



CITIZEN MEDIA  
LAW PROJECT

LEGAL RESOURCES FOR CITIZEN MEDIA

SEARCH

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## Risks Associated With Publication

Every time you publish something online, whether it's a news article, blog post, podcast, video, or even user comment, you open yourself up to potential legal liability. This shouldn't come as too much of a surprise because the Internet, after all, is available to anyone who wishes to connect to the network, and even the smallest blog or most obscure discussion forum has the potential to reach hundreds of millions of people throughout the world.

Often the legal risks are small, but not always. The risks you could face when you publish online can take a number of forms, depending on what and how you publish. The sections that follow are not intended to make you an expert on media law, but merely to help you identify potential "red flags" so that when you publish something that might result in liability, you will know to be extra careful and will take the necessary steps to minimize your potential legal risks.

Let's start with the more obvious risks.

**First**, if you publish information that harms the reputation of another person, group, or organization, inflicts emotional distress upon another person, you may be liable for "defamation" or "false light." Defamation is the term for a legal claim involving injury to reputation caused by false statements of fact and includes both libel (typically written or recorded statements) and slander (typically spoken statements). False light, which is similar to defamation, generally involves untrue factual implications about the subject that, although they might not hold the subject up to scorn or ridicule, nevertheless cause emotional distress. The crux of both of these claims is falsity; with very rare exceptions, truthful statements and implications that harm another's reputation will not create liability, although they may open you up to other forms of liability if the information you publish is of a personal or highly private nature. We explain the details of defamation and false light and provide some practical tips for avoiding defamation and false light claims in the section on Publishing Information that Harms Reputation.

**Second**, if you publish private or personal information about someone without their permission, you potentially expose yourself to legal liability even if your portrayal is factually accurate. For example, in most states you can be sued for publishing private facts about another person, even if those facts are true. The term "private facts" refers to information about someone's personal life that has not previously been revealed to the public, that is not of legitimate public concern, and the publication of which would be offensive to a reasonable person. This could include such things as writing about a person's medical condition, sexual activities, or financial troubles.

If you use someone else's name, likeness, or other personal attributes without their permission for an exploitative purpose you could also face liability for misappropriation or violation of the right of publicity. Usually, people run into trouble in this area when they use someone's name or photograph in a commercial setting, such as in advertising or other promotional activities. But, some states also prohibit use of another person's identity for the user's own personal benefit, whether or not the purpose is strictly commercial. We discuss the details of misappropriation/right of publicity and private facts claims and provide some practical tips for avoiding these claims in the section on Publishing Personal and Private Information.

**Third**, if you have web forums, allow reader comments, host guest bloggers on your site, or if you post information that you receive from RSS feeds, section 230 of the Communications Decency Act (CDA 230") will likely shield you from liability for certain kinds of problematic statements made by your users, guests and other third-parties on your site. This important federal law protects you from legal liability for statements contained in these materials – and any other user-submitted content – you publish on your site. You will not lose this immunity even if you moderate or edit this content, whether for accuracy or civility, so long as your edits do not substantially alter the meaning of the original statements. Keep in mind that CDA 230 will only protect you if a third-party – not you or your

employee or someone acting under your direction – posts something on your blog or website. It does not shield you from liability for your own statements. We cover this protection in more detail in the section on Publishing the Statements and Content of Others.

**Fourth**, if you publish or use the creative work of others, their trademarks, or certain confidential

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