Gaggle & Free Press Rights

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Progress made

We’re thankful for the progress made to restore students’ deleted images.

We’re hopeful that this issue is largely resolved, with the realization that the images have been quarantined, not deleted.

We would just like to check in: have any images actually been restored to students yet?

To reiterate, it’s clear that case law restricts the ability of schools to censor student speech. What’s the timeline for returning the images?
Understanding the Kansas Student Publications Act

The Supreme Court did limit First Amendment rights in school in Hazelwood v. Kuhlmeier. It said schools can limit speech “disseminated under its auspices.”

However, Kansas passed a law to restore those protections to high school student journalists. (KSA 72-7211).
Understanding the Kansas Student Publications Act

The law says: “The liberty of the press in student publications shall be protected.”

Here’s how that law protects student journalists:

- Administrators can determine length, number, and format of publications
- Review material to ensure it is consistent with “high standards of English and journalism.”
- Material that is “libelous, slanderous or obscene” OR that commands, requests, induces, encourages, commends or promotes conduct that is defined by law as a crime isn’t protected.
- Otherwise, students are solely responsible for determining their content.

Note: Our district has historically been very protective of First Amendment rights as a matter of community values.
Understanding the Kansas Student Publications Act

Students are responsible for determining the content of their publications regardless of politics or controversy.

This matters because:
- We strive to provide honest, uncensored reporting-
- This law allows us to do reporting that we feel is important without worrying about outside influence.
- From the SPJ Code of Ethics: “be vigilant and courageous about holding those with power accountable. Give voice to the voiceless.”
- “Sunlight is the best disinfectant”
Critically: The law does not contemplate prior review of work, **BEFORE** it is ready for publication:

- This means that our unpublished notes, sources, and confidential interviews should remain private.
Protecting the work product of journalists

For journalists unpublished notes are essential:

- Anonymous interviews are often necessary components of sensitive stories.
- Our notes may include confidential sources, and if those are exposed, it critically impairs our ability to continue to do good reporting.
- Our notes also often include information that is not intended to be published, and should not be exposed to the outside world.
- Without trust, potential sources won't come forward.
A real-life comparison

Marion County Record
We reported on the case earlier this year. Police seized computers and other technology from a Kansas newsroom, and it sparked national outrage.

The police eventually returned all the materials, and the police chief resigned following the incident. The city has been sued and will likely have to pay damages.

This was a clear violation of the Kansas Shield Law in the professional world. These issues are critical.

Protecting journalists’ rights isn’t just about preventing censorship. It’s also critical to protect the reporting process.
Kansas Reporter's Shield Law

KSA 60-480

We believe this law applies to us because the Budget is “an online journal in the regular business of newsgathering and disseminating news or information to the public”

This law protects journalists’ notes and sources from being revealed.

The Student Press Law Center has made it clear to us that this law should apply to student journalists in Kansas, and it should protect us from having our work scanned.
Student press rights supported in the courts

The Kansas Student Publications Act has been tested in court, and it held up well.

Students vs. Shawnee Mission School District

In 2018, a Shawnee Mission North administrator took a camera from a student covering a protest.

The ACLU argued that the district prevented students from engaging in protected First Amendment activities.
Student press rights supported in the courts

It *didn’t matter* that the district owned the cameras. Or that the action didn’t stop the students from eventually publishing their work.

The ACLU successfully argued that students had been restrained from taking part in protected First Amendment activity.

Similarly, the district ownership of our Google Drive doesn’t give it the ability to review our journalistic products.
Privacy Protection Act of 1980

Federal law prohibits the search of newsrooms by law enforcement and other government officials:

- It’s another protection given to journalists to safeguard the reporting process.
- Congress has recognized that there is a privacy interest in the journalism work product.
- This law makes it illegal to search files, notes or any reporting material, which Gaggle is constantly doing.
Realities of CIPA (Children's Internet Protection Act)

It’s clear to us that CIPA, which was created more than two decades ago, was not meant to require such invasive and proactive monitoring.

- CIPA was created to prevent children from accessing harmful online material (mainly pornography).
- It didn’t contemplate at all the idea of scanning student work.
- “Not having control over documents doesn’t constitute a violation of CIPA, any more than not having control over pen and paper makes spiral bound notebooks a violation of CIPA.” —Mark Wagner, EdTechLife
Realities of CIPA

From three United States Senators: Elizabeth Warren, Richard Blumenthal, and Edward J. Markey in a 2021 letter to the CEO of Gaggle:

“We are concerned these products may extend far beyond the direction in federal laws to monitor online activity to protect children from exploitation and abuse. The Children’s Internet Protection Act (CIPA), which Congress passed in 2000, requires schools and libraries that receive federal funding to filter and monitor online activity to prevent children from accessing material that is “harmful to minors.” Many education agencies use this law to justify the use of technologies such as yours. However, while your company claims to protect students from harmful content, we are concerned that your company’s products may extend beyond the intent of CIPA to serve to surveil student activity or reinforce biases.”
Realities of CIPA

From three United States Senators: Elizabeth Warren, Richard Blumenthal, and Edward J. Markey in a 2021 letter to the CEO of Gaggle:

“Because of the lack of transparency, many students and families are unaware that nearly all of their children’s online behavior is being tracked. **When students and families are aware, they are often unable to opt out because school-issued devices are given to students with the software already installed, and many students rely on these devices for remote or at-home learning.** While some students are able to avoid constant monitoring of their online activity by using personal devices, this is a luxury that not all students and families are able to afford.”
Examples of work that Gaggle could impact

This story that the Budget wrote in 2018 explored if the district was meeting legal obligations to notify teachers who had students with violent histories in their classrooms.

- It mentioned topics like sexual assault and violence, so it seems likely that it would be flagged by Gaggle.
- It included anonymous interviews from teachers, who were critical of the district’s handling of the issue.
Examples of work that Gaggle would prevent

- If we wrote that story today, it it very possible that district admin could be legally required to **view our notes and anonymous interviews**, which would both compromise our integrity as journalists and our ability to provide anonymous sourcing.
- It would cause massive **conflicts of interest** regarding the admin–teacher relationship.
- This story won the Quill and Scroll International Writing, Photo and Multimedia Contest as a News story. Doing this **outstanding work** was only possible because of our assurance of the privacy of our notes and sources.
The journalism process: a hypothetical

I wrote this story in November following the incident with a weapon on campus.

During that reporting, I talked to several teachers about how they felt school administration handled the situation.

Of course, they all agreed that Dr. Rials handled it very well. **But imagine if they didn’t:**

- Administration could have read that reporting if Gaggle flagged all the mentions of violence and guns.
- They could have potentially read criticism of themselves that was meant to be confidential. This compromises the ability of sources to speak candidly with our reporters.

This is why these laws exist: to protect the journalism process.
First Amendment experts are concerned

From Student Press Law Center senior legal counsel Mike Hiestand when we spoke to him last week:

“I'm very concerned with what I'm hearing about their implementation of Gaggle in the context of student media, and this is something that we take very seriously.”

SPLC has made their support of our concerns clear, so we are firm in believing change is required. It’s also clear that this could quickly become a nationwide issue, and we would like to be an example of transparently working together with our district toward a solution.
Moving forward - Journalism

- We believe the law is clear that no district administrator or third-party vendor should be accessing journalism material in our Shared Google Drive.
- The best solution is to immediately remove the journalism Google Drive from Gaggle scans to avoid further damage.
- We would like a response by Friday including a specific timeline for moving forward.
Questions?