



CHAPTER 4:

LEGAL RIGHTS

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment to the U.S. Constitution

The First Amendment protects the rights of ordinary citizens and journalists. It gives reporters, editors, photographers and other news professionals certain freedoms to report about, probe into the decisions of and criticize the government. It means that most government meetings, documents and reports, including many police and court proceedings, are open to news coverage.

Whenever governments try to limit media access or try to censor the press, journalists invoke their First Amendment rights as guaranteed under the U.S. Constitution. But student journalists may not always enjoy the same protections.

Why? One reason is the First Amendment itself. It only limits the censorship authority of government, not that of private individuals. When it comes to censorship of student publications, only public schools,

which are taxpayer supported, must adhere to First Amendment rights. And even there, student journalists face greater limitations than do professional journalists. Since private schools are not taxpayer-supported institutions, they are free to censor student media without any First Amendment conflict.

Some public and private schools, however, are protected by state laws limiting administration censorship, and many private school officials choose to offer First Amendment protections to their student journalists; they are under no legal obligation to do so, however.

State Protections for Students

Several states have enacted special protections for student media. Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, Pennsylvania and

Washington have statutes or regulations spelling out the rights of student journalists.

For a current list and the distinctions between the state laws protecting student media, see the Student Press Law Center site at splc.org/law_library.asp.

Unfortunately, many educators aren't aware of student journalists' rights, says Richard Johns, editor and business manager of Quill and Scroll, the international honorary society for high school journalists.

Surveys of public school teachers and administrators show that educators say they support the First Amendment in principle, but are wary of applying it in schools.

The Supreme Court seems to agree. While the high court has ruled that public school journalists are entitled to First Amendment freedoms, it has imposed some important limitations.

TINKER: DISRUPTION OF SCHOOL PROCESS STANDARD

The two most important cases relating to school press freedom are *Tinker* and *Hazelwood*. In a 1969 Supreme Court case (see www.splc.org/law_library.asp?id=2), brother and sister John and Mary Beth Tinker, along with other students at high schools in Des Moines, Iowa, decided to protest the Vietnam War by wearing black armbands to their classes. The principal heard about it and made it school policy to force students wearing armbands to remove them or face suspension.

Iowa Law Codified to Protect Student Journalists

State laws and regulations help in battles with school administrators and school districts. Although the state of Iowa has an established state code protecting student journalists, journalism adviser Ann Visser is no stranger to battles with school administrators over what her Pella High School students can publish.

"The staff did a center spread on stereotypes," Visser says. "The staff artist, who was phenomenal, drew the different stereotypes, including the preacher's kid, the jock, the brain and the punk. He drew the punk with his middle finger extended."

Visser says she looked over the artwork prior to publication, but as written in the Iowa Student Free Expression Law, Iowa Code Sec. 280.22, her student journalists had to make the final decision about publishing it.

"I asked that they consider the pros and cons of publishing," she says. "Their feeling was that since it was a drawing, it lessened the impact somewhat. They also felt that this accurately depicted the way the punk feels toward life. They had a very intelligent conversation, which ended with a decision to go ahead and use it."

The principal and superintendent were upset with the decision, Visser says. "However, they could not tell the staff why it violated the Iowa Code. It was not obscene, it was not libelous, and it did not disrupt the school process." In the end, the students did publish the drawing, without ramifications from the administration.

The Tinkers refused and were suspended. Their lawsuit reached the U.S. Supreme Court, which found in their favor.

The court held that the students' speech was protected, finding that they had "neither interrupted school activities nor sought to intrude in the school affairs or lives of others." The decision strongly affirmed the students' First Amendment rights with these words: "It can hardly be argued that either students or teachers shed their constitutional right to freedom of speech or expression at the schoolhouse gate."

Nevertheless, the high court determined that, under certain circumstances, a school might justify some constraints on student expression that would not be allowed outside of school. While deciding that the evidence in *Tinker* "does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities," the court opened the door to the possibility of allowing censorship should school officials be able to meet their criteria.

HAZELWOOD: PUTTING LIMITS ON STUDENT PRESS RIGHTS

The other major Supreme Court ruling regarding student press rights came in the 1988 case of *Hazelwood School District v. Kuhlmeier* (go to www.splc.org/law_library.asp?id=1).

In *Hazelwood*, the high court drew a distinction between the independent

student expression in *Tinker* and school-sponsored expression, as in the curriculum-based student newspaper in *Hazelwood*.

The case involved censorship of *The Spectrum*, a high school newspaper published by the Journalism II class at Hazelwood East High School outside St. Louis. In 1983, an edition of *The Spectrum* was slated to include special articles on teen pregnancy and the



impact of divorce on teenagers. Before going to press, the paper's teacher/adviser submitted page proofs to Principal Robert Reynolds.

The principal said he was concerned that an article about pregnancy contained references to

sexual activity and birth control that were inappropriate for some of the school's younger students. He also said that, while the story used false names in an effort to protect the identities of the pregnant students mentioned, they still might be identifiable.

Reynolds also said the parents of a student named in the article on divorce should have an opportunity to respond to the student's remarks or consent to their publication. He directed the adviser to delete the pages with the two articles.

Three student journalists objected and, led by layout editor Cathy Kuhlmeier, sued the Hazelwood School District and several school officials in federal court. They cited the *Tinker* decision, arguing that school officials couldn't censor student expression unless they could reasonably forecast that publishing the articles would cause substantial disruption of school.

"It can hardly be argued that either students or teachers shed their constitutional right to freedom of speech or expression at the schoolhouse gate."

—*Tinker v.*

Des Moines

Independent

Community School

District, 1969

**To maximize...
First
Amendment
freedoms,
Mark
Goodman of
the Student
Press Law
Center
suggests that
students
establish by
policy that
their
publication is a
public forum.**

The District Court rejected the students' claims, finding that their First Amendment rights had not been violated. The students appealed, and the U.S. 8th Circuit Court of Appeals reversed the District Court decision. The school district then appealed to the Supreme Court for a reversal of the appellate court decision.

The Supreme Court said school officials had "authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."

"The 1988 *Hazelwood* decision led to the deterioration of the freedom of the press for student journalists," says Richard Johns of the Quill and Scroll.

In the majority opinion, Justice Byron White established a new standard for school-sponsored student speech: "...we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

The two key elements in the *Hazelwood* decision are the phrases "school-sponsored" and "legitimate pedagogical concerns," which are open to interpretation, according to Mark Goodman, director of the Student Press Law Center, a student press-rights advocacy group.

"The reality is [that] for a lot of school officials, *Hazelwood* means whatever they

want it to mean," says Goodman. "It's a very vague standard, and a deferential standard but still not a standard of complete deference."

What the high court seems to be saying, Goodman says, is that if school officials demonstrate a reasonable educational reason, they can legitimately censor a school-sponsored newspaper, broadcast or Web site that was produced as part of a class and without a "policy or practice" establishing it as a public forum for student expression.

In *Hazelwood*, the court said that, had *The Spectrum* been a public forum, First Amendment protection would have been applied at a higher level, the standard established in *Tinker*. News outlets that are shown to be public forums enjoy greater press freedom than those that are not. And alternative or underground newspapers, which are not school-sponsored, fall outside the limitations of *Hazelwood*.

So what makes a student publication a "public forum?" Goodman says it's when students have some "significant authority to make their own content decisions in both policy and practice."

ESTABLISHING A PUBLIC FORUM

To maximize those First Amendment freedoms, Goodman suggests that students establish by policy that their publication is a public forum. If the school doesn't already have such a policy, students should work with their principal, superintendent or school board to create one that will protect the rights of student journalists to make their own content decisions. It is also useful for a student

publication to identify itself as a public forum in its masthead or staff box in each edition.

It may be more difficult for a student newscast to establish itself as a public forum, Goodman says. “Because of the technology involved and the expense,” he says, “it is more common for a faculty member to be the editor and not just an adviser, so it is much more likely not to be considered a public forum.”

In situations where it is not possible to negotiate a stated policy, Goodman says a history of established practice demonstrating free student expression in student publications will be helpful if journalists are

confronted with attempts to censor their work.

“No matter what it (*Hazelwood*) ultimately does mean or how courts interpret it, school officials use it in a way that is completely devastating to high school journalists,” says Goodman.

John Bowen, chairman of the Journalism Education Association’s Scholastic Press Rights Commission, agrees. “*Hazelwood* is like a big storm,” he says. “It spawns all kinds of little things, restrictions on other levels, things administrators don’t want, or that the community doesn’t want to see in student publications.”

Student Press Freedom Survival Tips

Top Ten Survival Tips from *Press Freedom in Practice, A Manual for Student Media Advisers on Responding to Censorship* (copyright Student Press Law Center 2004, published by Newspaper Association of America Foundation).

1. Believe in and be prepared to act on the value of a free and responsible press. That will help you follow the other nine.
2. Understand the laws and policies relevant to operating a professional publication and ensure that your students know their rights and responsibilities, too.
3. Educate your student staff, other students, faculty, administrators and the community about the purpose, values and roles involved in a free student press.
4. Make it known that prior review and restraint are not acceptable educational practices, even if you have no choice but to live with them.
5. Work toward a system that allows students to make the content decisions for the publications they produce.
6. Maintain the publication, by school policy or practice, as an open forum for student expression.
7. Help students understand and follow professional standards of journalism and ethics.
8. Maintain open channels of communication with school officials and community groups on a regular basis.
9. Teach students that defending their own rights means supporting the free expression rights of others as well.
10. Remember that your students’ rights and responsibilities stem from our national commitment to the truth and the public’s right to know.

Some of those things include stories about sex, drugs or gay students “coming out” in their student media, says Bowen.

“*Hazelwood*, coupled with society’s general climate today with its concern for homeland security, is giving them (school administrators) an excuse to do what they want.”

Mark Goodman says some school officials, who aren’t familiar with the *Hazelwood* ruling, invoke it to justify censorship. “They know there is a Supreme Court case and believe it gave them ultimate authority to censor,” says Goodman. “Some principals tell me, ‘the Supreme Court said I’m the publisher.’ It didn’t, of course, but they think it did.”

What Is the Adviser’s Role?

What is the appropriate role for an adviser to play in cases involving censorship or conflicts over what students can publish?

Ann Visser, journalism adviser at Pella High School in Pella, Iowa, says she acts as a mediator for students and administrators, but also as a devil’s advocate, to make students aware of their rights and the potential consequences of their actions.

When considering a questionable issue, Visser says she makes her students pass through a high threshold test. She tells

Tips for Advising High School Publications

Gloria Olman spent more than 30 years as a student media teacher and adviser at Utica High School in Utica, Mich. Here are her top tips.

- Understand student press law and important legal cases, including *Tinker*, *Hazelwood* and others. Study the cases to fully understand student press rights and responsibilities.
- Help students to learn and understand all of their rights and responsibilities as outlined in the First Amendment, court decisions and codes of ethics. Teach them how to get help with legal and/or censorship issues. If a story is censored, as the adviser you may not be able to help students or you could be found guilty of insubordination. The students will have to act on their own to fight the censorship.
- Be professional in all you do and teach students to be professional in their approach to journalism. Encourage them to seek all points of view and to explore a variety of sources for every story they cover. Work with the editors to ensure that stories are accurate, balanced and fair before they are published.
- Develop a solid working relationship with administrators. Invite the principal for weekly or monthly press conferences. Give the principal a “heads up” when students are covering sensitive or controversial stories. Often the principal can give both you and the students ideas for possible sources, angles or another point of view. Discuss important issues privately with him or her. This helps to develop that working relationship. However, do not let the administrator determine the content of the story or publication.

students to ask themselves: “Is this the mountain I want to die on?” She requires them to agree to defend their stories if necessary. “I always tell them I will meet with the administrator or the parent or the student, too, but they need to be the one who says what they intended, how they perceived the piece, etc.,” she says.

Many school advisers have come up with a different idea, one that Visser also endorses: creating a publications board to help resolve thorny issues. It should consist of student journalists, a student who is not a staffer on any of the publications and a few teachers selected by the student journalists. Bob Steele, of the Poynter Institute,

also encourages teacher advisers to draw on local professional journalists to help them navigate free press issues.

EDUCATE YOUR SCHOOL OFFICIALS

Enlist the support of your principal, school board and other school district officials. Educate them on the important role a free press plays in a vibrant democracy. Show them how a strong, unfettered student publication benefits the students and the community by creating better-informed citizens. Put school officials and local and regional professional news media on the publication’s mailing list, and make them all aware of any honors or awards presented to the publication.

- Remember that the function of the student press is not to serve as a public relations tool for the district; rather, it is to present those issues that are of interest and/or importance to readers, including the entire school and community.
- Write an editorial policy that includes the purposes and function of the publication, advertising policy, letters to the editor, etc. Publish the policy in every issue of the paper.
- Empower students to run the publication. They should help to select all editors, determine contents of the paper, set publication dates, make all decisions regarding the paper, and prepare it for publication. You are “only the adviser;” it is their publication and you are there simply to guide them.
- Beware the dangers of self-censorship. Students may be hesitant to tackle sensitive issues because someone “may not like it.” If it is an issue of interest and/or concern to students and community readers, reporters need to cover it. Realize that you will not be the most popular person with the staff, so be prepared to stand alone sometimes.
- Join scholastic journalism organizations, including your state press association, Journalism Education Association, Student Press Law Center, Columbia Scholastic Press Association, National Scholastic Press Association or Quill and Scroll. Network.

Enter the publication and individual student work in every critique and competition available. Publicize the awards. Frame the certificates and hang them in the room. They build staff morale, help with recruiting, and help to solidify your position as a knowledgeable adviser.

"It's critical that journalism advisers know journalism law backward and forward," says high school journalism adviser Gloria Olman.

Ann Visser takes the lead in educating her school's administrators about student journalism rights. Her example is a good one for other school journalism advisers.

"First I tell them that just because it's in the paper doesn't mean it's my personal view either," she says. "However, I do tell them that I won't deny a student the right to publish just because I don't like it."

The student paper's editorial policy also specifically states that the content is not necessarily reflective of the administration's views.

All of Visser's school administrators also get a copy of Quill & Scroll's *Principal's Guide* to help them to better understand student press freedoms. She also invites school officials to talk with her newspaper staff each year at the beginning of the semester.

To help maintain an open dialogue, Visser tries to give her principal notice when her students are publishing something likely to cause a stir.

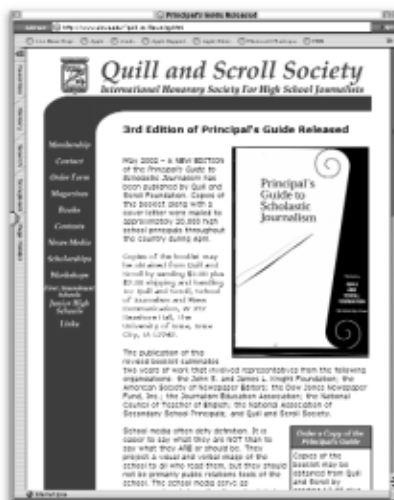
Gloria Olman, who served more than 30 years as a high school journalism adviser and teacher in Michigan, also informed her administrators of potential controversy but says she always stressed that prior restraint or review of the students' work was unacceptable. "It's critical that journalism advisers know journalism law backward and forward," she says, "They have to be willing to stand up for their students' rights."

"The danger is the self-censorship," Olman cautions. "[Students] tell themselves 'our principal wouldn't let us do it or oh, we might hurt somebody's feelings.'" The adviser should guide the young journalists, she says, but let

the students generate the story ideas, follow through on them and make all decisions.

Olman also recommends entering publications into competitions to help persuade school officials of the importance of media freedom. "Your administration may disagree with a story," she says, "but if it [the

newspaper or radio or television program] has taken an award in state or nationally, it changes their perspective and they may realize how important a strong student press is to the school."



FEDERAL EDUCATION RULES USED AS RESTRICTIONS

Some administrators try to justify restrictions by citing a federal law called the Family Educational Rights and Privacy Act (FERPA). Designed to protect the privacy of educational records, FERPA requires schools to get written permission from a parent or student in order to release any student information. The U.S. Department of Education says FERPA applies only to "school officials or those who are acting on the school's behalf." It doesn't restrict student journalists from reporting news. (See the Department of Education Website on FERPA for more details:

www.ed.gov/policy/gen/guid/fpco/ferpa/index.html.)

“Things like FERPA are often misinterpreted,” says John Bowen.

“Administrators think it says they have to block directory-type materials like names, faces and addresses so students can’t use pictures or print names. It’s ludicrous.”

LIBEL LAWS APPLY TO STUDENTS AND PROFESSIONALS

While the courts have interpreted the First Amendment differently for student journalists than for professionals, when it comes to defamation, their verdict is the same. Like professionals, student journalists cannot broadcast or publish anything they want, and they must be careful not to damage people’s reputations by publishing inaccurate information. If they do, they may be found guilty of libel or slander.

Slander is oral defamation. Libel is defamation usually applied to published or broadcast communication that falsely harms a person’s reputation. The word “falsely” is key in court because statements that can be proven true cannot be libelous. Truth is the best defense against libel.

A second important defense is privilege. The courts allow that people in some circumstances can make statements that may be false, malicious and damaging without fear of being sued for libel. The circumstances include judicial, legislative, public and official proceedings and most public records. Those statements have what the courts call “absolute privilege.” For example, if a member of Congress speaks on the floor of the House of Representatives, anything he or she says is protected from being sued for libel, no matter how outrageous the claim. However, he or she faces some restrictions under the Congressional rules of conduct.

Journalists who make fair and accurate reports of such privileged statements generally will not be in danger of libel even if those statements later turn out to be inaccurate. This is called “qualified privilege.”

In the publication of editorials and criticism, journalists also are shielded from libel by the defense of fair comment. The courts have said statements that are purely opinion are not libelous. However, as the Student Press Law Center cautions, “the distinction between fact and opinion can often be hard to define and does not turn solely on phrases such as ‘in my opinion.’”

In addition, the courts have ruled out libel in cases of rhetorical hyperbole. This means published statements that no reasonable person would believe, like those made in spoofs or satire, are not libelous.

Finally, there can be no libel of the dead. No one can sue for defamation on behalf of a deceased person.

While each state has its own definition of the term, words, pictures, cartoons, photo captions and headlines all can give rise to claims for libel. However, in order to win a libel suit, the person bringing the suit—the plaintiff—usually must meet the following legal tests:

Defamatory meaning: Does the statement harm the reputation of the plaintiff rather than being merely insulting or offensive?

Publication: Has the alleged defamatory statement been published or disseminated to at least one other person besides the plaintiff?

**Student
journalists
cannot
broadcast or
publish
anything they
want . . . they
must be careful
not to damage
people’s
reputations by
publishing
inaccurate
information.**

"Because of the music file-sharing thing," SPLC's Mark Goodman says, "students see copyright law as the enemy."

Identification: Is the statement "of and concerning" the plaintiff? This means that those hearing or reading the statement must identify it specifically with the plaintiff.

Falsity: Is the statement false?

Fault: Can you prove that the defendant is at fault?

The "fault" test is critical in libel cases, and varies depending on the type of plaintiff bringing suit. Courts have found that public figures like government officials, celebrities, and well-known individuals have a higher burden of proof than a private person when it comes to fault.

Public figures must prove actual malice, a legal term that means the defendant knew the statement was false or recklessly disregarded the truth or falsity of the statement. Private people must show only negligence, that the defendant failed to act with due care in the situation. (For more information see www.medialaw.org.)

COPYRIGHT INFRINGEMENT

Few student news outlets are likely to face libel charges, according to Student Press Law Center director Mark Goodman. "Copyright infringement is the legal violation that high school journalists most frequently engage in and is the one they are least likely to get caught at," he says.

"Because of the music file-sharing thing," Goodman says, "students see copyright law as the enemy. They don't give a lot of credence to it even if they have the notion that it applies."

Copyright law applies to student journalists

in two important ways. First, it protects them against unauthorized use of their stories, artwork or photographs. Second, it limits their ability to reproduce the works of others.

This means student journalists, as authors, can control the reproduction and use of their work by others and can seek damages for misuse. It also means students cannot copy source material and use it verbatim. Despite the ease of locating material on the Internet, journalists may not simply cut and paste text, images or video they located online and use it in their news outlets.

How does copyright work? Federal copyright law protects the authors of "original" works "fixed in any tangible medium of expression." The term "original" simply means the author of the work must have shown some creativity in producing it, and the phrase "fixed in any tangible medium of expression" means that the work must be real (a book, newspaper, video, CD-ROM, etc.) and not exist solely in the creator's mind.

Copyright protects literary works, sound recordings, works of art, musical compositions, computer programs and architectural works. Works created after March 1, 1989, need not contain the familiar copyright logo (©) in order to be protected. Copyright owners often register their copyrighted work with the Copyright Office in Washington, D.C. But these works are still copyrighted even if they haven't been registered.

Copyrights don't last forever. When they expire, the material can be freely used without any legal problems. Any work originally published before January 1, 1923, is

now in the public domain, and can be used without permission. For works created after January 1, 1978, copyright lasts through the duration of the creator's life plus 70 years.

Sometimes those dates are expanded. For example, the famous song "Happy Birthday to You" has had its copyright extended for another 20 years under federal law to 2030.

If you want to use copyrighted material, you must get permission from the copyright holder, usually by written request. Any request should include: your name, address, telephone number, a description of what you want to use, how you plan to use it, the type of outlet it will be used in (print, online, video), the expected date of your use and what price, if any, you will charge

The Web and Copyright Infringement

Lifting photographs and text from the Web is a "humongous problem" with student journalists says Candace Perkins Bowen, scholastic media coordinator for Kent State University's School of Journalism and Mass Communication. She frequently judges student journalism award contests and says that any hint of copyright violation will disqualify a newspaper.

"A paper we were judging had a story on four-day school weeks," Perkins Bowen says. "It compared other schools across the country dealing with the same thing. In it there were some direct quotes from a principal in Louisiana and a superintendent in Arkansas. Now I know some people do research these kinds of things, and would take the time to call people in Louisiana and Arkansas, but I just wondered. So I did a little search. The kid had written around it, but sure enough, had gotten the quotes from an AP (Associated Press) article and one from the Christian Science Monitor. No attribution. Unacceptable."

Students should be applauded for attempting ambitious reporting, Perkins Bowen says, but need to get permission when using information or photographs from other sources. To avoid copyright hassles, she recommends using government sites for free, non-copyrighted material.

Under the law, works produced by federal government employees as part of their official duties are not copyrighted. As a result, students can use them and cite them without worrying about copyright infringement. These include published works that were never copyrighted, and ones whose copyright has expired.

Here are several examples of free non-copyrighted material that students may use.

Project Gutenberg. This is a collection of more than 6,000 books whose copyright has expired or were never copyrighted and thus are available to the public for free use. promo.net/pg

Choral Public Domain Library. This site contains music that may be used without paying any royalties because its copyright has expired or it was never copyrighted. www.cpdlib.org

In addition to choral songs, another site lists more than 3,500 songs that are in the public domain, like the traditional New Years greeting Auld Lang Syne and Christmas songs like Deck the Halls and Jingle Bells. www.pdinfo.com.

While materials generated by the federal government are without copyright restrictions, it is an established practice to cite the source of the information when you use it in a news story. For example, if you use information from the Federal Emergency Management Agency (www.fema.gov) when reporting on natural disasters like hurricanes, tornadoes and earthquakes, be sure to tell your audience where you got the information.

to receive your end product. If your news outlet is nonprofit, be sure to make that clear to the copyright holder.

Web sites, like any original works, are copyrighted. Many sites have e-mail addresses where you can send inquiries about using their material for your own reporting.

FAIR USE DOCTRINE

Journalists also can use limited copyrighted work without permission under something called the “fair use” doctrine. It allows copyrighted material to be used for news reporting as long as it doesn’t destroy the commercial value of the copyrighted work. This usually means you can use a small

portion (a few seconds) of copyrighted work in a broadcast, for example.

The Student Press Law Center says “there is no black and white rule” for fair use: “each case must be examined on its own.” The SPLC offers the following criteria used by courts to determine “fair use” of copyrighted material:

1. The purpose and character of the use. Noncommercial uses for purposes like news reporting, teaching, criticism or commentary are more likely to be fair.
2. The nature of the copyrighted work. Uses of works containing mostly factual material like maps or biographies are more likely to be fair than uses of

“Fair Use” Doctrine Can Help Students Legally Use Material Found on the Web

by Gary Clites, journalism adviser, Northern High School, Owings, Md.

A little known tenet of copyright law known as “fair use” allows for the use or reproduction of copyrighted material under certain circumstances. This is great news for student journalists writing for the Web or elsewhere.

Under fair use doctrine, student reporters legally can download and republish portions of text from Web sites and books, lines of dialogue from movies and TV shows and portions of lyrics from CDs. Fair use allows for the republication of small amounts of material taken from the original owner of the copyright if the purpose is to convey the nature of the thing being written about and if the use does not diminish the value of the copyrighted material. Student journalists will want to know this information for use in the stories they prepare, especially when they are reviewing material of interest to their peers.

What does this mean? It means students can legally use a lot of the things they find on the Web. For example, students could illustrate a review of Seventeen magazine with a photo of the cover of the magazine. For a review of the movie “Tomb Raider,” they could go to Paramount Pictures’ official Web site for the film and legally download a photo of a scene from the movie. For a story about new Fall TV shows, they could visit the sites of the network programs and legally download publicity photos of the shows reviewed in the article. For an article about Britney Spears, students could legally visit Britney’s official Web

highly creative and original works like novels and cartoons.

3. How much of the original work is used. No more of the work than what is necessary may be used fairly. The test is both quantitative (how many words of a 200,000 word book are reproduced?) and qualitative (using the “core” or “heart” of a work—no matter how small—is less likely to be a fair use).
4. The effect of the use on the commercial value of the copyrighted work. This is important. If consumers are likely to buy the use as a substitute for the original, it probably will not qualify as a fair use.

Other material simply cannot be copyrighted and therefore can be used freely. Slogans, titles, short phrases and instructions are not copyrightable. Facts and ideas also are not subject to copyright law. What this means is that, while the way a newspaper or magazine arranges its words in reporting on an incident is protected by copyright, the actual facts of the incident are not. (For more information about copyright laws, go to the U.S Copyright Office’s Web site, www.copyright.gov/circs/circ1.html#hlc.)

For additional information on copyright and fair use, see the following Web sites:
How to Investigate the Copyright Status of

site, download publicity photos of the singer, and then scan the cover of her latest album to complete their need for illustrations.

All of this would commonly be considered fair use of the material. Copyright law asks two things of your students: (1) that they get their material directly from the owner of the copyright; and (2) that they identify the owner of the copyright when they use it. This means students should include a notation indicating the source of the material (“photo courtesy of Paramount Pictures,” for example).

What are the limits of the fair use doctrine? A student writing a story about Michael Jordan might be able legally to visit Jordan’s official web site to grab a publicity photo. She could not, however, visit Sports Illustrated’s site to download a photo of Jordan published by that magazine. Doing so would definitely violate the magazine’s copyright. A student writing about the Napster Web site could legally download and publish the site’s logo. He probably could *not* legally publish copyrighted photos of bands whose music is distributed on Napster since they are not the focus of the article and Napster would not be the legal owner of those photo’s copyrights.

And while a student writing about, say, school shootings at Santee High School in California could visit the school’s own Web site and download a photo from that site (assuming the school owned the rights to the photo), he could *not* borrow a photo illustrating the school shootings from WashingtonPost.com without getting permission from the copyright owner (which could be either the Post or a third party like the Associated Press).



a Work, from the Library of Congress
www.copyright.gov.

Copyright primer. A primer by technology corporate attorney Benedict O'Mahoney includes examples of copyright abuses
www.CopyrightWebsite.com.

What is "Fair Use" in Copyright Law? by Barbara Weil Gall for

GigaLaw.com, a site by lawyers and law professors for Internet and technology professionals
www.gigalaw.com/articles/2000-all/gall-2000-12-all.html.

Also, basic details on copyright
www.gigalaw.com/articles/2000-all/loc-2000-03-all.html.

INVASION OF PRIVACY

While the right to privacy is not guaranteed by the Constitution, the courts have ruled that some information about people is considered off-limits to the press and the public, even when it's true. The legal system recognizes four kinds of privacy invasion:

1. **Public disclosure of private and embarrassing facts**

Journalists can get into legal hot water if they publish intimate details about a private person's sexual conduct or medical condition. But if the information is seen as genuinely newsworthy—for example if a criminal act is involved—courts often protect news organizations from privacy claims.

2. **False light**

If a person is portrayed in an

unflattering way in a photo or words or a graphic, a journalist can face legal problems for invasion of privacy for being accused of showing someone in a way that is not accurate. A typical false light problem can arise when a misleading caption is published with a photo (for example, a caption describes a bystander at an unlawful demonstration as a "participant").¹¹

3. **Intrusion upon seclusion**

This charge can occur during the newsgathering process in several ways.

- When a journalist trespasses on private property without the owner's consent. As a general rule, journalists are allowed to enter privately owned public places, like college campuses, shopping malls and parking lots; however, they must leave when asked.
- When secret surveillance equipment is used.
- When a journalist misrepresents himself or herself, resulting in invalid or exceeded consent. This might occur when a student reveals personal information that he or she does not want disclosed in a publication in the context of a conversation with a friend (for example, if a student reveals that he or she is gay or Lesbian to a friend who also happens to be a student journalist). If the student journalist does not clearly indicate that the information is for publication, there could be a problem. This doesn't preclude students from undercover reporting as long as the disguise isn't used to trespass or engage in an activity that wouldn't otherwise be allowed.

While the right to privacy is not guaranteed by the Constitution, the courts have ruled that some information about people is considered off-limits to the press and public, even when true.

4. Misappropriation of name or likeness

This involves unauthorized use of a person's name, photograph, voice, likeness or endorsement to sell a commercial product or service. If a student publication does intend to use students for advertisements, it can avoid legal problems by having subjects sign release forms.

OBTAIN CONSENT TO AVOID PROBLEMS

So how do you avoid trouble in a situation you think might raise invasion of privacy concerns? Get consent. You would not be likely to have this problem if, for example, you take a picture in a public place. But if you think there is a serious risk that someone could have a legally actionable invasion of privacy claim (such as when you are revealing a very personal aspect of the person's private life), you might want to obtain consent from that person. Be candid about what information is needed and how it will be used.

It is important to make sure the person from whom you are seeking consent has the legal right to give it and fully understands what he or she is signing. Although many students are minors, legal experts say they may give consent if they understand and are fully informed of what is taking place, even if their parents' consent has not been obtained or has been refused. Be especially mindful when you are dealing with younger students, who may not fully understand the meaning of giving their consent. This has been a big issue on the Internet, where children have signed forms and then provided personal information about their parents without the parents being aware of it. (It prompted a crackdown by the federal government and Congress to pass a Child Privacy rights law.)

OBSCENITY TEST

Since true obscenity isn't considered protected speech, all journalists should think twice before using profanity or offensive language in their reporting. The Supreme Court's test for obscenity involves three elements: (1) whether a reasonable person, applying contemporary standards, would find that the work, taken as a whole, appeals to a prurient interest [dictionary.com defines "prurient" as "inordinately interested in matters of sex"]; (2) whether the work depicts or describes in a patently offensive way sexual conduct specifically defined as obscene by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

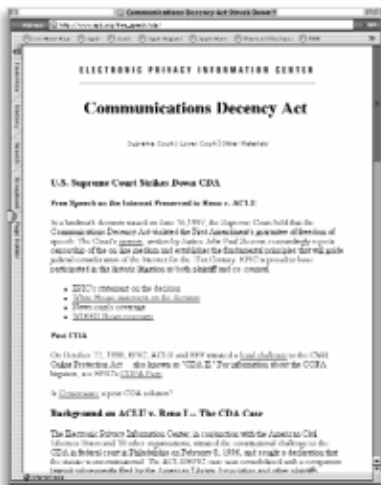
A 1968 Supreme Court ruling in *Ginsberg v. New York* established an even broader definition for cases involving minors, so keep in mind that even if the same material would not be considered obscene in an off-campus publication, student journalists working on school-sponsored media might run into problems with offensive material.

LEGAL RULINGS APPLY TO ONLINE NEWS

While the courts do not differentiate between student publications in print or online, many school administrators are more wary of online student journalism, and place greater restrictions on Web-based publications, according to Candace Perkins Bowen, scholastic media coordinator at Kent State University.

"School administrators are worried about their image," Perkins Bowen says, "When students publish online, more people are going to see it, so they don't want to post anything that looks bad."

Since true obscenity isn't considered protected speech, all journalists should think twice before using profanity or offensive language in their reporting.



Since many school Web sites started as public relations tools, some administrators find it difficult to reconcile a change in their purpose when they become outlets for news media. This is another reason to have an understanding with the school administration and perhaps a student advisory panel and a policy about a student-produced Web site and its role.

**Just because
journalists can
legally publish
or broadcast
something,
should they?**

Sometimes there are other problems relating to online sites. Karen Watts, a journalism teacher from Wheeling, Ill., says her students' online news site was shut down over the issue of publishing student names, and their print edition was threatened as well. The district had a privacy policy regarding student records directed at teachers and administrators. "They tried to apply the same rationale to the student press," Watts says, "but I said, 'look, we exchange papers with 200 different schools all over the country from Hawaii to Maine. That information is already out there.' So the student paper was not held to the same restrictions."

Despite concerns to the contrary, there is no evidence to suggest online student publications pose any more danger than print-based counterparts, according to SPLC director Mark Goodman. "Legally, the standards are the same," Goodman says, "Practically, the difference is perception of audience by school officials. Because the audience is potentially larger, they are more likely to be concerned about Web sites."

COMMUNICATIONS DECENCY ACT

In fact, according to the Student Press Law Center, schools publishing student-reported news online may enjoy even greater protections than print publications due to something called Section 230 of the Communications Decency Act (CDA). While some parts of the CDA have been struck down by the courts, the law still applies to students and online publications.

It states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This means that Internet Service Providers (ISPs) are given immunity from legal cases involving libel and invasion of privacy claims that would treat them as publishers of content provided by someone else.

Since many school districts act as ISPs for student news Web sites, the SPLC advises that the CDA language would "seem to protect all schools from liability for content posted by student journalists or others who are not school officials." This would include online student publications that operate chat rooms, bulletin boards or similar forums.

Goodman says that, although the CDA does afford greater protection against libel "in theory," he hasn't seen it motivate school authorities to allow greater online press freedoms.

"School officials are not concerned about liability, they are concerned about control," Goodman says, "They make it about liability, and when we demonstrate that it is not a factor, they make it about something else."

For more information on CDA Section 230, see the Electronic Privacy Information Center Web site at www.epic.org/free_speech/CDA.

Ethics

Just because journalists can legally publish or broadcast something, should they? Not according to Bob Steele, Nelson Poynter Scholar for Journalism Values at the Poynter Institute, St. Petersburg, Fla.

“When it comes to ethics, there are many shades of gray,” Steele says. “If you put ethical challenges on a spectrum, very few are close to black and white. There are guiding principles. Some rules are implied, like you should not plagiarize. It’s important

to respect the work of others and credit them. Err on the side of more attribution rather than less.”

While historically a big issue for students and academia, plagiarism is now on the rise across the news media, according to Steele. He says the Web has made it much easier for journalists to access material from around the world.

JOURNALISM ETHICS SITES

RTNDA’s code of ethics is printed in Appendix C. RTNDF’s also has ethics guidelines on a number of issues, including respecting privacy and evaluating sources. The guidelines can be found at www.rtnda.org/ethics/ethicsguidelines.shtml.

The Problem of Plagiarism

Kelly McBride teaches ethics at the Poynter Institute, a nonprofit school for journalists and journalism teachers. She says plagiarism is the most widespread ethical problem among student journalists.

“When I talk with students, I say if a story uses one paragraph that was taken from another publication, it’s plagiarism,” McBride says. “Then I ask them if they have ever plagiarized, and about half admit to it, which leads me to believe that it’s really more like two-thirds who have.”

Student journalists offer up various excuses for why they plagiarize, according to McBride. “They tell me that they got in a bind, had to hurry, or they didn’t want to have to attribute it all the way through a report,” she says. “Or they say, ‘nobody stopped me.’ It becomes habit. They think if they do it for something bigger, more important, that someone will notice and stop them, but they don’t.”

McBride encourages journalism teachers to stress the real harm journalists do when they plagiarize someone’s work. She recounts how college journalists have been expelled or lost their editing jobs when plagiarism was discovered. In addition, she says, teachers should set high standards for sourcing and attribution.

“Teachers should say, ‘I don’t care what you’ve done in the past, the stakes are higher,’ ” McBride says, “Beyond individual hurt, there is the harm caused to the stakeholders, corporate harm to journalism. Journalism is harmed because nobody believes anything they read, and when that happens, democracy collapses because you can’t have a free trade of ideas. In the biggest sense of the word, it’s about democracy.”



Being first

with information is important in journalism, but only if that information is accurate.

Doing Ethics: Ask Good Questions to Make Good Ethical Decisions, a Poynter Institute Handout by Bob Steele, director, Poynter Institute Ethics Program www.poynter.org/content/content_view.asp?id=5600

Poynter's collection of resources on media ethics www.poynter.org/subject.asp?id=32

WEB SITES ABOUT PLAGIARISM

Tracking Online Plagiarism. Tips on detection and prevention. alexia.lis.uiuc.edu/%7Ejanicke/plagiarism.htm

EVE Online Plagiarism Finder. This site offers a free copy of EVE software free for 15 days. www.canexus.com/eve

Plagiarism.org. This site says about 30 percent of all students plagiarize on every term paper turned in. www.plagiarism.org
This related site tracks media stories on plagiarism. www.plagiarism.org/press.html
Turn It In. A state-by-state breakdown of cybercheating. www.turnitin.com

In addition to plagiarism, student journalists may face other ethical dilemmas. The Web site www.highschooljournalism.org, sponsored by the American Society of Newspaper Editors, spells out some common ones. These include:

Conflict of interest: Should a journalist interview friends or teammates if he or she belongs to that team or organization?

Anonymous sources: Is this the only way to convey information? Is there an alternative source? Can you protect the identity of your source? Will using anonymous sources undermine your journalistic credibility?

Offensive content: It may be tempting to use offensive language or content, but is it in the best interests of your audience? Will the content compromise your ability to convey information?

Invasion of privacy: Although your newsgathering may be legal, will it harm or embarrass someone?

Bias: Can you be fair and impartial in your coverage? Have you considered all sides of an issue?

Accuracy: Carelessness or misleading newsgathering will undermine any journalist. Have you been as thorough as possible? Being first with information is important in journalism, but only if that information is accurate.

Some professional news organizations publish ethics codes or handbooks and recommend that their reporters, editors, photographers and broadcasters sign promises to abide by them.

But ethics should be more than a list of rules, according to Kelly McBride, ethics faculty member at the Poynter Institute. "Ethical decisions are like critical thinking," McBride says, "but we teach them like they are a list of rules. We have divorced ethics from the rest of the craft, when they are intrinsically tied to the craft."

McBride says journalists should make ethical decisions at every step in the story process, from decisions about who will be interviewed to what will be covered in a story lead through how the story is framed. Journalists should examine their story selection and ask themselves whether they have preconceived ideas about a story.

The most important lesson to instill in young journalists, says journalism teacher Ann Visser, is “that they are very powerful in their positions, but that power should not be abused. They need to always carefully consider the implications of what they’re printing.” Because student media regularly have new editors, producers and reporters, maintaining consistent ethical behavior can be a real issue, according to Richard Johns, the editor of Quill & Scroll. “Often the only stable factor is the adviser,” Johns says. “The kids come and go within two to three year cycles.”

When it comes to teaching ethics, the Poynter Institute’s Bob Steele says, “It’s as important how and why you make the decision as what decision you make.”

TIPS FOR ADVISERS ON ETHICS

Wheeling, Ill., journalism teacher Karen Watts says advisers should act as guides for their students, not as decision-makers. “I’m a student advocate,” Watts says, “My editors make all the major decisions. I feel it’s my job to give them the benefit of my experience. I don’t tell them how to consider issues. I’m the embodiment of conscience. And I’m an intermediary to the principal.”

Watts says journalism advising is about more than teaching writing style. “You have to teach your students to be reporters and news gatherers, and explain why it’s important to make those necessary journalistic decisions,” she says.

**Journalism
teacher**

Karen Watts

says advisers

should act as

guides for

their

students, not

as decision-

makers.

Ask These 10 Questions to Make Good Ethical Decisions

By Bob Steele, Poynter Institute

1. What do I know? What do I need to know?
2. What is my journalistic purpose?
3. What are my ethical concerns?
4. What organizational policies and professional guidelines should I consider?
5. How can I include other people, with different perspectives and diverse ideas, in the decision-making process?
6. Who are the stakeholders, those affected by my decision? What are their motivations? Which are legitimate?
7. What if the roles were reversed? How would I feel if I were in the shoes of one of the stakeholders?
8. What are the possible consequences of my actions? Short term? Long term?
9. What are my alternatives to maximize my truth-telling responsibility and minimize harm?
10. Can I clearly and fully justify my thinking and my decision? To my colleagues? To the stakeholders? To the public?

Many journalism instructors lead students through ethical scenarios to stimulate debate about good journalistic behavior.

“Every decision that they make, they must base it on strong convictions, strong evidence, and things don’t always work out the way they think,” she says. “They have a list of questions to consider, and I tell them you’d better have a basis for everything you write. We talk about who does it hurt? Who does it help? In other words, what’s the benefit to us?”

CASE STUDIES

Many journalism instructors lead students through ethical scenarios to stimulate debate about good journalistic behavior. Students are encouraged to role-play, asking them to be aware of how their reporting will affect their sources, audience and other people. A good place to start is RTNDF’s 2005 “Great Ideas For Your Classroom.” The book has an excellent chapter titled Ethical Decision-Making and News Judgment: Case Studies, which includes several ethics cases for your students to analyze.

Another resource is “The Newsroom Brain: A Working Guide to Journalism Decisions,” created by Northwestern University’s media management center www.mediamanagementcenter.org/center/index.htm. The guide poses ethical dilemmas for discussion and then shows how working journalists dealt with similar cases.

“It empowers them to know that professionals think about the same things and sometimes do what the kids have decided to do,” Watts says, “They realize that they do have power as journalists at 14, 15, 16 years old.”

The Poynter Institute’s Kelly McBride says she’s a “big fan” of using case studies in teaching ethics, and also suggests that advisers look to their own local media to give students insight into the professional newsgathering process.

“Take a story from the local paper,” McBride says, “Invite the sources to come in and talk to you about what it’s like to be interviewed for a story, especially for someone who is not normally in the paper.” Students will hear directly from sources about whether they were quoted accurately and treated professionally, she says.

For a tremendous collection of journalism ethics case studies, see www.web-miner.com/ethicscases.htm.

Also, some excellent real-world case studies are available at Journalism.org www.journalism.org/resources/education/case_studies/default.asp.

Finally, an excellent list of legal and ethics resources can be found in Appendix A. ■