



YEARBOOKS, THE LAW AND YOU

Walsworth yearbooks

Yearbook
SUITE

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YEARBOOKS,

THE LAW AND YOU

STUDENT WORKBOOK

YEARBOOKS, THE LAW AND YOU

Because of a miscommunication on your yearbook staff, no one took photos during the state soccer championship game. The photo editor decides to simply download photos from one team member's personal Facebook page to use on the spread about the soccer team's amazing season.

Another staff member thinks it would be humorous to use a picture of the school gym teacher without her knowledge when creating an ad promoting the new local donut shop.

When you produce a yearbook, legal conundrums have a way of finding you. As a form of speech and expression, yearbook content enjoys wide First Amendment protection. However, balanced against that right to expression, the yearbook must respect the rights of those whose lives and experiences are displayed upon its pages.

Your finished product (either in print or digital form) is a published work subject to applicable laws and standards that professionals must follow. While most staff members may not be old enough to vote, they are still legally responsible for what they print. This is why it's essential for yearbook staffs to understand the basics of the law as a road map to guide their decisions.

So, a little prevention goes a long way. Knowing and respecting basic aspects of the law will enable you to make wise decisions. This unit will help you:

Understand your First Amendment rights and how they apply to your publication.

Know how to avoid libel, malice and invasion of privacy.

Understand copyright and trademarks so you don't misuse the work of others.

Learn how the law applies to advertising.

And, if potential problems arise, seek advice from trained experts. You can get free legal advice from the Student Press Law Center, splc.org.

Lesson 1

First Amendment

Objectives – In this lesson, you will learn:

About your rights and responsibilities under the First Amendment to the U.S. Constitution

About prior review of school publications

About court cases that affect your work on publications

How to consider ethical courses of action

The First Amendment to the U.S. Constitution offers wide protection to speak and publish information, even if others find the speech offensive. However, the protections aren't absolute; some limitations do exist. These protections for speech and publishing apply to students as well, but courts have ruled school officials do possess more authority to control speech and expression at school to maintain a safe, effective learning environment. Thus, students at school enjoy less First Amendment protection at school than do members of the community at large.

How does the First Amendment work?

Think of the First Amendment as a balance scale. On one side rests an individual's right to speak or publish. On the other side rests the rights of others affected by the speech – their right to a good reputation, to privacy, for instance. The goal is to balance a person's right to speak and publish while simultaneously protecting the rights of others. The First Amendment protects a wide swath of responsible speech, even that which might be offensive to a majority of the population.

However, in some instances, speech can so negatively affect others in a physical or material way that courts have ruled it has no First Amendment protection. Here, the balance scale tips in the favor of those affected by the speech. For instance, speech that falsely defames someone, invades someone's privacy or infringes on one's ability to make money from his or her creative work is not protected. Engaging in those forms of unprotected

THE FIRST AMENDMENT

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.

speech could lead to a lawsuit against the individual or publication where the speech originated.

While the First Amendment plays an essential role in allowing students and adults alike to speak and publish freely, it is often misunderstood. The First Amendment only limits the actions of government officials in curbing people's rights. Public school officials fall into this category. Thus, any restrictions public school officials attempt to make on the content of the yearbook must be constrained within the limits of what the First Amendment allows.

What about private schools?

The same is not true at private schools. Because private school officials are not state actors, their actions to prevent students from speaking or publishing do not violate the First Amendment. Private school officials have more power to restrict speech or coverage that "makes the school look bad" or simply makes people uncomfortable.

How does the First Amendment apply to the school setting?

Because every school's primary mission is to educate, courts have recognized that the school environment needs to be able to function while providing students with the right to speak and express themselves.

Through the years, courts have defined the level of First Amendment protection students enjoy while attending a public school. In *Tinker vs. Des Moines* (1969), the court ruled that school officials must show that student speech would materially disrupt the educational environment before censoring or suppressing it. The ruling referred to a physical disruption that prevented learning or other normal school activities from taking place: a riot, a walkout, etc.

Specifically regarding student media, the Supreme Court has ruled in *Hazelwood vs. Kuhlmeier* (1988) that school officials have the right to restrict and censor content as long as their actions are viewpoint neutral and "reasonably related to legitimate pedagogical (educational) concerns." The court offered little guidance as to what that meant.

Other courts (like the Eastern District of Michigan in *Dean v. Utica* in 2004) have noted that if students practice good journalism, it is less likely administrators can justify restrictions on educational grounds.

The Court also ruled that if schools establish their student media as designated forums for student expression, school officials have less ability to censor and control content. Creating such a designation means student editors, not school officials or publication advisers, make all final content decisions.

FREE SPEECH AT SCHOOL

In *Tinker v. Des Moines Independent Community School District* (1969), the U.S. Supreme Court upheld the rights of free speech by students, saying in its opinion that, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The case began when several high school students wore black armbands to school in protest of the Vietnam War. The court said the protest was permissible as long as school work was not disrupted.

Ask yourself, is it ethical?

Ethics is a system of moral values, principles of right or good conduct. Your staff manual should include basic principles of scholastic press law, such as First Amendment status, libel, copyright and other topics of legal concern. It should also include policies that involve selection of editors, staff conduct, removal from staff, editorial content, advertising, job descriptions and matters of organization and production. Make sure to include a statement of ethics that will guide students in their moral duties and obligations as journalists.

SEVEN KEY ETHICS POINTS

From the NSPA Model Code of Ethics

1. Be responsible.
2. Be fair.
3. Be honest.
4. Be accurate.
5. Be independent.
6. Minimize harm.
7. Be accountable.

VOCABULARY

Ethics A system of moral values, principles of right or good conduct. The law tells us what we can and cannot do. Ethics looks at what's permissible and asks us to make the best decision of all of the legal options.

Forum publication A school publication that has been designated as a public forum for student expression; also, student editors must clearly have been allowed to make final decisions about the content of the publication.

Public forum A place where various viewpoints are expressed.

Prior review Administrators or others in authority not on the publications staff read everything scheduled to go into the publication prior to print.

Prior restraint The act of preventing material from being published.



ACTIVITY

THE FIRST AMENDMENT

Your Name: _____

In small groups, think of five reasons why school administrators would want prior review of your yearbook before it goes to press and then think of five reasons why they would want to allow the staff to remain in control of its content.

1. _____

2. _____

3. _____

4. _____

5. _____

1. _____

2. _____

3. _____

4. _____

5. _____

ACTIVITY

ETHICS IN ACTION

Your Name: _____

1. A spread on teen pregnancy and motherhood is planned, with interviews from three teen moms. Why should coverage on this topic be included in the yearbook? Why not? What are some approaches and concerns to consider with such a topic?

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2. Because of a miscommunication on your yearbook staff, no one took photos during the state soccer championship game. The photo editor decides to simply download photos from one team member's personal Facebook page to use on the spread about the soccer team's amazing season. Why is this not OK?

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3. A student dies in a car accident. A yearbook photographer goes to the crash scene, where students have put up a memorial with flowers, stuffed animals and school items. To get a better photo, the photographer rearranges the items. Why is this not OK?

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NOTES!



RATE YOUR PROGRESS

- 4.0 ☐ I can do all tasks in 3.0 and I can teach others!
- 3.0 ☐ I can demonstrate an understanding of my responsibility as a student journalist and how I should operate under both the First Amendment and a journalist's code of ethics. I can...
- a. demonstrate command of the First Amendment as well as my rights as a student journalist
 - b. determine the meaning of terms such as prior review, prior restraint and public forum and can apply them correctly in discussions and situations
 - c. effectively participate in discussions of ethical scenarios where I must apply a clear understanding of the First Amendment as well as a journalist's code of ethics
 - d. allow my understanding of the First Amendment and a journalist's code of ethics to guide my decisions and actions as a student journalist
- 2.0 ☐ I understand the First Amendment and how it relates to scholastic journalism, but I still struggle to effectively apply it to ethical questions in student journalism.
- 1.0 ☐ I don't understand the First Amendment or how it applies to scholastic journalism.

Lesson 2

Libel and Defamation

Objectives – In this lesson you will learn:

What libel is and what makes a statement libelous

The defenses to a libel claim

Words can hurt. Beyond the emotional pain and embarrassment they might cause, they can also lead to loss of a job, a lowered standing among one's peers, broken relationships and other consequences. At its core, this is what libel law is designed to do – protect people's reputations against false and defaming accusations that cause others to hold them in contempt or think poorly of them. The first duty of every journalist, including those producing a yearbook, is to tell the truth by producing an accurate account of events. If you follow that principle, you'll successfully avoid libel, every time.

What makes a statement libelous?

To be libelous, a statement must contain all five of these elements below, represented by the acronym P-I-H-F-F.

PUBLICATION A statement becomes libelous once it's published, meaning the person making the statement wrote it down and shared it with at least one other individual. Satisfying this element of the test could be as simple as writing something defamatory about another person on a scrap of paper and sharing it with someone else. Obviously, though, if a statement appears in hundreds or thousands of copies of a school yearbook, it's definitely considered published.

You're responsible for the truth of the information gathered from sources or that is submitted by people outside your staff and then published in your yearbook. Quote marks or attribution do not absolve you from libel.

IDENTIFICATION Libel generally applies to statements made against individuals. Thus, to be considered libelous, the individual about whom the statement applies must be identified. This could mean using the person's name or any type of description that would identify him or her such as physical appearance, style of dress, age, address, occupation and unique characteristics of one's personal space such as a classroom or office.

While it is not possible to libel groups of people (for example, using the statement: athletes cheat on their school work), it is possible for individual members of a small group (generally fewer than 25 people) to claim they have been libeled by a comment directed toward that group (for example: most members of the men's soccer team cheat on their tests).

HARM While it's important to guard against publishing any errors to preserve your credibility, not all false statements can be the basis of a successful libel claim. Only those false and malicious statements that could cause severe harm to one's reputation are libelous, such as allegations of criminal behavior, sexual misconduct, financial malfeasance or inept job performance.

FALSITY Libel only applies to false statements that unduly harm one's reputation. If a statement is true, no matter how hurtful, embarrassing or disruptive to one's life it may be, it cannot be libelous. However, the section below about defenses to libel will discuss the important difference between "knowing" that something is true and proving that it's true.

FAULT To be libelous, you must be at fault for publishing the material in question. In other words, you must have failed to do something a reasonable reporter should have done, such as verifying information, seeking comments from multiple sources or getting reaction from the person the statement concerns.

What are some defenses to a libel claim?

If someone accuses you or your yearbook staff of libel, four affirmative defenses exist – truth, consent, qualified privilege and opinion.

TRUTH As was previously mentioned, true statements, no matter how harmful to one's reputation, can't be libelous. However, remember that the court system operates on proof and evidence. If you accuse a student of cheating on a test yet have no physical proof (photo, disciplinary record), it will be difficult to prove he cheated, even if he really did.

CONSENT If someone provides you with seemingly libelous information about him or herself, it can't later be the basis of a successful claim. It sounds counterintuitive that someone would tell you something that's false and defaming about him or herself, but it often happens that someone admits something that's true (for example: I cheated on a test to remain athletically eligible) and then recants it after publication. It's best to ask someone to sign a simple written form attesting to what they are admitting.



OPINION Libel only applies to false statements of fact. Statements of pure opinion are not libelous, but it's not always easy to tell the difference between statements of fact and opinion. However, inserting the phrase "I think" in front of an otherwise libelous statement doesn't absolve you from libel problems. Compare these statements: "I think the head school cook does a poor job" and "I think the head school cook does a poor job because she uses expired meat." The first is a statement of pure opinion while the second makes a defamatory accusation about the cook's behavior. It can be proven true or false.

PRIVILEGE Information in public documents, such as court transcripts, arrest reports and the minutes of public meetings, can be accurately reported, even if it later turns out the information is false. Thus, if police accuse a teacher of selling marijuana at school and arrest her for that crime, there are no libel concerns by stating that police showed up at her home and arrested her for that crime. Always be sure to use words like "accused" and "alleged." Don't ever say, "Police arrested a teacher because she smokes marijuana." Instead, write the sentence as, "Police accused a teacher of smoking marijuana."

THAT'S NOT FUNNY

The First Amendment protects satire, humor and parody. However, attempting to be funny isn't a defense against libel. If you are attempting humor, be sure that's clear and any average reader would understand the material is meant to be a joke. Use disclaimers such as "parody – not meant to be taken seriously." If you are going to engage in such attempts at humor, avoid false and defamatory statements of fact. For instance, even on a page marked "parody," don't accuse a school bus driver of coming to work drunk each day.

ACTIVITY

Your Name:

APPLYING THE ELEMENTS OF LIBEL

Analyze the following scenarios and answer the questions.

SCENARIO 1

A student on your yearbook staff starts an official staff blog to increase your staff's presence among the school community throughout the year. She routinely discusses some of the coverage for that year's book as it comes together. In a post about the football team's less-than-stellar season, she wrote, "If our school had a better coach, maybe we'd win some games. Of course, everyone knows the coach was only hired because he's the superintendent's brother."

1. Analyze both statements using the P-I-H-F-F test and determine whether each statement poses any libel concerns.

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2. If either statement is potentially libelous, then discuss any potential defenses to a libel claim, if they are relevant.

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SCENARIO 2

Three students consent to being interviewed for a spread on teen mothers. The interviews and photos are done; the spread is complete and submitted. One month later, one of the teen mothers goes to the adviser and asks that she not be in the yearbook in this article. The editor lets her read the article and everything is correct.

1. Should you keep the spread in the yearbook? If so, why?

2. Should you replace the spread? If so, why?

SCENARIO 3

A yearbook feature quotes a student who relates that a personal highlight of his senior year was the night when he and (name of classmate) painted his school's mascot on the football field of a rival school.

1. Analyze this scenario using the P-I-H-F-F test and determine whether there are any libel concerns.

2. If so, discuss any potential defenses to a libel claim.



RATE YOUR PROGRESS

4.0 ☐ I can do all tasks in 3.0 and I can teach others!

3.0 ☐ I can demonstrate an understanding of the meaning of libel and how to prevent it and/or defend it. I can...

- a. demonstrate an understanding of the qualities that make a statement libelous
- b. defend my work against libel accusations
- c. identify potentially libelous statements and determine whether or not they can be defended

2.0 ☐ I understand what libel is, but I don't understand what qualities can make a statement libelous.

1.0 ☐ I don't understand what libel is or how it is applied in scholastic journalism.

Lesson 3

Private Facts

Objectives – In this lesson, you will learn:

What is private information

Who are public figures

There are some types of information people may not want to share with the world — medical information, intimate details of their personal relationships, their academic progress. The law recognizes people's right to keep this type of information private between themselves and a few select others. Truth isn't a defense to a privacy claim. Generally, these types of information are off-limits to reporters.

Choosing to reveal private information about oneself can be a big business. Many celebrities, athletes and public figures have chosen to forfeit their right to privacy in an effort to maintain their social standing. While you might legally be able to discuss in detail some movie star's latest love interest, you won't necessarily be able to dissect the minutiae of the personal life of the average student at your school.



Can people consent to revealing private information about themselves?

People often want to tell their stories, even if they are painful or embarrassing because they feel as though others can learn from them. People can legally consent to revealing otherwise private information about themselves. For instance, a student in your school struggling with drug addiction might want you to document his story so others don't follow the same path.

Consent is only valid if the person granting it can appreciate the consequences of his or her actions. With most adults, this isn't a problem. However, the law gets fuzzier with minors. The Supreme Court has ruled that minors can provide valid consent because most teenagers have the ability to understand that others will read their story. While specific laws vary by state, generally speaking, with minors under age 14 or those who might not have the mental capacity to appreciate the consequences of revealing private information, it's wise to seek consent from a parent or legal guardian.

On a related issue, it is legal to publish the names of minors accused of a crime as long as the information is legally obtained and truthfully reported. Some publications choose not to do so unless the criminal accusation is serious, like murder.

The issue of consent often becomes stickier when parents don't want their child to reveal certain private information and the child wishes to do so. Generally, as long as the minor child can appreciate what he/she is consenting to, the consent is valid. Also, if a story reveals private information about a third party – for instance, how a student dealt with her parent's divorce – seek consent and comment from both parents because your story includes private information about the parents as well as the student.

Is it ever legal to reveal private information about a person without his/her consent?

Sometimes people get caught up in a news event through no effort or desire of their own. If you're walking down the street and get hit by a car, you've forfeited your right to privacy because you are in a public place and have become part of the news even though you didn't seek out the situation or the attention. The law recognizes a newsworthiness defense to privacy issues.

Some information is so important for the public to know that it's permissible to reveal it with or without the person's consent. For instance, if the superintendent is stricken with cancer, that would be newsworthy because that person's ability to lead the district might be called into question because of the disease.

Be careful when trying to assert newsworthiness as a defense to a privacy claim, especially if the information is about a private person, which is most of the people you cover. Remember, truth is never a defense to a privacy claim.

What are some special privacy considerations in a school setting?

Two federal privacy laws often cause confusion among school administrators and student media. The Family Educational Rights and Privacy Act (FERPA) prevents schools from releasing an individual student's academic records (grades, disciplinary records, scores on standardized tests) and the Health Insurance Portability and Accountability Act (HIPAA) prevents health care providers from releasing information about a patient's medical information.

While academic and medical information is considered private, the consequences for non-compliance of these two laws only apply to school officials and health care providers, respectively – not to student media. Thus, a student can consent to discussing his failing grades in the yearbook without the school risking a FERPA violation, just as the yearbook staff can take a picture of an athlete injured on the field without risking a HIPAA violation. These laws are complex. For instance, while FERPA makes it illegal for a school to release a student's educational records, the Supreme Court ruled in *Owasso v. Falvo* (2002) that it was not a FERPA violation for students to grade each other's papers in class.

CONSIDER PRIVACY WHEN CONSIDERING COVERAGE

Be especially careful when covering students enrolled in special education courses. These students probably wouldn't be able to grant consent. Because enrollment in special education is an academic issue (and often a sensitive one at that), be extremely careful when identifying and discussing students by such a designation. Also be careful when identifying students who are in foster care or who are involved in custody battles between parents/guardians. These types of situations are often riddled with privacy concerns that require consent from multiple parties.

VOCABULARY

Private figure A private citizen; anyone who is not in the public eye

Public official or figure Anyone who has been thrust or who has thrust himself into the public spotlight



ACTIVITY

Your Name: _____

PRIVATE FACTS

Determine whether any privacy concerns exist in the following scenarios. Explain your reasoning and offer any valid defenses if applicable.

1. On a spread about teen relationships, a girl reveals that her ex-boyfriend cheated on her.

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2. In a story about new fashions, a student discusses how she had to buy new clothes after she overcame anorexia and gained weight back.

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3. A student talks about his love for punk rock music despite his parent's objections to that genre of music. They don't know he listens to it.

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NOTES!

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RATE YOUR PROGRESS

- 4.0 ☐ I can do all tasks in 3.0 and I can teach others!

- 3.0 ☐ I can demonstrate an understanding of the differences between private and public information and can apply my understanding of consent when making reporting decisions. I can...
 - a. distinguish between private and public information and figures
 - b. demonstrate an understanding of consent and how it is applied when revealing private information
 - c. analyze and evaluate reporting situations where privacy concerns may exist and can identify the issue and proper course of action for the student journalist

- 2.0 ☐ I can identify the differences between private and public information, but I still don't understand the rules of consent and how to apply them to reporting.

- 1.0 ☐ I don't understand the difference between information that is considered private and information that is open to the public.

Lesson 4

Private Places/ Intrusions

Information-gathering can be an intrusive process. Journalists – whether by their presence or by their recording equipment — can encroach on the lives of those they cover. At times, this can make news gathering uncomfortable.

Beyond discomfort, the law definitely forbids journalists — and anyone for that matter — from accessing certain places without someone's permission.

Objectives – In this lesson you will learn:

The difference between public and private places

The four aspects of invasion of privacy

- > **What types of places are private?** The law recognizes that people have a “reasonable expectation of privacy” in certain places. Some of these places are obvious – locker room, public restroom, a private home. Note that some of those places are considered private even though other people may have legitimate access to them. In order to gather information in those places, you need to gain permission.
- > **How can you gain consent?** It could be as simple as asking whether someone minds having you record his or her actions and behavior. It's a good idea to ask each person present for consent, especially if they are engaged in illegal behavior like underage drinking.
- > **Where can you gather information without consent?** People have no reasonable expectation of privacy when they are in a public place viewable by anyone passing by – a public park, a street corner or a school hallway.
- > **Is it difficult to determine the legality of gathering information in some places?** Gray areas exist between places that are private or public, especially in school. Classrooms are the perfect example. When gathering information and taking photos, staff members should identify themselves to students and teachers in the classroom. Also, some private property is open to the public – like museums and malls. While it is generally legal to enter these places to gather information, you must leave if asked.

BUT I HAVE A PRESS PASS!

Press passes only serve as a means of identification. They don't provide any extra legal right to access places. Those controlling access to a particular place or venue might allow those on official press business greater access, but that is solely their discretion.

VOCABULARY

Appropriation Using a person's photograph, likeness or endorsement for commercial purposes without permission

False light Presenting persons in such a way that they appear to be something they are not by using true information in a wrong or misleading fashion

Intrusion Taking pictures of someone in an area where that person would reasonably expect privacy, misrepresenting oneself as someone other than a journalist, taping a conversation without consent, or getting access to private records

Invasion of privacy Can be done in four ways, called intrusion, appropriation, false light and the act of publishing private and embarrassing facts

ACTIVITY

Your Name:

ARE THESE PRIVATE PLACES?

Identify whether you need to gain consent to access the following places or situations. Explain your reasoning.

1. Creating a video recording of a school track meet.

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2. Taking pictures of students working on a class project in the school science lab.

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3. Interviewing students while they participate in a community service project in which they enter the private homes of senior citizens to do light housework and cleaning.

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[illegible]



RATE YOUR PROGRESS

4.0 ☐ I can do all tasks in 3.0 and I can teach others!

3.0 ☐ I can demonstrate an ability to identify private places as well as the actions of a student journalist that may be considered an invasion of privacy. I can...

a. identify the difference between private and public places and how this affects my ability to gather information

b. demonstrate an understanding of consent and how it is applied when gathering information in private places

c. identify the actions of a student journalist that may be considered an invasion of privacy

d. analyze and evaluate reporting situations where privacy concerns may exist and can identify the issue and proper course of action for the student journalist

2.0 ☐ I can identify the differences between private and public places, but I still don't understand what is considered an invasion of privacy.

1.0 ☐ I don't understand what types of places are considered "private" or how journalists can gain access to these places.

Lesson 5

Intellectual Property

Objectives – In this lesson you will learn:

About copyright and trademarks

How to seek permission to use copyrighted work

What fair use is

When the Constitution was written, the framers concluded it was a societal benefit when people develop inventions, make discoveries, write books and create works of art. Society becomes richer and people benefit from the work others do.

However, who would invest all the time, energy and resources it takes to write and publish a novel if someone else could simply buy one copy of it after it's published, make thousands more and then sell them for a personal profit? That is the purpose of intellectual property law — to encourage people to create new works of art, literature and the like while allowing them to benefit financially and control how their works are used. This protection applies to works that appear online as well. Just because you can download a photo or video doesn't mean it's legal to republish it without the owner's permission.

Today, Congress regulates three types of intellectual property: patents, which protect inventions; trademarks, which protect the identity of goods in commerce; and copyright, which protects original works of authorship, including those on the Internet. The last two are relevant to student media.

What is copyright?

Copyright protects original works of authorship in a fixed medium, including books, movies, video games, sculptures, songs, slideshows and photos. A fixed medium implies the work must be in some tangible form, such as written on paper, recorded or drawn out. Not subject to copyright are ideas in someone's head, short titles, phrases, slogans and individual facts.

What rights does holding a copyright bestow? Why is it useful?

Copyright provides the holder the right to make copies of the work, distribute the work, make adaptations to the work and to perform and display the work. Copyright attaches at the moment something is created. To gain stronger protection, one can register the copyright with the U.S. Copyright Office.

While it might appear as a restriction, copyright law can also be a tremendous asset to yearbook staffs. Those same protections and rights apply to the work they create. In essence, owning the copyright to a work is like owning a piece of physical property — a house, car or cell phone. Copying a picture from a news organization's website to use in your publication is like taking someone's cell phone from her purse and using it for your own personal benefit. To use something that belongs to someone else, you must seek the owner's permission. The same is true when you want to republish someone else's copyrighted work.

How is copyright related to plagiarism?

People often confuse copyright infringement and plagiarism. Plagiarism is an honesty issue. When you cite someone's work, findings or ideas in your own original work — a research paper or news story, for instance — it's necessary to cite the source so as not to make it appear as though you created the work. However, in most cases, republishing or substantively using someone's copyrighted work in your own work requires that you seek permission.

Who owns the copyright to your yearbook content?

It's important to establish clearly who owns the copyright to your yearbook and the elements that comprise it, such as the photos, designs, stories and graphics. The publication itself often controls the use of yearbook content by sources outside of the staff. However, establish answers to the following questions:

- > Can yearbook staff members post the content they've created for the yearbook on their own personal web pages?
- > Can they sell the material they created to be published in another publication either in or outside of school?
- > Can individual staff members agree to let a school staff member (such an administrator or marketing director) use the content they've created in official school-related communications like the school's official website? Students generally own the copyright to the content they create.

How do you seek permission to use a copyrighted work?

Seeking permission to use a person's copyrighted work is like asking to borrow an item someone else owns. The owner can grant consent, ask for payment in exchange for consent, place conditions on how the work is used or deny permission.

When seeking permission:

- > Find the copyright holder. The easiest way is to find the copyright notice on a given work, for example © *The New York Times*.
- > Next, draft a letter or email explaining that you're a non-profit student publication and include a detailed description of the copyrighted material you want to use with specific plans of how you'll use it in your yearbook.



Who owns the copyright to your yearbook? Your school does.

- > Explain how many copies of the yearbook you generally sell, the price you charge and some indication of your deadline. It's best to start early because locating the precise person or department you need to get in touch with at a large media company can be tricky and time consuming.

When is it possible to use copyrighted work without seeking permission?

The law recognizes that in certain instances, it's beneficial for society to be able to use a limited amount of a copyrighted work to demonstrate a point, teach a concept, report about an event, or offer an opinion or critical review. In these instances, it is legal to use limited portions of a copyrighted work, especially when you're discussing the original copyright holder. This is known as fair use, and courts determine whether a use is fair use or infringement by employing a four-part test that examines:

- > The nature of copyrighted work you're using
- > How you're using it
- > The amount of the copyrighted work you're using
- > How your use affects the value of the original work

For instance, using two lines of lyrics from a song in a review to demonstrate why you think the song is amazing would probably be fair use. Reprinting the lyrics to the entire song wouldn't be.

What about parody?

Parody is highly protected by the First Amendment, so the law affords you some leeway to use copyrighted works for that purpose. Parody means you're spoofing or making fun of a specific work or the original copyright holder. For instance, you could parody a song by rewriting the lyrics to make fun of the song's original meaning or the singer who performed it. This is generally considered fair use. However, changing the lyrics of a song to convey some humorous message about the teachers in your school probably would not be. Laws regarding parody are debatable.

WHEN FAIR USE APPLIES

Fair use most often applies when using a work owned by the original copyright holder. For instance, using a still photo of an actor from his official website to accompany a story discussing his role on a new TV series would generally be considered fair use because the actor owns the copyrighted photos. Taking photos of that actor from the website of a celebrity magazine would not be because those photos belong to the magazine, not the actor. Your article is discussing the actor, not the magazine.

How are trademarks relevant to your yearbook staff?

Trademarks pertain to goods in commerce. These can take the form of logos, words and slogans that help consumers identify a product. Unlike copyright protection that expires after a limited time, trademarks get stronger with time. Thus, companies are protective of their trademarks and only want you to use them when discussing the specific product they produce. For instance, Jell-O® is a specific brand of gelatin. It is never spelled jello. Likewise, Kleenex® and Puffs® are specific brands of facial tissues. Some now common words like linoleum and aspirin were once trademarks to indicate a specific brand, but because of overuse, those brands have lost their exclusivity to those names. Don't use trademarks as verbs either. You "perform a search on Google" not "Google it."

VOCABULARY

Copyright infringement Using copyrighted material either in its exact form or a variation, without obtaining the permission of the copyright holder

Fair use Using a limited amount of a copyrighted work for purposes of news reporting, editorial comment, education or research; permission of the copyright holder is not needed in this case

Logo Original, distinct typography or artwork used as a trademark or unifying device

Trademark protection The law stating that no one else can use trademark corporate logos or graphics for commercial purposes

ACTIVITY

Your Name:

IS IT COPYRIGHTED?

Determine whether the following examples represent copyright, trademark infringement or fair use. Explain your reasoning.

1. Using the Apple® logo to accompany a story about the school's recent decision to update all of its computer labs with Apple® products.

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2. Using an image of the cartoon character Porky Pig on a spread about end-of-the-school-year activities. Underneath the image, Porky utters his famous phrase at the end of Warner Bros. cartoons, "That's all, Folks."

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3. Using the interlocking rings representing the Olympic games for a story about students with excellent athletic abilities. The headline reads "Our school's future Olympic athletes."

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4. Scanning the front covers of three CDs and using the images to illustrate a story that discusses those CDs and the artists who created them as being popular among students.

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5. Downloading and running a photo from another student's public photo-sharing account to demonstrate the cool types of photos students take with the cameras on their phones.

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RATE YOUR PROGRESS

4.0 ☐ I can do all tasks in 3.0 and I can teach others!

3.0 ☐ I can demonstrate an ability to identify intellectual property and the role copyright and trademark laws play in protecting it. I can...

- a. demonstrate an understanding of copyright and the importance of establishing copyright rules regarding yearbook content
- b. identify and evaluate copyright or trademark infringement
- c. execute the appropriate steps to seek copyright permission
- d. demonstrate an understanding of fair use and its relevancy in student journalism

I can demonstrate an ability to analyze reporting scenarios and identify whether the situation reflects copyright or trademark infringement or fair use.

2.0 ☐ I understand what intellectual property is and its relationship to student journalism, but I still don't understand how to identify and/or prevent copyright or trademark infringement.

1.0 ☐ I don't understand what intellectual property is or how it applies in scholastic journalism.

Lesson 6

Advertising

Advertising is the bedrock of any yearbook, since ad revenue pays a hefty share of the bills. While you might consider an ad to be any content in the book for which a customer pays, not all ads are created equal in the eyes of the law.

Objectives – In this lesson you will learn:

About commercial speech, the verbiage used in advertising

About creating a policy describing the types of advertising you will and won't accept for your yearbook

What is commercial speech?

The first category of ads involves those that propose a commercial transaction. This is what most people think of when they hear the word “advertising” — a business owner or corporation is trying to entice customers to buy a specific product, shop at their store or create good will among potential customers. This type of advertising, known as commercial speech, has been given less First Amendment protection than other forms of speech, meaning it is subject to greater government regulation.

Why does the government regulate commercial speech?

Part of this regulation stems from the realization that the claims ads contain could persuade people to buy defective or harmful products. They could also trick people into buying products that don't deliver on the promises the ads contain. Bottom line — if an ad for a pen claims that it writes upside down underwater, it must do so.

Ads that contain falsehoods about products or services receive no First Amendment protection. The companies and ad agencies that created them are subject to penalties from the Federal Trade Commission.

What are some advocacy advertisements?

A second category of advertisements is advocacy ads from organizations promoting specific ideas and causes. These can range from encouraging people to recycle to promoting a new method for evaluating a teacher's classroom performance. The content of these ads, even though it's paid for, is entitled to the high level of First Amendment protection afforded to other forms of speech because it doesn't propose a commercial transaction. Even dubious claims found in these ads are legally

acceptable just like they would be if a person handed out a copy of the ad's content to passersby on a street corner.

Even though advocacy ads can't be the basis of a false advertising claim, you are still responsible for what you publish. This includes any material that is libelous, an invasion of privacy or an infringement of copyright. Screen carefully.

Can your yearbook staff refuse to print an ad?

Any publication has the right to refuse advertising before a formal contract is signed between the advertiser and the publication. Refusal can be for any number of reasons:

- > The staff disagrees with the position taken in an advocacy ad.
- > The staff chooses not to accept ads that concern specific controversial issues, such as abortion or birth control.
- > The staff feels an ad promotes a product that is harmful to students.

Refusing ads is a perfect example of why it helps when students make editorial choices. Some groups have sued school districts claiming that, as government actors, the districts were unlawfully censoring their ability to reach the student audience with their intended message. However, courts have found that when students, who are not government actors, make those choices, no First Amendment concerns exist for the school itself. Creating a staff policy that specifically addresses acceptable advertising content will help your staff make decisions when concerns arise.

Are there any special considerations when your staff creates ads for businesses?

Even though you can legally take photos of people in a public setting and publish them in your yearbook without permission, this is not true when creating ads. Anyone whose name, image or likeness appears in an ad must give consent before the ad runs. Courts have said it's an invasion of privacy (known as misappropriation) when you use people to promote a product or service without their consent. If you're creating an ad for a local business for your yearbook, ask those appearing in the ad to sign a simple model release form that states they agree to appear in the ad.

VOCABULARY

Advertising policy An explanation in your staff manual of how a publication will handle advertisements that are submitted; the type of ads that will and will not be accepted

Appropriation Using a person's photograph, likeness or endorsement for commercial purposes without permission

PROMOTING YOUR BOOK

One exception to the rule about getting consent allows you to use pages, content and images from your yearbook in ads you create to promote yearbook sales, events and fundraisers. You don't need to seek the permission of those students who, say, appeared on a spread about Student Council if you intend to use an image of that spread on a flier encouraging people to buy that year's book.



ACTIVITY

ACCEPT OR REJECT THIS AD

Your Name: _____

Based on the information in the following scenarios, determine whether any legal problems exist with the following advertisements.

1. A local organization opposed to city council's plan to revamp city government wants to run the following ad in your yearbook: "Attention future citizens! Wake up and realize the city council's plan will bleed the city dry within a few years! As future citizens, help us take action now to prevent this massive mistake."

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2. A local bakery wants to take out an ad in your yearbook that claims its products will help people lose weight.

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3. A parent submits a photo for a senior ad in which his son, an avid deer hunter, is holding a hunting rifle.

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Lesson 6
SCORE

RATE YOUR PROGRESS

- 4.0 ☐ I can do all tasks in 3.0 and I can teach others!
- 3.0 ☐ I can demonstrate an understanding of advertising's role in yearbook and its relationship to the First Amendment and student journalists. I can...
- a. determine the meaning of both commercial and advocacy advertising
 - b. apply First Amendment principles to making editorial decisions about content
 - c. create an advertising policy to assist with potential legal problems and guide advertising decisions
- I understand both my rights and responsibilities in printing advertisements in the yearbook.
- 2.0 ☐ I understand advertising's relationship to student journalism, but I still struggle to understand how the First Amendment applies to advertising and how this can affect my yearbook staff.
- 1.0 ☐ I don't understand the role advertising plays in the yearbook.



MEET THE AUTHOR

Trevor Ivan is the Contest and Critiques Coordinator for the National Scholastic Press Association (NSPA) and the Associated Collegiate Press (ACP) in Minneapolis, Minn. Previously he was a journalism educator and researcher at Kent State University in Kent, Ohio, the position he held when he authored this unit. While earning his master's degree in journalism education at Kent State University in Kent, Ohio, he worked at the Center for Scholastic Journalism, a national clearinghouse for information and resources related to scholastic journalism. He also helped to direct the Ohio Scholastic Media Association.

In addition to his work at the Center, Trevor also served as assistant adviser to his former high school newsmagazine for eight years. His academic research focuses on First Amendment law and how it applies to the scholastic press. His master's thesis examined how news media frame stories about litigation related to off-campus online speech.

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