

Freedom of press and media regulations

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Though freedom of the press is protected and guaranteed by the First Amendment, there have virtually always been laws limiting and defining that freedom. These restrictions stem from English common law regarding libel and defamation and from the attempts of the United States government to keep up with ever changing modern times.

The initial restrictions on the freedom of the press were only in regards to libel and defamation. These concepts, dating to before the adoption of the American Constitution, were inherited restriction of the freedom of the press. Ultimately though, in American law at least, they come down to a singular defense. It's not libel or defamation if it is true.

Libel laws require that the victim be identified, that the thing being written damages them in the eyes of a significant minority and that the accusation not be true. Under American law, truth is the ultimate libel defense. However, the American court system has also long held that the freedom does not extend to the press the right to deliberately and with malice harm a person or group by reporting fiction. If the issue being reported is true, then there is no libel. This differs from other countries around the world, including Australia, where libel simply involves damaging another person's reputation and the claim can be made whether or not the facts in evidence support the accusations made.

The important distinctions of American libel law lie in identification and the concept of a significant minority. In the part, American courts have ruled that identification does not necessarily mean by name. Identification can be implied, so that a significant number of people can figure out who the individual is that is being discussed or it can be as a member of a group. For <https://assignbuster.com/freedom-of-press-and-media-regulations/>

example, even if Bob Jones is never identified by name as a member of the library board, he is a part of that group.

If the press then accuses all library board members of being tax cheats, and Jones is not, then he has been libeled as part of an identifiable group. The other interesting caveat of the law and the administration of libel law is that the victim must only prove that their reputation was damaged within a significant minority. This wording leaves a great deal up to the discretion of the court, both in determining what is a significant minority and when that minority might believe the things that are published about an individual. Ultimately though, all journalism students in the U. S. are taught that truth is the ultimate defense. If the issue being reported is true, there is no libel.

Further restricting the freedom of the press is the concept of defamation of character. This is the statute under which most lawsuits against tabloid magazines were brought before the more modern move to accuse them of invasion of privacy. Libel requires that a person suffer actual damage as a result of the insult to their reputation, i. e. the loss of a job, relationship or some tangible asset. Defamation simples requires that a person was injured by the falsehoods spoken or written about them.

This was well and good until 1964 when the Supreme Court ruled that public persons, politicians and others who earn their living via being in the limelight, could only sue for defamation when they could prove actual malice. This meant that unless the public figure, say the president, for example, could prove that the news organization concocted false stories knowingly for the sole purpose of harming him, he would have no right to sue. If the story was true, then he definitely had no grounds to stand on.

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In 1798, the U. S. Congress further restricted the freedom of the press with the Sedition Act of 1798. The sedition act said, among other things, that any “ false, scandalous or malicious writings” that bring damage to the U. S. Congress, the President, or any branch of the government were illegal (Wisconsin Journalism 2005). The laws regarding seditious libel were used to keep the press from criticizing the government and to restrict the freedom of the press. Furthermore, the government has always seen fit to regulate “ adult content” in print and has in recent years also restricted the types of advertising allowed in some form of media.

However, with the advent of and expansion of radio and television, the U. S. government determined it necessary to create an entirely new arm of the government to regulate the media, the Federal Communications Commission. The FCC was begun as a means of controlling the airwaves with a lot of lofty goals in place. Allegedly, there was a concern about air space.

The frequency the broadcast media was using had to be apportioned so that radio stations were not stepping on each other’s signals, preventing anyone from receiving clear reception. Furthermore, by regulating the size and power of the broadcast tower, the FCC claimed it was preventing the rich stations from dominating the airwaves with might instead of talent or desire. The plan then, was to increase competition by making sure that everyone was on a level playing field.

As time progressed, the FCC also worried about the influence that the broadcast media held and installed limitations on the number of television stations and radio stations that could be controlled by a single company or person. The idea was to again promote competition and prevent one faction

from having superior control over the information accessible to the average citizen. In further support of this, in 1949, the FCC instituted the Fairness Doctrine, a rule that said if a broadcast media gave a specific amount of time to one side of an issue, it was required to give the same amount of time to the other side.

This was done theoretically to promote fair and balanced reporting of issues so that the public could make informed decision regarding political issues, rather than being completely influenced by hearing only one side of an issue. Paid advertising was exempted, except that the media had to charge the same price to whatever person wanted to buy advertising space rather than offering special deals to the side of an issue supported by the editorial staff of the station.

The fairness doctrine was later withdrawn as unnecessary, but there have been some efforts recently to bring it back. Largely, these efforts come in the form of diatribes against right-wing talk radio, saying that because the talk show hosts do not present fair and balanced reporting of the issues, the stations which air them should be forced to offer a show with a counter point. Opponents of this argue that free market competition has made the right-wing talk shows profitable and that commerce, not politics, has dictated the content of most broadcast stations.

Because of the differing availability of broadcast television and radio, the FCC has also felt more comfortable with restricting the types of advertising that these stations may accept and when they may air it. The FCC banned some alcohol commercials and all cigarette advertising from the broadcast media in an attempt to legislate a healthier country. Proponents of the <https://assignbuster.com/freedom-of-press-and-media-regulations/>

restrictions say that manufacturers were unfairly using the psychological impact of broadcasting to influence people of an inappropriate age range to drink or smoke. Further restrictions have run the gamut from requiring alcohol manufacturers to encourage responsible drinking to forcing tobacco companies to rethink and redesign trademark logos.

In short, the FCC has tried to regulate the broadcast media at any turn that it appears the American public is likely to accept. They have been able to do this by differentiating between the press and the mass media when it suits them. And, the FCC has tried to regulate the print media as well, from suing Hustler for its publication of pornography to creating and overseeing joint operating agreements between major metropolitan newspapers, forcing the papers, once owned by the same company, to maintain separate editorial boards to preserve the appearance of competition and diversity in news.

The FCC has also tried to regulate even more modern media forms with attacks on the internet and attempts to regulate how Americans access the world wide web. This over regulation has led to a backlash with many people believing that the industry needs to be de-regulated and the FCC in a precarious position. In recent years it has fined broadcast networks for the language and behavior of shock jocks, for “ wardrobe malfunctions” at the Super Bowl, and for language used during prime time television.

But an increasingly media savvy nation is demanding that they back off. Yes, some people were offended with the sight of Janet Jackson’s breast in a time when people believed the programming to be “ family-friendly”, but at the same time, people are also calling on the offended to regulate themselves and turn off the programs they find offensive. Many people no longer believe

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in the government's right or need to protect people. After all, what tech savvy child can't find his way to much more gratuitous sites on the internet?

The relaxing of the regulations on the broadcast media is long overdue. The broadcast media has been hamstrung for years by the overregulation by the FCC. It has suffered through undue restrictions and made to compete with cable television which did not suffer from the same sort of restrictions. They have been subjected to the whims of the FCC and have had restricted advertising revenues due to FCC regulations. The reality is that Americans are tech savvy enough now to restrict themselves. If they want to keep their families from viewing inappropriate materials, they can do so via parental controls or a v-chip. It should not be the government's responsibility to legislate morality.

Furthermore, the regulations either need to be applied across the board or not at all. The FCC has not kept pace with technology in the modern era, and has thus not had Congress give it jurisdiction over newer forms of communication including cable television and satellite radio. As these things become commonplace, by regulating the broadcast media that uses the free airwaves and not the pay-for-use broadcast media, the FCC places the free media at a distinct disadvantage and should not do so.

While some restrictions on the freedom of the press, such as libel and defamation laws are appropriate, laws aimed at "protecting society" from itself, including advertising and pornography restrictions should be lifted. Once again, the government should trust the free market to decide as it did in the Imus' case. No FCC interference was needed to get the bigoted talk show host off the air. The fair market did its job, demanding that he be

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removed or the station face lost revenue. That should be the way the media is regulated.

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