EDITOR'S NOTE

The Federal Communications Law Journal is proud to present the second Issue of Volume 75. We are the nation's premiere communications law journal and the official journal of FCBA: The Tech Bar hosted at The George Washington University Law School. We are excited to feature a practitioner Article and four student Notes which provide analysis and insight into a range of policy questions facing the telecommunications field today.

This Issue begins with an Article written by Kal Raustiala, a Promise Institute Distinguished Professor of Comparative and International Law and the Director of the UCLA Burkle Center for International Relations. Raustiala explains why the Obama administration chose to relinquish formal federal government control over the naming and numbering system of the Internet, surrendering this authority to the non-profit Internet Corporation for Assigned Names and Numbers ("ICANN"). Raustiala goes on to detail the implications for multistakeholder governance throughout international law.

The first student Note, written by John Bogert, takes a market approach to stopping misinformation. Bogert proposes a statutory cap for social media market mergers under the Clayton Antitrust Act and argues against current proposals for reforming Section 230. In the second Note, author Julia Wells provides an overview of telehealth services—an industry that became increasingly important during the pandemic. Wells argues both that the FCC should be given broader authority to regulate these services and that HIPAA should be reformed to increase flexibility and prevent data breaches.

The third Note, authored by Nicolas Florio, explains how current bankruptcy law can provide a guide for strengthening the FCC and FTC's collection of consumer fraud penalties. Florio proposes modifications to the way consent decrees are drafted which would strengthen the agencies' enforcement powers and ultimately improve security across the telecommunications industry. The final Note in this Issue, written by Rebecca Roberts, presents the benefits and potential harms that arise with the use of post-mortem digital cloning. Roberts explores this unique intersection of probate law and artificial intelligence and argues that requiring explicit, affirmative consent from a decedent prior to their death is the best way to protect against unauthorized use of this technology.

The Editorial Board of Volume 75 would like to thank the FCBA and The George Washington University Law School for their continued support of our Journal. We would also like to acknowledge the contributions of the authors and editors who worked on this Issue. The Federal Communications Law Journal is committed to providing its readers with in-depth coverage of relevant communication law topics.

We welcome your feedback and encourage the submission of articles for publication consideration. Please direct any questions or comments about this Issue to fclj@law.gwu.edu. Articles can be sent to fcljarticles@law.gwu.edu. This Issue and our archive are available at http://www.fclj.org.

Julia Dacy
Editor-in-Chief

Federal Communications Law Journal

The *Federal Communications Law Journal* is published jointly by the Federal Communications Bar Association and The George Washington University Law School. The *Journal* publishes three issues per year and features articles, student notes, essays, and book reviews on issues in telecommunications, the First Amendment, broadcasting, telephony, computers, Internet, intellectual property, mass media, privacy, communications and information policymaking, and other related fields.

As the official journal of the Federal Communications Bar Association, the *Journal* is distributed to over 2,000 subscribers, including Association members as well as legal practitioners, industry experts, government officials and academics. The *Journal* is also distributed by Westlaw, Lexis, William S. Hein, and Bloomberg Law and is available on the Internet at www.fclj.org.

The *Journal* is managed by a student Editorial Board, in cooperation with the Editorial Advisory Board of the FCBA and two Faculty Advisors.

Federal Communications Bar Association

The Federal Communications Bar Association (FCBA) is a volunteer organization of attorneys, engineers, consultants, economists, government officials and law students involved in the study, development, interpretation, and practice of communications and information technology law and policy. From broadband deployment to broadcast content, from emerging wireless technologies to emergency communications, from spectrum allocations to satellite broadcasting, the FCBA has something to offer nearly everyone involved in the communications industry. That's why the FCBA, more than two thousand members strong, has been the leading organization for communications lawyers and other professionals since 1936.

Through its many professional, social, and educational activities, the FCBA offers its members unique opportunities to interact with their peers and decision-makers in the communications and information technology field, and to keep abreast of significant developments relating to legal, engineering, and policy issues. Through its work with other specialized associations, the FCBA also affords its members opportunities to associate with a broad and diverse cross-section of other professionals in related fields. Although the majority of FCBA members practice in the metropolitan Washington, D.C. area, the FCBA has eleven active regional chapters, including: Atlanta, Carolina, Florida, Midwest, New England, New York, Northern California, Southern California, Pacific Northwest, Rocky Mountain, and Texas. The FCBA has members from across the U.S., its territories, and several other countries.

The George Washington University Law School

Established in 1865, The George Washington University Law School (GW Law) is the oldest law school in Washington, D.C. The Law School is accredited by the American Bar Association and is a charter member of the Association of American Law Schools. GW Law has one of the largest curricula of any law school in the nation with more than 275 elective courses covering every aspect of legal study.

GW Law's home institution, The George Washington University, is a private institution founded in 1821 by charter of Congress. The Law School is located on the University's campus in the downtown neighborhood familiarly known as Foggy Bottom.

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Manuscripts: The *Journal* invites the submission of unsolicited articles, comments, essays, and book reviews mailed to the office or emailed to fcljarticles@law.gwu.edu. Manuscripts cannot be returned unless a self-addressed, postage-paid envelope is submitted with the manuscript.

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THE TECH JOURNAL

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ARTICLES

The Internet is the most significant global political and economic resource of our time. States increasingly seek to control it and bend it to their purposes. Nonetheless, in a surprising and controversial move in 2016, the Obama administration yielded control over the architecture of domain names and IP numbers that makes the Internet work to the Internet Corporation for Assigned Names and Numbers ("ICANN"), a non-profit organization headquartered in California. This action creates a puzzle for theories of international law and organization. Existing accounts of international organization often focus on theories of delegation and principal-agent models to explain why international organizations are created and how they work. Using these theoretical lenses, this Article explores the unusual case of ICANN and in particular its "multistakeholder" regulatory model, in which a wide variety of actors, not just governments, regulate central aspects of the complex global resource we know as the Internet. This Article argues that while ICANN began as a standard story of delegation to a regulatory agency, it morphed into something much closer to a trusteeship model. In part, this evolution was driven by the fear that multilateral control of the Internet—that is, control via a conventional state-led international organization such as the International Telecommunications Union—would throttle the Internet as we know it. The federal government, fearing this multilateral outcome, chose to relinquish its control and double down on multistakeholder regulation. The experience of ICANN is not only important for understanding the present and future of Internet regulation; it is also relevant for broader shifts underway in international law from multilateral processes to multistakeholder processes.

NOTES

This Note frames online misinformation as a symptom of an anticompetitive social media market, one where powerful firms exploit their market power and Section 230 protection to avoid addressing the spread of misinformation on

technology manipulates currently existing media of a person to create a hyper-realistic digital replica manifested as a video, audio clip, chatbot, or hologram. The digital replicas can be programmed to do and say things that their real counterpart has never done or said and are sometimes so incredibly lifelike, it seems as though they are real. Due to the high volume of digital media taken and accumulated during one's lifetime, these digital clones can even be produced post-mortem—in essence, digitally resurrecting someone and putting words in their mouth that they never said while still alive. This technology is distinctly new. Aside from a few state statutes criminalizing certain extreme instances of deepfake technology, any kind of potential remedy against unauthorized digital cloning remains unknown and untested. Many of these potential remedies would require an invasion of privacy or showing of harm. However, courts have consistently held that privacy rights and harm are not retained after death. Even with the few possible remedies that could protect against unauthorized digital cloning, none would protect against unauthorized post-mortem digital cloning. This Note argues that modern estate planning should include a digital legacy clause, dictating how one's digital assets should be used after they die. Legislators should also extend existing probate statutes to require explicit permission from someone, prior to death, to allow for post-mortem digital cloning.