MEDIA LAW RESOURCE CENTER, INC.

Symposium for MLRC Member on Blogs, Bloggers, and the Changing Media Business
[START TAPE 1 SIDE A]

SANDY BARON: Why are we here? Well, blogging is the new medium with millions and millions of messages, opinions, and facts being distributed over literally millions and millions of web-based pages that characterize themselves as blogs.

Perhaps you have a blog or contribute to one. I suspect all of you now know someone who has a blog or regularly contributes to one. Indeed many of you may have clients who have blogs and employees who are contributing to blogs, and that’s why we’re having this panel today - because blogs are big.

One small housekeeping before I turn this over to Dale Cohen, our moderator, and that is if you’ve got a cell phone you might want to now put it on buzz, hum, vibrate, kick you. Thanks.

Dale Cohen.

DALE COHEN: Afternoon everybody. Thank you for coming. I’m very excited to be able to lead this panel of very distinguished speakers, and let me do a quick introduction of them so that we can get to the heart of the presentation.

To my immediate left is Jonathan Hart. Jon, as many of you know, is a member of Dow, Lohnes, Albertson, the Washington, D.C., firm specializing in the representation of media and technology companies.
Jon’s also on the faculty of the Stanford Professional Publishing course and of Stanford’s new media program. He’s also the author this fine book that I would commend to you, Web Law, and really is an incredibly knowledgeable speaker and thinker and lawyer in this area.

Next to him is Cori Ulrich from Belo - the Assistant General Counsel there. Again, as many of you know, Cori has extensive experience in web law dating back to the beginnings of mainstream media’s entry into the web. Cori was the Vice President, Legal and Business Affairs, for Belo Interactive way back when, and, as you’ll hear in the course of today’s presentation, Cori is knee deep in these issues on a regular basis.

Speaking of knee deep in these issues, Sherrese Smith is the next person over from Cori. Sherrese is the Deputy General Counsel at Washington Post Newsweek Interactive, the Washington Post Internet and New Media subsidiary. At WPNI Sherrese focuses on copyright, trademark, Internet, and all of the kinds of issues we’ll be talking about today, and has some pretty interesting stories to tell.

As does the gentleman next to her, Ken Richieri, who is the Vice President and Deputy General Counsel of the New York Times Company. Again, as many of you
know, from 1999 to 2003 Ken served as the Vice President and General Counsel for New York Times Digital, the digital business unit of the New York Times Company, and has vast experience with these issues.

And then finally I’m very happy to be able to present to this group a gentleman that some of you may be familiar with, and if you’re not I’d urge you to become familiar with him – Jeff Jarvis. Jeff is the author, creator, publisher -- never sure what the right word is -- of BuzzMachine.com, a fabulous blog site.

When I asked Jeff to tell me what I should say about the blog, what its subject matter is, he said it’s a blog about the media and whatever else I feel like writing about. And it’s really true and it’s a terrific example of what’s going on out there, for those of you who are interested.

Jeff is a long time journalist and a consultant and a creator of magazines including Entertainment Weekly. Until recently he was at Advance.net, the online arm of Advance Publications. And in 2006 Jeff will become associate professor and director of the new media program at City College of New York’s new graduate school of journalism. We thought it was appropriate for this program to really turn it over
to Jeff for a few minutes and let him give you an overview of what’s going on out there, particularly in the non-mainstream media blogosphere, but I think he’ll touch on both.

So, Jeff, take it away.

JEFF JARVIS: Thank you. Imagine there’s a PowerPoint behind me and that I’m dancing around with a remote control and going crazy. You’re spared the PowerPoint by the cost of New York hotels.

So what you’ll see on that PowerPoint, if you can imagine right now, is the clever notion that the highest form of media is actually a top ten list. So I’ll try to give you top ten ways that this is all scary and wonderful in the citizen controlled, post-scarcity, distributed, exploding, remixed media world that we’re in today.

I’m going to go through ten areas. Feel free to interrupt or yell or stomp your feet, because I used to do that with some of you, and we’ll just come back to all these topics. My task is to try to draw a picture of where we kind of are in this strange new world.

Number one, of course, is that anyone can commit an act of journalism. Anyone. We all now have the power. We all used to -- we in big media. And I always get my first person plural confused. I’m very
schizo about this so I say “we” as big media guy and “me” as blog boy at the same time, so forgive me.

But big media used to control the printing presses and the broadcast towers. Now anyone has a printing press. Anyone can do what we do. And the problem I have with that is we still define reflexively journalism based on who owns the press or by the person. It’s not. It’s an act. Anyone can perform this act and it’s going to happen more and more and more. We’ll talk a lot later about shield laws, obviously.

But to my mind this also means that because anyone can commit an act of journalism, that means we are all journalists together, koo-koo-ka-choo. And that means that when the least of us loses a battle, we all lose a battle. And there are a lot of battles going on out there, starting up right now in the blogosphere that need the help of folks like you. They don’t have the departments that you have. But it still matters for us.

But that’s people who are doing this independently. Whether you’re a blogger who wants to be a journalist -- that’s some of us. It’s not all of us. At the Web 2.0 conference I went to in California a few weeks ago, much discussion about, “well, what’s Web 2.0?” And a lot of blathering that
filled whole hours of panels and finally the co-
founder of Flickr quoted the co-founder of a Wiki
company who quoted Soylent Green and said “Web 2.0,
it’s made of people.”

It’s just people talking. At some level it’s
just people talking. That’s all this is. It’s your
citizens, it’s your customers, it’s your consumers,
it’s a lot of people. But some of them do want to be
media and are acting as media and are acting
journalistically. Some of them are just giving
opinions as citizens.

I started blogging real quickly. At Advance I
got us to invest in the company that created Blogger.
I was around blogs a lot. I didn’t have anything to
blog about until September 11th when I was on the
last Path train into the World Trade Center and,
thank God, survived and wrote about it and stuck
around like an idiot reporter, to my wife’s
continuing ire.

I was a block away from the south tower when it
came down and made my way back up to Times Square
where I wrote about this for our newspapers and our
online sites. And the next day I discovered I had
more to say.

So I started a blog thinking it would last for a
few weeks. It took over all available life. It
changed my career and my life, because I realized that I’d been living in a one-way world my entire career. It’s always out. It’s always this way. Always this way. And the people who ever came back were people who usually wrote with crayon around all the edges of the letters of the paper. And that was my view of interactivity with the audience.

But here was this new medium where I found that it’s a distributed world. It’s no longer the centralized marketplace of media. It’s a distributed world. So after I wrote my first blog posts, bloggers in California linked to what I said and said something about it. That was my big “ding” moment.

We had a conversation. It didn’t happen under my umbrella, through my presses, on my forums. It happened wherever it happened, in their spaces and my spaces. And we communicated because the Internet makes connections.

So anyone can do an act of journalism. But the business reality of this is that don’t we all know, don’t you all know, revenue ain’t a heavy picture right now, circulation’s not a heavy picture. These businesses could be shrinking. How do we expand them? We expand them -- we expand our coverage by turning the public into our partner -- partner being, I know, a bad word at Advance. I learned that. It’s
a very specific word. But I’m just an editor still.

We worked together so that I was working at Advance and a lot of other places are working on hyper local media where we’re trying to get people in towns to help us report because we can’t have reporters everywhere.

During the tsunami, during the London bombings, people sent in, as you all know, photos. I see it in newspapers all the time, these poor photographers sent out to do a business story shot because of a story about McDonald’s and they go in McDonald’s and shoot another damn picture of McDonald’s. Why couldn’t we assign that to the public and pay them a few shekels?

There’s a new relationship that’s going to happen here between media and citizens acting in concert. And that brings in all kinds of new relationships, all kinds of new definitions of the relationship. And that will happen in a few ways.

We’ll share content. We can take the content from the newspaper and give them a feed of headlines they can put on their site. They’ll share content with us. They can send feeds of content or contributions to us. We should share promotion. We link to you, you link to us. And believe me, the linking from the audience matters. They have
promotional power. That’s what I’m doing at About.com where I’m consulting now, is trying to teach everyone to link out so they get links back and we get new traffic and new audience.

So we share content, we share promotion. We should also share training. The BBC is starting a journalism school for citizens. At CUNY I intend to try to start a citizens media center, and I’ll bug many of you to try to help with legal education in that. So we’re going to share training.

We could also share trust. We could say this guy’s good and this one we don’t know about. And importantly we can share revenue, and I’ll come back to that in a few minutes.

So when anyone can commit an act of journalism, they can do it on their own in their own way, but because they’re now doing what we do, that has an impact on us. They could also do it with us in a direct relationship that can be content, promotional, training, trust, or revenue.

Then there are other issues that come out of this -- access to officials, access to events, things like that. Things I used to do with Jerry Birenz of Sabin Bermant Gould on things like golf -- who’s mad at me because I had to bug out of another event. And I’m sorry, Jerry. Access to events, access to
officials, access to the White House pressroom.

Well, who really is a journalist, who gets in, who doesn’t? That’s another thing.

Finally, if you were seeing the PowerPoint you’d see the punch line there. Wonder what the hell it says. The last point on this slide is, life is on the record. And I say here, son, don’t blog this. My 13-year-old son and webmaster, known to me as JakeJarvis.com, without him I couldn’t have my site up.

We were talking the other day about dot com business. It’s now public, it was okay. And I said, oh, Yahoo’s doing this and that. And I realized halfway through our value meal at Burger King, I said, Jake, you can’t blog that.

You know, anyone is a journalist. Anyone can commit an act of journalism, and all of your life is now on the record because you don’t know whether the guy next to you is now committing and act of journalism about you.

So it’s fundamentally exploded our definitions – our little controlled definitions. We own the press. We’re journalists, you’re not. That’s gone. It’s over. It’s absolutely over. So that’s number one. Anyone can commit an act of journalism.

Two -- I’ll just do this briefly because it’s
legal and I don’t know what I’m talking about. Susan Crawford, she’s a professor now at Cardozo. Brilliant, brilliant woman who just got nominated to the board of ICANN, the Internet authority. And Susan comes out with wonderful provocative thoughts that I have to think about a week later.

One she just blathered out a few weeks ago was that libel law is outmoded now, now that the Internet affords anyone a means of response. There’s a syncopation that happens now, and the timing of this I’ll talk about more in a second, but there’s a syncopation that comes out of synch now as to what’s publication and what’s response and who has access to what. So I just throw that one out there. I think that has an impact.

Beyond that, when we use citizens to report, what is our role and responsibility in sharing trust with them? That’s obviously a big issue.

And then there’s the dual-edged power of the link, right? There’s the fear people have of the link of, “oh, my god, you’re going to link to something that you don’t really know and can’t vet, so it must be bad.” But you also have the power to link to the correction. And people can link to you and say this is wrong and people can discover that it’s wrong.
There’s a service called Technorati that tracks all the links among blogs. It now tracks 20 million blogs - or it has tracked 20 million blogs. There are 70,000 new blogs a day. There’s a new blog born every second. An angel has its wings, a blogger has its keyboard. Half of them die, but yet every second there’s another one born, so they keep growing. The blogosphere is doubling every five months.

I forget the number of how many links Technorati actually tracks, but the point is that Technorati enables the conversation of this link.

We get a reputation in the blogosphere for, number one, wearing pajamas -- and I want to show you that I don’t. I still have my suits left over from Advance. And number two, that we’re in an echo chamber. That we only care about what we care about. That’s wrong. It’s just not true. Because what we do, in fact, is we link to those we disagree with so we can say, “see this bozo over here and see what he’s saying. It’s all wrong”.

So the link has tremendous power, and it’s two-way power. Yes, some believe there’s a danger in linking to that which is bad. But the link also creates the means of correction. And even if I don’t link to something that corrected me, Technorati does.
So people can go in say, well, here’s all there people who are piling on Jarvis because he didn’t correct something. The correction mechanism in blogs is a hell of a lot faster and more powerful that it is in big mainstream media, I guarantee you.

When I make a mistake readers are on me like white blood cells on a germ, and they demand what they see as a correction. I’ll tell them to go screw off because it’s not a correction, it’s a disagreement. But if it is in fact a correction and I don’t do it, my brand, my reputation suffers immediately.

So there’s a lot of power there. So number two is the relationship of libel and corrections, and what’s right and wrong changes.

Number three and related is that what’s happened in the biorhythm of this medium is that we publish first and correct later. Gasp. Right? Isn’t that the most frightening possible thing? But it makes sense. The basic notion was that the news was done when we finished it. When we turned the news into fish wrap that’s when it was news. That’s what made it news. Right?

Well, in fact -- as with Dan Rather -- that’s when the news begins. When we publish it is when the people have the chance to react to it, to add their
questions, add their facts, add what they know about it, challenge us. So the news process really begins now at publication, publication being very broadly defined here as sharing.

So that means that what happens in blogs is that, yes, we do publish before we have a copy editor or a fact checking desk or whatever, because the audience is my copy editor. Believe me. And my fact checkers. And if I’m too irresponsible about that then my brand reputation will fail. If, however, I correct myself, people appreciate that.

During the Rathergate kerfluffle, I, in my blog, ignored it. I didn’t want to write about it because I said it was more damn mudslinging and I don’t do that and I didn’t want it. My readers came after me and said, no, damn it, Jarvis, you say you write about media. It’s a big media story. You should write about this.

So I came back in the blog and I said, you know, my readers told me I was wrong and they’re right and I’m going to write about it. And they came on then and said thanks for listening. It’s a new relationship. We should try it sometime with big media. It works.

So we publish first, correct later. We all do that now in forums, right? Where something bad
happens and when we were at Advance we had a great structure for enabling the audience to be the cops, the snitches, to tell us about the broken glass, the broken window, so we could send the cops there to -- no, I’m sorry. They were the snitches and we were the cops. Get all confused.

The audience would tell us whenever something was wrong in a forum, as long as it had enough people in it to do that. And as long as we responded quickly it cleaned up the neighborhood. So that’s another case of publishing first, correcting later. Bloggers, as I said, do that.

Now, when that comes to staff doing that, every time I go to a big newspaper or magazine and say your people should blog -- I actually told them not to do that first. I told them the first thing to do is to read blogs. Using my PowerPoint line again. We’ve owned the printing press for centuries. Now the people have the printing press. They’re speaking. It’s our turn to listen.

So the first thing I tell big media is, go out and listen to the bloggers. Hear what they’re saying. Read it, quote it, make them stars. Get into a conversation. Then on their terms go ahead and enter the conversation and start blogging. And the advantage to big media to blog -- the advantages
are many. One is that it humanizes us again. It
takes us off that pedestal we built without the exit
stairs and brings us back to an eye level.

It also helps to get stories. Heather Green --
blogspotting.net at Business Week is a great blog.
The Business Week writers -- I’m really embarrassed
I’m having a senior moment -- ask their audience
before they go out for stories what they should ask
interviewees. They ask their audience for help on
story ideas. They ask their audience for all kinds
of things, because the audience now participates.
It’s a great way to go.

So when staff bloggers blog, the knee jerk
reaction of big media is, I’ve got to edit them
beforehand. Well, but that takes away the immediacy,
it takes away the opportunity to have an ongoing and
quick dialog -- and this medium is very quick. I say
no. Don’t. Correct afterwards and let the lawyers
deal with it.

Because I now don’t work for a real company, you
know, what the hell. Of course it means I have no
legal defense so I’m screwed. The added difficulty
is, of course, that this medium is going to audio and
video very fast. A lot harder to review it, a lot
harder to search on it, a lot harder to correct it.

So those are issues. So that’s number three.
Number four, welcome to the distributed world.

As I said earlier, that first week of blogging for me was people linking to me and saying something and me linking back to them and it happened in different places. And I realized that’s media now. I would argue that Craig’s List is only a way station toward a distributed marketplace.

Craig’s List and Monster are just cheaper versions of what newspapers did — cheaper and more efficient versions. But they’re still centralized marketplaces. You have to go someplace, put your ad in, have something happen to it then.

What’s really going to happen, I believe, is that you’re going to go on your blog or on whatever, you’re going to put up our job ad or your resume, and it’s going to get tagged in a certain way, which Google is starting to do now with its new product called Base. You’ll tag it in a certain way and then any search engine can find it anywhere.

So you don’t any longer need to go to the marketplace. The marketplace comes to you. It’s a distributed world. That fundamentally changes the relationship. We were all about being centralized. That’s what media’s about. Media’s entirely about centralizing and controlling. And we’re now entering a world of distribution and a lack of control, which
we celebrate, which makes all of you nervous. But that’s where this is going from an economic stand. One of the bloggers’ bad habits is to quote themselves or repeat themselves, depending upon whether you read my blog. So I wrote an obnoxious post about a month ago or two months ago – finally kind of realized that the war over is content king or is distribution king is over and neither is king. In a post-scarcity world you can’t own all the content. You can’t own all the distribution. There’s always more for cheaper. And, yes, it can be good. So what’s king?

Well, conversation is the kingdom and trust is king. And we’ve got to decide as media properties who we are and what we are really.

When I left Advance where I worked for ten and a half years and loved it, and loved the company, but I went in to my boss, Steve Newhouse, as I’ve told this in my blog, and I said, Boss, you know, what you really need now to grow to the next level is a change agent in newsrooms. And that’s a thankless task I really don’t want. Plus I wouldn’t be very good at it because I’m the crazy guy who talks too fast.

So I said, you know, God speed. You’ll do that. I’m going to go and lose a lot of money and go be a professor. And there we go. There were things that
I failed to do in that role as the new media guy at a big media company, that Katrina came along and did in a matter of hours. Katrina proved to be a far better media executive than I ever was.

Because the things I was trying to do were three. One, that journalists should tell the public what they know when they know it. They shouldn’t wait for the next edition or for their show to get on. Suddenly now in New Orleans they were doing just that.

Two, that journalists shouldn’t get so damn snotty about, oh, I’m a print person, you’re a new media person, I’m a TV person. Screw the medium. Break free of the shackles of your medium. And when Katrina hit they did that. The people who wouldn’t get near a blog suddenly were dying to get their hands on the tool because it was a way to tell the public what they knew when they knew it.

Three, journalists now suddenly had to rely on the people on the street, or in this case in the lake, of New Orleans to tell them what was going on because they were there and the journalists weren’t there. So those things that happened in New Orleans, when it brought down the printing presses and the broadcast towers, suddenly the things that made big media big were gone.
And then they had to ask, what are we now? And what they were, I think, is a machine for connections. They were putting people together with information and with each other, and they had trust. We haven’t squandered that trust. That’s the essence of what we are.

So, welcome to the new distributed world where we don’t control things by owning it all, and we have to ask who and what are we?

Number five, a few of these get quicker now. RSS is a two-way street. Does everyone know what RSS is? Does anyone not know what RSS is? Cool. You got it. All right.

Obviously there were issues raised by RSS in the sense that we can share our content with others. We should put our content on other sites. They will share their stuff on our site and I have no idea, esteemed panel, what that means.

What does that do to our relationship with that content? When we put it on sites where we don’t control it, does that say anything about us? When we run their content on our site, does that infer any blessing on them? Or are we just a connection machine? I don’t know.

So now we share content, they share content, we scrape and are scraped, and we lose control. And RSS
I think is a great thing and a wonderful thing, but it has an issue.

Number six, remix generation. Remix and pass on. The people want to remix. They want control. I’m fond of saying that I was a TV critic at People, later TV Guide, but at People for the mid 80s when the remote control hit 50% penetration in America. And that was the moment when the people took over control of the consumption of media.

And the remote control and the cable box and the VCR improved the quality of TV, I’ll argue. We got HBO out of this deal and it was a good deal. Well, now along comes the Internet that allows us to control not just the consumption of media but the creation of media. People want to create stuff.

Now I’m sure you’re all familiar with Larry Lessig and I don’t fully agree with him about copyright and that all creation comes from some prior sampling. I don’t necessarily buy that. I like copyright, too, because I want to write a big book some day and I want my kids to do well from it. So I’m a friend of copyright.

But the smart relationship now is to put stuff out there so that people can remix it because it means they’re more engaged. If you’re a music company, why wouldn’t you put out some longer version
of your song, a little bit of video, have people make
videos for you and put it out there. It’ll work.

When Jon Stewart went on Crossfire to, God bless
his little heart, kill the show, that was seen on CNN
by an audience of 150,000 people. The next day that
segment was put onto IFILM where it’s been seen by
three and a quarter million people. And it’s on
BitTorrent where it’s seen by untold millions.

So what’s more powerful? The network that Time
Warner owns? With my damn stock that doesn’t move.
Or the network that no one owns? The network that no
one owns is more powerful. People want to pass
things on. How do we take advantage of this? How do
we throw our ads on something, figure out a way to
ping it, and let it go out there like wildfire? And
stop trying to get everybody to come to us.

How do we give people stuff so that they can get
engaged with it and do things with it and moosh it
up? How do we become open source? It’s a big
question for us. All right, that’s number six.
Heading for the home stretch.

Number seven. Maybe one of the things we do
going forward is we become ad networks. Maybe that’s
our first relationship of trust with the audience out
there. This is something I wanted to do at Advance
and didn’t get around to, but we were trying to go
into a hyper local strategy where the audience could
bring in local content in a way that we couldn’t
afford to gather.

But perhaps the right relationship was to also
support them with advertising. In New Jersey there’s
a site called Baristanet.com done by a woman named
Debbie Galant, who used to be the Jersey columnist
for the Sunday New York Times. Now she has a site
that she owns with people helping her out, covering
three towns in New Jersey with advertising. And
maybe NJ.com, my former site, should be selling ads
on her site and we could increase our reach. That’s
our relationship.

Nashvilleistalking.com I recommend very highly.
It’s put together by a guy named Terry Heaton working
with the Young Broadcasting stations. I had lunch
with the guys at Young with Terry -- and all I got
out of it was a damn t-shirt. My fault. I’m
learning how to be a consultant.

But it was a very open organization of media
people who realized they had to change here. So they
came at this and they said, what can we do? Well, a
couple things. One is that they brought bloggers in
to meet them face-to-face. Here, sit on the set,
take a picture of you, you’re on TV. Wow, isn’t that
cool. Right? But it was respect.
Number two, they hired a woman named Britney, a
former waitress -- good move -- to become a blogger
and she blogs about the town now.

Number three, they put together an aggregation,
avertomated, of bloggers’ comments in town. And number
four, they just put together an ad network. So the
TV station will sell local, Burst will sell national,
on to these local blogs. So now they have a very
rich ad media relationship with a local content
network. You can’t own all the content. You can’t
own all the distribution. Your goal needs to be to
participate in what’s going on out there and growing.

Number eight. We can never be too transparent.
Call on Dan Rather again. The highest virtue of this
world of blogs is transparency and we in big media
have to catch up and we’re really bad at it. And
it’s ironic, of course, because we want everybody
else to be transparent but not us.

So we’ve got to figure this out because it is an
ethical lapse of ours when we take two weeks to
correct our errors. It is an ethical lapse of ours
in the view of this world when we don’t admit our
biases. So what happens to us when reporters do
start to say what they think?

Number nine. Who owns the wisdom of the crowd?
What’s happening on the Internet is not just that it
creates new content and it creates new connections, it also proves James Surowiecki’s thesis that the crowd is smarter than the individual members of it. Google is that. Google relies on the links - the clicks we make to say that we know best.

Flickr has this wonderful thing called “interestingness”, which is about the best photos - not defined by traffic but defined by social relationships and how many people tag it and click it and link it. And if you go onto Flickr and click on “interestingness” you’ll see a gallery of photos that were automatically selected by the taste of the crowd.

Delicious is a tagging company where people define what content means and it does very powerful things.

So there are really interesting issues that come out of this in the sense that who owns that wisdom now. I want to own my own stuff. People get mad at eBay that they can’t go in and take their reputation out and use it elsewhere. It’s my reputation, isn’t it? My attention, isn’t it? Well, no, says eBay. It’s ours. People get mad at that so they go compete with that.

Who owns the aggregate wisdom and what’s the responsibility of those who control that aggregate
wisdom back to the community that creates it?

Okay, number ten, finally, and then I’ll shut up. Small is the new big. Not only are we in a distributed world, not only a world where our notion of centralized changes, the whole definition of big enough changes. So remember I mentioned Stewart on Crossfire at 150,000 viewers, and then Stewart on IFILM and BitTorrent at, you know, 5 to 10 million viewers.

Also see something called Rocket Boom. Rocket Boom is a blog -- a video blog done by one guy behind the camera who hired a very attractive comedienne woman in front of the camera, who is kind of a poor woman’s John Stewart. And so she and he make this show every day, and they have, with no cost, no structure, no attorneys, no deals, no nothing, 75,000 people a day for a little bit of bandwidth. Who’s got a better P&L?

So as we look at our businesses shrinking in some ways, we’ve got to look at ourselves as a collection of a whole bunch of little things to become big again and ask ourselves who are we really?

DALE COHEN: That was a lot, and we’re going to come back and talk about a lot of those things. I think when we were putting this panel together, and we knew that Jeff was going to lead it off, one of
the things that became important was to demonstrate
for you guys, as you go back out after this, that our
clients, our companies, are in fact learning these
lessons as we go along.

So we picked a panel of people that I’ve already
told you a little about, but all of whom are involved
in the incorporation of these ideas and the
mainstream media’s creation of some of these kinds of
products using some of the ideas that Jeff has talked
about. So why don’t I give them a chance to talk a
little bit about what they’ve been involved with,
what the business objectives were, and how it’s
worked so far.

And let’s start with Cori. Why don’t you talk
about what Belo and Dallas Morning News have been
doing in this theater?

CORINNA ULRICH: Dale, thank you. What I didn’t
know is how hard it would be to follow Jeff. We’re
doing exciting things, but wow.

Actually really interesting thoughts, and
interestingly do tie a lot in terms of what some of
our thinking has been. We have actually used blogs –
– and I’m going to limit really my discussion of
blogs, although we are equally interested in citizen
journalism or more user community generated content
as well.
I got a call a couple of years ago when, believe it or not, you could actually pick up a newspaper and the word blog didn’t appear in a particular issue of the paper. Not everybody at that time necessarily knew what a blog was.

And I got a call asking, do you know what a blog is? And at this time of course -- luckily I did know what a blog was, but I expected the typical we have someone who created a blog. Instead actually it was our editorial board at the Dallas Morning News calling to say that they wanted to create a blog. And that was a pretty early time period to do that.

And it was actually one of the more exciting things I’ve done in a long time there because the thinking was so forward. If you go on to Dallasnews.com you can still see Keven Ann Willey, who’s our editorial editor, her explanation that she put out as to why the blog was established. Which was important for us and for her.

It was primarily to allow a view -- transparency to the extent we could, about the process the editorial board uses day-to-day in reaching opinions, in what it prints, and in how that process works. And to try to get away from this notion that the editorial board is the ivory tower and all of a sudden you’ve got this opinion and how does it get
there? And it can be a very mysterious group, even to people in the media business but certainly people outside who don’t know.

So that was one of our objectives. It was also to try to engage people to use the medium in a different way than we had used it before. And to some extent it was also to help us get the perspectives that we wouldn’t have otherwise had in forming our opinions.

And the interesting thing at the time we launched that particular blog is that we did have the internal – the obvious debates about how do you feel about allowing individuals, when we’ve previously been operating as a group in terms of those opinions that are on the editorial page, and how do you feel about that?

It’s probably fair to say there was discomfort on both sides about changing the editorial process. I’m not sure it was just the paper saying, well, goodness, nobody should be able to put out their opinion individually. I think equally we have a fairly experienced group that had traditionally just been working in print and to have a comfort level with blogging was a fairly major change for them. So it was really a two-way process.

It has worked very well. We have actually
launched a few additional blogs now at the Morning News and actually companywide I would say there are different objectives that we’ve tried to achieve. The editorial blog was to give a view of how opinions are reached.

We have a sports blog on the Dallas Morning News page as well. It’s pretty obvious -- sports is just an interesting area -- and it’s generated a lot of response, a lot of content, a lot of back and forth.

We launched a few months later a fantasy football blog. That one was a little harder to be 100% comfortable about but that one mainly because I’m not even sure I still understand fantasy football, but okay.

That actually was a good example of taking advantage of the medium to some extent because fantasy football is such a big deal, especially on the Internet.

And finally we have one in the arts and entertainment area, which again is a category that I think lends itself well. We found that commentary and opinion tends to be an easier area, but we have both.

And finally I’ll cite one more example, especially since Jeff mentioned Katrina and hurricanes. We own the CBS affiliate in New Orleans
and as you can imagine a very, very difficult time for any media organization in that market. We’re actually the only television station in that market that stayed fully on the air during the entire time of the hurricane and afterward.

But one of the things that was very effective was a blog that our news director, or the newsroom, had, which was very different, obviously, than the editorial blog. Its entire purpose was just to get information out as quickly as possible.

So actually exactly what you were saying, Jeff. It was very useful to do that, because as you can imagine, there were a number of things that needed to be communicated in one way or another. Whether it was trying to find relatives, get news out, updates. It was a mix of things that just came in and quickly got put out there.

So we found lots of different opportunities. That blog I don’t think we have up anymore. In fact we checked. It was very much a limited purpose but very important at the time, and obviously highly visited.

DALE COHEN: Let me ask Ken about the New York Times and New York Times Digital and the things that they’ve been doing. You’ve been experimenting with lots of different things, no doubt influenced by your
consultant on About.com. Talk a little bit about what the objectives have been and how you measure success thus far.

KEN RICHIERI: Sure. Well, I think to some extent, as an example if you look at the New York Times company, our two largest websites, and look at them individually, they give you a sense of the kind of changes Jeff is talking about.

I mean if you look at nytimes.com it’s a very traditional news website. It’s a large website. We’re talking 600 plus million page views a month, probably 15 something million uniques -- 15, 16 million uniques.

It’s a site that’s architected in a very coherent way internally. Most of the traffic comes in through the front page and you can navigate around the site very clearly. The traffic at nytimes.com -- probably 7, 8% comes from search, the rest come from people who bookmark it, go there on purpose, or come from a link that we distribute in some way through our headlines.

Internal navigation is very good, but there’s boundaries on it. There’s boundaries at nytimes.com and the web. If you go to About, which is the site that we purchased earlier this year, which is really a collection of guide sites, it’s a tad smaller than
nytimes.com - probably 15, 20% smaller.

But as I like to say, it’s the largest website that nobody ever heard of. I guarantee everybody in this room has been on About. Most of you probably don’t even know it because you got there through Google. You navigated through Google, you were looking for something, and you got to one of the guide sites on About.

Internal navigation on About -

JEFF JARVIS: Sucks.

KEN RICHERI: - stinks. Yeah. Is not very good. But its external navigation, while it still could be improved, is better. The edges of About blur into the blogosphere and blur into the web.

I would argue that architecturally About is a much more modern structure. What you’re seeing, when people talk about blogs and things like that, what it really means or references is that more traditionally architected sites, like nytimes.com, their edges are going to change. That boundary between those sites and the web is going to lower and you’re going to have more of a distribution in and out in many of the ways that Jeff said.

So at nytimes.com we’ve begun to take some steps in this direction. Earlier this year there was a fellow who put together some software that he used to
aggregate discussions occurring on the web about New York Times articles and he published a site called the annotated New York Times. So we did what we usually do, send him a cease and desist, send somebody after him.

Our chief digital architect went to see him, came back and said the guy’s a genius. We should hire him. And we did, basically. The long and the short of it, so now he’s working for us and what he is doing, he’s begun to do on the site and you’re going to see more. He’s breaking down that edge of nytimes.com. He’s creating a mechanism for the blogosphere to connect with nytimes.com articles -- the articles that we publish. There’ll be reader responses and we’ll link to blogs and linking in and out.

And it’s not a process you’re going to see happen immediately, but again that edge goes down and we become more of a distributed network.

DALE COHEN: Sherrese, the other thing that Jeff talked about is even more community feedback and the really interactive nature. And the Washington Post is doing a lot of those kinds of community oriented blogs or sites. Can you talk a little about that and what you’re trying to accomplish?

SHERRESE SMITH: Okay. I feel like my
catchphrase should be Washingtonpost.com blogs gone wild, because the last ten months we’ve been very aggressive with blogs. In fact we’ve started over 20 new blogs in that 10-month period, and the blogs really are broken up into three basic areas. The first area being those subjects that are interesting to our core audience -- politics, technology, sports. You know, the biggies.

We also have blogs that relate to some of the big stories of the last year. We have a Hurricane Katrina aftermath blog that is tracking what’s going on in that area. We also have a Weligama blog that tracks what’s going on in the areas affected by the tsunamis. And all of those have been very successful.

But one of our big pushes, and this is one of our goals in general, is really having the community involved in the online process. And so we do have a number of community journalist blogs that we’ve implemented. We have our Race to Richmond blog and we have our Fairfax County blog. And the Fairfax County blog I think is probably the best example of that core community blog where you do have people weighing in on various subjects that are important to them in that particular county.

And I think what you’ll see is that while our
focus is also national, we’re also looking at what can we do to engage our local users. And Jeff mentioned that issue earlier. You can’t have reporters on the ground in every place. And this really is a good way to have people who are out there, who are experiencing things every day, weigh in on a lot of these subjects.

And you find that a lot of them are self-policing. I mean if someone has said something that’s not right you will see five responses immediately to that initial posting saying, uh, uh, uh, don’t think so. So it really is a way to get the community involved and to have them be a part of the process.

The other thing that we have implemented is that we do have a deal with Technorati and the way we use Technorati is that we will have Technorati links on the bottom of our articles on Washingtonpost.com so a user can click on those links and see other blogs that mention articles that talk about Washingtonpost.com or other articles that weigh in on subjects that are featured on Washingtonpost.com, and I think that has been a very good thing for us over the past year.

But like I said, in the future we’re going to continue focusing on having our community be part of
the conversation, part of the dialog, and trying to get them involved in the process.

DALE COHEN: Sherrese, let me just ask you a follow up about that. The old wisdom on the web was that you didn’t want to send people away from you site. You wanted to capture them and hold them there. We can all think of companies that have done that.

You said that that Technorati in particular has been very successful for you so far. How are you measuring that success?

SHERRESE SMITH: Well, I mean we have ways of tracking when someone goes out to a blog that’s mentioned on Technorati and then comes back in to another article. Because what you’ll find is that, yes, they’ll go out for a blog, but there might be something in that blog which will then focus on another story on Washingtonpost.com, or another area where we have information and so they come right back.

So it’s a 360 circle, really. I mean and we feed them information, they feed back, but we do track that.

DALE COHEN: Jeff?

JEFF JARVIS: I just had a meeting with Technorati before I came down. The other thing that
happens is because there’s article X on the Post, then you publish “here’s what people are saying about it here”. The blogger realizes now that by writing about that article and linking to that article, they’re appearing on the Post.

SHERRESE SMITH: Right.

JEFF JARVIS: So it’s a share of traffic. They’ve got a link back, too. So it’s link up, link back. It works both ways.

DALE COHEN: Let’s edge our way into the world of the law and take on what right now is probably the most controversial of subjects relating to blogs and blogging, and Jon, let me direct the question to you. I mean if Jeff is correct that anyone can commit an act of journalism now with blogging software, is everyone a journalist for purposes of the law?

JONATHAN HART: There are some journalists who are bloggers and then some bloggers who are journalists. Rather than looking at whether blogging is journalism or whether bloggers are journalists, we have to look at what Jeff was talking about -- about people committing acts of journalism and look at whether what a blogger is doing at a particular time is actually journalism.

And as anybody who’s been involved in some of the discussions around a federal shield law knows,
it’s going to be a fairly difficult proposition to sell to Congress the notion that with new blogs being added at one a second that somehow a federal shield law is going to cover all 20 million bloggers that we have today.

So I think really you’ve got to be looking not at who’s a journalist or what is journalism, but who is actually producing -- who is in the process of producing journalism.

DALE COHEN: All right, well, you’ve led us down the path to the federal shield law. Why don’t we talk about that just a little bit. The language of the proposed statute right now is far less than clear with respect to bloggers. Can you talk a little about how you think those issues will be resolved and where it’s going? And this is open to any of you guys. Please, we want you guys to participate so if anybody out here who’s been working on the draft and the lobbying efforts with respect to the shield law wants to comment on that? All right.

CORINNA ULRICH: Well, I’ll make a comment. To pick up on what Jonathan said because we talked about this a lot when we talked the other day about this panel, and that is I think as you get to the definitions it does become very difficult and you hear all this commentary about bloggers feeling
they’re not considered to be journalists and issues related to that.

Not to make it more complicated, but the shield law is really just one aspect of issues that relate to journalism and I think we’ll talk about that, too. So even if we get to one definition are we really defining the space? So I do like the notion of what is actually happening, what the individual is doing or what the particular blog does and using that as a guide. Of course, I don’t know how you draft a definition.

DALE COHEN: Sandy, let me call on you because you’ve been involved with those. I mean just talk about what the statute, as it stands right now, as proposed right now, says or doesn’t say about blogging and the Internet.

SANDY BARON: I don’t have any of the definitions, but the specific word “Internet” is in the statute. But it is intended, and it does try to cover the sort of formats, if you will, that have been thought to contain journalism, and to leave open all the means by which those formats are distributed with the notion that the blog is today’s sort of characterization, but as quickly as blogs come, something may follow on their heels and that therefore in the end trying to [off-mic] broad
definition of terms, recognizing that the courts are going to be [off-mic]. I mean just as they are today. Either for better or for worse in a lot of areas, and certainly, you know, first amendment contracts [off-mic]. The courts are ultimately going to decide who is the journalist.

JONATHAN HART: But the statute doesn’t even make reference to websites, not only the Internet. It talks about periodicals, among other things, whether published in print or electronic form. And I think that definition ought to be broad enough to cover a blogger who is committing Jeff’s act of journalism.

JEFF JARVIS: Though you could be at a politic tsunami where you happen to be the person who witnesses something or finds out something that is good for the public to know and you may not regularly be publishing this. Evelyn Rodriguez was a blogger who happened to be in Phuket when the tsunami hit. She did great journalism but she writes about marketing usually.

I think the problem is to define the regular habit, is also to define the person, is also to certify and license the person, and you guys know the problem of that.

DALE COHEN: Well, we’re not working off a completely blank slate, right Ken? I mean there have
been cases that have addressed this before and courts have looked functionally at the question of who’s committing an act of journalism, to use Jeff’s language.

KEN RICHIERI: Yes, that’s happened before but it’s an unfortunate time to be trying to bring a shield law -- well, for a lot of reasons.

But what the web is doing in this area of law isn’t all that different from what it’s done in other areas. I mean think copyright. It’s just wiping out the lines that made the definitions work. Congress is not going to pass a law that exempts everybody from testifying. I mean it’s just not going to happen.

And yet the trends that Jeff spoke about in the beginning make it very difficult to figure out how you draw that line in what you do. I think the drafters of the shield law are doing their best to try to punt on that and let the courts deal with it later. And I don’t know if they’re going to get away with that. That’s really the issue.

DALE COHEN: And Sherrese in fact it’s been interesting for those who have been following this debate. Editor and Publisher has run a couple of articles recently where Representative Pence and Senator Luger gave conflicting statements in recent
speeches about whether bloggers would or would not be covered.

But the states are dealing with this. There are state shield laws that cover the questions of who’s a journalist and decisions interpreting that. How do they deal with the functional question of is someone committing an act of journalism and thereby covered in most of the states?

SHERRESE SMITH: Of course you have to look at the statute. Now we have over 30 states and D.C. that have enacted some form of state shield laws. And the statutes really come down on two different sides.

One, you have a definition where the state shield law will only protect journalists who work full-time for, say, newspapers, news magazines, broadcasting companies, or cable companies. And at that point you’re not quite sure whether freelancers are covered, book authors are covered, what’s really going on. And I think you’ll find in a lot of those states that the courts have stepped in to interpret what that really means.

Then you have the New York statute approach where you have that definition defining someone who’s protected as professionals who are engaging in journalism as a form of livelihood. That’s the way
they’re basically making their bread and butter.

But again you’re going to end up having the
courts step in and say but what does that really
mean? I mean it’s easy if you’re talking about a
But what do you do when you have the amorphous people
out there, the non-traditional journalist? Does that
really fit into it? And I think the courts have to
come in at that point and that’s what they’ve done in
the states.

DALE COHEN: And in fact we have a fairly recent
case that came up in a non-traditional media context
involving Apple. Cori, could you talk a little about
that and what, if anything, we’ve learned at this
point from that case?

CORINNA ULRICH: We’ll also seek some audience
input if anyone has more current or specific
knowledge, especially from California.

That is a case where the court intervened. I’m
not sure that was a good thing. And it was, as Dale
says, a non-traditional case in that, it was really a
trade secrets case. Apple was confronted with the
release of trade secrets. It didn’t know who had
done that.

These trade secrets appeared on at least three
different websites, one of which Apple ended up
suing, but primarily what you read about is their efforts to find out. Basically they’ve sued the unnamed individuals who have actually disclosed the trade secrets and subpoenaed the email provider.

So they actually did not subpoena the other two online sources and the writers for those sources. So it was untraditional in that regard. It was not a case where you had a subpoena requiring a reporter to testify.

The court really just pretty much sidestepped the issue of whether these individuals were journalists even though they claimed to have that status under the California shield law. And basically, from my reading, treated it pretty strictly as a trade secret case.

JEFF JARVIS: But the court -- speaking as a non-lawyer -- did make, I think, a dangerous move where it judged the qualitative nature of the content by saying, “oh, it wasn’t really the public interest. It was a hobby thing.”

CORINNA ULRICH: Right.

JEFF JARVIS: That’s where we get in tremendous danger is when you have the government judging the quality of such things.

CORINNA ULRICH: That’s exactly right. That is what made it worse. They sidestepped the issue of
making the determination, which probably was better because who knows what they would have decided. It probably would not have been a good decision. But at the same time the court expressed its reservations about whether these writers truly were journalists, and in fact referred to the one, Thomas O’Grady, as a, quote, “intermediary”. Merely an intermediary perhaps between the source and the publication. And under trade secret law viewed that as of the essence.

So, at the end of the day you could say that the court really viewed this as a trade secret case. Maybe they didn’t quite understand the implications of all of it. But as Jeff says, and I agree with that, the language in there on this point about whether these writers were journalists in the shield law sense was very troubling.

JONATHAN HART: But at least the worst fears of what that case could have done were not realized, which was we could have an opinion which was actually trying to distinguish between who is a journalist and who is not a journalist.

CORINNA ULRICH: That’s true.

KEN RICHERI: The case is interesting because the court’s inability to draw the line between what is a journalist and what’s not a journalist in the context of an individual as opposed to a news
organization led the court to a decision that
basically when you’re talking about trade secrets you
don’t have First Amendment protection. I don’t know
that any of our major league clients would have
gotten that ruling.

JONATHAN HART: Well, the judge said they would have.

KEN RICHIERI: Well, he said he would have.

Would that really have happened? I don’t know.

DALE COHEN: We have a couple of hands. Yes?

QUESTION: Well, I have a question about the
Apple case. The judge was clearly concerned about
the fact that they didn’t think the bloggers were
doing anything in the public interest. They said
just because the bloggers were writing about it
doesn’t make it something that interested the public.

How do you deal with that? I mean legally how
do you deal with that? In the newspaper context if
an article is written at least it’s presumably
written because it is in the public interest. Can
you say the same thing for bloggers?

KEN RICHIERI: Well, I don’t know if you can
honestly say the same thing for all newspaper
articles. The basic idea is that judges don’t judge
the quality of expression and news. Again I just go
back to Jeff’s earliest point.
I mean even when we don’t realize what we’re doing, the lines that are drawn make distinctions and differences for us that makes the law and makes what we do make sense. And when these things are obliterated, this person comes up and he is a de facto journalist. He has information, he’s publishing it. Certainly publishing it to more people than any print journalist used to be able to publish it to.

What is he and why should he be treated differently? It’s tough to really figure out exactly why.

DALE COHEN: Yes?

QUESTION: I would just point out that most testimonial privileges grow very short [off-mic] through a sibling, a parent/child relationship. We still feel it makes our system somehow fair to carve out some [off-mic] that’s protected so that if the law [off-mic] turned out, carved out only those [off-mic] actual newsgathering and reporting [off-mic].

Or only those whose work is embodied in medium other than [off-mic]. I still think it would make this a better [off-mic].

JEFF JARVIS: But you have three choices. You can define the person, you can define the act, or you can define the quality of the information. All of
this was so important for society to know that we’re
going to let it skate that you got it from an
anonymous source.

Well, gee, Apple, that’s just cute. But
printing on papers, that’s important. Well, then
you’ve got government deciding the quality. Any of
those three leaves things out that should be there.

So yes, I agree, but here’s my heresy. The
problem is I’m not sure that I now support a shield
law. I haven’t said that in so many words, but now I
have the problem because if it leaves us out, then
I’ve got a big problem with it. And so I don’t know
what you do then.

DALE COHEN: Fair question.

KEN RICHIERI: Can I respond to that? I
actually agree with the statement that arbitrary
lines can be helpful. The question is, though,
whether it’s even achievable. Let’s say you didn’t
have a spousal privilege law and somebody wanted to
enact it now, they’d have a very hard time defining
who’s a spouse now if you were writing on a clean
slate.

That’s what’s happening with the shield law. It
might be a great idea but there’s now a whole group
of people who have an interest in this that didn’t
think they ever had an interest before.
DALE COHEN: Jerry?

JERRY: We’ve been thinking a lot about using our viewers as reporters, and a question for Jon and Cori. Talk about the interface between traditional legal exposure for broadcasting images and this solicited image from a viewer who sends in a doctored photo that falsely reports a story. How is the traditional media then protected in those instances?

DALE COHEN: Jerry, let me ask you to hold that just for a second because we’re going to come to a rather extensive portion of this program where we’re going to talk about Section 230 and related doctrines on exactly those kinds of questions. But I want to make sure that we’ve answered all the questions on shield related and similar kinds of questions at this point.

Yes? David.

QUESTION: [off-mic] shield law in blogs, when you’re talking shield law sources. [Off-mic] it’s a question of accountability. Let’s come back to your point, Jeff, you know, the question is if you say [off-mic]. The question is when do we know and how do we know it?

And those are [off-mic] journalists, and that’s where the accou - the accountability is [off-mic]. Somehow you’re stripping away this accountability
[off-mic] bloggers. And it - it still is [off-mic] in infancy. I think in time it will, like you say, sort itself out [off-mic] those that are good and those that are bad [off-mic].

I don’t think the rules of [off-mic] could change because [off-mic]. I think that that concept could do a lot to persuade those people who are on the fence at Congress. There isn’t really a danger in allowing bloggers to enjoy the same protection as anybody else who are in this - who are in the business of engaging the [off-mic]. It’s - it’s this notion that goes along with it that reminds me of all the contract discussions we had a few years ago.

There’s a new medium, let’s change all the rules [off-mic].

I think that’s a much tougher pill to swallow for a lot of people and [off-mic]. But that’s - that’s [off-mic] I see when the blogging stuff that comes up, we’re really not talking about bloggers [off-mic] other kinds of relief.

DALE COHEN: Thoughts and reactions from the panel.

JEFF JARVIS: But I would argue that the artificial definition was the one of the guy who owned the printing press. That’s the artificial definition. Citizens are just -- the Outlanders
Association. An editor got up, swayed emotionally, and said, “you know, you keep talking about citizen journalists. Well, we’re citizens, too, damn it. We journalists”.

And I said, yes, as long you’re willing to say that citizens can be journalists too, we agree. The definition was extraordinarily artificial. Publishing in the old days was what? Talking to somebody. Now you have the means to talk around the world. And it’s not just about old laws, it’s about new laws. It’s about the FEC trying to limit our freedom of speech and elections because of new laws about campaign finance.

I mean it’s a mess. Yes, it’s a wonderful, beautiful mess because it now means anybody can do anything, but you guys better figure it out.

DALE COHEN: Other thoughts or questions? Yes, Chuck?

QUESTION: Well, when people talk about Congress is deciding this or that, as if Congress is free to do that now, I think it’s not at all clear. The Supreme Court, kind of like some state courts, has been very resistant in the definition area, and rules which depended on whether you were part of the media or not.

It’s quite possible that they would crack down
on First Amendment or equal protection grounds, lines which carved out people who happen to be bloggers.

So the notion of letting the courts make some of these rules and not having Congress make them subject to challenge, they have a lot of [off-mic].

DALE COHEN: As I recall, the Supreme Court rejected Rosenblum because they didn’t want to leave it to the courts to decide what’s a matter of public concern and what’s really newsworthy either. So they headed towards picking public figures because you could define people more readily than matters of public concern. So I agree with you. It’s a mess on that front.

Other thoughts from the panel about this subject? Other questions about the shield law or about whether or not bloggers are journalists?

All right, then let’s head on to the area that Jerry really wanted to talk about. I mean what we’ve heard now from the panel is, what’s happening out there in the blogosphere, whether it’s mainstream media or otherwise, is something that’s very different. It’s very spontaneous, uncontrolled, there’s no prepublication review generally for these things. It’s just going out there in a relatively free form, and that’s the intention.

Jon, talk about the liability risks and how it’s
changed the liability risks, now that we’re
soliciting things from non-professional journalists
and we’re putting a very different kind of content
out there.

JONATHAN HART: Well, I’d come out of the
background, having been for many years a traditional
newsroom lawyer, and I think if you asked me 15 years
ago what my greatest nightmare would have been, it
would have been an unlimited news hall. It would
have been publish it first and then edit it, let the
community edit it after it’s out there.

SHERRESE SMITH: And correct it.

JONATHAN HART: And correct it. All of this is
mighty frightening stuff. And at the same time I
think Sherrese, Ken and Cori could tell you that they
can’t walk into their newsrooms today and tell the
bloggers that there will not be any blogs that are
not run through the normal editing process that we
have traditionally used in this newspaper. That’s
not an acceptable answer.

So it’s something we all have to learn to live
with and we’re going to have to figure out how to
lawyer.

DALE COHEN: What’s the experience been, Ken and
Sherrese and Cori? How’s that working in terms of
people getting more comfortable with the increased
risks and living with the new world?

CORINNA ULRICH: Actually, it’s been very interesting because my reaction was really the same as Jon’s. I had spent a couple of years on the interactive side before that so I think that helped me, because this wasn’t the first thing that we had done that seemed a little scary, frankly.

But really our experience has been mostly positive. I mean to answer Jerry’s specific example, because it’s something we’re actually looking at, interestingly the newspaper, too, video. A lot of this comes down to, quite honestly, judgment both on the business side - on the news side in terms of the reputation and how comfortable you feel. Oftentimes those issues are equally, if not more, difficult than the legal issue.

I mean when you start to take video that you haven’t edited before but you’re putting it on your site, how do you feel about that? Oftentimes it’s the editors that feel worse about it, frankly, than me. So that helps sometimes. I mean it really is a judgment call and it’s not that we don’t want to do it. We want to be reasonable about how we go about doing it.

That’s not a very definitive answer but that’s really where we’ve come out. And I think later we’re
going to talk probably a little more about how you manage those and implement those things. Why don’t we go ahead and launch into that. And I mentioned Section 230 before and I think that’s an important thing for us to talk about because there’s a lot of different elements here and lots of different sources of content that are going into these sites and these blogs that we’re talking about.

So, Jon, why don’t we start with you and why don’t you address Jerry’s question about the citizen journalism, to put it in the best possible light, of somebody sending you material that you put up on the site that is false or has been manipulated in some way.

JONATHAN HART: I’m trying to think how to get into this. In the mid 90s we all, as a media defense bar, gave a piece of advice to our clients following the issuance of an opinion from a New York court in the *Stratton Oakmont v. Prodigy* case.

I don’t know if you all remember this but it was a case in which an investment bank sued Prodigy over bulletin board postings that were quite unflattering of the investment banking service. And a New York court, in what I sort of read as a truth in advertising opinion said that Prodigy, because it had
held itself as being a safe place for kids to go, and
because it filtered indecency out of its message
boards, and voluntarily injected itself as an editor
into the message boards, had taken on liability as a
publisher of everything that was in those message
boards that the law would not have otherwise imposed
on it.

And we all went out and told our clients to be
very, very cautious about editing anything that was
in public forums, that was in message boards or in
chat rooms, and that if you did that, if you touched
it, if you even read it, you might be taking on a
liability that you didn’t have.

And our clients, amazingly, listened to us and
they heard that advice, and ten years later when the
law is really quite different, they still seem to an
extraordinarily degree to be clinging to that advice.
Jeff and Ken and I were just last week talking with
the online news association about this -- the very
same issues we’re talking about here.

There was this collective sigh of relief among
the editors and the audience as we finally, I think
for the first time, really got through to that
audience that Section 230 of the Communications
Decency Act, though there is ambiguity about exactly
what 230 means, that 230 - the one thing that is
clear is that 230 was enacted to undo *Stratton Oakmont v. Prodigy* and to allow editors to edit public forums and to take things down without taking on liability simply by the act of trying to police the public forums.

And obviously there are going to be limits and obviously if you edit and obviously I think if in the process of editing a bulletin board posting, the defamatory material is injected into the posting you’ve got there are going to be some limits on this.

But what Section 230 essentially says -- and this is a piece of the Communications Decency Act if you recall, is the statute, much of which was ruled unconstitutional in *ACLU v. Reno*. Section 230, however, survived. And Section 230 says that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

The questions that are really posed by 230 and that I think we’re going to be spending some time now talking about, are what are those limits? When is information provided by another information content provider? And to Jerry’s question, when, as content comes in from a third party, from a member of that
citizen community, when does a publisher that is creating an opportunity for that citizen to publish, have liability for that content?

DALE COHEN: So is Jerry’s client okay when the material he was talking about comes in from a member of that citizen community?

SHERRESE SMITH: You have to deal with it just the same way that you would deal with message boards. I mean if you have notice of it and you don’t do anything, I mean that’s a problem. So I think you kind of have to use those similar rules and have some common sense judgment about some of the postings.

CORINNA ULRICH: We’re generally in the middle. We’re not close enough -- I mean the forums seem easier to me, especially with 230. What we have talked a lot about and thought a lot about in terms of these types of parts of our site is the context.

I mean even if it truly is completely third party but it looks like something you created and edited -- frankly even if at the end of the day you could prevail under Section 230, you might be at the end of litigation after you’ve spent thousands of dollars.

So that’s what is so difficult about getting your hands around the scope of 230.

SHERRESE SMITH: Right. I’m talking more about
the text postings as opposed to blogs where you can put up photos. I mean I do think that that’s a bigger issue when you have people just submitting photos that could be theirs, could be copyrighted materials. You have privacy issues, publicity issues that are all involved in that.

No, I agree. I think that that’s a much harder thing. But for the traditional blogs, if there’s any such thing, I do think that you use at least from a basic level, common sense approach at dealing with some of those things.

JEFF JARVIS: Let me try to put a practical construct to this. At the level we knew was forums, you know, let’s argue about high school wrestling and we knew what to do about that. And then above that you have -- I’ll probably get this construct wrong, but you have things like people coming in and posting on blogs. Well, is that different from a forum? Well, when I worked with Jerry I tried to say, no, Jerry. It’s the same.

And then you have the notion that there are outside bloggers that you’re bringing in now in feeds and putting in. I don’t know which goes which in this order here. Then you have the notion that I’m taking content and putting it up in my context. And is there a line there? Should there be a line there?
Or in this new world where we blur the lines, maybe a forum is no different from our home page.

If you go to dig.com or many of these services now that are ones where the audience contributes to the content and then votes on it and creates the home page, the wisdom of the crowd, you know, I would propose that a newspaper should be doing what Dig does and let people create the home page.

Well, then where is that line then? But that line between theirs and ours goes away.

DALE COHEN: And actually I think we can take that construct even a little further. So let’s break it down and just deal with it a step at a time because I think it’s important for us to give you as much practical advice as we can.

So starting out first with Jerry’s concern. From the perspective of defamation or invasion of privacy, Jon, the information, the content, whether it’s a photo or otherwise comes in in a relatively unsolicited way. I mean you’ve opened it up, it comes in. Are you liable under 230? How strong is your argument under 230 to some type of immunity?

JONATHAN HART: I think you’ve got a very strong argument in that situation that that’s content provided by another information content provider and, again, limiting the conversation for a moment to
libel and privacy and other publication related
torts, as opposed to copyright and ownership related
liability. I think you’ve got a very strong 230
argument.

DALE COHEN: Okay. Why don’t we just handle the
other side of it? Now it turns out you get notice
that that photograph was stolen from somebody else.
Somebody else has the copyright. And is that
different, and why?

JONATHAN HART: I think it is different. I
don’t think Section 230 was designed to prevent
liability against copyright liability. But you do
have potential defenses under the Digital Millennium
Copyright Act. You’ve put your notice on your site
and you’ve registered who your agent for service is
under the Digital Millennium Copyright Act, and you
are promptly responding to complaints that there is
copyright protected material on your site. You’ve
probably got defenses under the DMCA.

DALE COHEN: Okay. Now, let’s go to the next
step and then I’ll call on the questioners. Your
company, your site, has now engaged Jeff Jarvis to
write a column about some subject and, as a
freelancer, and he submits it to you and it defames
somebody, or at least allegedly defames somebody.

Cori, under 230 do you have protection?
CORINNA ULRICH: I still have to assume that the laws are going to be as strict as they are -- and this is more on the libel/defamation side. But I don’t think it’s clear. I’d be a little worried about it.

DALE COHEN: Pat, why don’t you jump in? You think it feels pretty clear?

PAT CAROME: Well, there’s been one case decided on that question. It was the case involving Matt Drudge and Sidney Blumenthal in the Federal District Court in DC. And AOL had retained Matt Drudge as a independent contractor/columnist to supply his raging gossip.

Judge Friedman considered whether or not Drudge was an independent contractor and if so Section 230 did apply. And if he was an employee, on the other hand, he was outside the law. And so the summary judgment issue in that case was Drudge an employee under the common law statutory employee status.

And AOL prevailed in that case, even though at the time in question it was the sole source of Drudge’s income.

JONATHAN HART: And it’s important to point out that AOL was not being sued as the Internet service provider. The role that AOL was playing in that case was essentially the same role that’s played by most
magazines that collect freelance content rather than publishing just staff created content. They were an aggregator of content.

And if you haven’t read this opinion you ought to read it, because it’s very painful for the judge, who obviously did not want to come to the conclusion that Section 230 immunized AOL from liability for this third party content. They were paying, I think it was, $36,000 a year for the content. They had a contract that said they had a right to edit every word that he provided to them.

They were promoting the hell out of the fact that you could now get Drudge’s kind of reporting on AOL and still the court, though reluctantly, found that there was 230 liability.

KEN RICHIERI: I want to come a little bit to the defense of Section 230. I think there’s some discomfort with it only because it’s so different from the libel that we all grew up with and understand. You know, the publisher’s responsible for everything in the paper.

And by overturning that, I think it’s not only our clients, the legal community has always had an issue with it. But I actually think this is one case where there was sort of method to Congress’ madness.

They may have thought they were enabling message
boards on Prodigy, but they ended up enabling eBay.
You know, they ended up enabling Rate and Review.
They ended up enabling a lot of good stuff. And that is very important and very dynamic.

When you look at it in that context it’s not such a crazy law.

JONATHAN HART: I didn’t mean that all --

KEN RICHERI: No, no, I know. But there’s a notion that almost is too good to be true. Well, you know, there’s a too good to be true concept there.

DALE COHEN: I think that’s fair.

JONATHAN HART: Pat’s got another case going in Supreme Court of California right now that is absolutely critical in that it raises the question of whether Section 230 protects only publishers under the old definition of a publisher, also protects distributors.

Section 230 speaks specifically of publishers and the reason that becomes a very relevant distinction, of course, is exactly the issue that Cori raised of what happens once you’re put on notice that something in a blog or on a messages board is defamatory.

And if liability is found in this case, if Section 230 is found only to protect publishers and not to protect distributors against liability for
libel, anybody who’s operating a blog or a bulletin board service, or any sort of a public forum is going to have really no business choice but to take anything down that anybody complains about.

That’s what the method is to 230 and why it is such a critical piece of our defense fabric.

JEFF JARVIS: Let me ask a question. The party you left out was the bloggers. You know, the Drudges in this. Are we, the people, more screwed than ever because you can say, ha, not my job. So that even though we’re more judgment proof they’ll be coming after us more? Because they can’t go after you? Is that what the net result of this?

There’s the irony of 230 then, it screws the citizens more.

JONATHAN HART: I don’t know that it’s more screwed than ever. It’s the same screwed.

DALE COHEN: All right, before I lead us further into this mire I promised that I would call on the hand in the back.

QUESTION: Can you speak to the question about receiving [off-mic]. I mean there is [off-mic] copyright side [off-mic] that if you let your public know that that [off-mic] is coming from the public [off-mic] disclaimer that these are images that have been submitted by the community and are as is. [Off-
male voice: Jane Fonda.

female voice: - Jane Fonda together, making very clear [off-mic].

so I think maybe that is one way to [off-mic] trust in the public where you’re - even as you’re blurring the lines [off-mic] what your [off-mic].

Dale Cohen: Jeff, from an operational standpoint, from that trust perspective you were talking about, how does that work? Let’s put the law aside now.

Jeff Jarvis: Well, my populist semi-international view is that the editing function in great measure falls to the public itself. Rather than the notion that we hold the keys to the kingdom and all the wisdom and we can edit, we know everything. Well, we don’t. The people know more than we do.

And so what you do is you try to label and you try to invite corrections and you invite issues and you show that it’s about a dialog operationally. And then what happens in the end at some point you say, well, Ken has never had a complaint about anything he’s done. He’s done a hundred articles, not a single complaint. But, whoa, man, have you had a lot.
There’s trust. Or Technorati’s -- what they call inbound links is authority. It is a proxy for authority. So there are various ways that you start to allow the whole to determine the trust. Then it goes right back around and you can spam trust then. Then people hear this and they go after Ken and say, no, no, no. He voted the wrong way so we’re going to go after him and prove that he’s nowhere. But then people go after that. You know, it’s not a clean thing. But I think that operationally that’s where you end up going. We become trust brokers in a way.

In a haughty Harvard confab about blogs and media, and believe me I go to a lot of these things, there was the discussion that maybe in the future people out there are, to put this really haughtily, information entrepreneurs. And what we’re doing is we’re saying, okay, there are three people covering the town board meeting and this one -- Ken has the fewest complaints and the most audience, ergo Ken has the most trust. Right? There are maybe methods like that that you start to rely on and say, no, it’s not our fault. We’re making connections and this is what the audience says.

DALE COHEN: In fairness to everybody in the room -- and I’ll get to the next round of question -- how does this notion that your readers, your audience
are the ultimate editors go over in newsrooms these
days when you raise it? Because I don’t want to send
anybody out unsuspecting back to their newsroom with
these notions without knowing.

JEFF JARVIS: I’m not there anymore. Of course
it doesn’t go over well, but neither does a lot of
this stuff. I mean, hell, neither does the Internet
still. You know? So I don’t take that as a judgment
necessarily that that’s what it is. That’s why we
have problems in the business of journalism right
now.

DALE COHEN: Cori?

CORINNA ULRICH: My answer indirectly -- I was
going to say, before you asked the question, so it’s
an indirect answer. As a very practical matter, the
advice that I heard in the back of the room earlier --
-- I think that’s very practical and that’s a way that
we’ve thought about it -- is context. We still are
the big guys and we still have editors and we still
do look at the stuff generally before it goes on the
website, et cetera.

Actually we have talked about that. We’ve
looked at different types of areas where we might
feel comfortable at just taking something. But if
we’re going to do less editing, if we’re going to
take things real time, I think we’ll say that’s what
we’re doing so that at least that expectation is out there.

SHERRESE SMITH: I was going to say for our blogs it’s pretty clear. I mean when you go to the blogs you can tell that a reporter or someone that we’ve hired is actually writing, and then you’ll see user comments so that you actually have to click to another page to get to the user comments. So it was pretty clear from the user’s perspective who’s writing what.

And I also think that users expect that. I mean if you just go to your traditional, say, entertainment guide review where you have kind of the editor’s pick and the editor’s review and then you have all the users’ comments about the movie, the restaurant. I mean people understand that there are going to be different voices on the same page. And I think that as long as it’s clear to them then that truth in advertising is there and they’re more comfortable with being able to get one version from, say, the newspaper source and the other from just the user community service that’s out there.

DALE COHEN: Ken?

KEN RICHERI: I agree that labeling and all that is very good. I guess the thing I’d say is this is one area, that, whether we like it or not, as
lawyers we’re going to take a back seat to the business.

The audience of big media companies is probably the last untapped asset that we have. And I think any business on the web that’s going to get to scale and succeed is going to have to tap into that in some way. And that means in some way, shape, or form, letting them on the site to do stuff -- and you’re going to have labeling.

But it’s going to be too much, really, to monitor totally and you’re going to have to figure that out. If you want to be a niche player, that’s fine. You can do that. But if you want to get to scale you’re going to have to tap into the enormous value that your audiences represent.

DALE COHEN: Sir?

QUESTION: I think one of the examples that illustrates this is letters to the editor. Under Section 230 letters to the editor that are posted verbatim online and not edited have complete immunity. But letters to the editor that run in the same newspaper, the newspaper’s completely responsible for them. Would you edit those for the purposes of protecting yourself -- not the legal -- obviously you’re concerned about the legal but you’re concerned about your audience? That’s why you edit
DALE COHEN: Let’s dig a little deeper. Many sites have moderators or facilitators or regularly assigned bloggers who are not employees per se, but who are doing this on a regular basis, often encouraged or in fact engaged by the company. How does 230 fit into the construct there for those types of folks when they might do something that’s going to be defamatory? Sherrese?

SHERRESE SMITH: Well, you have to kind of look behind the relationship. I mean how involved are we in the process? Are we saying, okay, you need to follow our exact guidelines. You need to do it the exact way that the Washington Post Company does it. You need to, you know, X, Y, Z. The editor’s going to look at it.

That’s kind of a harder situation to say that you’re somewhat removed from that person. On the other end, if it’s a person who you kind of have on your site but you are taking it an arm’s length approach then you may have a better argument under Section 230.

I think it’s really not going to be clear. It’s really case-by-case.

DALE COHEN: So let’s take it to the next level then. We’ve talked about, and I think there’s a
pretty clear consensus, that we’re not going to be able to use 230 when it’s your employee putting up their comments or their work on your site. What about liability for our employees’ commentary, articles, freelance pieces on somebody else’s site or on their own personal sites? What do you guys think about that?

SHERRESE SMITH: That’s a tough one.

JEFF JARVIS: You get into that unlimited news hole problem that I worried about.

QUESTION: Well, that’s the Boston radio case, right?

DALE COHEN: The Boston Herald -- you mean going on O’Reilly? Yes, in fact that’s precisely where I’m going with this is that you have people who are very clearly associated with your brand, your product, whatever it may be, whatever media it might be. What happens when they go off the reservation somewhere else, but it’s still closely associated to either your brand or your journalism? And the plaintiff’s lawyer is clearly going to reach for the deep pocket, right? And they’re going to name you. So what’s going to happen at that point, Jon?

JONATHAN HART: Well, even if you don’t have liability directly, even if you can make the Section 230 argument, I think anybody who’s ever tried to
defend a libel suit where if you’re a newspaper where your reporters have gone on television and talked about their story, you recognize that the things that those reporters talk about on television, even though they’re not happening on a medium that’s controlled by your client, can determine the outcome of a case that goes to the mental state of the reporter.

So anything that’s going on on these blogs I think has the potential to impact the pocketbook of the publisher.

CORINNA ULRICH: Right. And that’s what makes it difficult and I may be off the reservation on 230 in general, but I mean this one I would argue stronger because if you truly have an employee, a reporter who has their own blog independently -- it’s not something you, as the newspaper, have authorized. They’re just doing this out on their own. I mean you should be able to make that argument as Jon says.

I think the problem does lie in what does that really mean in a realistic world where you have people who very much have a personality, a presence in the community, when they are commenting, you know, rightly or wrongly, are they able to do that independently? And that’s where I think it’s very troubling.

SHERRESE SMITH: Right. And I think disclaimers
help but I also think that there are going to just be some reporters who are just so -- I mean they’re almost synonymous with your brand, and if they make any comment or discuss anything that’s kind of part of what they do for your paper or for your online site, it is going to be a little harder to extricate yourself from that.

Or if, you know, there’s stuff that they’ve used not only on their personal blog but it’s somehow intertwined with what they’ve used in the work area, then again that line becomes harder. It becomes harder to say not my issue.

JONATHAN HART: But for the record, none of us are conceding that 230 doesn’t apply.

CORINNA ULRICH: Exactly.

SHERRESE SMITH: That would be our first line of defense no matter what. Agreed.

DALE COHEN: I think there’s a practical consideration, too. Let’s just consider that hypothetical that you’re leading us towards now, Sherrese, which is you’ve got one of your star reporters or columnists goes off on a personal blog or on someone else’s sponsored blog, says something that relates somewhat to their journalism, and gets sued over that. They also name the New York Times or the Washington Post.
If this is one of your star journalists and it’s closely related to your journalism, how likely is it that you’re really going to cut off your defense of them? And separate yourself?

SHERRESE SMITH: I don’t know how you’d do that anyway, because as soon as they were sued for something that they kind of sort of did in their work space, then you’re pulling out all of your records, you’re trying to defend -- “hey, these notes don’t have anything to do with that personal blog.” You’re pulled in no matter what. You’re still going to try to limit your liability, but again, it’s your stars. I mean there’s a practical consequence of this, of you’re not going to have your star reporter out there by himself.

MR. DALE COHEN: All right, so now let me really start to complicate this and then turn around and talk about ways you can protect yourself. One of the issues we’ve been talking about is insurance in that situation. I mean how do you deal with your insurer on the question of who’s defending what here if your star reporter on a personal site not your own said something and you both end up getting sued? How’s that going to play out? Have any of you guys confronted the insurance issues yet with respect to blogs?
CORINNA ULRICH: No, but for the record I’m sure it’s all covered.

DALE COHEN: Jeff, do you have insurance on Buzzmachine.com?

JEFF JARVIS: No. Glen Reynolds, who is the InstaPundit, a law professor at University of Tennessee, had insurance as a rider to his homeowner’s policy until such time as he started making money on the blog. And they were nowhere.

There’s an organization called the Media Bloggers Association that was trying to find some means to do a libel insurance for them, but that becomes immediately impossible as to -- well, then we’re certifying people. Right? Well, who’s in, who’s out based on what their activities are.

DALE COHEN: I know there are a couple of insurance folks out there. Chad? Do you want to add anything on this subject? Or Mike, would you like to comment? Not that we’re scaring you and I’m sure rates are not going anywhere.

CHAD MILTON: As a former claims person, I think you sort of asked the question in the hypothetical that you just did where the employee is off doing his own thing. There’s a question about whether that’s in the scope of the employee’s employment. The policy claims -- the corporate policy is when you
cover the employee for things that the employee does within the scope, but probably not.

It’s interesting, I think, if the corporation wants to defend this person because failing to do that would somehow reflect poorly on the corporation. I think that’s going to happen -- it’s going to play out in individual cases and negotiations.

DALE COHEN: Mike or anyone else from the insurance perspective?

COMMENT: I guess the question, as you said, is this within the scope of their employment? What’s the difference between journalists in blogs and a blogger? I mean because there is under the insurance contract this definition of who this person is. Is it going to be answered in the same way as some of the things we’ve been talking about already.

DALE COHEN: All right, well, let’s talk about some practical ways to approach this and see if there are ways that we can advise our clients on how to protect themselves from these situations. I mean clearly what a lot of companies have done is adopted policies with respect to ethics or outside activities. Is there anything, Ken, that you could put into an ethics code or a code of conduct that might provide some relief and help?

KEN RICHERI: Well, yes. I mean I think first
of all the biggest issues for a publication when its reporters blog probably isn’t libel, but it’s reputational. You know, libel in lawsuits come up every so often, but reputation is sort of constant. I think that’s the biggest threat. And it’s also if you’re going to allow or even encourage -- we were talking about a case where somebody just did it on their own. It may well be a publication begins to encourage this. You have to get comfortable with a fair amount of loss of control in terms of who becomes the brand on that.

I would say at the Times we’ve been pretty cautious on this. If you go on our website you can find our ethics code has a section on blogging and basically it says you can have a personal blog on matters that are unrelated to what you cover. But you can’t start a blog on matters you’re covering -- on anything remotely related to work.

DALE COHEN: How popular is that in the newsroom?

KEN RICHERI: You know, it’s getting less popular. But what’s going to happen is we’re going to evolve in a way to figure out how to allow our journalists to blog and get some rules and designs around that collectively with them.

That’s how I think it’s going to evolve.
Because the fact of the matter is, particularly when Sherrese is saying your stars, I mean, you know, they’re you. They are you and there’s no two ways about that. And both sides, the journalists and the media need to understand that.

SHERRESE SMITH: Ken, can I ask a question? Is this just for the editorial staff or is this for any employee at --

KEN RICHERI: editorial staff.

SHERRESE SMITH: Okay. Because that’s another thing that Cori and I talked about earlier. I mean some of the times you’ll find that the editorial staff will police themselves. I mean they are going to expect reporters or people involved in that area to let the editor know if they are doing a blog no matter what the subject, versus employees in the company as a whole. How does that play out?

Do you really want to have a policy -- and like I said, and I’m kind of just talking out loud because this is a complicated issue -- but do you want to have a policy that says anytime you have a blog you let me know? I mean that’s not going to be popular at all.

DALE COHEN: No, it’s not.

SHERRESE SMITH: Right.

DALE COHEN: Been there.
SHERRESE SMITH: Been there.

DALE COHEN: And in fact for those of you who represent union shops, you’ve got to negotiate those with the newsroom union, which is, I can tell you, a fascinating experience.

CORINNA ULRICH: But Dale, this is where I would, again, try to get back to the fact that blogs aren’t a medium in and of themselves, and to some extent, individuals can go out and do things publicly that aren’t a blog that could be equally damaging or beneficial, frankly, depending on what it is.

And so, you can look at it more broadly. It may not solve the problem. But there are, if you look at traditional employment policies there usually are conflict of interest and things like that that you would also argue would probably govern if there were an issue. And I don’t know if the minute you solve the problem with a blog then there will be potentially the next technology that doesn’t get covered.

SHERRESE SMITH: Right. There’s always going to be something out there that’s going to change the scope, and yet do you change the rules because it’s a new medium or do you just go with what you have? And I know from - from our perspective so far, I mean our
code of business conduct is very explicit on a lot of different things and probably will be our go to for most issues.

So now we’re struggling with “do you really need anything extra for blogs?” I’m not quite sure you do.

DALE COHEN: Jeff?

JEFF JARVIS: I think in general we’re better off the more people know about this no matter where they are, including inside and outside the organization. So that that falls to an obligation to you folks who know to train. I’ll plug again that I’m going to try to start a citizens media center at CUNY, but look at the example of Nashvilleistalking where the other station, they brought in people, they get to know you over donuts, they trained them how to make better video.

Well, why don’t we also train them how not to be stupid? At least. And do them a favor because maybe one day they’re going to report for us and they may be better at it as a result. So we’ve got to take some responsibility as a society that should put upon ourselves some responsibility for training the world. Because that’s where we are now. And it will only help us, I think, if everybody knows more.

SHERRESE SMITH: Well, there are companies out
there who have best practice guidelines that you can find if you just do a regular web search. And I think there are a lot of good points in some of those documents. And I think some companies have decided to do that instead of coming down with a hammer about exact rules that should apply to blogs.

JONATHAN HART: To Jeff’s point, does a member of the public who’s interested in knowing what your ethics policy is, have an ability to see that? I’m asking the transparency question that Jeff is raising. Can a member of the public go on to the New York Times’ website or the Washington Post website and see your ethics policy?

KEN RICHIERI: Yes, absolutely.

DALE COHEN: Was that true four years ago?

KEN RICHIERI: We didn’t have an ethics policy four years ago.

DALE COHEN: That’s really important. It’s important for everybody in this room to be thinking about the fact that one of the things that distinguishes those professional journalists and those professional organizations from the non-professionals that we’ve all been expressing some concern about, is the access to this group, and the things that you guys have collectively talked to those journalists. And you need to be out there
thinking about these very issues and helping to train
the new newsrooms or the new journalists or the
people who are committing acts of journalism now.

JEFF JARVIS: I wrote a webcast for the courses
that I teach at CUNY. And the real purpose is not to
teach the world so the world teaches the students a
new relationship to public, but there are plenty of
opportunities coming up. But there’s surprising
little about this. There’s no organized curriculum
on libel and copyright for bloggers. That would be a
mitzvah that you could give the world. And I think
that’s really important because it’s part of
transparency, too. You’re right. It was saying that
we’re not holding the secrets anymore. That we love
journalism. We love information. We love sharing
information. We want to help the world do that and
do that safely.

JONATHAN HART: And it’s also part of the
tradition of the web. You go into a lot of the
websites that have community areas and -- I don’t
know how many people read them but there are very
extensive sort of community guidelines. These are
the rules of the road if you’re going to commit
journalism in this space, this is what you have to
know about. These are the rules.

CORINNA ULRICH: Right. I mean to Jeff’s point
earlier when you asked the Section 230 question about the freelance situation and you were ungrateful at first, although probably I was defending you under that -- I mean really. I think that’s true. A lot of individuals have no idea what their potential liability could be just setting up a blog.

DALE COHEN: So there’s all this stuff going on yet as we sit here I bet if I polled the audience there are very few lawsuits, if any, against blogs or bloggers for libel and defamation.

JEFF JARVIS: Don’t jinx us, man.

DALE COHEN: My question is why?

JEFF JARVIS: We’re judgment proof. We’re sitting in our pajamas, right? That’s the perception. But there’s a case at a blog called Napsterization. Mary Hodder just wrote a post about and I don’t know what state it was in, but some bloggers who outed some spammers as spammers, and now there’s SLAPP suits going against them. And so it’s another area where we have to band together. What happens to the least of us happens to all of us.

DALE COHEN: Right.

JEFF JARVIS: And, pardon me for this, Ken, but there was a also a case before I got to the New York Times where there was the guy who started the Media Bloggers Association, Robert Cox, put up a parody
site for the corrections page that doesn’t exist for

Well, I kept my mouth shut because I was working
for Advance and I’m a big media guy at the time,
having earned the suit. What I would have told the
guy is, say parody and you’re okay. What happened
was you got a cease and desist, bloggers up in
storms, attorneys come along offering pro bono, and
then I call the then public editor and things get
smoothed out.

What I’m going to argue here is that was an
opportunity for a learning experience. That those
types of things, when they happen, I think the best
thing you can do is rather than saying cease and
desist, say, well, we could do that but let me
explain to you how this works here, and how we can
get along together okay.

My problem is you better not confuse my brand.
Don’t mess with my brand. As long as you don’t do
that, okay, you can make fair comment because I had
to do the same thing you do. Let’s train each other.
And I think that we have to get past the point where
we assume that bloggers and big media are necessarily
hostile. They really, except for ONA, aren’t.

DALE COHEN: Contrary to what Dick Posner said
in his piece in the book review.
Yes, question in the back.

QUESTION: How do the mainstream newspapers feel about having their editorial journalists have personal blogs where then their opinion about world events or politics might be known?

JEFF JARVIS: I’ll give you the blogger’s answer, which is not the mainstream newspaper answer. The blogger’s answer is it’s about frigging time. That’s part of transparency. But the journalist will disagree with that and so you still have the never-ending debate about objectivity.

But the saw is changing now, so if you go to blog journalist things, that right now, the view is pretty strongly now that we were fooling ourselves all those years. But that’s not true in newsrooms. In newsrooms they’re still saying no, no, no, no. We can’t reveal this. And so there’s a war that’s happening over that.

QUESTION: Newsrooms, though, discouraged traditional journalists from having personal blogs [off-mic] reveal more of their opinion about their [off-mic].

CORINNA ULRICH: I’m not sure I agree in the context of our sponsored blog, which we have on for editorial. Actually that is individual writers’
opinions. That’s exactly what it is now, but it is not their personal blog. So that particular blog, from a newsroom perspective or from a newspaper’s perspective have decided that’s okay. That’s consistent with what we do.

If somebody did that individually, the two could be inconsistent even though I guess conceivably someone has the same opinion that they might write. I don’t know. I’m troubled more by the personal blog that could then get confused with something we’re doing. If we sponsor it and we allow an individual opinion then that’s a decision we’ve made as a newspaper.

JONATHAN HART: Well, traditional media companies have long had this division. There are people who are allowed to express their opinion called columnists and people who were not allowed to express their opinion called reporters. And bloggers don’t seem to be recognizing this traditional distinction.

DALE COHEN: But most of the big newspapers have ethics policies that prohibit or discourage the reporters from doing things that will affect the impartiality or credibility of the newspaper or the broadcast station.

SHERRESE SMITH: And don’t you also think that
the reporters are concerned themselves? I mean they
don’t want to be seen as someone who’s no longer
objective. So it’s not just the legal kind of
analysis. It’s just the “this is what I do for a
living. I want my credibility to be the same no
matter what.” And so you’re going to find that
they’re going to police themselves a lot of times.

CORINNA ULRICH: And I also think when you have
reporters who are opining but also blogging about
facts, that is a riskier situation from just purely
an accuracy and potentially libel defamation, that
sort of case, because then you’re possibly not
editing things that you might not otherwise in print.

DALE COHEN: Just a couple more minutes so let
me take a couple of questions and then we’ll wrap up.
Yes, sir?

QUESTION: I just wanted to point out that there
is actually a CDA case in the blogging context
pending right now in Nevada. It’s an interesting
case because it’s not against the company that the
blogger works for. In fact the [off-mic] blogger
comments that he posted in his blog. And he’s made a
[off-mic].

DALE COHEN: Is that scheduled for hearing? Is
that coming up soon?

QUESTION: It’s scheduled for hearing [off-mic]
it was filed in state court in Nevada. The plaintiff is a company called Traffic Tower. The blog is a blog called [off-mic] and Traffic Tower is the company that pulled itself out of [off-mic]. And apparently there were some comments on the blog that were [off-mic] contacted the blogger, asked him to take the postings down. He refused and so [off-mic].

DALE COHEN: Interesting. Thank you.

QUESTION: I just want to add that it was mentioned that there aren’t suits against bloggers. We got a call a few weeks ago asking just that question. We did a little research and we came across seven or eight cases that have been filed in the past at that point. So they’re kind of below the radar screen. There aren’t important decisions yet, but they are happening.

JEFF JARVIS: Any summary to what kind of blogging it is? A summary as to what kind of cases they were?

MALE VOICE: They were against the bloggers. I actually have a list that I can give you.

JEFF JARVIS: I’d love to see that.

DALE COHEN: Other questions or comments before we wrap up? Well, I’d like to thank you all. I’d especially like to thank the panel for taking the time today.
SANDY BARON: Definitely want to thank the panel and want to thank Dale for helping to organize this and the new developments committee for having come up with the idea for it.

[END TAPE 1 SIDE A]