Legal Guide for Bloggers

Updated Feb 11 2009

Whether you're a newly minted blogger or a relative old-timer, you've been seeing more and more stories pop up every day about bloggers getting in trouble for what they post.

Like all journalists and publishers, bloggers sometimes publish information that other people don't want published. You might, for example, publish something that someone considers defamatory, republish an AP news story that's under copyright, or write a lengthy piece detailing the alleged crimes of a candidate for public office.

The difference between you and the reporter at your local newspaper is that in many cases, you may not have the benefit of training or resources to help you determine whether what you're doing is legal. And on top of that, sometimes knowing the law doesn't help - in many cases it was written for traditional journalists, and the courts haven't yet decided how it applies to bloggers.

But here's the important part: None of this should stop you from blogging. Freedom of speech is the foundation of a functioning democracy, and Internet bullies shouldn't use the law to stifle legitimate free expression. That's why EFF created this guide, compiling a number of FAQs designed to help you understand your rights and, if necessary, defend your freedom.

To be clear, this guide isn't a substitute for, nor does it constitute, legal advice. Only an attorney who knows the details of your particular situation can provide the kind of advice you need if you're being threatened with a lawsuit. The goal here is to give you a basic roadmap to the legal issues you may confront as a blogger, to let you know you have rights, and to encourage you to blog freely with the knowledge that your legitimate speech is protected.

Please note that this guide applies to people living in the US. We don't have the expertise or resources to speak to other countries' legal traditions, but we'd like to work with those who do. If you know of a similar guide for your own jurisdiction or feel inspired to research and write one, please let us know. We can link to it here.

Why Join The Fight?

EFF is a donor-funded nonprofit group of passionate people — lawyers, technologists, volunteers, and visionaries — who depend on your support to continue successfully defending your digital rights. Litigation is particularly expensive; because two-thirds of our budget comes from individual donors, every contribution is critical to helping EFF fight — and win — more cases.

Support bloggers' rights by spreading the word!

You Have the Right to Blog Anonymously. EFF has fought for your right to speak anonymously on the Internet, establishing legal protections in several states and federal jurisdictions, and developing technologies to help you protect your identity. With your support, EFF can continue to defend this right, conducting impact litigation to establish strict standards to unmask an anonymous critic in more jurisdictions.

You Have the Right to Keep Sources Confidential. In *Apple v. Does*, EFF is fighting to establish the reporter's privilege for online journalists before the California courts. With your support, EFF can defend news bloggers from subpoenas seeking the identity of confidential sources in more jurisdictions.

You Have the Right to Make Fair Use of Intellectual Property. In *OPG v. Diebold*, Diebold, Inc., a

manufacturer of electronic voting machines, had sent out copyright cease-and-desist letters to ISPs after internal documents indicating flaws in their systems were published on the Internet. EFF established the publication was a fair use. With your support, EFF can help fight to protect bloggers from frivolous or abusive threats and lawsuits.

You have the Right to Allow Readers' Comments Without Fear. In *Barrett v. Rosenthal*, EFF is working to establish that Section 230, a strong federal immunity for online publishers, applies to bloggers. With your support, EFF can continue to protect bloggers from liability for comments left by third parties.

You Have the Right to Protect Your Server from Government Seizure. In *In re Subpoena to Rackspace*. EFF successfully fought to unveil a secret government subpoena that had resulted in more than 20 Independent Media Center (Indymedia) news websites and other Internet services being taken offline. With your support, EFF can hold the government accountable for investigations that cut off protected speech.

You Have the Right to Freely Blog about Elections. EFF has advocated for the sensible application of Federal Election Commission rules to blogs that comment on political campaigns. With your support, EFF can continue to protect political blogs from onerous campaign regulations.

You Have the Right to Blog about Your Workplace. EFF has educated bloggers on their rights to blog about their workplace and developed technologies to help anonymous whistle bloggers. With your support, EFF can help shape the law to protect workplace bloggers from unfair retaliation.

You Have the Right to Access as Media. EFF has educated bloggers on their right to access public information, attend public events with the same rights as mainstream media, and how to blog from public events. With your support, EFF can fight for bloggers' right to access as media.

Know Your Rights and Prepare to Defend Them. EFF has created the Legal Guide for Bloggers to give you a basic roadmap to the legal issues you may confront as a blogger and a guide on How to Blog Safely. With your support, EFF can expand and update these guides.

Become a member today!

Legal Liability Issues

Legal Liability Overview

The Legal Liability Issues FAQ briefly addresses some common legal issues that affect you as a publisher, especially situations where you may face legal claims or threats based on information you published on your blog.

What should I do if I get sued for what I blogged?

You should contact an attorney (if you don't know an attorney, EFF may be able to help you find one). If the statement at issue is protected speech, you may be entitled to move to strike the complaint under your state's Anti-SLAPP laws.

How do I know if I am being SLAPPed?

SLAPP stands for Strategic Lawsuit Against Public Participation, and the Anti-SLAPP laws are designed to help people sued for legitimate, protected speech made about public issues. If you are sued because you wrote about an issue of public interest or concern, you may have been SLAPPed. The California Anti-SLAP Project and the First Amendment Project have excellent FAQs on Anti-SLAPP

laws. Note that Anti-SLAPP laws don't exist in every state, and they vary quite a bit among states, so this may not be available to everyone.

Can EFF defend me?

Maybe. EFF is a small, grassroots legal advocacy nonprofit supported by member contributions. We provide pro bono (free) legal assistance in cases where we believe we can help shape the law. Unfortunately, we have a relatively small number of very hard-working attorneys, so we do not have the resources to defend everyone who asks, no matter how deserving. If we cannot assist you, we will make every effort to put you in touch with attorneys who can. If you're in trouble, you can contact us at information@eff.org.

We also encourage you to review and use our extensive web archive of legal documents at http://eff.org/legal/cases/. You may download any of our legal filings.

I'm not in the United States — do these FAQs apply to me?

No. This legal guide is based on the laws in the United States, where there is a strong constitutional protection for speech. Many other countries do not have strong protections, making it easier to sue for speech. (See, for example, the BBC's guide, How to Avoid Libel and Defamation.) However, US courts are reluctant to enforce foreign judgments that would restrict your freedom of speech. So if you are sued in the United Kingdom for defamation, you might lose your UK case, but the winner would have a hard time collecting in the United States.

If you know of a similar guide for your own jurisdiction or feel inspired to research and write one, please let us know. We can link to it here. We don't have the expertise or resources to speak to other countries' legal traditions, but we'd like to work with those who do.

Do the laws vary from state to state?

Yes. While the Constitution and federal laws, such as copyright law or Section 230, apply nationwide, many laws that affect bloggers vary from state to state. For example, defamation, reporter shield laws, and privacy laws are defined by each state (within constitutional boundaries).

What legal liability issues can arise from my blog?

Generally, you face the same liability issues as anyone making a publication available to the public, and receive the same freedom of speech and press protections. The main legal liability issues include:

- Defamation
- Intellectual Property (Copyright/Trademark)
- Trade Secret
- Right of Publicity
- Publication of Private Facts
- Intrusion into Seclusion

Enough of your legal mumbo-jumbo, just give it to me straight!

If you're concerned that you may have published a statement on your blog that could be false or cause harm to someone's reputation (or someone is claiming you have), check out The Bloggers' FAQ on Online Defamation Law.

The Bloggers' FAQ on Intellectual Property will help you understand your rights to link to information, quote from articles and blogs, or otherwise use someone else's creative works. It also addresses situations where you can use the brand name of a good or service in your blog. Here you can also learn about the right of publicity, which is relevant if you want to use someone's name or image in a commercial context.

Trade secret law concerns the protection of confidential corporate information; for more information see the Chilling Effects Clearinghouse's FAQ on trade secret law.

The Bloggers' FAQ on Privacy covers "publication of private facts" law, which is designed to protect a person's private information, even if the information is truthful. It also addresses "intrusion into seclusion" law, which is designed to protect people's privacy and their interest in being left alone.

Are these the only legal issues for publishers or bloggers?

No. In our litigious society, there are many "causes of action" — reasons for initiating a lawsuit — which a creative and determined plaintiff can dream up. Aggressive plaintiffs will sometimes use dubious causes of action in an effort to squelch protected speech (for example, claiming that when they receive an offensive email, it constitutes trespass to the email server (see EFF's Open Letter to Shearman & Sterling). Fortunately, First Amendment protections for publications are strong and can help you defend against unwarranted legal threats.

What if I get sued for something written by another person that I posted on my blog?

A federal law known as Section 230 can protect Internet intermediaries from most civil liability for statements by another information content provider. See The Bloggers' FAQ on Section 230 Protections for more.

Do I have a right to blog anonymously?

Yes. The Supreme Court has repeatedly upheld the First Amendment right to speak anonymously: "author is generally free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be...the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." (McIntyre v. Ohio Elections Comm)

Sweet, no one will ever be able to find out my identity!

Not quite. If you try to blog anonymously through a third-party service, you may be subject to subpoenas seeking your identity from your blogging service provider. EFF has written a guide to blogging anonymously that may help you, and Reporters Without Borders has a guide to anonymizing technology.

Oh no, my ISP was subpoenaed for my identity!

If you receive notice of a subpoena and you wish to retain your anonymity, you should contact an attorney about filing a motion to quash (drop) the subpoena. Many courts have required the subpoenaing party to show a compelling need for the information that outweighs the speakers' constitutional rights to free speech and privacy. For more information, see this list of EFF cases on online anonymity.

Hey — my ISP took down my protected speech. Did it violate my constitutional rights?

No. The First Amendment protects you against government censorship and prevents the courts from enforcing a private-party action that violates the First Amendment, but it does not require a private party (like your ISP) to host speech. Indeed, the First Amendment also includes the right not to speak and that protects your ISP against claims that it "must" host whatever you decide to say.

Should I publicize cease-and-desist letters?

You betcha! Unwarranted cease-and-desist letters chill perfectly legitimate speech. The Chilling Effects Clearinghouse is collecting a database of cease-and-desist letters to document the chill. Chilling Effects also annotates the notices to help you understand your legal rights.

Are the legal issues with forums, bulletin boards, chat rooms, web pages and the like significantly different from blogs?

No. While Legal Guide for Bloggers is focused on blogs, the legal issues discussed here are broadly applicable to a wide variety of types of online publishing. For example, a web page where you place your thoughts and opinions is similar to a blog. An online forum where people can post comments is similar to the comment section of a blog.

Do the commenters on my blog have a First Amendment right to say whatever they want in the comments?

Generally no. Unless you are a government entity operating a public forum, you have a First Amendment right to publish your blog in the way that you want, which includes the right to choose who may participate in discussions on your blog. Nevertheless, we encourage you to allow wide-open and robust debates in the comments on your blogs. Private action to edit or delete comments may be legal, but can also exclude important voices from a debate.

I'm upset that a moderator disemvowelled my comments. Is that illegal?

No. While we are aware of no court cases regarding disemvowelling, removing the vowels from a post is a form of criticism and commentary on that post. Even if it not explicitly permitted by the blog's terms of use or an acceptable use policy, a court would likely consider the edit to be a fair use of your comment.

But the forum moderator edited some of my comments, deleted others and is being a jerk! Please tell me all the legal claims I might have against them so I can sue them into the ground.

Being a jerk is not a reason to sue someone. Nor is there a claim against blog hosts for exercising their free speech rights to control their forums. Even if there were any valid claims, please remember that lawsuits are expensive, not very fun and should only be thought of as a last resort. If you don't like what someone is doing, you can start your own blog and express your opinions there.

Intellectual Property

The Bloggers' FAQ on Intellectual Property addresses issues that arise when you publish material created by others on your blog.

Questions About Copyright

I found something interesting on someone else's blog. May I quote it?

Yes. Short quotations will usually be fair use, not copyright infringement. The Copyright Act says that "fair use...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." So if you are commenting on or criticizing an item someone else has posted, you have a fair use right to quote. The law favors "transformative" uses — commentary, either praise or criticism, is better than straight copying — but courts have said that even putting a piece of an existing work into a new context (such as a thumbnail in an image search engine) counts as "transformative." The blog's author might also have granted you even more generous rights through a Creative Commons license, so you should check for that as well.

What is fair use?

There are no hard and fast rules for fair use (and anyone who tells you that a set number of words or percentage of a work is "fair" is talking about guidelines, not the law). The Copyright Act sets out four factors for courts to look at (17 U.S.C. § 107):

- The purpose and character of the use. Transformative uses are favored over mere copying. Non-commercial uses are also more likely fair.
- The nature of the copyrighted work. Is the original factual in nature or fiction? Published or unpublished? Creative and unpublished works get more protection under copyright, while using factual material is more often fair use.
- The amount and substantiality of the portion used. Copying nearly all of a work, or copying its "heart" is less likely to be fair.
- The effect on the market or potential market. This factor is often held to be the most important in the analysis, and it applies even if the original is given away for free. If you use the copied work in a way that substitutes for the original in the market, it's unlikely to be a fair use; uses that serve a different audience or purpose are more likely fair. Linking to the original may also help to diminish the substitution effect. Note that criticism or parody that has the side effect of reducing a market may be fair because of its transformative character. In other words, if your criticism of a product is so powerful that people stop buying the product, that doesn't count as having an "effect on the market for the work" under copyright law.

May I freely copy from federal government documents?

Yes. Works produced by the US government, or any government agency or person acting in a government capacity, are in the public domain. So are the texts of legal cases and statutes from state or federal government. Private contractors working for the government, however, can transfer copyrights to the US government.

Am I free to copy facts and ideas?

Yes. You are free to report the facts and ideas embodied in another person's article or web page. Copyright only protects the expression — the combination of words and structure that expresses the factual information — not the facts themselves.

How does a Creative Commons license help?

Creative Commons licenses provide a standard way for authors to declare their works "some rights reserved" (instead of "all rights"). If the source you're quoting has a Creative Commons license or public domain dedication, you may have extra rights to use the content. Licenses don't trump fair use, but if you want to do more than fair use allows, look at the terms of the license to see what it permits and what, if anything, it requires you to do in return. The attribution license for example, lets you copy, distribute, and display a work so long as you name the original author. Share-alike lets you make derivative works so long as you use the same license for your re-mix. A work in the public domain is no longer under copyright, so you can use as much as you want in any way you like.

I'd like to let other people copy from my blog. Can I license it?

Sure. The Creative Commons licenses provide several copy and share licenses complete with legal code, computer code, and a human-readable declaration and graphic to let others know that they're invited to copy and share. You can choose whether to require attribution, permit commercial use, or allow modifications. If someone wants to do more than is permitted by fair use or the terms of your license, they can still contact you for permission. See Creative Common's licensing page for more information, or generate your own license.

If a reader comments on my blog, does she license the rights to me?

When a person enters comments on a blog for the purpose of public display, he is probably giving an implied license at least for that display and the incidental copying that goes along with it. If you want to make things clearer, you can add a Creative Commons license to your blog's comment post page and a statement that by posting comments, writers agree to license them under it.

Can I "deep link" to someone else's website or blog post?

Yes. Most people are happy to have other websites link to them. Indeed, "permalinks" for each blog post, to which others can link directly, are one of the features that have helped blogs and blog conversations take off. But some website owners complain that deep links — links that lead readers to an internal page on a website — "steal" traffic to the homepage or disrupt the intended flow of their websites. For example, Ticketmaster has argued that other sites should not be permitted to send browsers directly to Ticketmaster event listings. Ticketmaster settled a claim against Microsoft and lost a suit it had brought against Tickets.com over deep linking. See Ticketmaster v. Tickets.com. So far, the courts have found that deep links to web pages are neither copyright infringement nor trespass. No court has enforced a website's terms of use that bar deep linking.

When can I borrow someone's images for my blog post?

Images are subject to the same copyright and fair use laws as written materials, so here too you'll want to think about the fair use factors that might apply. Is the image used in a transformative way? Are you taking only what's necessary to convey your point? A thumbnail (reduced-size) image, or a portion of a larger image is more likely to be fair use than taking an entire full-size image. If you want to go beyond fair use, look for Creative Commons licensed images.

I want to parody someone. Can I use some of their images and text in my parody?

Yes, parody is recognized as a type of fair use, like other commentary and criticism, and courts recognize that a parody must often take recognizable elements from the work it comments upon.

Courts do distinguish parody from satire. Parody copies from the object it mocks, while satire uses recognizable elements from the original work to mock something else or society in general. Parody gets broader fair use leeway than satire. If you want to make fun of Roy Orbison by changing "Pretty Woman" to "Big Hairy Woman," that's non-infringing parody; but if you make fun of the O.J. Simpson trial using Dr. Seuss illustrations and rhymes, that's satire and in one famous case, it was found to be infringing (Campbell v. Acuff-Rose, Dr. Seuss Enterprises, L.P. v. Penguin Books U.S.A., Inc.).

More general FAQs about copyright: http://www.chillingeffects.org/copyright/faq

Questions about the Digital Millennium Copyright Act (DMCA)

My ISP received a DMCA complaint about my weblog. What does that mean? Can I do anything about it?

The Digital Millennium Copyright Act, 17 USC § 512, creates a "safe harbor" immunity from copyright liability for service providers who "respond expeditiously" to notices claiming that they are hosting or linking to infringing material. The DMCA does not make ISPs liable if they do not remove content, but gives them a strong incentive to take the content down. That in turn gives those who want your material removed from the Net a strong incentive to make claims of copyright infringement.

If you get a DMCA takedown notice from your ISP, but you believe the material you posted does not infringe copyright, you have the option to counter-notify. An ISP can put the material back up after a counter-notification and still keep its immunity from liability. If you are harmed by an erroneous takedown demand, you can even use the DMCA's section 512(f) to sue back.

What are the rules for filing a DMCA notification?

In order to have an allegedly infringing website removed from a service provider's network, or have access to an allegedly infringing website disabled, the copyright owner must provide notice to the service provider with the following information:

- The name, address, and physical or electronic signature of the complaining party [512(c)(3)(A)(i)]
- Identification of the infringing materials and their Internet location [512(c)(3)(A)(ii-iii)], or if the service provider is an "information location tool" such as a search engine, the reference or link to the infringing materials [512(d)(3)].
- Sufficient information to identify the copyrighted works [512(c)(3)(A)(iv)].
- A statement by the copyright holder of a good faith belief that there is no legal basis for the use complained of [512(c)(3)(A)(v)].
- A statement of the accuracy of the notice and, under penalty of perjury, that the complaining party is authorized to act on the behalf of the copyright holder [512(c)(3)(A)(vi)].

A service provider is not required to respond to a DMCA notice that does not contain substantially all of these elements.

What are the counter-notice and put-back procedures?

The DMCA provides an opportunity for you to counter-notify, to tell your ISP that the material in question is not infringing. Unless the copyright claimant brings a lawsuit within 10 business days, the ISP can put back the material and still remain immune from liability. A form for creating your own counter-notification is online at http://www.chillingeffects.org/dmca/counter512.pdf

A proper counter-notice must contain the following information:

- The subscriber's name, address, phone number, and physical or electronic signature [512(g)(3)(A)]
- Identification of the material and its location before removal [512(g)(3)(B)]
- A statement under penalty of perjury that the material was removed by mistake or misidentification [512(g)(3)(C)]
- Subscriber consent to local federal court jurisdiction, or if overseas, to an appropriate judicial body. [512(g)(3)(D)]

Can I sue if my site is wrongly taken down?

Yes. Section 512(f) of the DMCA creates liability for "Any person who knowingly materially misrepresents under this section (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification." If you were harmed by an improper takedown, you may be able to sue the person or company who sent the takedown demand for DMCA misuse under Section 512(f), and recover damages and your attorneys' fees. See EFF case Online Policy Group v. Diebold.

When can I claim the safe harbor for comments others post to my blog?

If you're concerned that people might post copyrighted material to your blog, you might want to be able to use the DMCA safe harbor yourself. You too can be a "provider of online services" — all you need to do is designate an agent for notification with the Copyright Office. The safe-harbor provision requires that providers have a policy against repeat copyright infringement by their "subscribers and account holders." If you have no subscribers or account holders, that policy can be as simple as "If we become aware that one of our users is a repeat copyright infringer, it is our policy to take reasonable steps within our power to terminate them."

I'm a music blogger, and I'm concerned that my blog will be taken offline by bogus DMCA

notices. What extra steps can I take to protect myself?

Bloggers who write about music regularly and include links to music in their posts should read Practical Advice for Music Bloggers Worried About DMCA Takedown Censorship.

More information on the DMCA safe harbors: http://www.chillingeffects.org/dmca512/faq

Questions About Trademark

I want to complain about a company. Can I use their name and logo?

Yes. While trademark law prevents you from using someone else's trademark to sell your competing products (you can't make and sell your own "Rolex" watches or name your blog "Newsweek"), it doesn't stop you from using the trademark to refer to the trademark owner or its products (offering repair services for Rolex watches or criticizing Newsweek's editorial decisions). That kind of use, known as "nominative fair use," is permitted if using the trademark is necessary to identify the products, services, or company you're talking about, and you don't use the mark to suggest the company endorses you. In general, this means you can use the company name in your review so people know which company or product you're complaining about. You can even use the trademark in a domain name (like walmartsucks.com), so long as it's clear that you're not claiming to be or speak for the company.

Since trademark law is designed to protect against consumer confusion, non-commercial uses are even more likely to be fair. Be aware that advertising may give a "commercial" character to your site, and some courts have even gone so far as to say that links to commercial sites makes a site commercial. (See PETA v. Doughney)

Can I use a trademark in my blog's name or in the title of a blog post?

Yes, if it is relevant to the subject of your discussion and does not confuse people into thinking the trademark holder endorses your content. Courts have found that non-misleading use of trademarks in URLs and domain names of critical websites is fair. (Bally Total Fitness Holding Corp. v. Faber, URL http://www.compupix.com/ballysucks; Bosley Medical Institute v. Kremer, domain name www.bosleymedical.com). Companies can get particularly annoyed about these uses because they may make your post appear in search results relating to the company, but that doesn't give them a right to stop you.

Sometimes, you might use a trademark without even knowing someone claims it as a trademark. That is permitted as long as you're not making commercial use in the same category of goods or services for which the trademark applies. Anyone can sell diesel fuel even though one company has trademarked DIESEL for jeans. Only holders of "famous" trademarks, like CocaCola, can stop use in all categories, but even they can't block non-commercial uses of their marks.

More information on trademark:http://www.chillingeffects.org/trademark/faq

Questions About the Right of Publicity

What is a right of publicity claim?

The right of publicity is a claim that you have used someone's name or likeness to your commercial advantage without consent and resulting in injury. The plaintiff generally must prove that you're using their image or likeness for advertising or other solicitations. Freedom of speech rights protect your use of a public figure's name and likeness in a truthful way, but you can still be liable if a court determines that your use implied a false endorsement. Here are a few examples of cases where the right of publicity was at odds with the Constitution.

- A newspaper's 900 number survey to determine the favorite New Kid on the Block was found to be a constitutionally protected use of the band member's name
- A newspaper's sale of a poster reproduction of its front page depicting Joe Montana was determined to merit protection under the First Amendment
- A commercial featuring a robot resembling game show hostess Vanna White was found to infringe her right of publicity

Online Defamation Law

The Bloggers' FAQ on Online Defamation Law provides an overview of defamation (libel) law, including a discussion of the constitutional and statutory privileges that may protect you.

What is defamation?

Generally, defamation is a false and unprivileged statement of fact that is harmful to someone's reputation, and published "with fault," meaning as a result of negligence or malice. State laws often define defamation in specific ways. Libel is a written defamation; slander is a spoken defamation.

What are the elements of a defamation claim?

The elements that must be proved to establish defamation are:

1. a publication to one other than the person defamed;
2. a false statement of fact;
3. that is understood as
    - a. being of and concerning the plaintiff; and
    - b. tending to harm the reputation of plaintiff.
4. If the plaintiff is a public figure, he or she must also prove actual malice.

Is truth a defense to defamation claims?

Yes. Truth is an absolute defense to a defamation claim. But keep in mind that the truth may be difficult and expensive to prove.

Can my opinion be defamatory?

No—but merely labeling a statement as your "opinion" does not make it so. Courts look at whether a reasonable reader or listener could understand the statement as asserting a statement of verifiable fact. (A verifiable fact is one capable of being proven true or false.) This is determined in light of the context of the statement. A few courts have said that statements made in the context of an Internet bulletin board or chat room are highly likely to be opinions or hyperbole, but they do look at the remark in context to see if it's likely to be seen as a true, even if controversial, opinion ("I really hate George Lucas' new movie") rather than an assertion of fact dressed up as an opinion ("It's my opinion that Trinity is the hacker who broke into the IRS database").

What is a statement of verifiable fact?

A statement of verifiable fact is a statement that conveys a provably false factual assertion, such as someone has committed murder or has cheated on his spouse. To illustrate this point, consider the following excerpt from a court (Vogel v. Felice) considering the alleged defamatory statement that plaintiffs were the top-ranking 'Dumb Asses' on defendant's list of "Top Ten Dumb Asses":

A statement that the plaintiff is a "Dumb Ass," even first among "Dumb Asses," communicates no factual proposition susceptible of proof or refutation. It is true that "dumb" by itself can convey the relatively concrete meaning "lacking in intelligence." Even so, depending on context, it may convey a lack less of objectively assayable mental function than of such imponderable and debatable virtues as

judgment or wisdom. Here defendant did not use "dumb" in isolation, but as part of the idiomatic phrase, "dumb ass." When applied to a whole human being, the term "ass" is a general expression of contempt essentially devoid of factual content. Adding the word "dumb" merely converts "contemptible person" to "contemptible fool." Plaintiffs were justifiably insulted by this epithet, but they failed entirely to show how it could be found to convey a provable factual proposition. ... If the meaning conveyed cannot by its nature be proved false, it cannot support a libel claim.

This California case also rejected a claim that the defendant linked the plaintiffs' names to certain web addresses with objectionable addresses (i.e. www.satan.com), noting "merely linking a plaintiff's name to the word "satan" conveys nothing more than the author's opinion that there is something devilish or evil about the plaintiff."

Is there a difference between reporting on public and private figures?

Yes. A private figure claiming defamation—your neighbor, your roommate, the guy who walks his dog by your favorite coffee shop—only has to prove you acted negligently, which is to say that a "reasonable person" would not have published the defamatory statement.

A public figure must show "actual malice"—that you published with either knowledge of falsity or in reckless disregard for the truth. This is a difficult standard for a plaintiff to meet.

Who is a public figure?

A public figure is someone who has actively sought, in a given matter of public interest, to influence the resolution of the matter. In addition to the obvious public figures—a government employee, a senator, a presidential candidate—someone may be a limited-purpose public figure. A limited-purpose public figure is one who (a) voluntarily participates in a discussion about a public controversy, and (b) has access to the media to get his or her own view across. One can also be an involuntary limited-purpose public figure—for example, an air traffic controller on duty at time of fatal crash was held to be an involuntary, limited-purpose public figure, due to his role in a major public occurrence.

Examples of public figures:

- A former city attorney and an attorney for a corporation organized to recall members of city counsel
- A psychologist who conducted "nude marathon" group therapy
- A land developer seeking public approval for housing near a toxic chemical plant
- Members of an activist group who spoke with reporters at public events

Corporations are not always public figures. They are judged by the same standards as individuals.

What are the rules about reporting on a public proceeding?

In some states, there are legal privileges protecting fair comments about public proceedings. For example, in California you have a right to make "a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued." This provision has been applied to posting on an online message board, Colt v. Freedom Communications, Inc., and would likely also be applied to blogs. The California privilege also extends to fair and true reports of public meetings, if the publication of the matter complained of was for the public benefit.

What is a "fair and true report"?

A report is "fair and true" if it captures the substance, gist, or sting of the proceeding. The report need not track verbatim the underlying proceeding, but should not deviate so far as to produce a different effect on the reader.

What if I want to report on a public controversy?

Many jurisdictions recognize a "neutral reportage" privilege, which protects "accurate and disinterested reporting" about potentially libelous accusations arising in public controversies. As one court put it, "The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them."

If I write something defamatory, will a retraction help?

Some jurisdictions have retraction statutes that provide protection from defamation lawsuits if the publisher retracts the allegedly defamatory statement. For example, in California, a plaintiff who fails to demand a retraction of a statement made in a newspaper or radio or television broadcast, or who demands and receives a retraction, is limited to getting "special damages"—the specific monetary losses caused by the libelous speech. While few courts have addressed retraction statutes with regard to online publications, a Georgia court denied punitive damages based on the plaintiff's failure to request a retraction for something posted on an Internet bulletin board. (See Mathis v. Cannon)

If you get a reasonable retraction request, it may help you to comply. The retraction must be "substantially as conspicuous" as the original alleged defamation.

What if I change the person's name?

To state a defamation claim, the person claiming defamation need not be mentioned by name—the plaintiff only needs to be reasonably identifiable. So if you defame the "government executive who makes his home at 1600 Pennsylvania Avenue," it is still reasonably identifiable as the president.

Do blogs have the same constitutional protections as mainstream media?

Yes. The US Supreme Court has said that "in the context of defamation law, the rights of the institutional media are no greater and no less than those enjoyed by other individuals and organizations engaged in the same activities."

What if I republish another person's statement? (i.e. someone comments on your posts)

Generally, anyone who repeats someone else's statements is just as responsible for their defamatory content as the original speaker—if they knew, or had reason to know, of the defamation. Recognizing the difficulty this would pose in the online world, Congress enacted Section 230 of the Communications Decency Act, which provides a strong protection against liability for Internet "intermediaries" who provide or republish speech by others. See the Section 230 FAQ for more.

The vast weight of authority has held that Section 230 precludes liability for an intermediary's distribution of defamation. While one California court had held that the federal law does not apply to an online distributor's liability in a defamation case, the case, Barrett v. Rosenthal, was overturned by the California Supreme Court (EFF filed an amicus brief in this case)

Can I get insurance to cover defamation claims?

Yes. Many insurance companies are now offering media liability insurance policies designed to cover online libel claims. However, the costs could be steep for small blogs—The minimum annual premium is generally $2,500 for a $1 million limit, with a minimum deductible of $5,000. In addition, the insurer will conduct a review of the publisher, and may insist upon certain standards and qualifications (i.e. procedures to screen inflammatory/offensive content, procedures to "take down" content after complaint). The Online Journalism Review has an extensive guide to libel insurance for online publishers.

Will my homeowner's or renter's insurance policy cover libel lawsuits?

Maybe. Eugene Volokh's the Volokh Conspiracy notes that homeowner's insurance policies, and possibly also some renter's or umbrella insurance policies, generally cover libel lawsuits, though they usually exclude punitive damages and liability related to "business pursuits." (This would generally exclude blogs with any advertising). You should read your insurance policy carefully to see what coverage it may provide.

What's the statute of limitation on libel?

Most states have a statute of limitations on libel claims, after which point the plaintiff cannot sue over the statement. For example, in California, the one-year statute of limitations starts when the statement is first published to the public. In certain circumstances, such as when the defendant cannot be identified, a plaintiff can have more time to file a claim. Most courts have rejected claims that publishing online amounts to "continuous" publication, and start the statute of limitations ticking when the claimed defamation was first published.

What are some examples of libelous and non-libelous statements?

The following are a couple of examples from California cases; note the law may vary from state to state. Libelous (when false):

- Charging someone with being a communist (in 1959)
- Calling an attorney a "crook"
- Describing a woman as a call girl
- Accusing a minister of unethical conduct
- Accusing a father of violating the confidence of son

Not-libelous:

- Calling a political foe a "thief" and "liar" in chance encounter (because hyperbole in context)
- Calling a TV show participant a "local loser," "chicken butt" and "big skank"
- Calling someone a "bitch" or a "son of a bitch"
- Changing product code name from "Carl Sagan" to "Butt Head Astronomer"

Since libel is considered in context, do not take these examples to be a hard and fast rule about particular phrases. Generally, the non-libelous examples are hyperbole or opinion, while the libelous statements are stating a defamatory fact.

How do courts look at the context of a statement?

For a blog, a court would likely start with the general tenor, setting, and format of the blog, as well as the context of the links through which the user accessed the particular entry. Next the court would look at the specific context and content of the blog entry, analyzing the extent of figurative or hyperbolic language used and the reasonable expectations of the blog's audience.

Context is critical. For example, it was not libel for ESPN to caption a photo "Evel Knievel proves you're never too old to be a pimp," since it was (in context) "not intended as a criminal accusation, nor was it reasonably susceptible to such a literal interpretation. Ironically, it was most likely intended as a compliment." However, it would be defamatory to falsely assert "our dad's a pimp" or to accuse your dad of "dabbling in the pimptorial arts." (Real case, but the defendant sons succeeded in a truth defense).

What is "Libel Per Se"?

When libel is clear on its face, without the need for any explanatory matter, it is called libel per se. The following are often found to be libelous per se:

A statement that falsely:

- Charges any person with crime, or with having been indicted, convicted, or punished for crime;
- Imputes in him the present existence of an infectious, contagious, or loathsome disease;
- Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects that the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
- Imputes to him impotence or a want of chastity.

Of course, context can still matter. If you respond to a post you don't like by beginning "Jane, you ignorant slut," it may imply a want of chastity on Jane's part. But you have a good chance of convincing a court this was mere hyperbole and pop cultural reference, not a false statement of fact.

What is a "false light" claim?

Some states allow people to sue for damages that arise when others place them in a false light. Information presented in a "false light" is portrayed as factual, but creates a false impression about the plaintiff (i.e., a photograph of plaintiffs in an article about sexual abuse, because it creates the impression that the depicted persons are victims of sexual abuse). False light claims are subject to the constitutional protections discussed above.

What is trade libel?

Trade libel is defamation against the goods or services of a company or business. For example, saying that you found a severed finger in you're a particular company's chili (if it isn't true).

Section 230 Protections

The Bloggers' FAQ on Section 230 Protections discusses a powerful federal law that gives you, as a web host, protection against legal claims arising from hosting information written by third parties.

What is this "Section 230" thing anyway?

Section 230 refers to Section 230 of Title 47 of the United States Code (47 USC § 230). It was passed as part of the much-maligned Communication Decency Act of 1996. Many aspects of the CDA were unconstitutional restrictions of freedom of speech (and, with EFF's help, struck down by the Supreme Court), but this section survived and has been a valuable defense for Internet intermediaries ever since.

What protection does Section 230 provide?

Section 230 says that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This federal law preempts any state laws to the contrary: "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." The courts have repeatedly rejected attempts to limit the reach of Section 230 to "traditional" Internet service providers, instead treating many diverse entities as "interactive computer service providers."

How does Section 230 apply to bloggers?

Bloggers can be both a provider and a user of interactive computer services. Bloggers are users when they create and edit blogs through a service provider, and they are providers to the extent that they allow third parties to add comments or other material to their blogs.

Your readers' comments, entries written by guest bloggers, tips sent by email, and information provided to you through an RSS feed would all likely be considered information provided by another content provider. This would mean that you would not be held liable for defamatory statements

contained in it. However, if you selected the third-party information yourself, no court has ruled whether this information would be considered "provided" to you. One court has limited Section 230 immunity to situations in which the originator "furnished it to the provider or user under circumstances in which a reasonable person...would conclude that the information was provided for publication on the Internet...."

So if you are actively going out and gathering data on your own, then republishing it on your blog, we cannot guarantee that Section 230 would shield you from liability. But we believe that Section 230 should cover information a blogger has selected from other blogs or elsewhere on the Internet, since the originator provided the information for publication to the world. However, no court has ruled on this.

Do I lose Section 230 immunity if I edit the content?

Courts have held that Section 230 prevents you from being held liable even if you exercise the usual prerogative of publishers to edit the material you publish. You may also delete entire posts. However, you may still be held responsible for information you provide in commentary or through editing. For example, if you edit the statement, "Fred is not a criminal" to remove the word "not," a court might find that you have sufficiently contributed to the content to take it as your own. Likewise, if you link to an article, but provide a defamatory comment with the link, you may not qualify for the immunity.

The courts have not clarified the line between acceptable editing and the point at which you become the "information content provider." To the extent that your edits or comment change the meaning of the information, and the new meaning is defamatory, you may lose the protection of Section 230.

Is Section 230 limited to defamation?

No. It has been used to protect intermediaries against claims of negligent misrepresentation, interference with business expectancy, breach of contract, intentional nuisance, violations of federal civil rights, and emotional distress. It protected against a state cause of action for violating a statute that forbids dealers in autographed sports items from misrepresenting those items as authentically autographed. It extends to unfair competition laws. It protected a library from being held liable for misuse of public funds, nuisance, and premises liability for providing computers allowing access to pornography.

Wow, is there anything Section 230 can't do?

Yes. It does not apply to federal criminal law, intellectual property law, and electronic communications privacy law.

What are some key Section 230 cases?

EFF has an archive of some of the key cases addressing Section 230.

Do blog or online forum operators have a legal obligation to post acceptable use guidelines for commenters?

No. Courts have held that Section 230 allows, but does not require, hosts to establish (and implement) standards of acceptable use without risking liability for doing so. But posting guidelines is still a good idea, since people will often appreciate some guidance of what is or is not acceptable.

Are blog or online forum operators legally obliged to hold to their policies?

Probably not. Most acceptable use policies give the host wide latitude over what editorial actions they take and are not presented in the form of a binding contract.

Can my commenters sue me for editing or deleting their comments on my blog?

Generally no, if you are not the government. Section 230 protect a blog host from liability for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.” This would include editing or deleting posts you consider objectionable, even if those posts would be protected by the First Amendment against *government* censorship.

Sweet, I can edit the comments on my blog to change the meaning and make commenters I don’t like seem like crazed defamers.

Not so fast. As noted above, Section 230 protects actions taken in good faith, and you may be liable for new information you create. The ability to edit comments is strongly protected, but you should not abuse that power.

Privacy

The Bloggers' FAQ on Privacy addresses the legal issues surrounding the privacy rights of people you blog about.

What are private facts?

Private facts are personal details about someone that have not been disclosed to the public. A person's sexual orientation, a sex-change operation, and a private romantic encounter could all be private facts. Once publicly disclosed by that person, however, they move into the public domain.

Can I be sued for publishing somebody else's private facts?

Some jurisdictions allow lawsuits for the publication of private facts. In California, for example, the elements are (1) public disclosure; (2) of a private fact; (3) that is offensive to a reasonable person; and (4) which is not a legitimate matter of public concern. Publication on a blog would generally be considered public disclosure. However, if a private fact is deemed "newsworthy," it may be legal to print it even if it might be considered "offensive to a reasonable person."

What is offensive to a reasonable person?

To state a claim, the plaintiff must show that the matter made public was one that would be offensive and objectionable to a reasonable person of ordinary sensibilities. For example, disclosing that the plaintiff returned $240,000 he found on the street was held not to be offensive, but the publication of an "upskirt" photo would likely be found to be offensive to a reasonable person.

How do I know if a private fact is "newsworthy"?

A private fact is newsworthy if some reasonable members of the community could entertain a legitimate interest in it. Courts generally recognize that the public has a legitimate interest in almost all recent events, even if it involves private information about participants, as well as a legitimate interest in the private lives of prominent or notorious figures (such as actors, actresses, professional athletes, public officers, noted inventors, or war heroes). Newsworthiness is not limited to reports of current events, but extends to articles for the purposes of education, amusement, or enlightenment. However, a court may look at whether the private fact is pertinent to an otherwise newsworthy story.

What is "intrusion into seclusion"?

Intrusion into seclusion occurs when you intrude upon the solitude or seclusion of another person or his private affairs or concerns, if the intrusion would be highly offensive to a reasonable person. It generally comes up in the context of paparazzi photographing celebrities, but covers any reasonable expectation of privacy that is intruded upon. If the person intruded upon gave you consent to do it —

i.e., gave you permission to take his picture or write about him —then you have a defense against this claim.

Interception of an electronic communication (i.e., an email or IM chat) can raise additional legal issues, such as federal wiretap laws.

Bloggers As Journalists

Reporters' Privilege

The Bloggers' FAQ on the Reporter's Privilege is useful to bloggers who report news gathered from confidential sources.

Are bloggers journalists?

Sometimes. While this question is often asked in the mainstream media and on blogs, it does not frame the debate very well. You can use blogging software for journalism, and many bloggers do. But you can also use blogging software for other purposes. What makes a journalist a journalist is whether she is gathering news for dissemination to the public, not the method or medium she uses to publish. So the better way to frame the debate is: Can journalists blog?

Can journalists blog?

Of course! If you are engaged in journalism, your chosen medium of expression should not make a difference. The freedom of the press applies to every sort of publication that affords a vehicle of information and opinion, whether online or offline.

Why do we care whether someone is a "journalist"?

Some states have laws that specifically protect the speech and privacy rights of journalists. These can include reporter's shield laws and retraction statutes, fee waivers for Freedom on Information Act requests, even campaign finance laws.

What is the constitutional reporter's privilege?

Almost all the federal and state courts have found that state and federal constitutions provide a qualified privilege to allow journalists to keep private the names of their confidential sources and the unpublished information provided by the sources. This protects the anonymity of news sources and thus helps encourage the free flow of information.

How is the constitutional reporter's privilege qualified?

Courts have set forth a multi-factor balancing test for deciding the applicability of the constitutional reporter's privilege. Generally, the subpoenaing party must show that the material is unavailable despite exhaustion of all reasonable alternative sources, that there is a compelling and overriding interest in obtaining the information, and that it is clearly relevant to an important issue in the case. In the ordinary civil case, the privilege will prevent discovery.

Some courts have placed more severe restrictions on this First Amendment right in certain circumstances, such as criminal cases. The Reporter's Committee for Freedom of the Press has an excellent compendium of the reporter's privilege laws in every jurisdiction.

How do courts determine whether the constitutional reporter's privilege applies?

Courts use a test to determine whether someone invoking the reporter's privilege has the right to do it. A test used by many federal courts is whether that person intended to disseminate information to the public, and whether that intent existed at the inception of the newsgathering process (where "newsgathering process" can mean seeking, collecting, or receiving information from a source). Under this test, courts have provided the privilege to non-traditional journalists, including book authors and documentary filmmakers.

What is a state reporter's shield law?

More than 30 states have elected to provide protection for journalists over and above the protection afforded by the constitutional reporter's privilege. For example, through an initiative the people of California included a reporter's shield in the California Constitution. This shield provides "absolute protection to nonparty journalists in civil litigation from being compelled to disclose unpublished information." It may be "overcome only by a countervailing federal constitutional right." The California reporter's shield protects all persons "connected with...a newspaper, magazines, or other periodical publication," without limitation.

Is protecting journalists' sources important to the freedom of the press?

Yes. As the California Supreme Court acknowledged, "The press' function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired. Compelling a reporter to disclose the identity of a source may significantly interfere with this news gathering ability; journalists frequently depend on informants to gather news, and confidentiality is often essential to establishing a relationship with an informant." (Mitchell v. Superior Court)

Where can I get more information on the reporter's privilege in my states?

The Reporter's Committee for Freedom of the Press has an excellent compendium of the reporter's privilege laws in every jurisdiction.

Media Access

The Bloggers' FAQ on Media Access can help bloggers who need to get access to public records and government meetings, as well as secure press passes to help with newsgathering.

Does the First Amendment provide a right to gather news?

Yes. Because the right to publish news necessarily depends on the ability to gather information, restrictions on your right to gather news raise First Amendment concerns. However, some courts have found that news media have no constitutional right of access to places where the general public is excluded. If a government official denies you access to a public place (such as a city street, a public park, the county courthouse, or a jail), contact an attorney — you may have a claim against the government.

Can bloggers get press passes?

Yes. Some government agencies have established procedures for obtaining press credentials (a means of identifying yourself as a journalist). Government agencies are prohibited from deciding arbitrarily whether you are entitled to a press credential, and are required to publish the standards used. See, e.g. the State Department Press Credential Standards. For example, a federal court determined that Consumer Reports was unconstitutionally denied access to the Congressional press gallery based on "arbitrary and unnecessary regulations with a view to excluding from news sources representatives of publications whose ownership or ideas they consider objectionable."

An online journalist seeking access to the Congressional press gallery was initially denied access because he was not a full-time journalist, and not working on salary for a for-profit organization.

However, the Periodical Correspondents' Association, which determines access, subsequently adopted broader regulations that allowed for online journalists.

Can bloggers get access to courts for newsgathering?

Yes. Most states allow public access to courts, allowing the press (whether or not they're writing for an online publication) the same right of access as the public. For more information, see the First Amendment Project's guide to court access. Some courts provide their own guides: for example, see the US Federal Court's Guide for Journalists and California Courts' Online Press Center.

Can bloggers get access to public meetings for newsgathering?

Yes. Many states generally require meetings of public bodies to be open and public. This includes meetings by county and city agencies, school districts, agency boards, commissions, committees, and the like. Under limited circumstances, the agency can conduct a closed meeting (such as for addressing certain personnel issues). For more information, see the RCFP's compendium of state-by-state open meetings laws.

Can bloggers get access to public records?

Yes. Through the Freedom of Information Act (FOIA), anyone can seek access to public records held by federal agencies. Members of the news media are entitled to a fee waiver. The definition of news media has been interpreted broadly, and we believe that a blogger who is gathering news for a public blog should qualify. For more information, see the Bloggers' FAQ on the Freedom of Information Act.

States also have public records laws. For example, the California Public Records Act provides access to public records held by state and local agencies. For more information, see the First Amendment Project's Guide to the California Public Records Act.

I'm a podcaster — can I record my interviews?

Yes — but you may need to get consent from the people you interview. Many states require all parties to consent for recording audio. Some states also prohibit hidden cameras. See the RCFP's Tape-Recording Laws at a Glance.

FOIA

What is the Freedom of Information Act?

The Freedom of Information Act (FOIA) is a federal law that gives people the right to request information kept by federal government agencies.

The law also requires agencies to make certain information automatically available to the public in online "reading rooms." This includes regulations, general policy statements, staff instructions, final opinions, and other records that affect members of the public. Furthermore, the FOIA says that information that is or is likely to be frequently requested should be automatically published on the Internet. You can check an office's reading room, which should be accessible from the office's website, to see if the records you are seeking are available online. The U.S. Department of Justice maintains a list of links to federal offices' reading rooms.

You can read the text of the FOIA here.

Who can make requests under the FOIA?

Anyone.

Does the entire federal government have to turn over information under the FOIA?

No. The law applies only to federal agencies, departments, regulatory commissions, federal corporations and other executive branch offices, as well as private contractors maintaining records on behalf of these entities. The President, Congress, federal courts, and private companies are generally not subject to FOIA, though some White House offices are covered by the law. If you're still unsure whether a government office is covered by the FOIA, check the web site of that office. The U.S. Department of Justice maintains a list of links to covered offices, though it may not be comprehensive.

Does FOIA cover state and local governments?

State and local governments are not subject to the FOIA. However, all 50 states and Washington, D.C. have enacted open records laws similar to the FOIA. A comprehensive breakdown of state FOI laws is available in the Reporters Committee for Freedom of the Press Open Government Guide. For more information, visit the individual state or local government's web site.

What kind of information can I get through the FOIA?

The FOIA says that any agency records must be turned over to a requester unless they fall within one of several narrow categories of information that don't have to be disclosed.

These categories include:

- classified information that would damage national security
- internal information involving personnel rules and agency practices
- material specifically shielded from disclosure by another law
- confidential commercial or financial data, like trade secrets
- records that would be privileged in litigation
- information that would invade someone's privacy
- law enforcement records
- information related to government regulation of financial institutions
- certain geological/geographical data

Can I get electronic records through the FOIA?

Yes. You can get many different types of records in response to a FOIA request, including documents, emails, photographs, and sound or visual recordings.

How do I know what to ask for?

News articles, government reports, press releases, and Congressional hearings are good starting points for thinking up FOIA request ideas.

For example, EFF successfully used FOIA to obtain records showing that U.S. Attorney General Alberto Gonzales had been aware of chronic problems with the FBI's use of National Security Letters (NSLs) to collect Americans' personal information before he testified that "[t]here has not been one verified case of civil liberties abuse" as a result of the Patriot Act. The records were the products of an EFF request for documents relating to a Justice Department report on the FBI's use of NSLs. When the FBI did not comply with the request, EFF sued under FOIA, prompting the judge to order the FBI to turn over the records.

How do I make a FOIA request?

You can make a FOIA request by mailing or faxing a letter to the agency. You may also be able to submit your request by email. Check the agency's web site for information about how and where to send requests.

Your FOIA request should include:

- Your name and contact information, including both your preferred method of contact and your preferred records medium (*i.e.*, paper through standard mail, electronic files via email, electronic files via CD, etc.).
- A description of the record(s) you are seeking. The only requirement is that you "reasonably describe" the records. Basically, this means that you must give enough information that a record-keeper would be able to find the records without an undue amount of searching.
- The maximum records/reproduction fee you are willing to pay. You should indicate that you want to be contacted beforehand if the fees are going to exceed this amount.

Are there any step-by-step guides for writing and submitting FOIA requests?

Yes. Reporters Committee for Freedom of the Press has published a guide called How To Use the Federal FOI Act, and also has a FOI Letter Generator. The National Security Archive also has helpful guidance for FOIA requesters.

Can I ask for government records about myself under the FOIA?

Yes. You can also ask for this kind of information under the Privacy Act of 1974 if you are an American citizen or permanent legal resident.

How much does it cost to make a FOIA request?

It depends. The law allows agencies to charge fees to search for, review and duplicate records for commercial requesters. Other requesters may be required to pay some, but not all, of these fees. Requesters from media, educational, non-commercial or scientific entities have special fee status — they don't have to pay search or review fees, but may have to pay some duplication fees. However, a requester who can show that the disclosure she seeks is in the public interest may pay reduced or no duplication fees.

How long does it take to get information through the FOIA?

It depends on the agency and request. The FOIA generally requires that agencies grant or deny requests within 20 working days. Unfortunately, many agencies don't act on requests within the time required by the law, so it may take much longer to get the records. To get a sense of what an agency's response time might be, take a look at the annual FOIA report on its web site.

Congress recently made an effort to fix this problem by declaring that agencies won't be able to charge search or duplication fees when they fail to comply with the FOIA's time limits for no good reason. These penalties won't take effect until December 31, 2008, though, so it remains to be seen how they will affect processing times for FOIA requests.

To get a sense of what a particular agency's response time has been in recent years, take a look at the annual FOIA report on the agency's web site.

Is there any way I can get the information faster?

The FOIA does allow for "expedited processing," which means an agency must move your FOIA request to the head of the line and process it "as soon as practicable." A journalist or other person who is "primarily engaged in disseminating information" may ask for expedited processing when she can show that her request involves a matter of "compelling need." A requester can also ask for expedited processing when delayed disclosure of information threatens someone's life or physical safety.

Requesters should check the agency's regulations to see if it has any other basis for granting expedited processing. The Department of Justice, for example, also provides for expedited processing if a person will lose substantial due process rights if the records are not processed quickly, or when

the request involves "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

I'm a blogger who is also a journalist. Do I get special treatment under the FOIA?

Yes. If you are a representative of the news media, you are entitled not to be charged fees for the agency's search or review of records. You may also qualify to have your request processed faster than it otherwise would be if you can show that there's an "urgency to inform the public" about the information you've requested.

What if I'm a blogger but I'm not sure if I qualify as a journalist for FOIA purposes?

The question of whether or when a blogger would qualify as a journalist for FOIA purposes based solely on his or her blog work has not yet been addressed. However, the FOIA makes it clear that alternative media and freelance journalists can qualify as representatives of the news media for fee purposes. If you plan to publish information on your blog based on the records you are seeking, you should note as much in your FOIA request and ask for a fee waiver/reduction. You may or may not succeed, but there's no harm in trying. If you are denied, you may file suit in federal court to challenge the denial.

After I've submitted my request, what if I don't hear anything from the agency?

If you don't get a response from the agency within 20 working days, you can treat it as though the agency denied your request, and you may either file an administrative appeal or seek judicial relief in court. If you file an administrative appeal and the agency doesn't respond to it within 20 working days, you again have the right to file suit.

What if the agency doesn't give me the information I asked for?

If the agency denies your request, you can appeal the decision. If your appeal is also denied, you have the right to file suit.

What if the agency denies my request for expedited processing or doesn't respond to it?

If the agency doesn't grant expedited processing, you have no obligation to appeal and may file suit immediately on the issue of your right to expedition.

If I file a lawsuit to force the agency to give me expedited processing and/or the records I requested, can I get attorneys fees?

If your lawsuit has merit and causes an agency to reverse the position it has taken on your request — even if a judge doesn't rule that the agency was wrong — you may be entitled to recover attorneys fees.

Other Legal Issues

Student Bloggers

The Bloggers' FAQ on Student Blogging addresses legal issues arising from student blogging. It focuses on blogging by high school (and middle school) students, but also contains information for college students.

Do Public School Students Have Free Speech Rights under the First Amendment?

Absolutely. Both minors and adults have First Amendment rights, and according to the Supreme

Court, public school students don't "shed their constitutional right to freedom of speech or expression at the schoolhouse gate." See *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). In the *Tinker* case, the Court said that public high school students had a First Amendment right to wear black armbands to class in symbolic protest of the Vietnam War. "Students in school as well as out of school are 'persons' under our Constitution," the Court said, and "they are possessed of fundamental rights which the State must respect..."

But I'm a Private School Student — What About Me?

You also have First Amendment rights, but those rights only protect you from **government** censorship, not private censorship. As a general matter, you will receive no protection from censorship or punishment by a private school or college. See e.g. *Ubriaco v. Albertus Magnus High School*, No. 99 Civ. 11135 (JSM) (S.D.N.Y. July 21, 2000) (dismissing claim contesting private school expulsion for content on personal web site). However, as discussed below, some states provide private high school and college students with additional speech protections that go above and beyond the First Amendment. Furthermore, if your private school has an applicable written policy, the school must follow that policy.

Also keep in mind that even though your private school may have the right to enforce a stupid rule, that doesn't make it any less stupid. So, if your private school is going overboard in trying to squelch online speech, contact EFF. Depending on the facts, we may be able to help you publicize the problem and hopefully convince your school to be more reasonable.

Can Public Schools Censor or Punish Students' On-Campus Speech?

Yes, whether you're a minor or an adult, in high school or in college. Although the *Tinker* decision recognized that students have free speech rights on campus, the court also held that your free-speech rights can be limited when the speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." This rule is referred to as *Tinker's* "material disruption" standard, or the *Tinker* test. For example, a school can "prohibit the use of vulgar and offensive terms in public discourse" while you are on campus *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986) (upholding suspension of a high-school student Matthew Fraser for a student government nomination speech "including the use of obscene, profane language or gestures.").

Can Public High School Administrators Censor What I Say in a School-Hosted Blog or Other School-Sponsored Publication?

Usually, but it depends on the facts. In *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988), the Supreme Court distinguished a school-sponsored newspaper from the armbands permitted in *Tinker* and allowed censorship that was "reasonably related to legitimate pedagogical concerns." This rule is referred to as the *Hazelwood* standard or the *Hazelwood* test. The *Hazelwood* standard applies to censorship of "school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." "Imprimatur of the school" refers to activities that appear to be sponsored or endorsed by the school.

The *Hazelwood* standard is less protective of your rights than the *Tinker* test. However, there is one bright spot: the *Hazelwood* standard does not apply to publications that have been opened as "public forums for student expression," even if those publications are school-sponsored. (See next question for whether a publication is a "public forum").

Is My School-Hosted Blog a Public Forum?

A public forum is one where the student bloggers, not school administrators, have the authority to determine the content. Whether a school-hosted blog would be considered a public forum, and therefore not subject to Hazelwood censorship, is determined on a case-by-case basis, looking at the school's

policies and statements. If your school has an Internet Policy or Terms of Use for its site-hosting services, look it over carefully to see if the school has a right to edit or censor content.

Can Public College Administrators Censor My School-Hosted Blog?

Probably not, unless justified under *Tinker's* "material disruption" test as described above. Courts have generally found that the protective *Hazelwood* standard (that allows school censorship) only applies to high schools, and censorship of a student's publication by a public college or university would amount to an unconstitutional prior restraint. See e.g. *Student Gov't Ass'n v. Univ. of Mass.*, 868 F.2d 473 (1st Cir. 1989) and *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001). Addressing the First Amendment rights of public college students, one federal Fourth Circuit Court of Appeals explained:

> It may well be that a college need not establish a campus newspaper, or, if a paper has been established, the college may permanently discontinue publication for reasons wholly unrelated to the First Amendment. But if a college has a student newspaper, its publication cannot be suppressed because college officials dislike its editorial comment.

Joyner v. Whiting, 477 F.2d 456, 460 (4th Cir. 1973). In some states, as discussed below, state laws extend this protection to private colleges.

However, in *Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005), by a vote of seven to four, the *en banc* federal Seventh Circuit Court of Appeal held that "*Hazelwood's* framework applies to subsidized student newspapers at colleges as well as elementary and secondary schools," unless the student publication is a "public forum." While the court thought the student publication at issue may very well have been a public forum, it did not decide that issue. The students have filed a petition asking the U.S. Supreme Court to overturn this misguided decision. See also FIRE's policy statement on the *Hosty* decision. The Seventh Circuit decision applies to federal courts in Illinois, Indiana and Wisconsin.

But Wait, These Cases Are About Student Newspapers, Not Blogs!

Yes. In the U.S. legal system, it generally takes a while for the courts to reach decisions that clarify how the law will be applied to new technologies or mediums of expression, like blogs. However, if there were a lawsuit, your attorney could argue by analogy, showing the court how blogging is similar to traditional media, and should have the same protections.

Do I Have More Protections for a Personal Blog?

Yes. In *Emmett v. Kent School District*, 92 F. Supp.2d 1088 (W.D. Wash. 2000), the court held that public school officials had violated a student's First Amendment rights by punishing the student for his personal website, the "Unofficial Kentlake High Home Page." The court held that "[a]lthough the intended audience was undoubtedly connected to Kentlake High School, the speech was entirely outside of the school's supervision or control." Likewise, in *Flaherty v. Keystone Oaks School Dist.*, 247 F.Supp.2d 698 (W.D. Pa. 2003) a federal court found a public school's policy, which prohibited "inappropriate, harassing, offensive or abusive" behavior, was unconstitutional because "the policy could be (and is) read by school officials to cover speech that occurs off school premises and that is not related to any school activity in an arbitrary manner."

Sweet, my Personal Blog is Untouchable!

Not so fast. EFF believes that public schools have no right to punish or censor any speech activities conducted outside of the school gates, and the Supreme Court has yet to consider such off-campus censorship. However, some lower courts have applied the *Tinker* "material disruption" standard in cases concerning the personal web sites of high school and middle school students. For example, in *Beussink v. Woodland School District*, 30 F. Supp.2d 1175 (E.D. Mo. 1998), a federal court applied Tinker's "material disruption" standard when considering a student's web site that used vulgar language to criticize his public school and its teachers and administrators. Even though the site was

created on the student's own time, with his own computer and Internet connection, the court decided that the *Tinker* "material disruption" test applied since a classmate viewed the site at school. While it is unfortunate that the court applied the less protective standard, in the end the student was vindicated — since there was no material disruption, the court decided that the student's First Amendment rights were violated.

Likewise, in *J.S. ex rel H.S. v. Bethlehem Area School District*, 569 A.2d 638 (Pa. 2002), the Supreme Court of Pennsylvania held that despite the fact that the web site was not created at school, the *Tinker* test applied because the site "was aimed at a specific school and/or its personnel" and was "brought onto the school campus or accessed at school by its originator." The court proceeded to hold that the public school's punishment of a student for his off-campus web site, which included an image of a teacher's face morphing into Hitler's, an image of the same teacher with a decapitated head dripping with blood, and a request that visitors contribute $20 for a hit man, was justified under the "material disruption" standard.

Better reasoned cases have looked at whether the speech was "intentionally or knowingly communicate[d]" to the students before applying *Tinker's* "material disruption" test to speech that originated off campus. See e.g. *Porter v. Ascension Parish School Bd.*, 393 F.3d 608 (5th Cir. 2004).

Again, EFF doesn't think that a public school should be able to punish you for the contents of your personal blog. Nevertheless, these cases show that some courts may find even a blog created and hosted off campus to be subject to school restrictions.

So Can I Criticize Teachers on My Blog?

It depends on how you do it. Merely criticizing or insulting schoolteachers and administrators, even with vulgar language, likely will not amount to the "material disruption" required by the Supreme Court. See e.g. *Beidler v. North Thurston County (Wash.) Sch. Dist.*, No. 99-2-00236-6 (Thurston Cty. Super. Ct. July 18, 2000) (unpublished opinion holding the First Amendment protected a student's private web site that ridiculed a school administrator), and *Beussink v. Woodland School District*, 30 F. Supp.2d 1175 (E.D. Mo. 1998) (student's vulgar criticisms of school on his personal blog did not rise to a "material disruption.").

However, if you publish anything that might be considered a physical threat toward a student, teacher, or administrator, a court will likely find that punishment by the school is constitutional. See *J.S. ex rel H.S. v. Bethlehem Area School District*, 569 A.2d 638 (Pa. 2002) (punishment of student for publishing an image of decapitated teacher and soliciting donations for a hit man on his personal blog was justified under the "material disruption" test, even though it was intended as a joke and a law enforcement investigation concluded the student was not a threat).

Similarly, although your opinions are protected by the First Amendment, publishing defamatory content (See our Guide to learn what that is) — even jokingly — may get you in trouble at school, and maybe even get you sued. Other types of speech may also violate the law and put you within reach of the school's discipline, so read further to see what legal pitfalls you should avoid.

Can I Publish Sexual Content on My Blog?

Yes, as long as it's not obscene. However, it's important to note that obscenity law applies differently to minors and adults. In *Ginsberg v. New York*, 390 U.S. 629, the Supreme Court found a lower standard of obscenity applies when the speech is directed toward minors: speech is obscene as to minors (or "harmful to minors") if it (1) appeals to the prurient, shameful, or morbid interest of minors, (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, and (3) is utterly without redeeming social importance for minors.

To steer clear of this law, avoid posting images that most people in your community would consider to be pornographic, especially "hard-core" porn that depicts actual sexual acts. However, you do have

a clear constitutional right to post explicit sexual content that isn't just meant to be arousing, but is related to social issues like sexual health that are important to minors.

What Can I Do to Avoid Causing a "Material Disruption" at School with My Personal Blog?

Based on how the courts have applied the "material disruption" standard to off-campus web sites in the past, there are several things you can do to avoid a situation where the school might discipline you:

- Most importantly, don't post anything that someone at school is likely to take as a direct physical threat against school staff or students.
- Don't advocate for the immediate violation of any laws or school rules.
- Review the Bloggers' Legal Guide to understand your rights and make sure you aren't publishing anything illegal. Just as you have First Amendment rights like other bloggers, you're also subject to all the same legal responsibilities.
- Don't use any school resources to publish or view your blog.
- Don't encourage other students to read or post comments to your blog while at school — tell them to wait until they are off campus. If you see comments on your blog posted by other students during school hours, consider deleting them.
- Make sure it's clear to readers that the blog isn't sponsored by or affiliated with the school.
- Before you start cussing or bagging on people, take a second to cool off. Although we think you have a right to use coarse language to describe people at school, and several courts have agreed with us, it will still increase the chance that your school will try to punish you.

What if I Want to Advocate Civil Disobedience on my Blog?

If you want to, for example, call for a student walk-out or otherwise advocate for civil disobedience that might be considered a "material disruption" at school, or if you just want to be able to freely criticize teachers and students without fear of getting unjustly punished, you should blog anonymously.

Even if you're blogging anonymously, though, you still shouldn't publish anything illegal — first off, you don't want to break the law, and second, publishing illegal material will increase the chance that someone will try to subpoena your Internet Service Provider or your blog host for your real identity. If you are notified that someone is trying to subpoena your real identity and you don't have a lawyer, contact EFF — we may be able to help.

Do I have a First Amendment Right to Blog Anonymously?

Yes. You have a First Amendment right to speak anonymously (both online and elsewhere) and to protect your identity from subpoenas. EFF's How to Blog Safely (About Work or Anything Else) guide offers a few simple precautions to help you maintain control of your personal privacy so that you can express yourself without revealing your identity.

What if I Get Punished for My Personal Blog?

Contact your lawyer; if you don't have one, contact EFF and we may be able to help. Even those courts that have used the "material disruption" test when evaluating school punishments for off-campus web sites have usually found the punishments to be unconstitutional. In fact, some students who have been punished for their personal web sites have been able to get their school records cleared and obtain cash settlements from their schools in exchange for dropping or not bringing a lawsuit. For example, Oceanport School District school administrators in New Jersey punished an eighth grader for his website that was critical of the school, and ended up having to pay him $117,500 to settle his First Amendment lawsuit. Read the full story.

Most schools, when faced with the threat of a suit for a clearly unconstitutional punishment, will back down and clear your record.

Can I Republish Rumors on My Blog?

Not if it is false and will cause harm to someone's reputation. If you blog based on a rumor that the dude in the back row of chemistry class is a pothead, or that the head cheerleader has hooked up with half the football team, or that the principal is having an affair with the algebra teacher, and it ends up not being true, then you may have defamed those people. So if you're thinking about publishing a statement on your blog that might be false or cause harm to someone's reputation (or someone is claiming you have), check out The Bloggers' FAQ on Online Defamation Law.

What do I Need to Know About Intellectual Property Law?

The Bloggers' FAQ on Intellectual Property will help you understand your rights to link to information, quote from articles and blogs, or otherwise use someone else's creative works. It also addresses situations where you can use the brand name of a good or service in your blog. Here you can also learn about the right of publicity, which is relevant if you want to use someone's name or image in a commercial context.

Should I Blog About My Fellow Students' Private Lives?

Not without asking. People can get upset if you spread their secrets. Ask friends and family what types of stuff they're comfortable with you sharing on your blog. When you take pictures for your online photo album, be considerate and ask your subjects if they don't mind before you post it.

Ok, So Maybe It's Uncool, But Is It Illegal to Blog About Someone's Private Business?

Outing a friend who told you about things like a private medical condition or family problem is not only really lame, it also could violate "publication of private facts" law, which is designed to protect a person's private information even if the information is truthful. For more information, please read the Bloggers' FAQ on Privacy, which also addresses "intrusion into seclusion" law, which is designed to protect people's privacy and their interest in being left alone.

What About Blogging About My Own Private Life?

Keep in mind that whatever you post on a public blog can be seen by your friends, your enemies, your teachers, your parents, your ex, that Great Aunt who likes to pinch your cheeks like you're a baby, the admissions offices of schools and colleges to which you might apply, current and future potential employers, and anyone else with access to the Internet and a search engine. While you can change your blog post at any time, it may be archived by others.

So, before you reveal personal information online, carefully consider whether you want that to be public now and in the future. And keep in mind that although a school has little power to punish you for off-campus speech, it can still use your blog against you as evidence of other rules violations. For example, several underage college students were recently punished for violating their school's alcohol policy after they posted pictures of themselves drinking.

What Can I Do to Blog More Privately?

You can use password-protected blogs and other technologies that allow a more limited audience, such as "friends-only" posts. If you don't want to blog anonymously, consider blogging under only your first name, or for even more privacy, a pseudonym. This will make it harder for people to search on your name (depending, of course, on how rare your name is). You can also use a robots.txt file to stop search engines from indexing blog pages you don't want crawled.

What if My School Orders Students to Stop Blogging About School?

Contact a lawyer; if you don't have one, contact EFF and we may be able to help. Such a blanket ban at a public school would undoubtedly violate your First Amendment rights, while such a ban at a

private school may violate state laws protecting student speech that are described below.

Can State Law Provide Additional Student Speech Protections?

Yes. Six states (Arkansas, California, Colorado, Iowa, Kansas and Massachusetts) have laws that provide public high school students with additional protections for their publications and other speech.

In addition, California law ensures that for both public and private high schools, "a student shall have the same right to exercise his or her right to free speech on campus as he or she enjoys when off campus." See *Lovell v. Poway Unified School District*, 90 F.3d 367, 371 (9th Cir. 1996).

Moreover, California law also protects students at community colleges, public universities, and private postsecondary schools, but does not apply to religious schools "to the extent that the application of this section would not be consistent with the religious tenets of the organization."

The New Jersey, Massachusetts and Pennsylvania constitutions also have been interpreted to provide some additional protection for the free expression rights of students on private campuses.

Where Else Can I Find More Information on Student Speech Rights?

USC's Online Journalism Review has an excellent summary of cases and news reports dealing with school speech issues, the Student Press Law Center provides a wide selection of legal research memos for the student press, FIRE provides an excellent Guide to Free Speech on Campus for college students, focusing on speech codes, and the ACLU provides general information on student rights.

I Work for a Public School — What Are My Free Speech Rights?

Please see our Blogger's FAQ on Labor Law, which addresses the free speech protections for employees of government institutions.

Do Many Students Keep Blogs?

Yes. According to a November 2005 study by the Pew Internet & American Life Project, 19% of online teens keep a blog and 38% read them. This represents approximately four million students who blog and is a significantly higher percentage than the adult population (7%). Another Pew study found that 68% of all teenagers have used the Internet at school.

Election Law

The Bloggers' FAQ on Election Law addresses the legal issues regarding blogging about political campaigns.

Is it true that new rules limit how I can blog about politics?

No, but some very narrow restrictions regarding online political advertisements were recently passed. As a result of a federal district court ruling in the fall of 2004, the Federal Election Commission (FEC) was forced to reconsider how it implemented federal election laws regarding behavior on the Internet. When an FEC commissioner implied that new regulations could strongly impact the online community, bloggers took notice. After intense criticism from bloggers and First Amendment activists, the FEC in March of 2005 issued a series of relatively weak new proposed regulations that would place some limited new restrictions on blogging and other communications on the Internet. The final regulations, published in the Federal Register on April 12, 2006, were largely limited to online political advertising.

What did the FEC's (previous) 2002 regulations do?

In 2002, the FEC promulgated regulations designed to implement new provisions of the Federal

Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002. The FEC's 2002 regulations sought to shield online activities from campaign finance oversight. To that end, "public communications" and "generic campaign activity" were defined to exempt most Internet communications from coverage, as were regulations regarding coordinated activities with candidates and political parties.

What did the district court ruling on the FEC regulations do?

In Shays v. FEC, issued on September 18, 2004, the DC federal district court struck down several portions of the 2004 regulations. The court found that the exclusion of all Internet communications from "public communications" and "generic campaign activity" conflicted with the statute that cast a broader regulatory net. Similarly, the court struck down exemptions for coordinated Internet-based political activities.

What do the new FEC regulations do?

The FEC's new regulations were designed to fill the holes found by the Shays court. Primarily, the new FEC rules place restrictions on paid Internet political advertisements: paid political advertisements are now subject to campaign spending limits and other restrictions on candidates. In addition, paid political advertisements are required to carry disclaimers, informing readers that ads were paid for by a party or candidate. Other proposed regulations, such as disclosures for "political spam" and for blogging funded by federal candidates, were rejected. Bloggers wishing to promote one candidate or criticize another without compensation can continue to do so without any new restraints. Even bloggers who are paid by a candidate, party, or political action committee (PAC) to promote a candidate or cause — in non-advertisement form — are not be required to disclose this fact themselves. (The candidate or party, however, would.)

Also of interest to bloggers is the FEC's explicit extension of the "press exemption" to online activities. In the new regulations, the FEC has explicitly stated for the first time that costs incurred by online speakers in the course of covering political candidates, issues, or events do not ordinarily constitute "expenditures" or "contributions" under campaign finance rules.

Do the new proposed regulations seek to make any other changes of interest to bloggers?

Yes. The FEC is additionally seeking comments regarding the precise scope of the "press exemption," regulatory recognition that costs incurred by the news media in the course of covering political candidates, issues, or events do not constitute "expenditures" or "contributions" under campaign finance rules. The FEC is considering whether or not to amend existing regulations to specifically indicate that media activities that otherwise would be entitled to the statutory exemption are likewise exempt when they take place over the Internet.

When do these regulations go into effect?

May 12, 2006, 30 days after publication in the Federal Register.

Labor Law

The Bloggers' FAQ on Labor Law addresses legal issues arising from workplace blogging, including union organizing, protections for political blogging away from the workplace, and whistle-blogging.

If I am fired for blogging while at work, do I have any legal recourse?

Maybe. That depends on a number of factors, including whether you work for a private or government employer, whether your job is covered by a union contract or any other employment agreement, and what you were blogging about. In general, in California and most of the other states, if you work for a private employer and you have no union contract or other agreement that provides

you with additional protections, you are considered an "at will" employee and the employer may fire you for any reason that is not specifically prohibited by law. (For discussions of some reasons that are specifically prohibited by law, see below. A union contract or another employment agreement may protect you by requiring "just cause" for termination and/or by addressing electronic privacy and/or computer use issues. In some very limited circumstances, even if you don't have a written employment agreement, personnel policies or promises made to you over the course of your time on the job may establish some additional protections.

Do I have more protection if I work for the government?

Yes. If you work for any level of government (also called a "public employer"), your employer's right to fire you is also limited by the First Amendment's protection of your right to free speech. However, your free speech rights as an employee are more limited than they are as a member of the general public. If you were to challenge your termination on First Amendment grounds, courts would balance your employer's legitimate interest in delivering efficient government services against your interest as a citizen in commenting on a matter of public concern. So if you blog about something important to the public, you have greater protection. But if your blog's content could disrupt the workplace, your protection diminishes. Government employees also enjoy some legal protections against being disciplined, which vary based on the level of government you work for. In California, for example, a public employee is entitled to notice and a hearing prior to termination. See Skelly v. State Personnel Board, 15 Cal.3d 194 (1975). You may also find the Federal Employees Legal Survival Guide helpful.

What if I am fired for something I wrote in my blog when I wasn't at work?

Some states provide legal protection for activity outside the work place. For example, California Labor Code Sections 1101 and 1102 prohibit employers from interfering with their employees' political activities. If you blog about something political in California, these laws may protect you.

In addition, we believe that two relatively new provisions of the California Labor Code that address "lawful conduct during nonworking hours away from the employer's premises" could be used to protect employee bloggers. On their face, the provisions prohibit employers from disciplining employees for anything that goes on outside of work so long as it's legal (including, presumably, blogging). See Cal. Labor Code §§ 96(k); 98.6. So far, however, courts have not construed the law so broadly. Some courts and the Attorney General have ruled that these provisions merely help enforce existing rights -- such as the right to privacy -- rather than give employees any additional rights. See Grinzi v. San Diego Hospice Corp., 120 Cal.App.4th 72, 86-88 (2004); Barbee v. Household Automotive Finance Corp., 113 Cal.App.4th 525, 534-36 (2003). While the issue is not settled, these rulings suggest that Section 96(k) and 98.6 apply only if, in the course of terminating you, the employer violated some right that you have under other laws (for example, by interfering with your political activities, or libeling you).

Some states other than California (Colorado, New York, and North Dakota) have also enacted statutes that prohibit employers from terminating employees for engaging in lawful activities outside of work, including political activities. But these laws also have broader exceptions than California's and some do not apply to disciplinary actions other than firing. The District of Columbia, Connecticut, and some cities (for example, Seattle, Lansing, and Madison) also prohibit discrimination on the basis of political or expressive activity. For links to these laws and a discussion of the protections they provide, see the Workplace Fairness FAQ on Retaliation for Political Activity.

Can my employer read my blog?

If you don't restrict access to your blog with a password or other scheme, your employer probably does not violate the law by reading it. But if you restrict access and your employer reads it anyway, this may violate provisions of federal and state laws that prohibit the unauthorized interception of communications. See 18 U.S.C. §§ 2510 et seq. (Wiretap Act), 2701 et seq. (Stored Communications Act) ; Cal. Penal Code §§ 631-32. However, many of these laws exempt some employer monitoring. And some laws have been interpreted to ban only the interception of communications during

transmission – not interception of any stored communications (your posts are "stored" on a server). See, e.g., Konop v. Hawaiian Airlines, Inc., 302 F.2d 868 (9th Cir. 2002).

If, however, you use work computers to blog, your employer has a much stronger claim to being able to legally read it even if you restrict access. See below.

On the other hand, if you're blogging about something deeply personal on your restricted-access blog, you may be able to claim that your employer has violated your right to privacy by unreasonably "intruding upon your seclusion."

I have a personal blog, but I don't tell my work colleagues about it. Should I expect my employer to find it?

Yes. Search tools are becoming more and more powerful and effective. If you open your blog to the public, you should expect that anyone and everyone could find and read it. Not just your employer, but also your mother, that guy in middle school who used to steal your lunch money, potential future colleagues and employers — anyone. So if you wish to blog about controversial topics, consider blogging anonymously or restricting access to your blog.

Can my employer monitor my blog if I use work computers or the company network?

Some courts have ruled that if you are using your employer's equipment (even at home, after work hours) or computer network (even on your own personal computer), your employer's freedom to monitor your electronic communications is not limited by any reasonable expectation of privacy. See Smyth v. The Pillsbury Co., 914 F. Supp. 97 (E.D. Pa. 1996); TBG Ins. Services Corp. v. Superior Ct., 96 Cal.App.4th 443 (Cal. Ct. App. 2002). If your employer told you (perhaps in fine print when you were hired) that you could potentially be monitored, your privacy claim is even weaker. So make sure that you are not using your employer's computer or network when you engage in blogging activities that you would prefer to keep private.

Is it legal for my boss to monitor my blogging at work if I'm on a break?

The privacy protections that an employee enjoys at work are limited, especially in public areas of the workplace and while using employer equipment. (See the American Management Association (AMA) and the ePolicy Institute, 2005 Electronic Monitoring & Surveillance Survey).

However, if you are communicating with fellow employees about unionizing or another issue related to your employment, employer surveillance may violate federal labor law by having a "chilling effect" on your right to engage in protected, concerted activities. (See, e.g., NLRB v. Unbelievable, Inc., 71 F.3d 1434 (9th Cir. 1995). In NLRB v. Unbelievable, an employer who eavesdropped on employee conversations in the break room was found to have committed an unfair labor practice. So if you're blogging about unionizing during your break and your boss listens in, you could file an unfair labor practice charge with the National Labor Relations Board.

Public employees are also protected by the Fourth Amendment of the US Constitution, although whether or not your employer is permitted to monitor your communications still depends on whether a court determines that you had a "reasonable expectation of privacy."

If my co-workers and I start a blog about our workplace, are there any laws that protect us from being fired for what we say on it?

Yes. The National Labor Relations Act not only protects employees who are trying to unionize, it also any employee who "engage[s] in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. Activities are "concerted" if multiple employees are acting together, or if the activity is part of one employee's effort to instigate collective action. Activities are "for the purpose of . . . mutual aid or protection" if they relate to employees' interests as employees (in other words, wages, hours, or other terms and conditions of employment). Efforts to

change your employer's corporate disclosure policies or shareholder meeting practices, for example, would not qualify as protected under this provision.

What safeguards do I have for blogging with co-workers for mutual aid or protection?

An employer is not allowed to retaliate against employees (for example, by demoting or firing them) for engaging in concerted activities for mutual aid or protection. Thus, for example, an employer probably cannot discipline an employee for blogging about the company's inadequate pay scale with other employees, or for using a blog to urge other employees to challenge the company's vacation policy. See Timekeeping Sys., Inc., 323 NLRB 244, 247-49 (1997).

Can I be fired for using my work computer to blog about working conditions?

Not if that's the reason for terminating you. You can be fired based on a generally applicable policy, such as a rule prohibiting personal use of the employer's computer equipment. But the termination may be unlawful if the policy is being administered in a way that discriminates against protected, concerted activities (for example, if the employer has tolerated blogging about other subjects during work time, but takes action against an employee who blogs about low wages). In addition, while the issue is unsettled, a "no personal use" email policy may violate federal labor law even if applied in an even-handed manner, if it serves to restrict speech about protected, concerted activities. An employee fired for such activities can file an unfair labor practice charge with the National Labor Relations Board.

State laws provide some additional protections. For example, California law prevents employers from maintaining or enforcing rules prohibiting employees from disclosing their wages. Cal. Labor Code §232.

Are there limits to these protections for work blogging for mutual aid or protection?

Yes. For example, false or defamatory statements, statements that disclose an employer's trade secrets, and similarly unlawful statements will generally not qualify for protection. Also, independent contractors, supervisors, and other categories of employees are exempted from the National Labor Relations Act's protections. Public employees are also excluded, but many states have laws that are modeled after federal labor law and protect government employees against retaliation for protected, concerted activities.

Are there certain topics I can blog about that are protected by law, so that no employer can fire me for saying them?

Certain speech about unionization or terms and conditions of employment is protected.

In some circumstances it might also violate the law for an employer to fire or discipline you for blogging about matters that are protected by statute. For example, if you were blogging about your experience with sex discrimination at work, it may violate the law for the employer to take action against you. State and federal laws prohibit discrimination based on race, national origin, sex, pregnancy, religion, disability, age, serious health condition, and, in some states, sexual orientation or family/marital status. These laws also prohibit retaliation for complaining about discrimination or harassment based on these characteristics. It also may violate the law for an employer to retaliate against you for complaining about workplace safety issues.

If you are fired for blogging about issues that relate to your membership in these protected groups, you may have a legal basis to challenge your termination. Keep in mind, however, that it may be difficult to prove that your employer fired you for these reasons. You are much more likely to be protected if you formally complained about the matter at issue before your employer took action against you, either to your employer or to the appropriate state or federal agency. The complaint should be in written form, to make it easier to prove later that you actually did complain.

What should I do if I was terminated in retaliation for protected activity?

If you believe that your termination was discriminatory or retaliatory, you will need to file a complaint with the appropriate federal and/or state agency before filing a lawsuit. These laws often have strict time limits, so you may need to act quickly. Also keep in mind that these laws apply only to employers of a certain size (based on the number of employees) and do not protect independent contractors. More details: Legal Aid Society-Employment Law Center.

How can a union protect my right to blog at work?

Union contracts, reached in bargaining sessions with the employer, typically contain a provision prohibiting discipline or termination of employees except for "good cause." Whether your blogging activities constitute such "good cause" would depend upon whether they violate the employer's work rules, whether the union contract places limitations on those work rules, the specific conduct involved, and your employment record. If you are disciplined or terminated without good cause, the union can file a grievance on your behalf. Typically the grievance process has a final step of arbitration, where an independent arbitrator decides whether the employer violated the union contract and, if so, may order the employer to reverse the disciplinary action and compensate you for your harm.

In addition, more and more unions are negotiating specific protections for workers' use of electronic means of communications. For example, some union contracts contain provisions that allow reasonable personal use of an employer's computer equipment, or that prohibit terminating an employee for off-duty conduct. And even if the union contract doesn't contain anything specific, an employer will be required to bargain with the union before making a unilateral change in a workplace computer or email policy.

Can I be fired if I create a blog about unionizing my workplace?

No. Employees' right to self-organization, including by forming or joining labor unions, is protected by federal law. See 29 U.S.C. §157. An employer may not fire you for blogging about unionization and, if you are fired for such activity, you can file an unfair labor practice charge with the National Labor Relations Board. If you are working with an already established union, that union may be willing to help you file and prosecute the charge. See above for more details about whether an employer who claims to be applying a generally applicable workplace policy can take action against you for union-related speech.

Can I be fired for whistle-blogging about my company's violation of the law?

No, if you report the violation before whistle-blogging about it. Many federal and state laws protect "whistleblowers" – employees who reveal their employers' unlawful activities. Typically these laws protect employees against retaliation even if the employer was not actually doing something unlawful, so long as the employee reasonably believed that it was. Some of these laws protect blowing the whistle about specific matters, like reporting violations of the Securities and Exchange Commission rules or other fraud against shareholders. Others confer more general protections. But whistle-blogging about unlawful activity without reporting it to a government agency may not be protected. See next question.

Should I report the violation before whistle-blogging about it?

Yes. Whistle-blowing laws will typically protect you only after you have actually blown the whistle, by reporting the unlawful activity to a government agency. Some laws also protect employees who report illegal activity to their supervisor or employer, but you are better protected if you also make a complaint to a government entity. If you are a public employee, reporting the unlawful activity to your employer may suffice to give you whistleblower protection. Public employees may also report to the Office of Special Counsel's Disclosure Unit.

Whistleblower protection laws often have strict time limits for complaining that you were retaliated

against for whistle-blowing activities. See e.g. Occupational Safety & Health Administration's whistleblower program , or, for more detail, see the Workplace Fairness FAQ on Whistleblowing and Retaliation .

What can I do to protect myself from employer retaliation?

Blog anonymously. EFF's How to Blog Safely (About Work or Anything Else) offers a few simple precautions to help you maintain control of your personal privacy so that you can express yourself without facing unjust retaliation. If followed correctly, these protections can save you from embarrassment or just plain weirdness in front of your friends and coworkers.

Do some companies permit employee blogging?

Yes. A number of companies permit or even encourage workplace blogging. For example, Sun has 1,300 employee blogs -- including company President Jonathan Schwartz. Many companies that permit blogging have guidelines for their employees. Toby Bloomberg of Diva Marketing Blog, has compiled a list of company blogging guidelines, and Fredrik Wackå's CorporateBlogging site provides a guide to corporate blogging.

Where can I get more information on workplace blogging?

C|Net has published an FAQ about blogging on the job. Workplace Fairness provides a detailed overview of your rights under labor law, as does the Legal Aid Society-Employment Law Center. For the corporate audience, the law firm Howard Rice published a newsletter article, Corporate Blogging — Seize the Opportunity, But Control the Risks.

Thanks to Stacey M. Leyton, an attorney with Altshuler, Berzon, Nussbaum, Rubin & Demain, for her work on this FAQ.

Adult Material

The Bloggers' FAQ on Adult Material addresses the legal issues arising from publishing risque adult-oriented content, including obscenity law, community standards on the Internet, and the new 2257 regulations.

Can I put adult content on my blog?

Yes. The First Amendment protects your right to communicate legal adult content to the public. However, the law prohibits distribution of obscene material and child pornography. In addition, a federal law, 18 U.S.C. § 2257, currently being challenged in court, imposes record-keeping requirements on a broadly defined category of producers of sexually explicit material.

What is obscene material?

United States courts use the Miller test for determining whether speech or expression is "obscene," and therefore not protected by the First Amendment. That means it can legally be banned.

The Miller test stems from Miller v. California, 413 U.S. 15 (1973), in which the US Supreme Court held that material is obscene if each of the following factors is satisfied:

- Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- Whether the work depicts/describes, in a patently offensive way, sexual conduct specifically defined by applicable law;
- Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Most pornography depicting sexual acts or genitalia would not be considered obscene but community standards can vary widely (compare Peoria with Manhattan), and a blog can be seen in any jurisdiction.

How do you determine "community standards" on the Internet?

Under current law, the legal question of whether speech is obscene is determined partly by reference to local community standards. Federal venue rules permit an obscenity prosecution to be brought where the speech originated or where it was received. Internet speech, however, is received in every community of our nation. As a result, "the 'community standards' criterion as applied to a nationwide audience will be judged by the standards of the community most likely to be offended by the message." Reno v. ACLU, 521 U.S. 844 (1997).

EFF is concerned that present law permits censorship of speech on the Internet under the standards of the least tolerant community, negating the values that the community standards doctrine was intended to protect -- diversity and localism in the marketplace of ideas.

In Nitke v. Ashcroft, EFF is helping challenge the "least tolerant" standard. Barbara Nitke, a New York photographer who works with erotic subject matter, has joined with the National Coalition for Sexual Freedom to challenge the constitutionality of provisions in the Communications Decency Act that create criminal penalties for making "obscene" materials available online. In July 2005, the district court ruled that the plaintiffs had not provided sufficient evidence of harm to maintain a facial challenge to the criminal provisions, but left open the possibility of a case-by-case analysis. EFF opposes this decision because the possibility of being hauled into court in the least tolerant jurisdiction could chill protected speech throughout the Internet. There will be an appeal.

What is child pornography?

Child pornography is any visual depiction, where "(A) the producing of such visual depiction involves the use of a minor [under 18] engaging in sexually explicit conduct; and (B) such visual depiction is of such conduct." 18 U.S.C. § 2252 The law prohibits knowingly possessing or transmitting (including by computer) child pornography.

What is sexually explicit conduct?

Sexually explicit conduct is defined in 18 U.S.C. § 2256, but basically is any form of sex or the "lascivious exhibition of the genitals or pubic area." This definition is used for both child pornography and for federal reporting and record-keeping requirements.

Who is required to keep records about adult images under federal law?

Under a federal law, 18 U.S.C. § 2257, producers of a "visual depiction of an actual human being engaged in actual sexually explicit conduct" are required to keep records showing the ages of the models. It does not cover images produced before July 3, 1995, or depictions of simulated sexually explicit conduct.

While this law has been in effect for years, recently the Department of Justice (DOJ) issued new regulations that expand the definition of a "secondary producer" of sexually explicit material. As of June 23, 2005, new federal regulations apply the record-keeping requirement to these secondary producers, and defines them as anyone "who inserts on a computer site or service a digital image of, or otherwise manages the sexually explicit content of a computer site or service that contains a visual depiction" of sexually explicit conduct.

The regulations imply that the record-keeping requirement is restricted to commercial operations. This would seem to exclude noncommercial or educational distribution from the regulation, and to limit secondary publishing and reproduction to material intended for commercial distribution. However, the DOJ has left wiggle-room, and it is still unclear if they intend to go after noncommercial websites.

Wait, don't the new DOJ regulations exceed the statute?

Yes. The statute limits its definition of producers to people involved with the "hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted." The DOJ regulations define producer much more broadly. This issue will be one part of legal challenges to the requirement.

What records do federal regulations require?

Producers are required to maintain records of the legal name and date of birth of each performer, any name, other than each performer's legal name, ever used by the performer, including the performer's maiden name, alias, nickname, stage name, or professional name.

The proposed DOJ rule would add a requirement that the records include a copy of each image as well as the URL on which the depiction was published. It also includes onerous requirements for how the records are kept, including maintaining the records for up to five years after the so-called producer is out of business.

For online publishers, a statement that includes the location of these records must be displayed on their site's "homepage, any known major entry points, or principal URL (including the principal URL of a subdomain), or in a separate window that opens upon the viewer's clicking a hypertext link that states, '18 U.S.C. 2257 Record-Keeping Requirements Compliance Statement.'"

What if I don't have the records?

18 U.S.C. § 2257(f)(4) makes it a crime for a person "knowingly to sell or otherwise transfer" any sexually explicit material that does not have a statement affixed. As noted above, this does not include noncommercial distribution.

What is a "lascivious" image?

Many courts apply the so-called Dost test to determine if a given image is considered to be "lascivious" under the law. United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986), aff'd sub nom., United States v. Wiegand, 812 F.2d 1239, 1244 (9th Cir. 1987) set forth a six factor test:

- Whether the genitals or pubic area are the focal point of the image;
- Whether the setting of the image is sexually suggestive (i.e., a location generally associated with sexual activity, such as a bed);
- Whether the subject is depicted in an unnatural pose or inappropriate attire considering her age;
- Whether the subject is fully or partially clothed, or nude;
- Whether the image suggests sexual coyness or willingness to engage in sexual activity; and
- Whether the image is intended or designed to elicit a sexual response in the viewer.

This test requires a case-by-case analysis and is devoid of bright line rules.

How is the Dost Test applied in case law?

Nudity is not enough for a finding that an image is lascivious, but clothing does not mean a photo is in the clear: "a photograph of a naked girl might not be lascivious (depending on the balance of the remaining Dost factors), but a photograph of a girl in a highly sexual pose dressed in hose, garters, and a bra would certainly be found to be lascivious." United States v. Villard, 885 F.2d 117, 124 (3d Cir. 1989).

Setting is critical, but must be taken in context. For example, "while the setting of a bed, by itself, is some evidence of lasciviousness, it alone is not enough to support a finding of lasciviousness." Id. One should consider not just the bed, but how the person is posed on the bed (i.e. sleeping vs. posing seductively).

Context is also important in determining "whether the image is intended or designed to elicit a sexual response in the viewer." For example, in jury instructions approved by the Ninth Circuit, the Court asked the jurors to consider the caption of the photograph. United States v. Arvin, 900 F.2d 1385 (9th Cir. 1990).

What do I do if someone puts child porn on my blog?

Some blogs allow anyone to come along and put in comments, sometimes with images. A federal law, 18 U.S.C. § 2258A , requires anyone who is engaged in providing certain online services to the public, and obtains knowledge of a violation of the child exploitation statutes, to report such violation to the CyberTipline of the National Center for Missing and Exploited Children. NCMEC will forward information to law enforcement. These regulations apply to electronic communication services and remote computing services. Section 2258B provides a limited safe harbor for these service providers and domain name registrars.

Will the DOJ really go after my little blog for a couple of risqué photos?

Probably not. First, as discussed above, the record-keeping requirements are only for actually sexually explicit conduct?photos of you topless at Burning Man or jogging naked for Bay to Breakers are not going to trigger the law. Second, the legality of the new regulations is being challenged in court, which should discourage the DOJ from going after borderline sites.

What have courts said about record-keeping requirements?

In Sundance Assoc., Inc. v. Reno, 139 F.3d 804 (10th Cir. 1998), the Tenth Circuit rejected the prior regulation's distinction between primary and secondary producers and entirely exempted from the record-keeping requirements those who merely distribute or those whose activity "does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted." 18 U.S.C. § 2257(h)(3).

However, the DOJ takes the position that American Library Ass'n v. Reno, 33 F.3d 78 (DC Cir. 1994), "implicitly accepted that the distinction between primary and secondary producers was valid" and that "the requirement that secondary producers maintain records was not a constitutionally impermissible burden on protected speech."

In Connection Distributing Co., et al. v. Keisler, 505 F.3d 545, (6th Cir. 2007) the Sixth Circuit initially rejected the DOJ's argument, and held that "the [revised] statute is overbroad and therefore violates the First Amendment. However, the Court reheard the case *en banc* and ultimately issued a new opinion, Connection Distributing Co. v. Holder, 557 F.3d 321 (6th Cir. 2009), upholding the record-keeping requirements.

What is EFF doing about the new 2257 regulations?

EFF is working with the Free Speech Coalition to challenge the new regulations, which go far beyond the authorization of the statute, and impermissibly impinge on constitutionally protected speech. For instance, on March 5, 2010, we filed an amicus curiae brief in the Eastern District of Pennsylvania, challenging the constitutionality of the statute.

Index Of All Questions

Below is an index of all the questions in the Bloggers' Legal Guide.

Overview

IP

Copyright

DMCA

Trademark

Right of Publicity

Defamation

Section 230

Privacy

Reporter's Privilege

Media Access

Student Bloggers

Election Law

Labor Law

Adult Materials

Freedom of Information Act

Additional Resources

Topics

Anonymous Blogging

AnonBlog: A Technical Guide to Anonymous Blogging
http://advocacy.globalvoicesonline.org/projects/guide/
Ethan Zuckerman discusses a variety of software tools and online services available to the blogger who wants to blog anonymously and to stay anonymous. A useful technical counterpart to EFF's guide to anonymous blogging.

CyberSLAPP.org
http://www.cyberslapp.org/intro.cfm
CyberSLAPP.org was founded to oppose the practice of filing a meritless lawsuit in order to use subpoenas to pierce a critic's anonymity. A joint project of several civil liberties groups (including EFF), CyberSLAPP.org features a "best practices" document for ISPs whose subscribers face subpoena and a variety of legal resources for individuals whose right to anonymous speech is under attack.

Information Resources

Podcasting Legal Guide
http://wiki.creativecommons.org/Welcome_To_The_Podcasting_Legal_Guide
A legal guide for podcasters.

Chilling Effects Clearinghouse
http://www.chillingeffects.org
The Chilling Effects Clearinghouse collects and publishes cease-and-desist letters sent to web page operators, with commentary from EFF and a consortium of law school clinics. It is a valuable source of information on cease-and-desist letters and on the state of free speech online

Media Law Resource Center
http://www.medialaw.org
The MLRC is an information clearinghouse dedicated to First Amendment issues, particularly libel and privacy issues.

MLRC's List of Legal Cases Against Bloggers
Libel And Related Lawsuits Against Bloggers

Stanford University's Fair Use Site
http://fairuse.stanford.edu/index.html
Stanford's Fair Use site is a clearinghouse for information on copyright and fair use, featuring primary source materials, articles discussing fair use issues, and commentary and analysis on current issues.

International

Guìa Legal del Blogger
http://www.derechosdigitales.org/glb
A Chilean Legal Guide for bloggers

Committee to Protect Bloggers
http://committeetoprotectbloggers.civiblog.org
The CPB distributes information about bloggers around the world who have been imprisoned or otherwise pressured by state authority, and organizes activismC on those bloggers' behalf.

Reporters Without Borders
http://www.rsf.org/rubrique.php3?id_rubrique=20

Reporters Without Borders works to protect journalists worldwide from violence, arrest, and oppression.

Dutch Legal Guide
http://www.iusmentis.com/maatschappij/juridisch/bloggen/

Legal Advice and Assistance

California Anti-SLAPP Project
http://www.casp.net
The California Anti-SLAPP Project provides information and assistance to the targets of Strategic Lawsuits Against Public Participation — lawsuits intended to silence criticism.

California First Amendment Coalition
http://www.cfac.org
The California First Amendment Coalition is a nonprofit, nonpartisan public interest organization dedicated to enhancing rights to freedom of speech and open government through educational programs, information services, and litigation. CFAC works to promote transparency in government. It provides legal advice and assistance on First Amendment and open government issues, and advocates improved public access to government.

The First Amendment Project
http://www.thefirstamendment.org
The First Amendment Project is a nonprofit advocacy organization dedicated to protecting and promoting freedom of information, expression, and petition. The First Amendment Project provides advice, information, and legal assistance to activists, journalists, and artists.

Reporter's Committee for Freedom of the Press
http://www.rcfp.org

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The RCFP provides a wealth of information and publication with advice and legal assistance for journalists on free speech and free press issues.

Professional Associations

Media Bloggers Association
http://mediabloggers.org/
The MBA is an association of bloggers who blog about news and the media. It exists to promote its members and their blogs, and to support the role of blogs as watchdogs for and supplements to the traditional media.

Online News Association
http://www.journalists.org/
The Online News Association is an organization composed largely of professional online journalists. The association is dedicated to promoting editorial integrity, independence, excellence, and freedom of expression in digital news.

Society of Professional Journalists
http://www.spj.org/
The Society of Professional Journalists is the nation's largest and most broad-based journalism organization. It seeks to defend free speech, uphold high journalistic standards, and support journalism education.

Student Blogging

FIRE's Guide to Free Speech on Campus
http://www.thefire.org/index.php/article/5063.html
FIRE's Guide to Free Speech on Campus provides advice and information for members of educational communities to fight restrictions placed on speech by school administrators.

Northern Illinois University's Guide for High School Journalists
http://www.star.niu.edu/nina/highschool/quick.html
This quick legal guide provides simple advice on libel, copyright, obscenity, and privacy for high school journalists.

Commercial Blogging

CMLP Guide to FTC Disclosure Requirements for Product Endorsements
http://www.citmedialaw.org/legal-guide/publishing-product-or-service-endorsements
CMLP explanation of FTC guidelines that require bloggers, Tweeters, Facebook users, and other online publishers to disclose "material connections" they have with companies whose products or services they endorse. The guidelines also say that bloggers may be held liable for making misleading or unsubstantiated claims about a product or service.

General Journalism

Associated Press Stylebook and Brief on Media Law
http://www.apstylebook.com/
This subscription site is the online edition of the Associated Press Stylebook, the style guide used by most news outlets and many other publications. The Stylebook also includes a primer on legal issues relevant to the media.

Journalist's Codes of Ethics
http://www.asne.org/index.cfm?id=387
This page collects various ethical codes for journalists in effect for various media outlets and professional associations.

Massachusetts Bar Association's Journalist's Handbook
http://www.massbar.org/publications/journalists_handbook/
This resource, published by the Massachusetts Bar Association, is a summary of legal concepts and terminology intended to help journalists better understand legal issues on which they report.

Online Journalism Review
http://www.ojr.org/
The OJR is a web-based journal devoted to online journalism produced by USC's Annenberg School of Communications. In addition to articles on journalism, the site includes tutorials for beginning journalists on subjects like journalistic ethics and effective reporting.

Poynter's on Citizen Journalism
http://www.poynter.org/content/content_view.asp?id=83126
This article discusses ways that traditional media outlets can use blogs and similar tools to improve their own offerings.

CyberJournalist.net
http://www.cyberjournalist.net/
CyberJournalist.net focuses on how the Internet, convergence, and new technologies are transforming the media. The site includes tips on how to produce better online journalism, a Weblog Blog that tracks weblogs' impact on journalism and a list of journalists who blog and citizen media efforts.

Workplace Blogging (For Workers)

C|Net's Guide to Workplace Blogging
http://news.com.com/FAQ+Blogging+on+the+job/2100-1030_3-5597010.html
A brief FAQ on the professional repercussions of blogging, discussing the possible consequences of blogging at and about your workplace.

Legal Aid Society-Employment Law Center
http://www.las-elc.org/
The LAS-ELC promotes the rights of low-income and minority workers through litigation, legislative advocacy, and providing advice and information to workers.

Nolo Press' Employee Rights Resources
http://www.nolo.com/resource.cfm/catID/411DD971-9C17-47D8-880913B3AE9A2FFF/104/150/
This Nolo Press site contains many self-help resources for workers concerned about their rights.

Workplace Fairness
http://www.workplacefairness.org/
Workplace Fairness works to defend employee rights by distributing information and supporting legal advocates of workers' rights.

National Whistleblower Center
http://www.whistleblowers.org
The NWC works to support and encourage individuals who come forward to reveal illegal or unethical activity by government or industry.

Workplace Blogging (For Employers)

Corporate Blogging: Seize the Opportunity, but Control the Risks

http://www.howardrice.com/uploads/content/BloggingAlert0305.htm
This article discusses the legal issues involved in blogging for companies considering setting up a company-sponsored blog.

Fredrik Wacka's Corporate Blogging site
http://www.corporateblogging.info/
CorporateBlogging.info is a blog devoted to corporate blogging — blogs used by companies for internal or external communications.