

# News and the Law

# What is free expression?

- Freedom to speak or freedom to be heard?
- Justifications:
  - Promotes democratic discussion
  - Promotes search for truth in a marketplace of ideas
  - Enables self-actualization, the development of one's true self
  - Serves as check on government power

# What is free expression?

- Positive vs. Negative Approaches to freedom: the freedom to do something (e.g., to be heard) vs. the freedom not to be interfered with
- Example of negative approach: campaign finance laws are said to be unconstitutional
- Example of a positive approach: the UN Declaration of HR and the "right to communicate" (also right-of-reply statutes)

# The First Amendment in the U.S.

- "Congress shall make no law ... abridging the freedom of speech, or of the press...."
- History:
  - 19th century, not important, not applied to local governments
  - 20th century, becomes gradually more important

# Limits to the First Amendment

- "Clear and Present Dangers," e.g., yelling fire in a crowded theater
- Libel: A "false and defamatory attack in written [or broadcast] form on a person's reputation or character."
  - For ordinary people, can sue if false statement was negligent (e.g., not intentional).
  - For "public figures" must show "actual malice."

# Limits to the First Amendment

- Government Action Doctrine: private censorship is generally legal
- Broadcast Regulation and Licensing
  - No obscenity
  - The Equal Time Rule (positive right approach)
  - Public interest, convenience, and necessity

# Free Speech and Media Concentration

- Is it true that "Freedom of the press is guaranteed only to those who own one." (A.J. Liebling)
- Direct private censorship vs. structural censorship



# Digital technologies, the internet, and law

- Governments who censor the internet
- The net neutrality debate
- Intellectual property as censorship