

Goldsmiths Department of Media & Communications

Student Pocket Guide to Media Law and Ethics of England and Wales



Goldsmiths, Department of Media & Communications
Pocket Guide to Media Law In England & Wales 2011-2012 for all Journalism and Media
Courses. (by Tim Crook updated October 2011)

[Very similar to other common law jurisdictions. As an exercise if you are in the USA, Canada, Australia, India and New Zealand, write down a list of how your media law is different.]

Journalists need to be aware of four major areas of the law when reporting and writing articles:

1. Ensuring people have a fair trial (The Law of Contempt)
2. Ensuring that people's reputations are not unfairly damaged by inaccurate and malicious information. (Defamation),
3. Privacy. Demonstrating respect for the right to privacy (family, home and correspondence)
4. Copyright and Intellectual Property.

There are many criminal sanctions for journalists who break media law and draconian punishment and embarrassment through secondary media law and ethics regulation (Press Complaints Commission, Ofcom and BBC Trust enforcing Editorial Guidelines.)

Contempt

Contempt carries criminal sanctions such as an unlimited fine and maximum jail sentence of two year's imprisonment. Once someone has been arrested for a crime, or a warrant has been issued for their arrest, and until proceedings are over, you may not 'create a substantial risk of serious prejudice' for example by:

- a. publishing previous convictions
- b. suggesting the defendant has confessed
- c. suggesting accusations of more serious crimes or crimes they are not facing
- d. suggesting they are guilty
- e. saying something so bad about them that you could prejudice a potential juror against them.

New case-law is developing an additional obligation to avoid 'impeding' the administration of justice by demonising or 'monstering' a suspect through critical depiction of a suspect's character/personality such that other equally significant suspects will not be investigated and the police enquiry will be diverted/undermined or adversely affected.

Reporting court cases: some simple ground rules

- a. Never report anything said in the absence of the jury until after all the verdicts have been returned.
 - b. Stick to reporting accurately what is said in court and do not paraphrase using 'sexier' and more sensationalist language
 - c. Make sure your reports are fair and accurate. To be fair involves putting the other side of the story. Accuracy speaks for itself.
1. Never ever publish anything that can lead to the identification of somebody involved in legal proceedings who is aged 17 and under unless the court specifically allows it. (16 and under in Scotland)
 2. Never ever publish anything that is likely to lead to the identification of anyone complaining of a sexual offence unless they agree to be identified and that agreement is in writing [range of

sexual offences includes voyeurism, indecent exposure, 'flashing' and has substantially expanded]

3. You also need to watch out for special court orders banning identification of frightened witnesses, blackmail victims and undercover police, intelligence and customs officers.

4. Go out of your way to check if there are any special reporting bans/orders relating to the legal case and/or proceedings that you are covering. Keep proof of any emails and contacts demonstrating your efforts to carry out this checking.

Defamation

Defamation carries civil law sanctions such as being sued for loads of money and having to pay lawyers huge amounts in fees. [A research study in 2008 demonstrated that lawyers in England charge 140 times more than in other European countries.]

Defamation: four basic definitions:

- a. what you write exposes someone to hatred, ridicule and contempt
- b. what you write lowers the estimation of right thinking people generally
- c. what you write damages someone in their trade, profession or office
- d. what you write causes people to shun and avoid your subject

Identification: even if you do not name someone explicitly if it is possible to work out who you are talking about you are in trouble.

Publication to a third party: not just a newspaper or magazine, sending a postcard with a defamatory comment is good enough.

Golden rule of testing your copy: Imagine you are the most sensitive person being criticized and think the very worst interpretation of what could be misunderstood by the language you have used in your copy.

Bane and antidote: When evaluating your copy consider the worst possible 'reading' of your material (known as the bane), make your assessment on one quick and immediate reading (the natural and ordinary meaning expected of your audience), then look for any antidote in terms of putting the other side, indicating that the bane is ridiculous, meaningless satire that nobody would believe, and contextualisation which would ensure that any reasonable reader would not derive any defamatory meaning.

Separating fact from comment: Facts have to be proved and if defamatory are the most dangerous parts of your copy. Comment should be opinion, honestly held and based on true facts or allegations made in legally privileged contexts.

Avoid alleging and/or imputing defamatory motive: Not even the prosecution has to prove motive in a criminal trial. It is almost impossible to prove unless admitted. There is a famous legal quotation about how impossible it is to guess the state of man's mind as it would be to guess the state of his digestion.

Defences

You may be able to avoid getting sued if any of the following apply:

1. It has come from a senior police officer or government department – you may have qualified privilege [subject to explanation or contradiction]
2. It was said in open court, or in the House of Parliament – you should have absolute privilege/high qualified privilege.
3. It was said at a public meeting [held for a lawful purpose] – you should have qualified privilege but you need to get the side of the person being attacked and offer a reply
4. It was part of a review or editorial. You might have a defence called ‘honest comment’ [used to be known as fair comment] but the comments must be honestly held opinions, based on true facts which are also a matter of public interest. Get all this right, then you might be let off the hook.
5. You might have a public interest privilege for responsible journalism that has mistakenly libelled somebody. The criteria for responsible journalism includes various criteria such as: giving fair opportunity for people criticized to give their side of the story, reporting a gist of this; evaluating reliability of your source who might have an axe to grind, and avoiding sensationalist language and bias.

The critical thing in the field of defamation is if in doubt get professional legal advice before publication.

Privacy

The Human Rights Act 1998 now means freedom of expression is balanced with the right to respect for privacy. The English and European courts recognize that private information cannot be reported unless it is in the public interest. No go areas include the nature of health treatment and state of health, education, sexuality, and personal relationships. It now means that people who do not give permission to be photographed in public and are not the subject of a public interest story are entitled to privacy protection. The principle of when media privacy law applies is when any individual has ‘a reasonable expectation of privacy.’ Privacy as an European legal concept means dignity, honour, reputation (overlapping with libel) identity, family life, home space, and privacy communications (correspondence, email, mobile, Skype, palm computer devices etc.) It goes without saying that intercepting anyone’s mobile, mail, email and communications devices is a criminal offence and so is giving bribes or impersonating anyone to unlawfully obtain private information. It is also a criminal offence and civil wrong to ‘harass’ anyone on the basis of causing distress on at least two separate occasions.

Copyright/Intellectual Property

Journalists have ‘a fair dealing’ defence if they use quotations and material during the course of reporting current events, criticism or review, or research or private study, and where a literary, dramatic, musical or artistic work is used. It helps if the quotations are attributed. Publishing the substantial part or identifying element of a copyrighted work without permission could be a problem. Facts re-written do not amount to a breach of copyright. Blatant lifting of the original work (i.e. another story) with the same words, skill, labour and judgement of the original journalist is likely to be a breach of copyright. In 2001 the Sunday Telegraph was not allowed to depend on Article 10 freedom of expression rights when defending a breach of copyright action involving the former leader of the Liberal Democrats, Paddy Ashdown. The newspaper’s political editor had included substantial sections of Mr Ashdown’s confidential note of a meeting with the

Prime Minister. The quotations went much further than those normally incorporated in a news report. There does not appear to be a clear 'public interest' defence for breach of copyright.

The Copyright, Designs and Patents Act 1988 protects literary, dramatic, artistic work, music, TV, cable or radio broadcasts, film, sound recordings and page layouts. To protect your copyright, it must satisfy the following tests: it is original; some work must have been put into it by the copyright claimant; Copyright does not protect slogans, facts, news, ideas or information, but it does offer protection in the way the above are expressed. For example; it is a breach of copyright to continuously take facts from another person's work. The spoken word is also afforded protection. Images are also subject to copyright law.

Copyright takes effect as soon as certain works (this term applies to all copyright protected material) are created. The key thing to remember as a writer is that ideas themselves are not protected but the way ideas are expressed is protected. So if you think of an idea for an article, that isn't protected; when you write it, it is. It's the information you select and the way you arrange that information that makes it unique. In order for material to have copyright protection it has to result from independent intellectual effort. In other words, you must have put some work into it.

Copyright lasts for the duration of the author's life plus 70 years for literary, dramatic or musical works. Different periods apply for films (70 years after the last to die of the director, screenplay authors and musical director), sound recordings (50 years) and published editions (25 years). As indicated above the key defence for journalistic communications is that people are allowed to publish excerpts from your copyrighted work for the purpose of news, review or criticism, provided that it is not the substantial part of the work. This is known as fair dealing. Works used in this way should be properly acknowledged.

You cannot publish a picture without permission from the copyright holder. The fair dealing defence does not apply to images. All images (photographs, designs, artwork, sculptures etc) have rights implications in Europe (including UK) where made and published/exhibited after 1st July 1912. In the USA the position is more complicated because of copyright renewal provisions. It is unwise to rely on 'creative commons' declarations. Those made in relation to Wikipedia images are often legally challenged. Quite detailed research needs to be undertaken to ascertain rights holders in photographic images and legal disclaimers will need to be published to protect from future actions from the owners of what appeared to be 'orphan' works. [material previously published with no assigned and traceable ownership/originality.] Original images of other images/two or three dimensional works of art are subject to rights implications where they are taken in private exhibition spaces or from copyright publications. However, public architecture and sculptures are deemed to be in the public domain however recently built and created.

This is a very simple outline of how to survive the law in English journalism. For more information read: *Comparative Media Law & Ethics* (2009) by Tim Crook, *McNae's Essential Law for Journalists*, (20th Edition, 2009) by Mark Hanna and David Banks, *Law for Journalists* (3rd Edition 2011) by Frances Quinn, or *Media Law* by Geoffrey Robertson and Andrew Nicol. (5th Edition 2008) [Remember to read the latest editions]

There are more detailed briefings and information exclusively available to you as one of our students on our Virtual Learning Environment resource at: <https://learn.gold.ac.uk/course/view.php?id=493> The enrolment key is Aristotle. *Comparative Media Law & Ethics* has an open access companion web site at <http://www.maradio.gold.ac.uk/cmle>

Ethics.

NUJ Code of conduct.

The NUJ's Code of Conduct has set out the main principles of British and Irish journalism since 1936. The code is part of the rules and all journalists joining the union must sign that they will strive to adhere to the it.

Members of the National Union of Journalists are expected to abide by the following professional principles:

A journalist:

- 1 At all times upholds and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed
- 2 Strives to ensure that information disseminated is honestly conveyed, accurate and fair
- 3 Does her/his utmost to correct harmful inaccuracies
- 4 Differentiates between fact and opinion
- 5 Obtains material by honest, straightforward and open means, with the exception of investigations that are both overwhelmingly in the public interest and which involve evidence that cannot be obtained by straightforward means
- 6 Does nothing to intrude into anybody's private life, grief or distress unless justified by overriding consideration of the public interest
- 7 Protects the identity of sources who supply information in confidence and material gathered in the course of her/his work
- 8 Resists threats or any other inducements to influence, distort or suppress information and takes no unfair personal advantage of information gained in the course of her/his duties before the information is public knowledge
- 9 Produces no material likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation
- 10 Does not by way of statement, voice or appearance endorse by advertisement any commercial product or service save for the promotion of her/his own work or of the medium by which she/he is employed
- 11 A journalist shall normally seek the consent of an appropriate adult when interviewing or photographing a child for a story about her/his welfare
- 12 Avoids plagiarism

The NUJ believes a journalist has the right to refuse an assignment or be identified as the author of editorial that would break the letter or spirit of the code. The NUJ will fully support any journalist disciplined for asserting her/his right to act according to the code (source: <http://media.gn.apc.org/nujcode.html>)

Other important codes to reference.

UK Press Complaints Commission. Editors' Code of Practice
<http://www.pcc.org.uk/cop/practice.html>

BBC Editorial Guidelines. Television, radio and online: <http://www.bbc.co.uk/editorialguidelines/>
Ofcom. Independent Television and radio. Broadcasting Code:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

Broadcasting Code Guidance:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>