

Legal and ethical issues in the online world essay



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Legal and Ethical Issues in the Online World Nov 1st, 2007 by Bryan. This year, a slightly revised version of an earlier article I wrote was printed in Keeping Free Presses Free, a publication of the Student Press Law Center and CMA. Even though the printed publication is distributed at conventions, I think the information is worthwhile for a general audience who might not be able to attend, so I'm including what I wrote in this blog post. Look below the fold for information about CDA section 230, blogging policies, comments, and online archives. By Bryan Murley Assistant Professor Eastern Illinois The best thing about the Internet is that it allows any U.

S. citizen to put their First Amendment rights into practice with a minimum of effort. A skeptic might say that the worst thing about the Internet is that it allows any U. S.

citizen to put their First Amendment rights into practice with a minimum of effort. The widespread use of the Internet has spawned a number of legal and ethical issues for journalists. The framework of U. S. law is scrambling to keep up with new questions posed by digital media, from RSS feeds and hyperlinks to intellectual property and fair use to weblogs and forum messages. Ethical quandaries have arisen as well in this new media landscape.

Here we will examine three areas of legal and ethical challenges relating to the community, the company, and history. Freedom of the Press for All Allow me to introduce you to Tucker Max. Max is a self-described "celebrity drunk

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A-hole. " His web site, tuckermax. com, has been twice embroiled in defamation lawsuits.

The latest such suit was summarily dismissed by a federal district judge in Philadelphia, but the opinion that accompanied the dismissal holds some interest for college media outlets. The case pitted Max against Anthony DiMeo III, a wealthy resident of Philadelphia. After a New Year's Eve party at DiMeo's estate turned bad, posters on the forum boards at Max's Web site took turns making derogatory statements about DiMeo and his party-planning skills. DiMeo sued Max, claiming that Max acted in the role of publisher by allowing such postings in the forums of his site.

U. S. District Judge Stewart Dalzell found that, even though Max " selects, removes, and alters posts on the message boards," he still acted as a " provider of an interactive computer service" and was thus not liable for the forum messages under 47 U. S. C. (a.

k. a, the Communications Decency Act), section 230. The U. S.

Supreme Court threw out portions of the Communications Decency Act several years ago, but section 230 remains intact. It has traditionally protected Internet service providers from suits based on the content of users of their services. The section has shielded online companies like AOL from defamation suits (Zeran v. America Online, Inc. (4th Cir.

1997). Dalzell's opinion is an example of the extension of that protection to individuals who host their own web sites, and follows Donato v. Maldow, a 2005 decision by the New Jersey Superior Court decision that reached similar

conclusions. “ In the context of traditional media, such as newspapers and magazines, the publisher of defamatory statements might well be exposed to liability for conduct such as that alleged against Maldow. See, e. g.

, *Kotlikoff v. The Community News*, 89 N. J. 62, 65-66 (1982). In the context of cyberspace, however, Congress has chosen a different course. It granted a broad immunity to providers or users of interactive computer services with the enactment of § 230.

” *Donato v. Maldow*, 865 A. 2d 711, 717. How does this relate to college news media? Dalzell suggests that even though Max performs some of the functions of a traditional publisher, the fact that he does so does not make him the publisher of the content provided by outsiders who choose to post comments in the forums on his site.

This is an encouraging sign for college news organizations that host reader comments on their web sites, or forums, or even community weblogs. To put it another way, if the newspaper were to print the defamatory statements in a published issue of the newspaper, they could be held liable for the comments. However, in their role as an “ interactive computer service provider,” the newspaper’s web site holds no such liability for postings made in comment sections, forums, or weblogs – even if they sometimes remove such materials after they are posted. One could come to the conclusion that a college news site that hosts reader comments with no “ moderation” prior to posting on the site are in a better position to argue that they are acting as a “ provider of an interactive computer service” rather than in their traditional role as publisher.

Some of the dialogue on the Internet surely tests the limits of conventional discourse. Speech on the Internet can be unfiltered, unpolished, and unconventional, even emotionally charged, sexually explicit and vulgar — in a word, ‘indecent’ in many communities. But we should expect such speech to occur in a medium in which citizens from all walks of life have a voice. ” – ACLU v. Reno, 929 F. Supp.

824, 882 (E. D. Pa. 1996). Of course, even with this encouraging sign, some businesses argue that section 230 should be scaled back, but their arguments have not held sway.

The California Supreme Court ruled that an individual user could not be held liable for comments that she posted to an internet news group that were originally authored by someone else (Barrett v. Rosenthal, 146 p. 3d 510 (Cal. 2006)) This overturned an appellate court decision which held that Rosenthal, a women’s health advocate, could be sued.

Also, there are indications this broad protection is under assault. The Ninth Circuit Court of Appeals recently ruled (Fair Housing Council of San Fernando Valley v. Roomates. com LLC, 2007) that the CDA did not protect Roomates. com when it “ does more than merely publish information it solicits from its members.

Roomate also channels the information based on members’ answers to various questions, as well as the answers of other members. ” (489 F. 3d 928) The implication for college media is that a “ hands-off” approach to prior review of reader comments is preferred to mitigate against liability in

lawsuits. Lawsuits continue to work their way through the court systems, and there is no indication when Congress will revisit CDA section 230.

EMPLOYEE COMMENTSCollege students are among the prime users of social networking web sites like Facebook and MySpace. Many are also adept at using weblog software to post their thoughts and opinions on the World Wide Web for all to see. So what happens when social networking meets traditional publishing in the newsrooms of college media? The issue has surfaced more frequently during the last two years. I have heard anecdotes about a student who wrote a negative comment about another student journalist that later played a part in the offending student being denied the editor-in-chief position. A student at a private college in the South was prohibited from writing for the student newspaper for a semester after posting negative comments about a school official on a personal weblog.

And student journalists at the Daily Illini of the University of Illinois were prohibited from blogging about a controversy earlier this year. In September 2006, Francis McDavid of Mississippi State posted this question to the CMA-L Listserv: Is anyone aware of any professional codes of ethics that specifically say that employees should exercise discretion in their personal speech when what they say may result in negative impressions about the news organization for which they work? " If so, how do you explain to your staff that newspapers and other media expect employees to exercise their personal free speech in a manner that is not potentially detrimental to the image of the organization? " The closest the SPJ Code of Ethics comes to address this issue is the following, under the section headed " Act Independently": Journalists should be free of obligation to any interest other

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than the public's right to know. Journalists should: —Avoid conflicts of interest, real or perceived. — Remain free of associations and activities that may compromise integrity or damage credibility. " The concerns over staff-produced weblogs are several.

First, students who work on a student newspaper often discuss news coverage in the newsroom. Those discussions may become heated at times. There are also the inevitable personality conflicts that arise between individuals who are passionate about their beliefs and their jobs. When these topics become fodder for a student on a personal weblog, newsroom trust – a valuable quality if ever there was one – can be destroyed.

Second, editorial decisions can be taken out of context and posted to a personal weblog in a way that reflects poorly on the student media outlet. This type of activity might severely damage the credibility of a news organization. Finally, the use of student media computers and Internet connections to post to personal weblogs could hamper production, impede staff productivity, and engender hard feelings between staffers. The law is clear that businesses may limit what employees do with company equipment and while they are on company time.

But there is an ethical question that arises when a business bases its freedom to publish upon the First Amendment's free press provisions, but desires to greatly restrict its employees' rights to freedom of speech. This ethical dilemma is compounded with regards to college media that exist to extend student First Amendment rights on campus. The Daily Illini developed a weblog policy earlier this year in the midst of a very public controversy.

The policy was leaked to the Internet, and appeared on several weblogs as printed below: Illini Media policy on personal blogs and Web sites: - No Illini Media resources may be used in creating, updating or editing personal blogs or Web sites.

- Illini Media employees may not create, edit or update personal blogs or Web sites during the course of their work day, work shift or work assignment.

- Content of personal blogs or Web sites must not be based upon internal conversations, discussions and/or decisions. - An employee's affiliation with Illini Media or any of its units should not be the focus of his or her personal blog or Web site. Employees may not post material on personal blogs or Web sites intended for publication/broadcast or material that has been previously published/broadcast.

- Any employee violating this policy is subject to immediate termination of employment with the company. (found here) In the middle of a controversy over the publication of cartoon depictions of Mohammed, the DI blog policy only served to stir up more negative publicity for the publication. Clearly, student media advisers should learn from this instance and develop policies ahead of time relating to student journalism blogs. What should that policy look like? Good question, and one that doesn't have a clear answer right now.

The policy will differ based on the unique setting of each college media operation. However, I would like to suggest these considerations that align with journalistic ideals like truth, transparency and the nurturing of the

community. 1. Explain the ethical quandary: Be upfront about the reasons why a blogging policy should be adopted.

Explain the primary concerns, like damage to the reputation of the organization, destruction of trust among staffers, etc. 2. Involve students in the process early: Students will be directly affected by this policy, so they should be involved in its development. Even if the adviser or media board is acting in a role as publisher when developing such a document, no good purpose is served by developing this policy without student input. 3.

Balance competing ideals carefully: The ideals of free speech and credibility are among the highest in the journalistic pantheon. A blogging policy that acknowledges these two ideals while setting definite boundaries on staff conduct should be signed by every new staff member. . Clearly state consequences: With student input, the policy should clearly spell out the consequences if broken. I would suggest a more lenient policy than immediate termination. The point is to treat it as you would other operating policies and procedures.

You might resort to a written warning, suspension, termination mechanism.

5. Allow other means of blogging: Kiyoshi Martinez, an alumnus of the University of Illinois, was caught up in the DI blogging policy when it was first enacted, and later wrote that student media need outlets for students to blog. Give your journalists the opportunity to blog on the paper's site and just make sure they don't break journalistic standards or do anything libelous. Simple. " 6.

Publicize the policy: I am a big believer in transparency. A student publications weblog policy should be publicized both internally and to the campus at large with a link somewhere on the media web site. If your policy is adopted through the manner above, it should be something others can learn from. I like to point out that Sun Microsystems has a corporate weblog policy that allows employees to write about their work, with some suggestions (see the policy here: [http://www.](http://www.un.com/aboutsun/media/blogs/policy.html)

[un.com/aboutsun/media/blogs/policy.html](http://www.un.com/aboutsun/media/blogs/policy.html)). REWRITING HISTORY A prime ethical consideration raised by the Internet is the question of clarity in light of history.

I will explain by means of an example. John Doe was arrested and charged with drunken and disorderly conduct while at a fraternity party in his junior year at good ole State U. The Daily U. reported the arrest in its crime blotter column, which was then uploaded to the DailyU.

com web site. The charges against Doe were dropped, but the disposition of the case was never reported in the newspaper, or on the news site. Five years later, John Doe is a promising young lawyer who'd like to remove the "Google prints" of his arrest. He sends a letter to the editor and adviser of the Daily U.

asking that the newspaper remove the story from its online archives. A further example: Jane Pious has just graduated from Central U. and has accepted a position with a religious organization which will allow her to travel to a country in the Middle East to do mission work. While at Central U.

, Jane was interviewed for a story about Campus Ambassadors for Jesus, and her membership in the organization was mentioned in the story. Now, three years later, Pious writes to the newspaper to ask that her real name be removed from the online archive because she fears it may jeopardize her safety if the wrong people in this Middle Eastern country were to discover her religious background while searching the Internet. Neither of these situations is entirely hypothetical. I will leave it to you to chew on the ethical issues raised by these two situations, but I do want to point out the options that news web sites might consider in clarifying the historical record of any article that contains a mistake, incomplete information, or other errata. .

No changes: Some would argue that web sites should leave the material in its original state, making no changes to a “ published” page, even if the information later turns out to be incomplete or false. 2. Changes made with no notification: This approach means that the incorrect or incomplete material that appeared on the web site is updated or corrected at a later time, but no notification of the change is made on the web page. Here, a later visitor to the site would have no inkling that the material had been altered unless they had visited prior to the alteration, or the previous version of the page survived in a “ cached” search engine version.

3. Changes made with notification at the top/bottom of the page: This approach means that any changes made (more than a minor spelling or grammatical error) would be noted at the top or bottom of the article with a “ correction notice” explaining why the material was being updated. .

Changes made with notification within the text: Here, any changes that are made to the text are noted within the text itself, and possibly with a “

Corrected” or “ Amended” heading at the top of the page. Option 1 is difficult to defend, especially given the ease with which material on the web can be updated.

To use a noteworthy example, should the New York Times amend its pre-war reporting about Iraqi weapons of mass destruction with information clarifying that such weapons were never found? Option 2 shows that news organizations recognize their responsibility to report the truth, even if their earlier reporting is deficient or incomplete. But it also poses problems for credibility. In the past few years, several news organizations have been caught “ red-handed” changing stories without any notice when the story creates controversy. These episodes usually involve Internet bloggers or media watchdog types making “ screen caps” of a browser window with story as it originally appeared. Options 3 and 4 are both preferred, and perhaps a mixture of the two – providing an “ editor’s note” at the top of the story explaining what corrections were made and then documenting the corrections within the text with strikethroughs or different colored text. Whichever option you choose, choose one, write it down and stick with it.

And be transparent about it. I am fond of the New York Times’ online corrections page, which links to every article corrected and provides information to contact the Times about a correction. The corrected articles include correction notes and “ flags” at the top of the page. The Times’ corrections page is prominent in the right hand navigation of their web site. **THE LESSON: BE PREPARED** Even five years ago, we couldn’t predict all the legal and ethical questions that would arise from the Internet. But today,

there are at least a few indicators of ways we can adapt to the new media environment.

I hope that you see from the above three sections that the best thing you can do for your student media outlet is to be forward thinking about legal and ethical issues online. Do you have online forums, weblogs, or comments? Clearly spell out your policy about those forums of public discussion, so complaints are not handled on an ad hoc basis. Are you concerned about student journalists blogging about newsroom gossip? Develop guidelines with student input to prevent future misunderstandings. How do you handle your online archives? Develop a guide that attempts to clearly spell out what, when, where, and how you will correct or modify those archival files.

Such forethought will save many headaches in the future if such legal or ethical questions arise in your college media outlet.