

presented by insights

Developing Effective Media Loss Control Programs

By P. Blake Keating, Vice President, Claims — First Media

media·insights is published periodically by OneBeacon Professional Partners to address the broad scope of exposures faced by our agents' and brokers' clients, as media-related companies scramble to meet the public's appetite for information, news and entertainment in an increasingly litigious society. This issue of media·insights identifies four essential components, in addition to appropriate liability coverage, of a robust media risk-mitigation program. Training, internal oversight procedures, legal review and prompt response to complaints each play a unique role in loss control, as explained in this article. For further insight, or help with developing a customized loss control program, please contact First Media's Claim Administrator at 800.753.7545. First Media attorneys are happy to talk with you or your clients.

First Media is a division of OneBeacon Professional Partners. OneBeacon Professional Partners, located in Avon, Connecticut, is the Specialty Liability underwriting division of OneBeacon Insurance Group ("OneBeacon"). With roots that date back 170 years, an A.M. Best rating of A (excellent) and a Financial Size of XV, OneBeacon Insurance boasts a heritage of keeping promises, backed by financial strength. OneBeacon is publicly traded on the New York Stock Exchange under the symbol "OB."

Loss prevention practices – implemented, practiced and perfected over time - will reduce legal liability for media companies. These programs include training, internal oversight procedures, legal review and prompt response to complaints for the retraction or correction of offending or infringing content.

Training as to the recognition of media-related exposures should begin with every new hire and should be done on a regular basis. Repetition is crucial so that the identification of potential legal issues becomes instinctive for employees. It's also important to repeat training to accommodate new hires and employee turnover. All staff members with a connection to published or broadcast content, including advertising and technology employees, should recognize issues that can give rise to litigation, such as the use of confidential sources and "red flag" words that negatively impact one's character, such as "scam" or "fraud". Trespass, defamation, invasion of privacy and intellectual property law should be discussed in general terms so that employees can recognize potential trouble areas and seek assistance from a supervisor or legal counsel for further direction. Such individuals would include editors, news reporters, announcers or commentators, photographers, camera crew, those in charge of file or stock photos or tapes, advertising staff and those who post or refresh information on the Internet.

Loss prevention training can be provided by employees within the organization, outside counsel, consultants, or some combination thereof. It's key, however, that whoever provides the training has credibility within the organization and rapport with the staff so that they feel comfortable asking questions. The training should be utilized on an ongoing basis and mandatory for all applicable employees. Employees should be encouraged to seek the advice of such individuals whenever questions arise.

The media organization should also periodically review its risk management procedures. Such internal review should be conducted with the assistance of outside counsel, insurance or risk managers, or other consultant so that there is an objective understanding of operations and risk management. Such procedures must be evaluated to ensure that they adequately protect the media entity from known and foreseeable risks while keeping pace with emerging legal issues and new technology. The review can help the company better identify what it does well and where more work is needed. Media content should be examined for persons who may sue and how well the reporting staff covers complex subject matter, use of criminal terminology and file footage and sources. Someone who may have a greater understanding than a generalist should also review technical subject articles, such as finance. The macro review of operations should analyze the use of audio and video to make sure that they are properly synchronized so as not to provide an unintended message. News stories should be reviewed for fairness, balance and whether or not legal advice should have been sought given the complexity of the subject. There should also be an internal review of the amount of time that the entity takes to respond to a request for a retraction or correction.

At a minimum, every media organization should establish procedures for minimizing exposure to defamation and copyright infringement, which remain two of the most problematic areas for the media. Publishers need to make sure that all written materials are examined, including web versions, headlines and

prior drafts to ensure that no critical changes or omissions were accidentally made. Consideration should be given to individuals who may complain about a story and why. Are there problematical terms or opinions expressed or implied? Have all sources been verified? How were photographs obtained? Is the story balanced and fair? Are there any private facts or records at issue? Check each of these matters against a story development timeline from the beginning of the story through the editing process. For broadcasters, make sure to look over promos or teasers. Do they properly introduce the broadcast, and are they correct?

Where and how was the audio or video obtained? Do the audio and video properly track, i.e., are they properly synchronized? Are certain problematic sources or the use of "red flag" words necessary? If not, omit them. For well-publicized and lengthy investigative reports, vetting counsel should be consulted early and often, perhaps throughout the entire process. Procedures should be implemented each step along the way from story development through final editing.

It is crucial that every media organization have a relationship with an experienced media law attorney – even if it is among the lucky few to never experience a legal problem. The relationship should be developed so that when a problem arises, the attorney knows the media personnel and is familiar with business operations and procedures. A relationship is important so that reporters and other staff members will feel comfortable discussing issues with the attorney. Counsel should spend time with the media company to see how it works and to get to know the people and processes of the particular entity.

Counsel is especially helpful in developing newsroom policies, such as the maintenance of notes and outtakes generated during the development of a story, the retention period for same, retraction and correction procedure, the use of confidential sources, and other newsgathering or content issues. Counsel will also be well-versed as to his or her particular state's laws as to trespass, wiretapping, stalking, etc. Newsroom counsel should be easily accessible to reporters at the media entity either by cell or email and should be consulted with regularity as to stories where questions remain after management review, such as consumer reporting, complex investigations and stories involving individuals known to be litigious. The newsroom attorney should always be consulted when complaints are made.

In the event a story subject complains about a broadcast or article, the media entity must handle it carefully, seriously and quickly. An unresolved complaint may give rise to expensive and time consuming litigation. An individual other than the reporter involved in the original story should handle any complaints. The individual charged in responding to a complaint should listen carefully, taking notes where appropriate, and promise to investigate the matter without admitting any errors or mistakes. After the investigation, a response should be made to the person, as well as the publication or broadcast of a retraction, correction, clarification, amplification or apology, if warranted under the circumstances. If the complaint is serious in nature, an on-site meeting with the reporter, editing staff and counsel is often helpful in identifying the facts and the appropriate remedial measures. In the event a

retraction does not resolve the matter, there are creative ways in which serious complaints can be resolved, including reader or viewer response, an agreement to do a certain type of story in the future, and the provision of advertising services in the event the complaining party is a business. Additionally, contributions can be made to certain charitable groups.

In conclusion, although no system is foolproof, engaging in a comprehensive and regular system of liability or loss control will help minimize claims and the severity of those claims that do arise. First Media's claims staff is comprised of experienced media lawyers and former journalists and writers. Our attorneys would be happy to talk with you or your clients to assist in developing a customized loss control program. Please contact us at 800-753-7545 and ask to speak to our Claim Administrator. Please do not hesitate to avail yourself of such assistance when you deem it appropriate.

© 2007 First Media, a division of OneBeacon Professional Partners
The contents may be reproduced by recipients provided proper attribution is given. Material is provided for general informational and illustrative purposes and is not to be considered legal or risk management advice. Readers should consult their counsel for legal advice concerning copyright infringement.



OneBeacon
PROFESSIONAL PARTNERS

OneBeacon Professional Partners
30 Tower Lane Avon, CT 06001
tel 860.773.6150
www.onebeaconpro.com