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**INTRODUCTION: THE LAW SCHOOL'S ROLE IN
DOCUMENTING AND ANALYZING THE INCREASINGLY
RAPID DEVELOPMENT OF BROADBAND**

by

Michael Botein*

Welcome to the newest edition of the *Media Law & Policy* journal symposium on broadband law and regulation.¹ The Law School's students, staff, and faculty are pleased to continue their role in documenting and analyzing the increasingly rapid development of broadband.

This series is multi-national, and indeed had its birth in a preliminary comparative analysis of U.S. and foreign broadband deployment in 2006. The Media Center has been a partner of the European Audiovisual Observatory at the Council of Europe (COE) for two decades, and the two organizations have cooperated on a number of events and publications. In the early part of the new millenium, both organizations were focusing on the effects of broadband media – a partnership that led them to co-sponsor an intensive symposium in New York City in the fall of 2006. As with other projects, the Media Center continues to appreciate its fruitful relationship with the Observatory and the COE.

The original premise was that primary concerns would be programming standards and new intellectual property standards as the existing media slowly but inevitably “converged.” Even by the middle of the last decade, most academic debate concerned the government's role

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¹ For streaming video of the underlying live presentations on a gratis basis, please visit www.nyls.edu/broadband. This series is continually updated to reflect new events, and thus may be more current than the print version.

as to programming and regulation in this new world, as well as peer-to-peer copying and the like.² Although much of this projection was right on point, the major issue turned out to be methods of encouraging broadband deployment. There appear to have been several reasons for this. Both European and US companies began to make major investments in broadband – such as Verizon’s FIOS³ and AT&T’s Lightspeed.⁴

More important, deployment of broadband became a major policy – and political – issue in the United States. The impetus was a series of reports by the Organisation for Economic Co-operation and Development (OECD), ranking the United States as twelfth out of the 30 OECD members in broadband development.⁵

Not surprisingly, this created a substantial political furor in the US, which was gearing up for the 2008 presidential elections.⁶ In fact, Senator John McCain was one of the chief critics of the US’s failure to be competitive in broadband.

As life and politics so often would have it, however, Barack Obama won the election and inherited the mantle of broadband deployment. Although President Obama had no background in telecommunications or broadband, he made broadband one of the signature issues of his early

² 17 *Media L. & Pol’y* II (2007). The two major issues there were digital rights management systems and effect of digital television.

³ As generally known, FIOS is a subsidiary of Verizon, using circuit switched video to provide hundreds of digital channels in a “downstream” capacity, much like traditional analog cable television. – Comment: not sure if he is citing a source or these are his own thoughts, but this needs an actual source.

⁴ Lightspeed is a subsidiary of AT&T, using IP circuits to transmit hundreds of megahertz of combined digital material. Because Verizon is circuit switched and Lightspeed is IP, the two obviously are completely incompatible. – Comment: not sure if he is citing a source or these are his own thoughts, but this needs an actual source.

⁵ OECD, *Broadband Statistics to June 2006* (2006), http://www.oecd.org/document/54/0,3343,en_2649_34225_38690102_1_1_1_1,00.html

⁶ *See, e.g.*, 151 Cong. Rec. S7296 (daily ed. June 23, 2005).

Administration. This soon led to a round of congressional activity, ultimately concluding in the Broadband Stimulus Act (BSA) of 2009.⁷

Like most enabling statutes, the BSA gave comparatively little detail about the procedures and standards for its implementation, other than generally delegating power largely to the National Telecommunications & Information Administration (NTIA) of the Commerce Department and the Rural Utility and Services division (RUS) of the Department of Agriculture.⁸ Immediately after the BSA's passage, most academic inquiry focused on the "ought" of public policy – i.e., initial goals for NTIA and RUS – such as service to unserved/underserved areas, grants to public computer centers, and development of "sustaining" broadband enterprises.

The first symposium thus dealt mainly with economic issues.⁹ Alan Pearce and Michael S. Pagano analyzed the BSA's likely impact on jobs and gross domestic product. Jennifer Manner emphasized the importance of applying market-based regulation to the new broadband media, while treating with caution government financial assistance to new entrants. At the same time, Dariusz Adamski drew upon his European experience to make a case against official depression of end user prices below competitive levels, in order to avoid price or cost dysfunction. Patrick S. Brogan similarly urged that the ongoing convergence within the broadband industries made it potentially dangerous to tamper with the existing marketplace regime.¹⁰

⁷ The Broadband Stimulus Act is a subpart of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (Feb. 17, 2009). It provides for up to a total of \$ 7.2 billion in a combination of loans and grants to encourage broadband development.

⁸ The Act also delegated significant power to the Federal Communications Commission ("FCC") to adopt a National Broadband Plan, due at some time in the Spring of 2010.

⁹ 18 *Media L. & Pol'y II* (2009).

¹⁰ The textual overview does not include another, very useful article on the effect of tax issues and broadband deployment, which appeared slightly out of the symposium sequence, because of scheduling issues. Larry F. Darby & Joseph P. Fuhr, Jr., *Investing in Economic Growth: Broadband Network Tax Forbearance*, 18 *Media L. & Poly. I* (2009).

This first round of largely economic literature dealt with most of the initial broadband policy after the government's decision to encourage its deployment. That brought the discussion to narrower legal issues, which began to arise in the wake of the initial policy concerns.

These were addressed in a second *Media Law & Policy* symposium issue. This arose out of another symposium at the Law School on October 29, 2009. You hold the results before you.¹¹

The dynamism of broadband is reflected by the speed of its development. Since the first symposium in 2006, the focus of attention has moved from program rights to national broadband deployment. This latest symposium begins with Jennifer Manners' overview of current broadband regulatory theories, and their impact on the speed of broadband development. Davidson and Santorelli follow this with a discussion of broadband's impact on US education, healthcare, and communication, with particular emphasis on factors encouraging or discouraging use by older Americans. Courtney A. Barclay then provides an in-depth view of broadband's effect on the internal state of the population, particularly in terms of privacy, and Daniel Margolis gives a detailed analysis of the means for obtaining a grant or loan from NTIA or RUS to fund new broadband operation, which may be enough to make the most sophisticated corporate telecommunications lawyer's blood run dry.

Keeping up with these developments is no easy task, and has been possible only because of the consistent and dedicated work of *Media Law & Policy* student editors. They have done an outstanding job of meeting difficult and changing deadlines, even when they change at the drop of a hat. Many other "friends of the Law School" have made significant contributions, by contributing material and providing overview. This synergy hopefully will continue for the future.

This leaves the question of where the development of broadband goes from here. It simply is not clear. In the few years that *Media Law & Policy* has been focusing on broadband developments, the degree of detail has increased dramatically. Will it continue to do so in the future? *Media Law & Policy* naturally has no better idea than any other observer. But come along for what promises to be an interesting ride.

¹¹ Again, the streaming video proceedings are available at www.nyls.edu/broadband.