

KNOW YOUR RIGHTS:

Libel and privacy

The student press law center answers your most frequently asked questions about defamation and privacy law

Q Can you protect against a libel suit by labeling a statement “opinion”?

A: Not necessarily. A pure opinion – “the coach should be replaced” – cannot be the basis of a libel claim. But if the opinion implies a fact that proves to be false – “in my opinion, the coach should be replaced because he bought his college degree on EBay” – then the “opinion” label is no insulation.

Q Is our publication responsible for libelous quotes from third parties, or libelous statements that third parties make in letters-to-the-editor?

A: In print or broadcast media, yes. The fact that a statement comes from someone not on the staff makes no difference. If you publish it, you own it, and if the statement is factually false and causes harm, then both your publication and the speaker may be liable for defamation. On the Web, the federal Communications Decency Act offers some insulation against liability for comments left by third parties – but *not* content created by the publication’s staff.

Q Do we need parental consent to publish names or images of minors?

A: There is a widespread myth that minors cannot consent to be interviewed or photographed. But in fact, no federal or state law requires parental consent – with the exception of two states, New Jersey and Maine, that require parental sign-off for a student to be pictured or named on a school-operated website. In extreme cases, such as naming a student who admits to substance abuse or criminal behavior, it is a cautious editorial policy, though not required by law, to obtain parental approval.

Q What about FERPA (the “Buckley Amendment”)?

A: FERPA, the Family Educational Rights and Privacy Act, allows a school or college to release basic “directory information” about students, including photos – unless the student (or the parents of a minor student) signs a written opt-out. No courts have addressed whether a student media outlet is required to honor the opt-out – FERPA governs the release of information by the school or its employees, not by students – but many do so voluntarily as a courtesy.

Q Can we be stopped from taking and distributing photos or video of people in public places?

A: The general rule is that, when a person does something in an area that is visible to public foot traffic, that person has no reason to expect privacy and cannot complain if he is photographed or filmed. The exception is that a person’s likeness may not be associated with a commercial endorsement without a release.

