

Litigating Online Speech Cases

Perspectives From Both Sides of the Bar

CWBA Annual Convention May 2019

From the Plaintiff's Side

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Your Presenters



CASSANDRA M. KIRSCH



ASHLEY I. KISSINGER

Agenda

- I. How Today Helps You
- II. Defamation & Disparagement
- III. Invasion of Privacy
- IV. Harassment, Cyberbullying,
Revenge Porn
- V. In the mix:
 - Anonymous speech
 - Evidentiary issues
- VI. Q & A

I.

How Today Helps You

Speech Torts are Different

- Claims arising from speech implicate both state law and the First Amendment
- Speech claims often implicate special state and federal law provisions (*e.g.*, anti-SLAPP statutes, CDA, DMCA, retraction statutes, shorter statutes of limitation, anonymity law, case law emphasizing importance of dispositive motion practice given the rights at issue)
- Judges may not be familiar with the stringent substantive and procedural requirements attendant to claims involving speech

Online Harassment Affects Everyone

- Employers can be liable under respondeat superior and other theories
- Parents can be liable under theories of negligent supervision
- Online harassment has serious real-world affects ranging from monetary damages to even suicide
- Adults and children are targets

Online Harassment Affects Everyone

- Approximately 41% of American adults have experienced some form of online harassment
- Nearly 20% of American adults report being subjected to particularly severe forms of harassment online, such as physical threats, sexual harassment or stalking

Source: Pew Research (2017)

II.

Claims for Harm to Reputation
Defamation, Disparagement, etc.

Defamation Claims

Court Upholds \$14.5 Million Defamation Verdict Against State Farm
Source: A.M. Best

The New York Times

ABC's 'Pink Slime' Report Tied to \$177 Million in Settlement Costs

**LAS VEGAS
REVIEW-JOURNAL**

**Los Angeles businessman
awarded \$38 million in Nevada
defamation case**

Detroit LEGAL NEWS

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Posted November 21, 2011

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**Alabama Jury delivers \$7 million
slander verdict against dealership**

Defamation Claims: Online Speech

\$12.5 Million Jury Verdict in Texas Internet Defamation Case

Posted April 22nd, 2009 by [Sam Bayard](#)
in [Texas](#) [Defamation](#) [Gripe Sites](#)

'Anonymous' Posters to Pay \$13 Million for Defamatory Comments

By KI MAE HEUSSNER and SUSANNA KIM · April 24, 2012

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Ciara hits Future with \$15 million libel suit over tweets

Plus, the blurry ethics of mining a relationship for art

by [Lizzie Plaugic](#) | Feb 9, 2016, 12:40pm EST

Attorney Must Face Producer's Defamation Suit Over Tweets

By [Suevon Lee](#)



Are Americans willing to give up for internet access?

PhotoLibrary/Getty

What Is Defamation?

- A published statement of fact
- That is defamatory (*i.e.*, harmful to reputation)
- That is about the plaintiff
- That is materially false
- There was no legal privilege to publish it
- The defendant is at fault (at the requisite level)
- The statement caused injury to the plaintiff

Disparagement

- Generally involves criticism of a business's products or services
- Intent or recklessness
- Malice
- Might have different limitations period

Things to Watch Out For . . .

Incidental Plaintiffs

- The main subject of a statement or publication is not the only one who can assert a claim for defamation.
- Pay attention to all persons and organizations mentioned or identifiable in context.
- (Companies and other organizations can sue, too).

Implications

- Defamation by implication: In some circumstances, the reasonably understood (but unstated) implications of a statement may be actionable as defamation.
- Defamation by implication claims can arise from:
 - Juxtaposition of photos with text
 - Arrangement of words
 - Omission of material point
 - Suggestive section headings
- There may be a heightened fault standard

Heated sex scandal surrounds Philadelphia fire department: 'It's bad stuff'

Rumors emerged that Philadelphia firefighters had been having sexual encounters with a female paramedic at fire stations as a fellow paramedic filed an EEOC complaint, the Philadelphia Daily News reports.

BY NICOLE HENSLEY [Follow](#) / NEW YORK DAILY NEWS / Thursday, January 29, 2015, 11:31 AM

A A A

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[Aweb/20150129212...](#) [COPY](#)

A sex scandal has set Philadelphia Fire Department ablaze with firefighters accused of having sex with a paramedic on- and off-duty.

The investigation implicates dozens of city employees including paramedics, firefighters and the department's supervisors, who could face charges related to unbecoming conduct, sources told the Philadelphia Daily News.

"It's bad stuff," former Philly fire Commissioner Lloyd Ayers told the paper. "That was the word we had."

The scandal came to light last year when a fellow paramedic filed a Equal Employment Opportunity complaint alleging misconduct by a female paramedic.

As the investigation was handed to the department's Special Investigations Office, rumors surfaced that the female paramedic had sexual encounters with colleagues at firehouses, Philly.com reported.



MATT FOURKE/AP

Philadelphia firefighter Francis Cheney holds a flag at a 9/11 ceremony in 2006.

Cheney v. Daily News
L.P., 654 F. App'x 578
(3rd Cir. 2016)

Repeating Defamatory Statements

Repetition of a defamatory statement is typically deemed a “republishing,” so the repeater may be held liable, too.

(Plaintiff must still show the defendant is at fault)

Exception to Republication Rule: Comments By Website Users

- Websites hosting content posted by third parties are often immune from suit over that content.
 - Section 230 of the Communications Decency Act, 47 U.S.C. § 230
- HOW? So long as the host does not help “create or develop” the content.
- But can the host edit content? Delete content? YES
 - Just don’t create unlawful content in the editing process.

Exception to Republication Rule: Linking and Retweeting

- The CDA generally provides tort immunity for links to, and re-tweets of, third party content.
- There could be risk, however, if you appear to have adopted or endorsed the content.



Types of Claims Covered by Section 230

YES:

- Defamation
- Invasion of Privacy
- Tortious Interference
- Fraud
- Negligence
- Product Liability
- Breach of Contract
- Misrepresentation
- Unfair Business Practices
- Violation of Federal or State Statute

NO:

- Intellectual Property (but DMCA applies)
- Federal Criminal Law
- Communications Privacy Law

False Light

- Similar to defamation, but need not be defamatory
- Must be highly offensive.
- A “tag along” tort that should fail if defamation claim fails

Intrusion Upon Seclusion

Invading a zone in which a person has an objectively reasonable expectation of privacy, in a highly offensive manner, without permission



Publication of Private Facts

- Public disclosure of a
- Private fact about the plaintiff
- Defendant knew or should have known it was private
- Disclosure of it would be highly offensive to a reasonable person
- Fact has no real connection to a matter of legitimate public concern
- Injury caused by disclosure

Hypothetical #1

RackEmStackEm

v.

SturdyShelf



**Subpoenas to “Unmask”
Anonymous Online Speakers**

Why Seek Anonymous Speaker's Identity?

- To sue (or indict) the speaker
- To obtain evidence from the speaker as witness
- In various kinds of cases:
 - Defamation, invasion of privacy, etc.
 - Copyright & trademark infringement
 - Business torts
 - Misappropriation of identity
 - Criminal cases

Procedures Used to Unmask Anonymous Speakers

- Pre-complaint discovery petition to website host, ISP (some jurisdictions)
- File suit and serve subpoena on a third party (Website host, ISP)
- DMCA Subpoena, 17 U.S.C. § 512(h)

Procedures Used to Unmask Anonymous Speakers

- At the same time, take advantage of the early discovery and include with any subpoena to an ISP or other corporate website-host:
 - Copies of the social media posts, and
 - Affidavit to be completed by a representative of the entity
- This will help satisfy any authentication objections raised by opposing counsel

Anonymous Speech is Protected by the First Amendment

The Supreme Court has consistently held that the First Amendment protects the right to speak anonymously, and that right extends to online speech:

- 1960 - *Talley v. California*
- 1995 - *McIntyre v. Ohio Elections Comm'n*
- 1999 - *Buckley v. Am. Const. Law Found.*



How Do Courts Decide Whether to Unmask the Anonymous Speaker?

Factors Considered Before Unmasking

- The test used depends on the jurisdiction
- Depending on the test, one or more of these factors may be considered:
 - Has the anonymous speaker been notified of the demand for his/her identity?
 - Does the requester have a legally valid case against the speaker or someone else?
 - Is the need for the identity of the speaker important to the case?
 - Is there verification of that need?
 - Are the statements alleged to be defamatory specifically stated in the request?
 - Are there alternative means to uncover the identity of the speaker?
 - What consequences will befall the speaker if his or her identity is revealed?
 - What is the risk that the identifying information will be destroyed or lost?

The Prima Facie Case Standard

(for many civil cases involving expressive speech)

“The plaintiff must produce sufficient evidence supporting each element of its cause of action, on a prima facie basis, prior to a court ordering the disclosure of the identity of the unnamed defendant.”

AND

“The court must balance the defendant’s First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant’s identity to allow the plaintiff to properly proceed.”

Dendrite Int’l Inc. v. Doe No. 3, 342 N.J. Super. 134 775 A.2d 756 (App. Div. 2001)

Evidentiary Issues

- **Authentication**

- Contents of social media posts, emails, and text messages are not self-authenticating documents under CRE 901 and analogous rules
- Attorneys need to resolve questions about ownership, access to the account or device, and authorship

- **Spoliation**

- Data residing on social media platforms, cell phones, email inboxes, and other online accounts are subject to the same duty to preserve as other types of electronically stored information (ESI).

Teilhaber Mfg. Co. v. Unarco Materials

PRELIMINARY TEST REPORT

Unarco Materials Bldg. 3A

Division of
Unarco Industries, Inc.

ON CUE (Q) RACK

Furnished by Teilhaber Mfg. Corp.
Bloomfield, Colorado

Test Conducted July 17, 18, 1979
at Unarco's Nashville Warehouse
Monitored by Pittsburgh
Testing Laboratory



220 S. Michigan Ave.
Chicago, Illinois 60604
Phone 312 341 1234

Manufacturers of
SURE-BR and
LAWICO Products

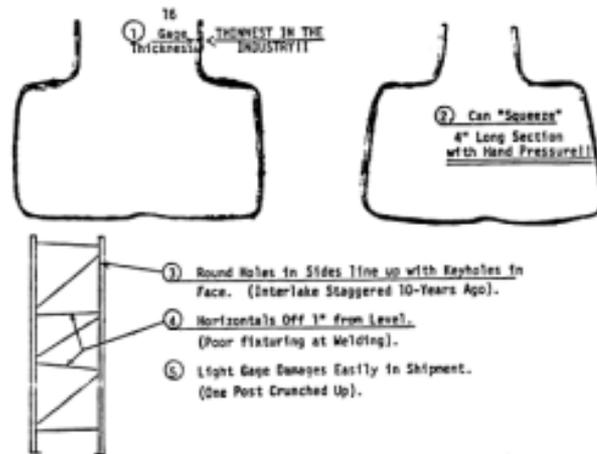
①

GENERAL INFORMATION

Q-Rack has copied an old version of the Interlake Connection,
but did a very poor job of it.

UPRIGHT FRAME

144" x 42" - 25,000# capacity ordered.
QW 23 furnished



Teilhaver Mfg. Co. v. Unarco Materials

(cont'd)

Teilhaver Mf'g v. Unarco Materials Storage, 791 P.2d 1164
(Colo. App. 1989)

- Based on distribution of report evaluating competitor's product to employees and distributors
- Not "opinion" (based on false facts; omission of critical true fact)
- Held plaintiff need not point to specific lost sales
- Jury verdict: \$1.7 million. Affirmed.

The Publication Audit:

Inventory Your Public-Facing Communications

Website	Social Media Posts	Advertising
Press Releases	Reports	Interviews
Op-Eds	Emails	Presentations
Marketing Materials	Article Placements	Cease and Desist Letters

The Publication Audit: Assess Insurance Coverage

- Mind the Gap: Confirm that coverage includes the most common publication claims (defamation, invasion of privacy, copyright and trademark infringement, publicity rights claims)
- Mind the Gap: Confirm that coverage extends to relevant channels of communication, including advertising, website publications, social media, etc.



A TRADER JACQUES store with workers playing in the background. The internet will the gap in the case of cyber protection. The main it may be hard to say compare to be in the media business as a result of advertising a company's message.

COMMERCIAL INSURERS HAVE TIGHTENED THE SCOPE OF COVERAGE, AND THE ADVERTISING INJURY PROVISIONS IN POLICIES SIMPLY ARE NOT DESIGNED TO ADDRESS NEWER FORMS OF ONLINE MARKETING.

Most commercial insurers are standard policy forms provided by the Insurance Services Office (ISO). In 1976, ISO introduced standard adhesion policies of standard forms providing advertising injury coverage. Many of the most common forms have general coverage for intellectual property claims under the advertising injury provision under the 1966 edition. The scope provided coverage for four specific "offenses": (a) copying or otherwise publication of material that infringes or misleads a person or organization or otherwise a person's or organization's goods, products, or services;

(b) false or untrue publication of material that violates a person's right of privacy;

(c) misappropriation of advertising ideas or style of design; trademark, or (d) misappropriation of copyright, title or design. The early version of the advertising injury provision has been widely interpreted by courts to provide coverage—or at least a potential for coverage sufficient to trigger the insurer's duty to provide a defense to the insured for a spectrum of intellectual property claims. For example, while trademark infringement is not itself specifically enumerated among the covered "offenses," courts have concluded that, at least for purposes of triggering the carrier's duty to defend its insured, trademark infringement does fall within the coverage for misappropriation of an "advertising idea" or "style of design," or for infringement of a "title" or "design."

The majority of courts also have interpreted the injury provision using the version of the advertising injury provision that an offense occur in the "course of advertising the insured's goods, products or services." Thus, copyright or trademark infringement claims with even a tangential connection to an insured's actual advertising activities often have been found to be covered.

In 1996, having been repeatedly told by the courts that the 1966 provisions afforded standard broader coverage than they had intended, carriers revised ISO's advertising income provisions. In 2001, just three years later, ISO introduced a further limitation on "advertising injury" coverage for intellectual property claims. This change of the commercial general liability form includes a new exclusion that the property or business off-

PROFESSIONAL LIABILITY

Stay Informed and Mind the Gap

Companies face Internet marketing-related legal claims that their commercial general liability insurance policies no longer cover.

BY ELIZABETH C. KOCH AND JAY WARD BROWN

In today's marketplace, virtually every company is in the publishing business. From the underlying right to manufacture or generate, and distributing related content through a burgeoning number of channels, manufacturers, along with retailers and service businesses of all sizes, now communicate with potential customers, suppliers and business affiliates through websites, email marketing, blogs and social media networks. As increasing numbers of companies integrate their products and marketing content into websites, Facebook, YouTube, podcasts, blogs and eBooks, sites and other programming.

Add to these the traditional channels of corporate expression, press releases and press conferences, increasingly distributed by e-mail over the Internet, live public appearances, and branding activities ranging from package design to sponsorship of annual charitable events, and there is little doubt that virtually every company, no matter what its market niche, faces significant exposure to legal risks once considered prohibitive

with for newspapers, television stations and advertising agencies.

While much corporate law advice had to purchase special insurance coverage for intellectual property and other risks arising from their publishing or broadcasting activities, the past several decades could only upon their commercial general liability policies to provide coverage for claims arising from their marketing activities.

Summary

- In 2001, the Insurance Services Office revised the standard commercial general liability form to restrict coverage for intellectual property claims that are largely attributable to advertising.
- Federal law places some limitations on recovery of other claim costs and related losses.
- Effects by carriers to limit the scope of the advertising injury coverage have led many commercial exposures with a coverage gap.



Vetting Social Media Content: Getting Ahead of the Fast and Furious

By Rob Falk and David Bowen



Communicating with the public is nothing new for most organizations — and not just those that are media, public relations, or advocacy entities. As the channels of public engagement have multiplied in recent years, companies find themselves speaking to audiences with increasing frequency online and through interactive and fast-moving social media platforms. It is hardly a stretch now to say that “everyone is a publisher.”



Cyber Torts

- Revenge Porn
- Online Harassment/Cyber Bullying
- Sextortion
- Online Defamation
- Hacking

Revenge Porn

Revenge porn is the unauthorized distribution of photos and videos containing nudity or sexual acts by a person who intends to profit from the distribution or distributes the photos or videos with the intent to harass, intimidate, or coerce the subject of the photos or videos

- Statutory Civil and Criminal Remedies in Colorado as of 2014
 - C.R.S. 18-7-107 (Harassment Purpose)
 - C.R.S. 18-7-108 (Monetary Gain Purpose)
- Plaintiffs receive a minimum in \$10,000.00 USD in damages per the statute, along with their attorney's fees

Revenge Porn: C.R.S. § 18-7-107

A violation of the Revenge Porn statute, C.R.S. § 18-7-107, occurs when someone:

- (1) posts or distributes;
- (2) through the use of social media or any web site;
- (3) any photograph, video, or other image;
- (4) displaying the private intimate parts of or sexual acts of an identified or identifiable person eighteen years of age or older;
- (5) without that person's consent or when the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private;
- (6) with the intent to harass, intimidate, or coerce the depicted person; and
- (7) the depicted person suffers serious emotional distress

Revenge Porn: C.R.S. § 18-7-108

A violation of the Revenge Porn statute, C.R.S. § 18-7-108, occurs when someone:

- (1) posts or distributes;
- (2) through the use of social media or any web site;
- (3) any photograph, video, or other image;
- (4) displaying the private intimate parts of or sexual acts of an identified or identifiable person eighteen years of age or older;
- (5) with the intent to obtain a pecuniary benefit from any person as a result of the posting, viewing, or removal of the private image; and
- (6) without that person's consent or when the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private

Revenge Porn: C.R.S. §§ 18-7-107 and 108

- “Private intimate parts” includes any “external genitalia or the perineum or the anus or the pubes of any person or the breast of a female”
- “Social media” includes “**any electronic medium, including** an interactive computer service, **telephone network, or data network**, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet website profiles”

Online Harassment/Cyber Bullying

Online harassment involves threatening or harassing emails, instant messages, or website entries. It often includes repeated attempts to target a specific person by directly contacting them, or indirectly using or disseminating their personal information, causing them distress, fear, or anger.

Cyber bullying is online harassment involving or between minors.

Online Harassment/Cyber Bullying

- Colorado Statutes
 - Kianna Arellano's Law (Criminal, C.R.S. § 18-9-111(1)(e))
- Common Law
 - Intentional Infliction of Emotional Distress
 - Intrusion Upon Seclusion
- Title IX
 - Gender/Sex Based Harassment by Students

Sextortion

Sextortion occurs when someone threatens to distribute your private and sensitive material if you don't provide them images of a sexual nature, sexual favors, or money

There is currently NO federal or Colorado state statute (civil or criminal)

Hypothetical #2

Hester Prynne

v.

Roger Chillingworth

Evidentiary Issues

- **Authentication**

- Contents of social media, emails, and text messages are not self-authenticating documents under CRE 901 and analogous rules
- Attorneys need to resolve questions about ownership, access to the account or device, and authorship

- **Spoliation**

- Data residing on social media platforms, cell phones, email inboxes, and other online accounts are subject to the same duty to preserve as other types of electronically stored information (ESI).

Key Cases: Authenticating Electronic Materials and Communications

- ***People v. Heisler* (2017 COA 58)**
 - Expanded upon tests for social media authentication in *People v. Glover* (2015 COA 16)
 - Provides test for authenticating text messages
- ***People v. Bernard* (2013 COA 79)**
 - Provides test for authenticating emails

Key Cases: Authenticating Electronic Materials and Communications

People v. Bernard (2013 COA 79)

- The Court of Appeals ruled that e-mails may be authenticated (1) through testimony explaining that they are what they purport to be; or (2) through consideration of distinctive characteristics shown by an examination of their contents and substance in light of the circumstances of the case
- Doubt about whether the defendant actually sent the email goes to weight, NOT admissibility

Key Cases: Authenticating Electronic Materials and Communications

People v. Bernard (2013 COA 79)

Email authentication test

Testimony by an individual who received the email that . . .

- (1) a printout was a true and accurate depiction,
 - (2) they recognized the email address as belonging to the defendant, and
 - (3) the content of the email indicated knowledge that the sender would have had,
- . . . was sufficient to authenticate the printout

Key Cases: Authenticating Electronic Materials and Communications

People v. Heisler (2017 COA 58)

Social Media Two-Level Authentication Test

Step One: Printouts of a social networking site must be actual depictions of the site

- Solve with testimony from someone with personal knowledge of how the printouts were obtained, or through an examination of distinctive characteristics in the printouts' content or substance

Key Cases: Authenticating Electronic Materials and Communications

People v. Heisler (2017 COA 58)

Social Media Two-Level Authentication Test

Step Two: Authenticate the identity of the purported sender by showing that the communications were made by the defendant

- Confirmation the account belongs to the defendant alone is insufficient

Key Cases: Authenticating Electronic Materials and Communications

People v. Heisler (2017 COA 58)

Social Media Two-Level Authentication Test

Solve the second-part of the test with testimony from a witness with personal knowledge who testifies to **at least** two of the following:

- (1) the account was registered to the defendant;
- (2) corroborative evidence showed that the defendant used the account;
- (3) the substance of the communications was recognizable as being from the defendant;
- (4) the defendant responded to an exchange in such a way as to indicate circumstantially that he or she was in fact the author of the communication; and
- (5) any other confirming evidence under the circumstances

Key Cases: Authenticating Electronic Materials and Communications

People v. Heisler (2017 COA 58)

Text Message Authentication Test

- Step One: Witness with personal knowledge must testify that printouts of text message(s) accurately reflect the content of the message(s)
- Step Two: Witness with personal knowledge must provide testimony establishing the identity of the purported sender of the text message(s)

Key Cases: Authenticating Electronic Materials and Communications

People vs. Heisler (2017 COA 58)

Text Message Authentication Test

Solve Step-Two with a combination of **at least** two of the following:

- (1) the phone number was assigned to or associated with the purported sender;
- (2) the substance of the text message(s) was recognizable as being from the purported sender;
- (3) the purported sender responded to an exchange in such a way as to indicate circumstantially that he or she was in fact the author of the communication; or
- (4) any other corroborative evidence under the circumstances

Spoliation

- The private contents of social media accounts is discoverable when the publicly-posted information contradicts a party's claims.

Ledbetter v. Wal-Mart Stores, Inc., 2009 WL 1067018, at * 2 (D. Colo. 2009).

- Attorneys cannot direct a client to “clean-up” their Facebook page or other social media profiles as the information is discoverable.

Lester v. Allied Concrete Co., 83 Va. Cir. 308 (Sept. 6, 2011).

Spoliation

Adverse Inference

- Mere negligence enough for adverse inference to remediate harm when the inference is reasonably likely to have been contained in the destroyed evidence.

Pfantz v. K-Mart Corp., 85 P.3d 564 (Colo. App. 2003).

Sanctions

- \$542,000 in sanctions against attorney/ \$180,000 in sanctions against client after the attorney advised his client to “clean up” his Facebook account and sixteen photos were subsequently deleted.

Lester v. Allied Concrete Co., 83 Va. Cir. 308 (Sept. 6, 2011).

MPRC Limitations on Attorney Access to Social Media Profiles in Litigation

Colorado Bar Association Ethics Committee Opinion 127:

- Information that is not public, and is protected by a user's privacy setting or otherwise restricted from public view, can be gathered only when the lawyer has determined whether the user is represented by counsel, in compliance with the requirements of MPRC 4.2 and MPRC 8.4(c)
- If represented by counsel, the attorney must get consent from that counsel to view the information
- If unrepresented, the attorney may ask the user to access the private content only with a full disclosure of their role in the litigation
- Attorneys may not circumvent the requirements by having a third party send a "friend" request

THANK YOU FOR JOINING US!

Cassandra M. Kirsch

SPEAKER

- Cassandra is the owner and lead attorney at the Law Office of Cassandra M. Kirsch, LLC. Her practice focuses on representing plaintiffs in cases involving privacy, defamation, computer fraud, online harassment, and revenge porn claims. Her firm is currently contracted with the Rocky Mountain Victim's Law Center to provide expanded services for crime victims in these areas.
- In 2018, Cassandra assisted in the drafting of House Bill 18-1264, which closed loopholes in the state revenge porn statute and expanded categories of behavior and images captured under the statute. She testified before the Colorado House Judiciary Committee and Senate Judiciary Committee in support of the legislation.
- Cassandra is a recognized legal scholar on privacy and cyber security legal issues outside the courtroom. Her research on cyber attacks is available at the Peace Palace Library at the International Court of Justice in The Hague and she has been a guest speaker at the NKU Law + Informatics Symposium.
- Cassandra is the author of the privacy chapter for the upcoming Colorado Bar Association's Colorado Civil Claims treatise.

Ashley I. Kissinger

SPEAKER

- Ashley is Of Counsel and a member of Ballard Spahr's Litigation, Media and Entertainment Law, and Appellate Groups
- Ashley has a nationwide practice representing content publishers in First Amendment and related matters. Her primary clients are the news media, entertainment companies, advocacy organizations, individual journalists, and authors, and she defends complex defamation, invasion of privacy, copyright, and other cases. She fights for her clients' right to attend court proceedings and other government meetings, and to obtain government records. And she represents journalists who are subpoenaed as third parties in criminal and civil litigation.
- Ashley leverages her significant expertise in this space to help non-media companies and individuals manage risk arising from their websites, social media, and other communications.
- *The Legal 500* has recognized Ashley individually as part of the nation's top-ranked First Amendment law practice, with clients describing her as "intellectually keen" and "a pleasure to work with." She is a Colorado "Super Lawyer" and one of *5280's* "Top Lawyers."