
| TV regulations/policy | 15 |
| Internet regulations/policy | 14 |
| Internet privacy | 11 |
| Media policy (broadly defined) | 11 |
| Freedom of information | 8 |
| Campaign finance laws/campaign speech | 6 |
| Pornography/child pornography/revenge pornography/sexting | 5 |
| Privacy (not online) | 4 |
| Social media/search engine self-regulation | 4 |
| Student expression | 3 |
| Defamation | 3 |
| Film censorship | 2 |
| Media ownership | 2 |
| Public forum/public sphere scholarship | 2 |
| Journalists' privilege | 2 |
| Coding and free speech | 1 |
| Video game regulations | 1 |
| Originalism and the First Amendment | 1 |
| Appropriation | 1 |
| Media rating systems | 1 |
| Bloggers' rights | 1 |
| Free press/fair trial | 1 |
| Commercial speech | 1 |
| History, technology and the law | 1 |
| True threats/incitement | 1 |
| Anti-SLAPP laws | 1 |

dissent in workplaces in China,¹⁹ how media organizations responded to government censorship,²⁰ or how media responded to a particular

¹⁹See Cheng Zeng & Stephen M. Croucher, *An Exploration of Organization Dissent and Workplace Freedom of Speech Among Young Professional Intra-urban Migrants in Shanghai*, 10 J. OF INT'L & INTERCULTURAL COMM. 201 (2017).

²⁰See Lisa Broton, *Media, Militarization, and Human Rights: Comparing Media Reform in the Philippines and Burma*, 4 COMM., CULTURE & CRITIQUE 229 (2011); Bilge Yesil, *Press Censorship in Turkey: Networks of State Power, Commercial Pressures, and Self-Censorship*, 7 COMM., CULTURE & CRITIQUE 154 (2014).

presidency.²¹ Other methodological tools were used as well. For example, a cross-national longitudinal study in *Mass Communication and Society* conducted statistical analyses on a sample of 101 nation states over a ten-year period to examine, among other things, the correlation between press freedom and the protection of human rights.²² The authors found that their analysis “provided strong support for scholars and observers who argue that communication has contributed to the improvement in human rights practices.”²³

Altogether we found fourteen historical examinations of press freedom, published in a variety of journals,²⁴ although most of these articles appeared in *Journalism History*. A 2016 article in *Journalism History*, for example, examined Thomas Jefferson’s views on freedom of the press, focusing specifically on a federal district court case involving Federalist critics of Jefferson who had libeled him.²⁵ Another article in *Journalism History*, this one from 2012, focused on how the colonial press in Virginia responded to the Stamp Act, concluding that

²¹See Qian Gong & Gary Rawnsley, *Media Freedom and Responsibility in South Korea: The Perceptions of Journalists and Politicians During the Roh Moo-hyun Presidency*, 19 JOURNALISM 1257 (2018).

²²Aimei Yang & Rong Wang, *The Value of Freedom of Expression and Information on Countries Human Rights Performance: A Cross-National Longitudinal Study*, 19 MASS COMM. & SOC’Y 352 (2016).

²³*Id.* at 373.

²⁴Carl Patrick Burrowes, *Property, Power and Press Freedom: Emergence of the Fourth Estate, 1640-1789*, 13 JOURNALISM & MASS COMM. MONOGRAPHS 1 (2011); Matthew Cecil, *The Path to Madness: McCarthyism and New York Post Editor James A. Wechsler’s Campaign to Defend Press Freedom*, 35 J. OF COMM. INQUIRY 275 (2011); Michael Conforti, *John Wilkes, the Wilkite Movement and a Free Press in America*, 43 JOURNALISM HIST. 32 (2017); Erin K. Coyle, *Press Freedom and Citizen’s Right to Know in the 1960s: Sam Ragan’s Crusade to Provide the Public with Access to Criminal Justice Information*, 43 JOURNALISM HIST. 44 (2017); File, *supra* note 16; Matthew S. May, *Hobo Orator Union: Class Composition and the Spokane Free Speech Fight of the Industrial Workers of the World*, 97 Q. J. OF SPEECH 155 (2011); Roger P. Mellen, *The Lee Family and Freedom of The Press in Virginia*, 43 JOURNALISM HIST. 126 (2017); Roger P. Mellen, *John Wilkes and the Constitutional Right to a Free Press in the United States*, 41 JOURNALISM HIST. 2 (2016); Roger P. Mellen, *The Colonial Virginia Press and the Stamp Act: An Expansion of Civic Discourse*, 38 JOURNALISM HIST. 74 (2012); Victor Pickard, *Laying Low the Shibboleth of a Free Press: Regulatory Threats Against the American Newspaper Industry, 1938–1947*, 15 JOURNALISM STUD. 464 (2014); Arthur Scherr, *Thomas Jefferson, the “Libertarian” Jeffersonians of 1799, and Leonard W. Levy’s Freedom of the Press: A Reconsideration*, 42 JOURNALISM HIST. 58 (2016); Mark D. Szuchman, *Fighting Words in an Angry Democracy: The Press in Revolutionary Buenos Aires, 1810–1820*, 45 JOURNALISM HIST. 353 (2019); Nikki Usher, *Resurrecting the 1938 St. Louis Post-Dispatch Symposium on the Freedom of the Press: Examining its Contributions and Their Implications for Today*, 11 JOURNALISM STUD. 311 (2010); Debra Reddin Van Tuyl, *Protecting Press Freedom and Access to Government Information in Antebellum South Carolina*, 43 JOURNALISM HIST. 209 (2018).

²⁵Scherr, *supra* note 24.

a “newly critical Virginia press and an accompanying broadening civic discourse led to a new regard for freedom of the press.”²⁶ Historical examinations of press freedom included analysis of twentieth century incidents as well. For example, a 2011 article in the *Journal of Communication Inquiry* analyzed *New York Post* editor James Wechsler’s campaign to defend press freedom in the face of Senator Joseph McCarthy’s anticommunist crusade.²⁷

A 2013 article in *Political Research Quarterly* examined the relationship between press freedom and terrorist attacks, noting that because publicity was central to terrorism it was important to understand the relationship between terrorist attacks and a country’s press freedom.²⁸ The authors found that perpetrators of terrorism “are inclined to avoid states that restrict press freedom, opting instead for states that permit the press to operate without restrictions and that are the focus of press attention.”²⁹ A 2010 article in *Journalism & Mass Communication Monographs* examined press freedom/freedom of expression and indigenous peoples, using rhetorical criticism to explore “whether tribal journalists appeal to peoplehood or nationhood for authority for their exercise of rhetorical sovereignty and freedom of expression.”³⁰ A 2014 article in *Journalism Studies* examined press freedom as it related to privacy, contrasting press freedom with the concept of the public sphere, and “distinguishing between individual, social and political dimensions of privacy.”³¹ There were also two largely theoretical examinations or conceptualizations of press freedom or freedom of expression.³² For example, a 2013 article in *Communication Research*, combining individual-level public opinion data from a Pew Global Attitudes Survey with institutional data from Freedom House, developed a “theoretical model to explicate the multi-level relationships between the openness of national media systems and citizens’ perceptions about press freedom in emerging

²⁶Mellen, *supra* note 24, at 74.

²⁷Cecil, *supra* note 24.

²⁸Aaron M. Hoffman, Crystal Shelton & Erik Clevon, *Press Freedom, Publicity, and the Cross-National Incidence of Transnational Terrorism*, 66 POL. RES. Q. 896 (2013).

²⁹*Id.* at 906.

³⁰Kevin R. Kemper, *Who Speaks for Indigenous Peoples? Tribal Journalists, Rhetorical Sovereignty, and Freedom of Expression*, 12 JOURNALISM & MASS COMM. MONOGRAPHS 3, 3 (2010).

³¹Simon Dawes, *Press Freedom, Privacy and the Public Sphere*, 15 JOURNALISM STUD. 17, 17 (2014).

³²Kari Karppinen, *Freedom Without Idealization: Non-ideal Approaches to Freedom of Communication*, 29 COMM. THEORY 66 (2019); Erik C. Nisbet & Elizabeth Stoycheff, *Let the People Speak: A Multilevel Model of Supply and Demand for Press Freedom*, 40 COMM. RES. 720 (2013).

democracies.”³³ Finally, a 2018 content analysis in the *Journal of Media and Religion* focused on two Aaron Sorkin TV shows, *The West Wing* and *The Newsroom*, and found that “freedom of the press and its centrality to democracy dominates both shows.”³⁴

Copyright

The second most frequently covered topic was copyright. The number of issues related to copyright was extremely varied. In addition, many of the articles also did not use traditional legal research methods. For example, a 2017 study in the *Journal of Computer-Mediated Communication* analyzed patterns of digital news consumption before and after a “link tax” was introduced in Spain that resulted in the shutdown of Google News Spain in order to offer empirical evidence that could help evaluate the impact of this sort of intervention.³⁵

Two articles examined copyright issues related to fan fiction. One explored “notions of authorship” *via* fan fiction, such as fiction created by fans of *A Song of Ice and Fire*, the book series that inspired the TV show *Game of Thrones*.³⁶ A 2013 article used critical discourse analysis to scrutinize “one notable digital intervention in copyright policy-making: an interactive and ‘clickable’ PDF comic.”³⁷ Also in 2013, an article used discursive analysis to examine how discursive strategies of policy framing were employed to challenge the “international IP regime status quo and its underlying rationale” and to “expand our understanding of how ideas about IP governance evolve.”³⁸ In 2012, an article in the *Journal of Computer-Mediated Communication* used content analysis to examine the rhetoric around the copyright debate regarding digital rights management in congressional hearings, major

³³Nisbet & Stoycheff, *supra* note 32, at 720.

³⁴Christina Littlefield, Theresa de los Santos, Patrick G. Rear & Savannah Janssen, *Patriotism and a Free Press: A Content Analysis of Civil Religion in Aaron Sorkin’s The West Wing*, 17 J. OF MEDIA AND RELIGION 41, 41 (2018).

³⁵Silvia Majo-Vazquez, Ana S. Cardenal & Sandra Gonzalez-Bailon, *Digital News Consumption and Copyright Intervention: Evidence from Spain Before and After the 2105 “Link Tax,”* 22 J. OF COMPUTER-MEDIATED COMM. 284 (2017).

³⁶Katharien Sarikakis, Claudia Krug & Joan Ramon Rodriguez-Amat, *Defining Authorship in User-Generated Content: Copyright Struggles in The Game of Thrones*, 19 NEW MEDIA & SOC’Y 597 (2017).

³⁷Alex Mochnacki, *Calling All Copyfighters: Experts as Superheroes, Comic Books as Intervention and Boundary Making in Canadian Copyright Policy*, 6 COMM., CULTURE & CRITIQUE 525, 525 (2013).

³⁸Stephanie Dixon, *Discursive Intervention in International Intellectual Property Policymaking: How Developing Countries and Civil Society Employ Text to Challenge and Change the Status Quo*, 6 COMM., CULTURE & CRITIQUE 598, 598 (2013).

newspapers, and on relevant Web sites.³⁹ Finally, a 2011 article analyzed the “discursive battle” of corporate and government sponsored anti-piracy media campaigns.⁴⁰ The author argued that anti-piracy discourse at the time was “being sounded through an increasingly militarized language that relies on metaphors of war to inspire fear among audiences and to criminalize even the most casual of informational exchanges.”⁴¹

Several articles used ethnographic research, surveys, or interviews to examine copyright law. For example, a 2016 article in *New Media & Society* used ethnographic research to examine fair use and visual remix artists, known as “vidders,”⁴² concluding that “[r]ather than being seen as simply victims of an unjust system, this research demonstrates that online communities have worked proactively to understand and respond to perceived copyright threats.”⁴³ Using survey research, another article in *New Media & Society* examined the impact of “permission culture” on the visual arts and artists,⁴⁴ while another examined the “gap between copyright law and social norms” using survey research.⁴⁵ Another examined media users’ attitudes and beliefs about copyright law.⁴⁶ A 2013 article in *Journalism Studies* used interviews with eighty-one journalists to show that journalists were receiving inadequate and conflicting advice about fair use, finding that the “problem is most acute in emergent digital platforms and small organizations.”⁴⁷

³⁹Bill D. Herman, *Taking the Copyright Online: Comparing the Copyright Debate in Congressional Hearings, in Newspapers, and on the Web*, 17 J. OF COMPUTER-MEDIATED COMM. 354 (2012).

⁴⁰Suzannah Mirghani, *The War on Piracy: Analyzing the Discursive Battles of Corporate and Government-Sponsored Anti-Piracy Media Campaigns*, 28 CRITICAL STUD. IN MEDIA COMM. 113 (2011).

⁴¹*Id.* at 113.

⁴²Katharina Freund, “Fair Use is Legal Use”: *Copyright Negotiations and Strategies in the Fan-vidding Community*, 18 NEW MEDIA & SOC’Y 1347 (2016).

⁴³*Id.* at 1347.

⁴⁴Patricia Aufderheide, Tijana Milosevic & Bryan Bello, *The Impact of Copyright Permissions Culture on the US Visual Arts Community: The Consequences of Fear of Fair Use*, 18 NEW MEDIA & SOC’Y 2012 (2016).

⁴⁵Mans Svensson & Stefan Larsson, *Intellectual Property Law Compliance in Europe: Illegal File Sharing and the Role of Social Norms*, 14 NEW MEDIA & SOC’Y 1147, 1147 (2012).

⁴⁶Lee Edwards, Bethany Klein, & David Lee, “Isn’t it Just a Way to Protect Walt Disney’s Rights?”: *Media User Perspectives on Copyright*, 17 NEW MEDIA & SOC’Y 691 (2015).

⁴⁷Patricia Aufderheide, Jan Lauren Boyles & Katie Bieze, *Copyright, Free Speech, and the Public’s Right to Know: Journalists and Fair Use*, 14 JOURNALISM STUD. 875, 875 (2013).

Three articles focused on predictors of behavior regarding copyright violations. A 2010 experimental study published in *Telematics and Informatics* focused on an experiment to deter/prevent digital piracy behavior in a developing country in the Middle East.⁴⁸ The study used “an experiment where different treatments (effect of religion, law, and awareness) were applied.”⁴⁹ The study concluded that only the religion and awareness treatments contributed to a decline in digital piracy.⁵⁰ A similar 2015 study in the same journal examined “what factors predict college students’ intentions to download digital content through unauthorized peer-to-peer (P2P) file-sharing sites.”⁵¹ Comparing American and Korean students, the study found “that cultural differences may play an important role with regard to people’s intentions to engage in illegal downloading.”⁵² Finally, a 2018 study, also in *Telematics and Informatics*, examined predictors of digital piracy across two Turkish undergraduate samples.⁵³

Other articles used more traditional legal research methods. One article in *New Media & Society* considered “how the future development and use of three-dimensional printing may be facilitated or inhibited through intellectual property law and practice.”⁵⁴ In 2012, a study in *Newspaper Research Journal* examined federal court decisions since 1985, determining that federal courts have frequently found in favor of news producers’ fair use claims.⁵⁵ A 2011 article in *Critical Studies in Media Communication* focused on copyright and the future of journalism. “Drawing on the underlying principle of copyright — as a public subsidy to promote and protect access to social expression — and positive interpretations of the First Amendment,” the authors proposed “a two-tiered, content-neutral, opt-in system of state-funded incentives for journalism.”⁵⁶ Another article examined copyright law in the United Kingdom, focusing on the UK Digital

⁴⁸Sulaiman Al-Rafee & Kamel Rouibah, *The Fight Against Digital Piracy: An Experiment*, 27 *TELEMATICS AND INFORMATICS* 283 (2010).

⁴⁹*Id.* at 283.

⁵⁰*Id.*

⁵¹Sang et al., *supra* note 10, at 333.

⁵²*Id.* at 333.

⁵³Yavuz Aklulut & Onur Donmez, *Predictors of Digital Piracy Among Turkish Undergraduate Students*, 35 *TELEMATICS AND INFORMATICS* 1324 (2018).

⁵⁴Stephanie M. Santoso & Stephen B. Wicker, *The Future of Three-Dimensional Printing: Intellectual Property or Intellectual Confinement?*, 18 *NEW MEDIA & SOC’Y* 138, 138 (2016).

⁵⁵Scott Parrott, *News Producers Often Prevail Against “Fair Use” Claims*, 33 *NEWSPAPER RES. J.* 6 (2012).

⁵⁶Mike Ananny & Daniel Kreiss, *A New Contract for the Press: Copyright, Public Domain Journalism, and Self-Governance in a Digital Age*, 28 *CRITICAL STUD. IN MEDIA COMM.* 313, 313 (2011).

Economy Act 2010.⁵⁷ A 2010 article in *Journalism & Mass Communication Quarterly* focused on fair use and the — at the time — “novel” “transformative use” analysis.⁵⁸ Noting that “[r]ecently, the ‘transformative use’ doctrine has emerged as a dominant approach to fair use determinations,” the article examined and critiqued this approach to fair use.⁵⁹ A 2014 article in *Critical Studies in Media Communication* examined fair use’s expansion to countries beyond the United States.⁶⁰ There were also two historical analyses of copyright law,⁶¹ including one 2019 article in *Journalism History* that explored Matthew Brady’s efforts to use copyright to protect his Civil War photographs.⁶²

Finally, there were two theoretical examinations of copyright law. Focusing on the first sale doctrine and advocating for that doctrine’s expansion to digital goods, a 2019 article in *Communication Theory* focused on “theoretical justification for copyright and consider[ed] the implications of the notion of cultural democracy in regard to copyright law and policy.”⁶³ A 2014 article in *Visual Communication Quarterly* relied on an examination of “theories of the image to inform discussion about copyright reform in the digital age” and explored “visual culture theory and the status of visual media in copyright law.”⁶⁴

TV Regulations/Policy

Fifteen articles examined law and policy issues related to the regulation of television or television policy. As with the articles on copyright, many of these did not employ traditional legal research methods. For example, a 2017 article in *Communication, Culture &*

⁵⁷Robin Mansell & W. Edward Steinmueller, *Copyright Infringement Online: The Case of the Digital Economy Act Judicial Review in the United Kingdom*, 15 *NEW MEDIA & SOC’Y* 1312 (2013).

⁵⁸Matthew D. Bunker, *The Song Remains the Same*, 87 *JOURNALISM & MASS COMM. Q.* 170 (2010).

⁵⁹*Id.* at 170.

⁶⁰Peter Decherney, *Fair Use Goes Global*, 31 *CRITICAL STUD. IN MEDIA COMM.* 146 (2014).

⁶¹Jason Lee Guthrie, *Ill-Protected Portraits: Matthew Brady and Photographic Copyright*, 45 *JOURNALISM HIST.* 135 (2019); Avi Santo, *The Lone Ranger and the Law: Legal Battles Over Corporate Authorship and Intellectual Property Management, 1939–1942*, 29 *CRITICAL STUD. IN MEDIA COMM.* 185 (2012).

⁶²Guthrie, *supra* note 61, at 135.

⁶³Yoonmo Sang, *Revisiting Copyright Theories: Democratic Culture and the Resale of Digital Goods*, 29 *COMM. THEORY* 277, 277 (2019).

⁶⁴Victoria Smith Ekstrand & Derigan Silver, *Remixing, Reposting, and Reblogging: Digital Media, Theories of the Image, and Copyright Law*, 21 *VISUAL COMM. Q.* 96, 96 (2014).

Critique, based on interviews and focus groups with more than ninety participants in the United Kingdom and Germany, explored “the expectations audiences articulate about regulatory processes behind television content they find offensive.”⁶⁵ The article found that although people were generally suspicious of television regulations, complaints about offensive content were just “the tip of the iceberg.”⁶⁶ A historical study, also in *Communication, Culture & Critique*, offered a “comprehensive political economic analysis” using dozens of trade press articles, archival sources, government documents, and oral histories to examine the “kidvid crusade” of the late 1970s and the Federal Trade Commission’s efforts to limit children’s advertising.⁶⁷ Using “Foucauldian cultural policy studies and actor-network theory,” a 2011 article in that same journal examined the campaign for à la carte delivery of cable channels on U.S. television via the viewers’ “political and economic identity within regulated media systems.”⁶⁸ A 2011 study in *Newspaper Research Journal* examined newspaper editorials on broadcasting indecency, concluding that the economic interests of news organizations affect editorial positions more than free expression concerns.⁶⁹ A 2015 article in the *Journal of Media Ethics* examined “violent broadcast media violence that may harm children,” using “ubuntu” as its conceptual lens, which “has been described as an African moral philosophy that finds actions grounded on good will to be right if they promote shared identity.”⁷⁰

Other studies used more traditional legal research methods. For example, a 2013 article in *Communication, Culture & Critique* focused on the regulation of Spanish-language media in the United States. Drawing on participatory democratic theory, the article used the 2007 sale of Univision as a case study, concluding, “[T]he regulation of Spanish-language broadcasting has infringed on the political rights of

⁶⁵Ranjana Das & Anne Grefer, *Regulatory Expectations of Offended Audiences: The Citizen Interest in Audience Discourse*, 10 COMM., CULTURE & CRITIQUE 626, 626 (2017).

⁶⁶*Id.*

⁶⁷Molly Niesen, *From Gray Panther to National Nanny: The Kidvid Crusade and the Eclipse of the U.S. Federal Trade Commission, 1977-1980*, 8 COMM., CULTURE & CRITIQUE 576 (2015).

⁶⁸Josh Heuman, “I Don’t Want to Pay for What I Don’t Watch”: *The Cultural Politics of a la carte Cable Television and the Cultural Life of Communication Policy*, 4 COMM., CULTURE & CRITIQUE 31, 31 (2011).

⁶⁹Todd Schaefer & Robert Fordan, *Newspaper Editorial Stands on Broadcast Indecency Regulation: Profits Over Principles?*, 32 NEWSPAPER RES. J. 128 (2011).

⁷⁰Colin Chasi, *Ubuntu and Freedom of Expression: Considering Children and Broadcast News Violence in a Violent Society*, 30 J. OF MEDIA ETHICS 91, 91 (2015).

Latino citizens.”⁷¹ Many of these articles frequently focused on non-U.S. policies or used comparative analysis. A 2010 study in *Telematics and Informatics*, for example, examined the legal and economic frameworks of community media regulations in the United Kingdom, Netherlands, Switzerland, Germany and Ireland. Intended to “serve as a productive impulse for the further academic exploration of community media and to contribute to the growing significance of research on participation,” the article laid out “good practices,” general trends, and key challenges and difficulties.⁷² The only communication law and policy article published in the ten-year period we examined in the *Journal of Sports Media* focused on television regulations. The article, published in 2017, used court and regulatory filings and a political economy framework to examine the Tennis Channel’s battle with Comcast Cable to gain broad-based carriage.⁷³

A single issue of *Telematics and Informatics* in 2016 had three articles about TV regulations. One examined mergers and acquisitions in TV broadcasting, focusing on the implications for competition, the industry, and media policy.⁷⁴ In another, four authors examined the rise in audio-visual distribution platforms, exploring the issue “through an analysis of the rationales, policy approaches, and effectiveness of domestic content policies in four countries (Australia, Canada, Ireland, and South Korea) and consider[ing] the implications of these approaches in a globally connected environment.”⁷⁵ The third article examined how Thailand regulated digital television and is discussed in more detail below.⁷⁶

Several studies examined high definition television or digital TV. For example, a 2011 study in *Telematics and Informatics* explored

⁷¹Allison Perlman & Hector Amaya, *Owning a Voice: Broadcasting Policy, Spanish Language Media, and Latina Speech Rights*, 6 COMM., CULTURE & CRITIQUE 142, 142 (2013).

⁷²Helmut Peissl & Otto Tremetzberger, *The Legal and Economic Framework of the Third Audiovisual Sector in UK, Netherlands, Switzerland, Niedersachsen (Germany) and Ireland*, 27 TELEMATICS AND INFORMATICS 122, 122 (2010).

⁷³Stephen W. Dittmore & Bo Li, *Serve and Volley: A Political-Economy View of Tennis Channel’s Six-Year Carriage Battle with Comcast*, 12 J. OF SPORTS MEDIA 103 (2017).

⁷⁴Tom Evens & Karen Donders, *Mergers and Acquisitions in TV Broadcasting and Distribution: Challenges for Competition, Industrial and Media Policy*, 33 TELEMATICS AND INFORMATICS 674 (2016).

⁷⁵Robert G. Picard, Charles H. Davis, Franco Papandrea & Sora Park, *Platform Proliferation and its Implications for Domestic Content Policies*, 33 TELEMATICS AND INFORMATICS 683, 683 (2016).

⁷⁶Trisha T.C. Lin & Chanansara Oranop, *Responding to Media Convergence: Regulating Multi-Screen Television Services in Thailand*, 33 TELEMATICS AND INFORMATICS 722 (2016).

“why the European standard for analogue HDTV was not widely adopted and what Europe’s relation to HDTV means today.”⁷⁷ The article also proposed “some general lessons that can be learned for the benefit of the development of HDTV’s successor, Ultra HDTV aka Super Hi-Vision.”⁷⁸ An article in the same issue of the journal noted that “[t]he switchover to digital communications was launched as a major information society policy initiative across Europe, and was expected to be a key contributor to the spreading of internet access across all households.”⁷⁹ The authors, however, noted that “[m]ore than a decade after its introduction... digital television (DTV) is not delivering the promise of interactivity for all.”⁸⁰ The article examined policies in the United Kingdom to determine why. A 2013 study, also in *Telematics and Informatics*, examined DTV standards and transitions using a comparative policy analysis. The study concluded that “protectionist impulses shaping distinct standards for the US (Grand Alliance), China, and other regions dampen prospects for a global standard in DTV.”⁸¹ A 2016 *Journalism & Mass Communication Quarterly* article examined the regulation of broadcasting in Israel, focusing on the public interest standard.⁸² And, finally, as noted above, a 2016 article examined how Thailand regulated digital television’s transition and new audiovisual services.⁸³

Internet Regulations/Policy

Fourteen articles examined research questions related to Internet regulations or Internet policy, broadly defined. We placed articles in this category if they did not clearly examine a specific aspect of the Internet, such as internet privacy, but rather broadly discussed issues of Internet regulation. For example, articles from *New Media & Society* in this category included a 2018 study of the Internet’s

⁷⁷Nils Walravens & Carline Pauwels, *From High Hopes to High Deficit and Back: A Historic Overview of Europe’s HDTV Policy and Reflections Towards the Future of HDTV*, 28 *TELEMATICS AND INFORMATICS* 283, 283 (2011).

⁷⁸*Id.*

⁷⁹Maria Sourbati *The Digital Switchover as an Information Society Initiative: The Role of Public Policy in Promoting Access to Digital ICTs*, 28 *TELEMATICS AND INFORMATICS* 295, 295 (2011).

⁸⁰*Id.*

⁸¹Fu & Atkin, *supra* note 10, at 381.

⁸²Avshalom Ginosar & Or Krispil, *Broadcasting Regulation and the Public Interest: Independent Versus Governmental Agencies*, 93 *JOURNALISM & MASS COMM. Q.* 946 (2016).

⁸³Lin & Oranop, *supra* note 76.

Domain Name System⁸⁴ as well as a 2017 comparison of efforts to “protect children on the internet” in the United States, South Africa and the European Union.⁸⁵ A 2013 article in *Communication, Culture & Critique* also examined “danger to children,” broadly defined, and explored how dialogue about internet governance balanced this interest with freedom of expression.⁸⁶ The article discussed an “ecology of values” based on the phronetic, rather than epistemic, aspects of the discursive relationships created between members of these two advocacy groups, where core values are negotiated and redefined as part of the policymaking process.”⁸⁷

Several articles examined Internet censorship. A 2016 article in *New Media & Society* proposed the concept of “visibility as a new lens through which to examine the politics of Internet censorship in China,”⁸⁸ while another 2016 article in that same journal examined tools to bypass internet censorship in China.⁸⁹ A 2014 article, also in *New Media & Society*, examined resistance to Internet censorship in Turkey, concluding, “[C]itizen-consumers engage in two types of resistance strategies against such domination by the state: using irony as passive resistance, and using the very same technology used by the state to resist its domination.”⁹⁰

Two articles from a 2014 special edition of *Critical Studies in Media Communication* focused on “Internet Policy Crises” directly looked at Internet policies/regulations. The first examined the “future of Chinese Internet Policy,” focusing on “the ideological tendency with a Maoist imprint” that became more visible in policy making after Xi Jinping took office in November 2012.⁹¹ The second article examined

⁸⁴Samantha Bradshaw & Laura DeNardis, *The Politicization of the Internet’s Domain Name System: Implications for Internet Security, Universality, and Freedom*, 20 *NEW MEDIA & SOC’Y* 332 (2018).

⁸⁵Monica Bulger, Patrick Burton & Brian O’Neill, *Where Policy and Practice Collide: Comparing United States, South African and European Union Approaches to Protecting Children Online*, 19 *NEW MEDIA & SOC’Y* 750 (2017). The article did not focus exclusively on privacy. Rather, it focused on “online abuse and exploitation.” *Id.* at 750.

⁸⁶Alison Powell & Vicki Nash, *Beyond Rational Games: An Analysis of the “Ecology of Values” in Internet Governance Debates*, 6 *COMM., CULTURE & CRITIQUE* 616 (2013).

⁸⁷*Id.* at 616.

⁸⁸Fan Yang, *Rethinking China’s Internet Censorship: The Practice of Recoding and the Politics of Visibility*, 18 *NEW MEDIA & SOC’Y* 1364, 1364 (2016).

⁸⁹Yi Mou, Kevin Wu & David Atkin, *Understanding the Use of Circumvention Tools to Bypass Online Censorship*, 18 *NEW MEDIA & SOC’Y* 837 (2016).

⁹⁰Cagri Yalkin, Finola Kerrigan & Dirk vom Lehn, *(Il)Legitimation of the Role of the Nation State: Understanding of and Reactions to Internet Censorship in Turkey*, 16 *NEW MEDIA & SOC’Y* 271, 271 (2014).

⁹¹Guobin Yang, *The Return of Ideology and the Future of Chinese Internet Policy*, 31 *CRITICAL STUD. IN MEDIA COMM.* 109, 109 (2014).

the digital divide in the United States, arguing that because United States policy around the digital divide was “[c]aught between a public discourse that espouses equality in opportunity as well as the tremendous bounty at the end of the technological rainbow and another that celebrates a marketplace distribution of technologies and services” the policy had “waffled between unsystematic efforts to provide access to technology and to cultivate technological capabilities.”⁹²

Several articles examined net neutrality. A 2013 examination of the net neutrality debate in the United States drew on “the theory of intertextuality,” tracing the first use of the term “net neutrality” to 1960s Federal Communications Commission hearings on the problem of convergence or “communications” in the Computer Inquiry proceedings.⁹³ A 2014 article in *Telematics and Informatics* examined the effects of network neutrality on the diffusion of new internet services.⁹⁴ Also published in 2014, an article in the *Annals of International Communication Association* examined net neutrality, exploring “the implications of the net neutrality debate for communication research and the public sphere.”⁹⁵ The authors adopted a public sphere framework to “discuss areas of net neutrality that are relevant for communication studies.”⁹⁶

Other articles examined other varied aspects of Internet policy and regulation. A 2015 article in *Telematics and Informatics* examined the impact of public policy on the development of broadband infrastructure in the European Union.⁹⁷ We counted a 2018 study in *New Media & Society* of the Dark Web in this category and also internet privacy because it examined broader issues than just privacy. The study used survey data of 17,121 Internet users in seventeen countries.⁹⁸ In the study, “[A] series of mixed-effect order logit regressions reveal that

⁹²Sharon Stover, *The US Digital Divide: A Call for a New Philosophy*, 31 CRITICAL STUD. IN MEDIA COMM. 114 (2014).

⁹³Becky Lentz, *Excavating Historicity in the U.S. Network Neutrality Debate: An Interpretive Perspective on Policy Change*, 6 COMM., CULTURE & CRITIQUE 530, 530 (2013).

⁹⁴Daeho Lee & Hongbum Kim, *The Effects of Network Neutrality on the Diffusion of New Internet Application Services*, 31 TELEMATICS AND INFORMATICS 386 (2014).

⁹⁵Maria Loblich & Francesca Musiani, *Net Neutrality and Communication Research: The Implications of Internet Infrastructure for the Public Sphere*, 38 ANNALS OF THE INT'L COMM. ASS'N 339, 339 (2014).

⁹⁶*Id.*

⁹⁷Reza Rajabiun & Catherine Middleton, *Regulation, Investment and Efficiency in the Transition to Next Generation Broadband Networks: Evidence from the European Union*, 32 TELEMATICS AND INFORMATICS 230 (2015).

⁹⁸Eric Jardine, *Privacy, Censorship, Data Breaches and Internet Freedom: The Drivers of Support and Opposition to Dark Web Technologies*, 30 NEW MEDIA & SOC'Y 2824 (2018).

privacy and censorship concerns are both significant predictors of less opposition to the Dark Web” while past exposure to online crime “significantly increases opposition to the Dark Web.”⁹⁹

Internet Privacy

Eleven articles in the ten-year period focused on Internet privacy, examining a wide range of issues. For example, one article in *New Media & Society* examined the legal roots and moral foundations of consent,¹⁰⁰ while another explored the new European Union General Data Protection Regulation’s policies designed to protect the privacy of children.¹⁰¹ Two articles examined the right to be forgotten. A 2016 article in *Journalism & Mass Communication Quarterly* “examine[d] the post–Google Spain impact on the right to be forgotten in the European Union and its worldwide impact.”¹⁰² And a 2017 article in *Digital Journalism* focused on the ways the right to be forgotten challenge traditional journalistic principles, including freedom of expression.¹⁰³

Some of these articles also employed methods other than traditional legal analysis. For example, a 2019 study in *New Media & Society* used survey research to examine concerns about internet surveillance among internet users in Saudi Arabia, Tunisia, Lebanon, Qatar and the UAE.¹⁰⁴ A 2018 study in that same journal examined the meaning of privacy by analyzing discussion about privacy on two major developer platforms, one for iOS and one for Android.¹⁰⁵ The research concluded:

⁹⁹*Id.* at 2824.

¹⁰⁰Elizabeth Edenberg & Meg Leta Jones, *Analyzing the Legal Roots and Moral Core of Digital Consent*, 21 *NEW MEDIA & SOC’Y* 1804 (2019).

¹⁰¹Milda Macenaite, *From Universal Towards Child-Specific Protection of the Right to Privacy Online: Dilemmas in the EU General Data Protection Regulation* 19 *NEW MEDIA & SOC’Y* 765 (2017).

¹⁰²Kyu Ho Youm & Ahnan Park, *The “Right to Be Forgotten” in European Union Law: Data Protection Balanced with Free Speech?*, 93 *JOURNALISM & MASS COMM. Q.* 273, 273 (2016).

¹⁰³Ivor Shapiro & Brian MacLeod Rogers, *How the “Right to be Forgotten” Challenges Journalistic Principles: Privacy, Freedom and News Durability*, 5 *DIGITAL JOURNALISM* 1101 (2017).

¹⁰⁴Justin D. Martin, S. Shageaa Naqvi & Klaus Schoenbach, *Attribute Substitution and Stereotypes About the Online Arab Public Sphere: Predictors of Concerns about Internet Surveillance in Five Arab Countries*, 21 *NEW MEDIA & SOC’Y* 1085 (2019).

¹⁰⁵Daniel Greene & Katie Shilton, *Platform Privacies: Governance, Collaboration, and the Different Meanings of “Privacy” in iOS and Android Development*, 20 *NEW MEDIA & SOC’Y* 1640 (2018).

For iOS developers, Apple is a gatekeeper, controlling market access. The meaning of “privacy” shifts as developers try to interpret Apple’s policy guidance. For Android developers, Google is one data-collecting adversary among many. Privacy becomes a set of defensive features through which developers respond to a data-driven economy’s unequal distribution of power.¹⁰⁶

A 2017 article, also in *New Media & Society*, was based on interviews with users at broadband adoption programs at community-based and public institutions in the United States in an effort to “understand the ways in which privacy and surveillance issues emerge and are engaged in these settings.”¹⁰⁷ The article concluded that while “adults who enroll in introductory digital literacy classes and access the Internet at public terminals feel optimistic about broadband ‘opportunities,’ they encounter ‘privacy-poor, surveillance-rich’ broadband.”¹⁰⁸ A 2018 article in *Digital Journalism* examined how national security journalists communicate online, using seven in-depth interviews with journalists to understand the way journalism has changed in response to real or perceived threats of mass government surveillance.¹⁰⁹ A similar study in *Digital Journalism* in 2017 examined the response of regional journalists in the United Kingdom to widespread reports of the interception of online and digital communications by the U.K. government.¹¹⁰

Media Policy

Eleven articles went beyond looking at regulations or policy related to the Internet or television and broadly examined a wide range of policies targeting media. This included a 2014 article that called for three “radical policies”: “[T]he nationalization of the ISP/cellphone industry and its conversion to a public utility; the nationalization of huge Internet monopolies that are impervious to antitrust; the adoption of a massive public subsidy to pay for independent, competitive,

¹⁰⁶*Id.* at 1640.

¹⁰⁷Seeta Peña Gangadharan, *The Downside of Digital Inclusion: Expectations and Experiences of Privacy and Surveillance Among Marginal Internet Users*, 19 *NEW MEDIA & SOC’Y* 597, 597 (2017).

¹⁰⁸*Id.* at 597.

¹⁰⁹Stephenson Waters, *The Effects of Mass Surveillance on Journalists’ Relations with Confidential Sources: A Constant Comparative Study*, 6 *DIGITAL JOURNALISM* 1294 (2018).

¹¹⁰Paul Bradshaw, *Chilling Effect: Regional Journalists’ Source Protection and Information Security Practice in the Wake of the Snowden and Regulation of Investigatory Powers Act (RIPA) Revelations*, 5 *DIGITAL JOURNALISM* 334 (2017).

uncensored, noncommercial news media.”¹¹¹ Although the article appeared in the special edition of *Critical Studies in Media Communication* devoted to “Internet Policy Crises,” the article’s proposals addressed issues much broader than Internet policy or regulation. In addition, another article in that issue used a historical analysis of American media policy to argue that market forces did not provide the type of media that facilitated the “public good” or self-governance.¹¹² A final article in the issue argued that:

Over the next few years, the Federal Communications Commission (FCC) will go down one of two paths. Its importance may fade to insignificance. Or the FCC may recast its mission and affirm the areas in which it retains unique expertise to address vital questions for the communications future.¹¹³

A 2013 article in *Communication, Culture & Critique* used concepts from cultural studies, legal pluralism, interpretative policy analysis, and other areas to argue for an expanded media policy analysis that also considers unofficial, bottom-up, and vernacular media policy.¹¹⁴ A 2010 article in *Telematics and Informatics* analyzed community media in Europe, focusing on how policy has attempted to support community media as a “means for pluralism and diversity in the media, as well as a tool to promote social cohesion.”¹¹⁵ Noting that media policy was not “a clean, administrative, depoliticized, and unproblematically evidence-based space,” a 2015 article in *Critical Studies in Media Communication* proposed that media scholars focus on “the fetishistic character of the media policy process, understood in relation to the loss of control over the decision-making arena and the outsourcing of political agency to external forces.”¹¹⁶ In a similar vein, a 2018 article in *Communication Theory* contended that while communication in policy making and regulation had been of interest to political scientists for years, the analysis of communication in media policymaking and

¹¹¹Robert W. McChesney, *Be Realistic, Demand the Impossible: Three Radically Democratic Internet Policies*, 31 CRITICAL STUD. IN MEDIA COMM. 92, 92 (2014).

¹¹²Victor Pickard, *The Great Evasion: Confronting Market Failure in American Media Policy*, 31 CRITICAL STUD. IN MEDIA COMM. 153 (2014).

¹¹³Kevin Werbach, *The Death and Life of a Great American Agency*, 31 CRITICAL STUD. IN MEDIA COMM. 160, 160 (2014).

¹¹⁴Bill Kirkpatrick, *Vernacular Policymaking and the Cultural Turn in Media Policy Studies*, 6 COMM., CULTURE & CRITIQUE 634 (2013).

¹¹⁵Nuria Reguero Jimenez & Salvatore Scifo, *Community Media in the Context of European Media Policies*, 27 TELEMATICS AND INFORMATICS 131, 131 (2010).

¹¹⁶Des Freedman, *Media Policy Fetishism*, 32 CRITICAL STUD. IN MEDIA COMM. 96, 96 (2015).

regulation had not garnered much attention from media policy scholars.¹¹⁷ The article addressed this by introducing a “theoretical and methodological approach that centers on the intersection of communication and power in media policymaking.”¹¹⁸

Communication, Culture & Critique published a special issue in 2010 on media governance that included several broad examinations of media policy. One article argued that while “media governance” has been attracting growing interest among communication scholars, there was uncertainty “as to what exactly governance is.”¹¹⁹ The article argued that “media governance” be “characterized as a new concept suited for the analysis of media policy and regulation” and adaptive to “various theoretical approaches.”¹²⁰ Another article in the special issue attempted to address “difficult yet necessary first steps toward meeting the challenges of analyzing the transformations in media and communication policy: defining the boundaries of what we actually mean by ‘global media policy (GMP).’”¹²¹ The article went on to conceptualize global media policy “as a domain, elaborating a consistent analytical framework, and addressing methodological implications.”¹²² The final article in the issue used archival research to examine the 1940s as the critical juncture when policymakers, social movements, and communication industries “grappled over commercial media’s role in democratic society.”¹²³

Remaining Topics

These six categories – press freedom/freedom of expression, copyright, television regulations, internet regulations or policy, internet privacy, and media policy – amounted to almost 65% of the communication law and policy topics covered in the ten-year period we

¹¹⁷Christopher Ali & Manuel Puppis, *When the Watchdog Neither Barks nor Bites: Communication as a Power Resource in Media Policy and Regulation*, 28 COMM. THEORY 270 (2018).

¹¹⁸*Id.* at 270.

¹¹⁹Manuel Puppis, *Media Governance: A New Concept for the Analysis of Media Policy and Regulation*, 3 COMM., CULTURE & CRITIQUE 134, 134 (2010). Apparently as late as 2010, among some communication scholars, examining media law and policy was considered a “growing interest” rather than the well-established discipline we assumed it to be by that point.

¹²⁰*Id.* at 134.

¹²¹Marc Raboy & Claudia Padovani, *Mapping Global Media Policy: Concepts, Frameworks, Methods*, 3 COMM., CULTURE & CRITIQUE 150, 150 (2010).

¹²²*Id.* at 150.

¹²³Victor Pickard, *Reopening the Postwar Settlement for U.S. Media: The Origins and Implications of the Social Contract Between Media, the State and the Polity*, 3 COMM., CULTURE & CRITIQUE 170, 170 (2010).

reviewed. The remaining twenty-three categories each had fewer than ten articles published about them, with about half of those categories only having one published article on the topic.¹²⁴ This is not to downplay the significance of the published work on those topics. For instance, eight articles in the ten-year period explored freedom of information issues, including a 2016 study that explored freedom of information laws' impact in emerging European democracies¹²⁵ and a 2019 article in *Community Journalism* that documented how the FOI request process can be fraught for community journalists.¹²⁶ And six articles, all in political science journals, explored campaign finance law or regulations – particularly the effect of regulations or Supreme Court decisions on various stakeholders, such as shareholders.¹²⁷ The fact that these topics and the others appeared in less than one article per year over the last ten years, however, does suggest that the topics are of less interest to scholars who publish their work in the non-law peer-reviewed journals we examined.

CONCLUDING OBSERVATIONS

It seems clear from this analysis that communication law and policy topics are of interest to a general scholarly audience. The 152 articles we found covered a wide range of topics and used a wide variety of methods and theoretical frameworks to examine questions related to communication law and policy. We were encouraged by the number of journals that published articles on these topics, although we were surprised that a number of journals — particularly those communication journals associated with AEJMC, ICA and NCA — did not publish a

¹²⁴See Table 2.

¹²⁵Lindita Camaj, *Governments' Uses and Misuses of Freedom of Information Laws in Emerging European Democracies: FOI Laws' Impact on News Agenda-Building in Albania, Kosovo, and Montenegro*, 93 JOURNALISM & MASS COMM. Q. 923 (2016).

¹²⁶Katherine Fink, *Freedom of Information in Community Journalism*, 7 COMMUNITY JOURNALISM 17 (2019).

¹²⁷See Natasha Burns & Jan Jindra, *Political Spending and Shareholder Wealth: The Effect of the U.S. Supreme Court Ruling in Citizens United*, 42 AM. POL. RES. 579 (2014). For other political science articles related to campaign finance law, see, e.g., Patrick Flavin, *Campaign Finance Laws, Policy Outcomes, and Political Equality in the American States*, 68 POL. RES. Q. 77 (2015); Ben Gaskins, Ellen Seljan, Todd Lochner, Katie Kowal, Zane Dundon & Maya Gold, *From the FEC to the Ballot Box: Voter Accountability for Campaign Finance Law Violations*, 47 AM. POL. RES. 1000 (2019); Wendy L. Hansen & Michael S. Rocca, *The Impact of Citizens United on Large Corporations and Their Employees*, 72 POL. RES. Q. 403 (2019); Timothy Werner, *The Sound, the Fury, and the Nonevent: Business Power and Market Reactions to the Citizens United Decision*, 39 AM. POL. RES. 118 (2011).

single article in a ten-year period on communication law and policy. We wonder if communication law and policy scholars need to reach out to the editors of journals that did not publish any communication law articles to see what kind of work they would be interested in sending out for review.

Overall, we found that there is a good amount of quality research being published in these non-law peer-reviewed journals. In particular, we were impressed by the research published on press freedom/freedom of expression (particularly comparative work and work on non-U.S. countries), Internet regulation and policy and Internet privacy, and television regulation/policy. We also found that there is a lot of interesting copyright research being published outside of *Communication Law and Policy*, particularly work that incorporated a variety of methods and theoretical approaches to examine various issues related to copyright. There also appear to be robust opportunities for publishing communication legal history, particularly in *Journalism History*. In addition, it appears that many of these non-law, peer-reviewed journals are publishing articles that have a more international focus than the work often published in *Communication Law and Policy*. We encourage scholars who work in these areas to consider the outlets examined in this essay, and we encourage all researchers who publish research on communication law and policy topics to read widely outside of law reviews and *Communication Law and Policy*. The non-law, peer-reviewed outlets we looked at are publishing strong work that can enrich our scholarship and expand our understanding of how communication law and policy can, and should, be studied.

Interestingly, some of the traditional topics often examined in *Communication Law and Policy* publications as well as in AEJMC Law and Policy Division conference papers were not examined in great detail in the work we analyzed. For example, in the call for papers for the 2020 AEJMC research competition, the Law and Policy Division highlighted a few topics of particular interest to the division, including “defamation, privacy, FCC issues, intellectual property, obscenity, freedom of information, and other relevant media law and policy topics.”¹²⁸ The articles we examined for this essay did not generally focus

¹²⁸AEJMC Law and Policy Division Paper Call, available at <http://aejmc.org/events/sanfrancisco20/lawp-papers/> (last visited Mar. 31, 2020). While highlighting topics of interest to the division of course does not preclude authors from submitting work in other areas, it does signal to authors the type of work the division is interested in.

on defamation or obscenity, and only eight articles in the ten-year period examined freedom of information.

We also found it noteworthy that the authors in these non-law, peer-reviewed journals utilized a variety of methods in their work, including experimental designs, surveys, ethnographies, interviews and focus groups. Employing more of these methodologies in both *Communication Law and Policy* and in the research paper competition of the AEJMC Law and Policy Division could perhaps strengthen the work of our division and simultaneously broaden our knowledge of the field. *Communication Law and Policy* has published work using these sorts of methods in the past, such as the survey research and experimental design studies conducted by David Cuillier.¹²⁹ We saw, however, a far wider variety of methodological tools employed in the articles we examined for this essay compared to the approaches typically taken in publications in *Communication Law and Policy*.

The “aims and scope” of *Communication Law and Policy* do note:

The journal seeks research that is informed theoretically by First Amendment constitutional analyses, historical approaches to communication law and policy issues, contemporary social theory literature that treats the law as cultural forms, the sociology and philosophy of law, systems approaches, critical theory, and other appropriate theoretical bases. The journal publishes rigorously reasoned and thoroughly researched studies based on traditional legal research, social science techniques, or ethnographic, international, or comparative analyses. *Communication Law and Policy* also publishes articles using other appropriate approaches to pertinent topics.¹³⁰

We wonder, though, if both the journal and the division could do more to solicit research from the authors who are publishing communication law and policy-related work but who aren’t in programs with a historically strong presence at AEJMC. In addition, we also note that one of *Communication Law and Policy*’s stated goals is to attract researchers from a wide range of fields.¹³¹ Therefore, we recommend that both the journal and the Law and Policy Division research competition do more

¹²⁹See, e.g., David Cuillier & Bruce E. Pinkleton, *Suspicion and Secrecy: Political Attitudes and Their Relationship to Support for Freedom of Information*, 16 COMM. LAW AND POL’Y 227 (2011); David Cuillier, *Honey v. Vinegar: Testing Compliance-Gaining Theories in the Context of Freedom of Information Laws*, 15 COMM. LAW AND POL’Y 203 (2010).

¹³⁰*Aims and Scope*, supra note 1 (emphasis added).

¹³¹*Id.* (“Manuscripts are sought from those in the academic fields of journalism and mass communication, communication, telecommunications, law, business,

to educate and remind reviewers and submitters from a wide variety of disciplines that *all* methodologies are indeed welcome. To facilitate this, of course, the journal and the division must also recruit reviewers with expertise in these various methodologies.

Finally, it is important to emphasize that these 152 articles in these thirty-six journals are roughly equal to the number of articles published by *Communication Law and Policy* alone over the last ten years. The thirty-six journals together are publishing on average less than .5 articles per year on communication law and policy topics. *New Media & Society* topped our list, publishing, on average, only 2.4 articles per year. In addition, we recognize the important fact that *Communication Law and Policy* is indexed in Nexis Uni and Westlaw, important outlets where other legal scholars search for literature. Thus, it is clear that *Communication Law and Policy* is as much needed today as it was twenty-five years ago when the Law Division of AEJ decided to start publishing its own journal to give members an outlet suited for their work. Although, as mentioned, *Communication Law and Policy* would arguably be strengthened with more inclusion of the methods and theoretical frameworks we often saw in the non-law peer-reviewed journals we examined here, those journals are clearly not publishing articles on communication law and policy topics with enough regularity to suggest scholars in this area have adequate peer-reviewed outlets for their research.¹³² While we encourage scholars, particularly pre-tenure scholars, to seek out a variety of journals to publish their work, *Communication Law and Policy* is — and will likely remain — the premier outlet for most peer-reviewed research on communication law and policy.

and cognate disciplines, as well as practicing attorneys, policymakers, and policy analysts.”).

¹³²As noted above, we did not review research for this essay published in peer-reviewed publications that are devoted to communication law and policy issues, such as the *Journal of Media Law & Ethics* and *First Amendment Studies*. We doubt that these journals, however, would cover the gap left if *Communication Law and Policy* were to stop publishing. We also note that that these two journals are not indexed in Nexis Uni and Westlaw.