

Avoiding Libel, Invasion of Privacy and Infringement Lawsuits

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In today's litigious society, journalists must be alert to the potential for expensive litigation arising from advertising, publishing, broadcasting, newsgathering and online activities. This list identifies areas where journalists should exercise particular care.

1. **Use of Criminal Terminology** - Be familiar with criminal terminology, i.e. an arrest versus a conviction. Just because a criminal defendant has been arrested or charged with one crime, does not mean that he or she will ultimately be convicted of that same crime. The action may be dismissed or the defendant may plead to a lesser crime. Be very careful when relying upon old newspaper reports or file footage to fill in the criminal background of a subject involved in a current news story. Always rely on court records as much as possible. Criminals are litigious.
2. **Do not Trespass on Private Property** - Do not enter a private dwelling or trespass upon private property without valid consent. The same is also true for "private" areas of businesses. Minors, relatives and neighbors cannot consent to entry. Consent will be invalid if it is elicited through a misrepresentation or false pretenses.
3. **Beware of Doctors and Lawyers** - Be careful when reporting on the wrongdoing of professionals. Doctors and Lawyers have been very successful libel plaintiffs. They make very good witnesses on their own behalf and have the money - and ego - to vigorously litigate a defamation claim against the media.
4. **Watch out for Financially Unstable Businesses** - If you report on a business in financial difficulty, always make sure that the figures are correct with public records to back them up. Business owners are quick to allege that the offending story was the cause of the financial instability.
5. **Beware of Old File Footage** - Be careful when using old file footage or photographs to illustrate a new and unrelated story.
6. **Let's Get Personal** - Be especially wary of the content of classified ads. Some individuals like to use the classified section to get back at spurned lovers.
7. **Beware of Infringing Content in Advertisements** - Just because an advertiser executes a hold harmless agreement with the publisher, doesn't mean that you will not be sued as a contributory infringer for publishing the infringing advertisement. Be wary of superheroes and the golden Oscar statuette. Their copyright owners Vigorously protect ownership interests.

8. **Sugar and Spice and Everything Nice - Not!** - Children are often careless in their words and actions. Be careful when interviewing and photographing a child without the guardian's consent - especially in an unflattering story, such as truancy or gang violence. Parents are very protective of their children and will quickly sue on their behalf. Also be very cautious when photographing accident scenes involving children, who are identifiable, as the parents may sue for emotional distress.
9. **Be Cautious with Neighbors** - when interviewing the neighbors of a story subject, use caution. Neighbors often have an axe to grind and cannot resist the opportunity to publicly backstab.
10. **Beware of Anonymous Tipsters and Confidential Sources** - These individuals have their own agenda and often seek to destroy and humiliate their targets. Always try to corroborate tips with public records or with individuals who are willing to speak on the record.
11. **Beware of Diseases** - (This is always good advice.) Be cautious when reporting on and identifying people with diseases, such as AIDS.
12. **Be Cautious with Chatty Police Officers** - Police officers are quick to recant or conveniently forget "unofficial" statement made about the subjects of criminal investigations. Treat these individuals like confidential sources and try to corroborate their information with public records or a public official willing to speak on the record.
13. **Be Consistent with Notes and Out-Takes** - Keep everything or throw everything away. Also be consistent with e-mail messages. Make sure that there is a policy in place and that it is followed.
14. **The "Oh-No" Promo** - Make sure that promos and graphics fit the story and do not create defamatory implications. Be extremely cautious with the use of sensational promos during Sweeps.
15. **Misery Loves Company** - Attributing a defamatory statement about someone to another person is not a defense. You will both be sued.
16. **Communicate with the Photographer** - Make sure the photographer knows what the subject looks like. This is key when the reporter and photographer or camera person are working apart and are taping in an area with confusion and groups of people. Make sure that voiceovers are appropriately timed with the footage.

17. **Handle Complaints Promptly** - It is crucial to return calls, respond to e-mails and be courteous to people who have been offended by statements made about them. With broadcasts, many subjects have not actually seen the broadcast and rely on friends and relatives to interpret its content. The subjects are often upset because the substance of the broadcast has been garbled as it has traveled through the grapevine. Litigation can often be avoided by setting up a time with the subject to view the broadcast. If a subject is concerned about a newspaper article, listen to the complaint and offer potential solutions.
18. **Retract if Necessary** - If a mistake has been made, correct it. A retraction or apology may help mitigate damages. In some jurisdictions, a libel plaintiff may be limited to actual damages if a retraction has been published. Don't forget to check all online versions of your publication when investigating a retraction demand. Depending on how many times the online edition has been refreshed, there may be a significant number of versions to review - that is, if all copies have been maintained. Check out www.slipup.com for information about online corrections.
19. **Promises...Promises** - Do not make promises that you cannot keep. If you promise a source that you will protect his or her confidentiality, keep your word. If you break the promise, you may be sued for breach of oral agreement.
20. **What's in this?** - If you've got a beef with your beef, be careful what your report. Many food producers and distributors file trade disparagement suits when the integrity of their food products has been questioned. Likewise, restaurant owners are quick to sue if unappetizing words like hepatitis, roaches and E-coli bacteria are linked with their restaurants.
21. **These Boots Were Made for Stalking** - Some states have enacted anti-stalking laws that could be used against investigative reporters. If an undercover investigation requires the following of a subject, check with counsel to make sure that the proposed newsgathering activities do not constitute stalking or harassment.
22. **Titillating Tidbits** - Be careful when publishing or broadcasting x-rays, mammograms, early cancer detection breast examination footage or medical records without permission from the patient. If such records or clips are received from the hospital, treating physician or health support group, assume that the requisite consent has not been procured and ensure that the patient cannot be identified.
23. **Virtual liability** - Web surfing reporters must use caution with anything posted on the Internet. Treat all information as if it has been provided by an anonymous tipster and seek corroboration from a credible source.
24. **Web Site Slip-Ups** - Many times web sites are refreshed or updated by computer people and not editors or reporters. To avoid costly online mistakes, make sure that someone with a journalism background reviews the web site before it is released to the public.

25. **Linking Liability** - If your web site links to other sites, try to use a linking agreement to minimize liability. Never, ever, deep-link and bypass the homepage of the site to which you are linking. This practice has given rise to intellectual property lawsuits.

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