



Legal Issues for Publishing Online //

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Understanding the basics of media law is essential for any high school journalist. But that understanding may be even more important for the multimedia journalist because of issues unique to the online world.

How the Internet is Different

All who publish to a mass audience are subject to the constraints and protections of the law. Whether you're working on a high school print newspaper, broadcast television program or an online magazine, you can still be sued for libeling someone or infringing their copyright and have the protections of the First Amendment if you are threatened with censorship. Generally, the law is the same no matter what the medium through which you deliver your content.

But online journalists can find themselves facing concerns more frequently than their more traditional media counterparts for a couple reasons:

- Unlike a print publication that is distributed to a few hundred or a couple thousand readers, most online publications are accessible to millions. Because damages for certain kinds of injuries (libel and some privacy invasion claims, for example) are determined by the number of people who actually viewed or read the offending material, the financial risk posed by online publishing can be much greater.
- That same broad accessibility also makes it much more likely that legal violations will be caught. When you use a copyright work in violation of the law on your Web site, a simple Internet search could uncover it. Copyright owners are more likely to discover your misdeeds and hold you accountable, even if they live far away from your school.

With a few notable exceptions, the law is the same in both the online and print worlds. But the particular circumstances of online publishing make understanding the law even more important.

Libel

As for any publication, publishing false statements of fact that damage someone's reputation in a multimedia publication can result in a libel claim for money damages by the person or people who your statements

injured. Truth is a complete defense to a libel claim and statements of "pure opinion" (those that cannot be proven true or false because they are subjective interpretation and not actual facts) are protected from libel claims as well.

Most libel problems student media organizations confront arise in two contexts:

- When they have published damaging statements about someone made by others that the publication staff never independently verified.
- When they published damaging material about someone intended to be humorous but that was perceived as factual by reasonable readers.

As a result, a multimedia publication staff should remember that in most cases they are legally responsible for everything they publish (including quotes from sources in stories) and won't be protected because they intended something to be "just a joke" if your audience takes it seriously.

There is one context where online content can have special protection from libel lawsuits that doesn't exist for print or broadcast publications. Thanks to a federal law (Section 230 of the Communications Decency Act), the host of a Web site that allows others to post content there without pre-publication editing (such as a message board or reader response forum) can be protected from liability for libelous and privacy invading statements made in those postings. But most online journalistic publications enforce the same standards that they would apply for their print counterparts: if we can't verify the accuracy of statements submitted by others, we will take them down.

Privacy Invasion

It will be a surprise to many to learn that the rules of privacy invasion apply in much the same way to online media as they do to print or broadcast. Although the perception exists that somehow publishing material about someone else online is more intrusive than it





would be in print, the law says a privacy invasion is a privacy invasion, regardless of the medium of communication.

That said, out of concerns for student safety, some high schools have policies that attempt to restrict the use of student names and photographs in online publications, restrictions that are not applied to student newspapers and yearbooks. Although the school itself may be limited in its ability to publish certain information, there appears to be no legal justification for this online only restriction on student media and no evidence to support a need for it. Thousands of online high school publications routinely include student names and photographs (as do the Web sites of community news organizations) without problem. In fact, good journalism requires proper identification of sources and subjects. Many student media organizations threatened with these limitations have successfully contested them as a threat to their press freedom and others have simply avoided the confrontation by publishing on an independent Web site, not on the school's Web server.

Copyright

Copyright law is probably the most misunderstood (and frequently ignored) area of the law for high school publications. That may be especially true for those publishing online.

Copyright law provides that except in very limited circumstances, you cannot use someone else's original work in your publication unless you have first obtained their permission. That rule applies to photos, illustrations, stories, computer code, graphics and music, as just a few examples. It does not apply to titles, short phrases, facts or ideas. But in most contexts, things created by others cannot be used in your publication unless they have given you their permission first.

The Internet has made copyright infringement a much bigger problem. First, a great wealth of copyrighted material is now easily discoverable. A simple

Internet search can turn up an image that would look great on your Web site. With a quick select, copy, paste, post you have infringed the copyright of the owner of that image. Second, because the Internet turns everything into the same kind of data — a digital file — it is now much simpler to infringe complex items like elaborate images, recorded music or film and television clips. Using the same process described above, you can duplicate someone else's copyright work that previously would have been extremely difficult to steal. But in many cases, using that material without permission is a violation of the law.

Providing only a link to the work in question on the copyright owner's Web site is one way to avoid this copyright problem. But many online publications limit their use of others' works to those instances that are considered "fair use."

Fair Use Saves the Day

The good news is that copyright law does recognize some protection for what it calls "fair use." Although determining fair use can be a complicated, multi-step process, there are some generally accepted contexts in which you can use another person's work without permission. For example, if you were writing a review of a just-released movie, you could use a short video clip of a scene from that film as a fair use. The same would apply for a feature story about song lyrics; you could use some of the words of the songs or short audio clips from them without having to obtain permission.

The key to these fair use situations is that:

- You are using a small portion of the copyrighted work, and
- You are using the work in reference to news or commentary about the copyright owner of that work.

Not every use by a student publication will be considered a fair use. So a multimedia publication staff must assess each situation carefully. And seeking permission from the copyright owner is always an option. It can take time (and the copyright owner can always say no), but sometimes obtaining permission is the simplest way to use a copyright work in a non-fair use context.

Press Freedom and Censorship

As reflected by calls to the Student Press Law Center, the biggest legal problem that any student publication faces, including those that publish online, is censorship. Efforts by school officials and others outside the publication staff to interfere with student content

The Biggest Copyright Misconception:

Attribution is as good as permission.

Contrary to popular belief, simply publishing a "courtesy of" line or attributing your use of a copyright work to its source does not avoid a copyright infringement claim. It may satisfy ethical concerns about plagiarizing others' work, but the law requires permission.



decisions are troubling. But students do have means for defending their press freedom and minimizing the likelihood of censorship:

- Adopt a policy reflecting your commitment to high ethical principles and journalistic quality and stick by it. Journalism of the highest quality is the most difficult to censor. The better your work, the stronger your ability to defend it.
- Establish your publication as a public forum for student expression. Each individual student publication at your school should have its own policy statement identifying it as a public forum where student editors make the content decisions.
- Keep open lines of communication with school administrators. Be willing to listen to their concerns and don't hesitate to let them know yours. Mutual respect can result in fewer conflicts.
- Consider having your publication hosted independently, not on your school's Web site server. Although site hosting should not dictate the level

of press freedom protection you are entitled to, the more separation you can create from the school the more easily you may be able to defend your independence. It is possible to find free or low cost Web hosts for high school student publications (see my.hsj.org for an example).

- Seek help when you need it. Parents, community members, local media and state and national scholastic media organizations (especially the Student Press Law Center) can be your strongest defenders.

For more information on the law as it applies to on-line student media, see the Student Press Law Center's Web site: www.splc.org

The National Scholastic Press Association helps promote scholastic journalism through contests, evaluation critiques, educational conventions and more.

Visit the NSPA Web site: studentpress.org/nspa