MEDIA LAW AND ETHICS QUICK GUIDE
By Anthony Brown

Ethics

Media Law: Defamation

What is defamation?
1. Material calculated to injure the reputation of another by exposing them to hatred, contempt or ridicule;
2. A false statement about someone to their discredit;
3. A statement that would tend to lower the person defamed in the estimation of right-thinking members of society generally;
4. Material that tends to make the person shunned or avoided.

What has the plaintiff (the person who says they’ve been defamed) have to prove in bringing a defamation action against a publisher?
Three elements of defamation:
1. There must be a defamatory imputation;
2. The imputation must be of and concerning the plaintiff – in other words, identify the plaintiff;
3. It must be published to a third party.

What do we mean by imputation? – the defamatory meaning of words.

Who can sue? Any living person

Who can be sued? Anybody in the publication chain – eg: journos, subs, editors, etc

What can it cost? $250,000 for non-economic loss

What is the time limit? A plaintiff must begin proceedings within one year of publication. (can be extended to 3 years if plaintiff can put up a good enough argument). With old internet material, court would look at when it was uploaded but there could be a problem if material was updated.

Defences to defamation:
1. Substantial truth
2. Contextual truth
3. Absolute privilege
4. Fair Report
5. Qualified privilege
6. Political qualified privilege
7. Honest opinion and fair comment
8. Innocent dissemination
9. Triviality
For journalists, the main defences are: truth, fair report, honest opinion and fair comment, and political qualified privilege.

**Resources:**

**Media Law: Copyright**

**What is copyright?**
Copyright is a form of intellectual property protection, falling under the Commonwealth Copyright Act of 1968 - which means it falls under statute and there is one law Australia-wide.

Under the Copyright Act of 1968, the person who writes, for example, a new piece of music is usually the first owner of copyright and is therefore the person entitled to record, perform, broadcast or communicate it. Permission from that person must be obtained if you want to use it for any purpose, unless the copyright in that work has expired or an exemption applies.

Copyright does not protect ideas, opinions, information or facts. Instead it protects the way ideas, opinions, information and facts are expressed.

**Does a creator have to do something special in order to protect their work?**
The answer to that is NO. You don’t have to register for copyright protection. It is free and automatic. You don’t have to pay for it and you don’t have to ask for it.

**How long does copyright last for?**
Generally, about 70 years after the death of the author. Once copyright has expired, the work is said to be in the public domain, meaning that permission is no longer required to copy the work.

**Copyright infringement**
Basically, this means where you copy material without permission of the copyright owner. For a breach to occur, it is not necessary that the whole of the work be copied, but merely a substantial part.

A part is deemed substantial if it is an important or distinctive part of the original work. It may not be a proportionately large part.

Be particularly careful with the internet – you can infringe if you print material from a website without express or implied permission.

Express permission – you can have express permission if there is a statement on a website that allows you to do certain things, such allowing you to download a document for personal or non-commercial use. Also, some material may be freely available under Creative Commons licences.

You also get express permission by emailing the source and asking for it.
Implied permission – this is where permission is not spelled out, but which you can imply – eg: the website might have a button saying printer friendly or email to a friend but this would not be for commercial purposes

What are the penalties for breach of copyright?
Well, they vary: from payment of damages, the payment by the infringer of any profits made from the copying, an order to surrender any infringing articles to the copyright owner, or an injunction prohibiting the infringing party from continuing to breach copyright.

Resources:
- Creative Commons - http://creativecommons.org/

Media Law: Privacy
There is no common law right to privacy in Australia, but there are few laws that relate to privacy that you should be aware of.

Media Law: Trespass
As a journo, you don’t have special right of entry to someone’s property beyond that of an ordinary citizen. You are liable for trespass if you enter land or premises without the owner’s permission, except if you are in the process of seeking permission. You can also be liable for trespassing if you put a listening device or a camera on someone’s property without their permission. The courts can award damages, which could be exemplary and therefore designed to make an example of you.

Media Law: Nuisance
This is where you might stake out someone in their home. The law takes the view that nuisance has to be persistent and annoying to make it actionable. Nuisance can include persistent telephone calls. Remedies can include injunction on publication.

Media Law: Surveillance and listening devices
It is an offence to record the private conversation without the consent of all parties to that conversation – Invasion of Privacy Act in Queensland.

Resource:

Media Law: National Security
Following the September 11 terrorist attacks in 2001, several countries including the U.S, Britain and Australia introduced specific anti-terrorism legislation which increased surveillance of citizens and the monitoring of information flows. It is these anti-terror measures which have been linked with the decline in press freedom across the western world.

In Australia, a package of laws is used to combat terrorism and protect national security. The Howard government, from 2001 to 2007, enacted 28 new (federal)
'antiterrorism' laws dealing with a broad range of contentious issues – including the ASIO Amendment Act 2003 (which allows for seven-day detention without charge of non-suspects).

The Telecommunications Interception Legislation Amendment Act 2002 enables surveillance of all citizens and facilitates the interception of information between citizens. This means that police have the power to listen to your phone conversations or read your emails if they suspect that you, or someone you are in contact with, is involved in terrorism.

The Anti-Terrorism Act 2005 was passed by the Commonwealth in December 2005. The legislation was intended to hamper the activities of any potential terrorists in Australia.

One of the big concerns for journos with the Anti-Terrorism Act was that it reintroduced the crime of sedition in Australia (statements and acts that condone the use of violence against Australians and its institutions). The Gillard Government brought in the National Security Amendment Act 2010 which removed the crime of sedition, but replaced it with the offence of urging violence. It retained short-term detention without charge and set out that a person could be held for up to 7 days.

Resources:

Media Law: Hate Laws
These laws prevent people from communicating publicly in a way that is racially offensive or treating others less favourably because of their race, skin colour, descent, national or ethnic origin or immigration status. It is also a crime to incite racial hatred.

Knowing your rights

This information is part of the CitizenJ Contributor Toolbox. To access the other resources in this kit head to http://citizenj.edgeqld.org.au/contributor-toolbox/