

Does *Red Lion* Still Roar?

Public Interest Media Regulation Forty Years After *Red Lion Broadcasting Co. v. FCC*

April 18, 2008

American University Washington College of Law

On June 9, 1969, the Supreme Court in *Red Lion v. FCC* upheld the Fairness Doctrine and related regulations, which required broadcasters to cover controversial issues of local importance, to provide reasonable opportunities for contrasting and dissenting viewpoints in doing so, and to observe rights of reply.

More generally, *Red Lion* reaffirmed the Federal Communications Commission's authority and duty to enforce the public interest programming obligations of broadcasters as trustees of the nation's scarce and publicly owned airwaves.

Although the FCC subsequently repealed the Fairness Doctrine together with a wide array of broadcast regulations during the Reagan Era's deregulatory purge of the 1980s, Congress and the FCC continue to refer to broadcasters as public trustees subject to specific and unique public interest programming duties.

In the forty years since *Red Lion* was decided, constant technological and economic developments in the media domain require us to reassess that "moving target" of the public interest and the proper role of the government in guaranteeing the viability of that interest.

Recently, media ownership controversies and the thirteen-year fight to establish new public interest guidelines for broadcasters transitioning into the digital realm continue to bring public interest obligations and their applicability to the forefront of debate.

Prominent regulators, legislators and scholars have called for the revival of the Fairness Doctrine and other public interest duties. Others have argued that public interest rules were violative of the First Amendment in their heyday and would constitute an even more serious violation today given the diversity and scope of the modern converging media landscape. Still others advocate an expansion of affirmative public interest regulation of non-broadcast media platforms.

The *Administrative Law Review* and the Washington College of Law's Communications Law Society sponsor this one-day symposium, in the hopes of advancing general understanding by eliciting discussion and elucidating the evolution of and outlook for the scholarly, industry and public views on these issues.

The symposium edition of the *Administrative Law Review*, which will be published later in the year, will continue this dialogue through several of the panelists' written submissions.

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AGENDA

- 9:00 – 9:45** **Registration and breakfast/coffee mixer**
- 9:45 – 10:15** **Welcome/Introduction**
- Claudio M. Grossman, Dean, Washington College of Law
 - Sarah K. Brown, Editor-in-Chief, *Administrative Law Review*
- 10:15 – 10:45** **Opening Keynote Address**
- Cass Sunstein, University of Chicago Law School
- 11:00 – 12:30** **Panel 1: *Red Lion's* Legacy: effects on today's broadcast regulation landscape in media diversity, fairness, localism, and democratic deliberation**
- Leonard M. Baynes, Saint John's University School of Law
 - Lili Levi, University of Miami School of Law
 - Jim Chen, Louisville Brandeis School of Law
 - Catherine J. K. Sandoval, Santa Clara University Law School
 - Angela J. Campbell, Georgetown University Law Center
 - Dr. Philip M. Napoli, Fordham University
- 12:45 – 1:20** **Luncheon and Keynote Speaker**
- C. Edwin Baker, University of Pennsylvania
- 1:30 – 3:30** **Panel 2: *Red Lion's* Relevancy: Industry and Public Interest Advocates Discuss the Role for and Effectiveness of Public Interest Media Regulation Today**
- Helgi C. Walker, Wiley Rein, LLP
 - Susan Fox, The Walt Disney Company
 - Howard J. Symons, Mintz Levin, PC
 - Mark Lloyd, Leadership Conference on Civil Rights
 - Marvin Ammori, Free Press
 - Andrew Jay Schwartzman, Media Access Project
- 3:40 – 5:15** **Panel 3: New Frontiers: Public Interest Regulation in a Converging 21st Century Media Marketplace**
- Randolph J. May, Free State Foundation
 - Frank Pasquale, Seton Hall Law School
 - Anthony E. Varona, Washington College of Law
 - Gigi B. Sohn, Public Knowledge
 - Tara Malloy, Campaign Legal Center
- 5:15 – 5:30** **Closing Remarks**
- H. Russell Frisby, Jr., Fleischman & Harding, LLP; Chair-Elect, ABA Section on Administrative Law and Regulatory Practice

Times and Panelists are Subject to Change

The symposium will end by 5:30 on Friday, April 18 in observance of the upcoming Passover holiday.