A Practical Guide to Media Law

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DEDICATION

May this book serve well its readers and the interests of Truth
A. M.
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How to Use This Book

This book is written from a somewhat unique point of view. I am a practicing media lawyer who works in-house with a national news organization and I also happen to teach media law in journalism school. In my capacity as an in-house lawyer, one of my responsibilities is to provide training to professional journalists on legal issues. I need to communicate tricky and ambiguous legal concepts in practical, easy-to-apply ways.

From my point of view, teaching media law to journalism students should be no different from the training I do in-house. Students are expected to go out into the so-called “real world” to work, and, ideally, a media law class will teach them the kinds of things they will be expected to know once they are professionals.

*A Practical Guide to Media Law* is intended to help nonlawyers understand the legal issues involved in modern communications and journalism. This book is particularly useful for future journalists, who need to be trained in the legal issues that will affect their work; but it is also an excellent guide for anyone who communicates in any capacity: tweeting, Facebooking, commenting, blogging, posting photos, managing public relations, running a website, etc. It’s a training manual for the real world of communications.

The Practical Approach to Media Law

The organization of this book attempts to address some specific challenges I’ve encountered while teaching media law to nonlawyers. The main challenge is that they lack sufficient background in law to understand some of the more subtle aspects of the cases, such as how legal principles might apply to various factual scenarios, the difference between civil and criminal principles, and the procedural issues that arise. To overcome the students’ lack of legal background, I have found that it is useful to organize the chapters by conduct—what people actually do and what they need to know if they are going to do it (for example, criticizing others, publishing photos, taking photos, or advertising a product). This also happens to make the book a useful reference to keep for future use.

I have divided the material into five sections that group conduct by the potential kinds of liability or legal issues that might arise. Dividing the material this way makes it easier for students to see how conduct can give rise to potential legal issues.

The book discusses cases to illustrate how the principles have been applied in real-life scenarios; however, in most instances, case discussions do not provide significant detail about the court opinions. They simply highlight the principle I am trying to illustrate. My goal is to provide information in a clear and structured way so that students can grasp the basic principles that apply. This gives the reader great flexibility. If one is interested in learning more about the subject, the case citations are provided in the Case Index, and the user can find and read the cases in full. Similarly, if the book
references a historical incident with which one is unfamiliar, an online search should provide additional information.

The law is not static; it is dynamic. Conversations about law should be equally dynamic, incorporating what is historically significant with the practical realities of the present situation. This book tries to balance all the competing interests in a way that will resonate with users and prompt thoughtful consideration of the kinds of issues that generate legal controversy.

Features and Structure of the Text
The text explains complicated legal issues in a clear, concise manner. There are several charts and graphs to help organize the material and see how concepts are related. Visual learners may appreciate having the concepts represented graphically. Some chapters also contain boxed supplemental material that is related to the concepts discussed in the chapter.

Section I presents key introductory material to ground students in the basics of the U.S. judiciary and the First Amendment. Chapter 1 explains the court systems and procedures and also explains how precedent can be used to understand legal principles. Chapter 2 outlines various theories of the First Amendment and explains how they have become doctrine or rules that courts follow to decide cases. It also explains how lawyers evaluate legal issues and risks.

Section II discusses the various ways that people can be sued for what they publish. This section focuses on civil claims, such as libel, privacy, copyright or trademark infringement, and negligence, although it does mention related criminal charges that might be brought. Also, the chapters emphasize the conduct that gives rise to claims; thus, there are separate chapters on using photos and using music, even though both of those activities implicate copyright rights. The use of photos may also give rise to libel or privacy claims, and thus the chapter covers those topics as well. In essence, the organization of the material is designed to help students understand all legal issues that might arise from their conduct without having to engage in the kind of “issue-spotting” that one is trained to do in law school.

Section III covers the issues related to the newsgathering process. One chapter addresses whether there is an enforceable right of access to information or places, and the other chapter focuses on whether one may be civilly or criminally liable for newsgathering activities.

Section IV addresses the myriad ways the government can interfere with speech or press. It covers rules regarding search and subpoena power, prosecution based on protests and other public speech, attempts to restrict publication of sensitive topics, regulations of election speech and advertising, the authority of the FCC, and restrictions on special classes of speakers such as students or government employees. These chapters also make a point to note when the speech at issue might also give rise to the kinds of civil claims addressed in Section II.

Section V addresses practical issues that matter in contemporary media. One chapter focuses on how the Internet has affected legal issues. It addresses matters such as the applicability of website Terms of Service, the right to speak anonymously, the potential for international liability, and the impact of social media. The other chapter
addresses practical considerations related to media law, such as ethical, business and safety issues that arise from speech. It also provides information about risk assessment and obtaining media liability insurance.

Disclaimer
The purpose of this book is to discuss legal issues that might arise in media law or communications contexts. It illustrates legal principles with examples and draws general conclusions based on existing case law. However, this book should not be construed as providing legal advice, nor should it be used for guidance in any specific factual situation a reader might encounter. A person who is faced with a potential legal issue should always consult their own lawyer for advice. One thing this book should demonstrate is that the outcome of any case always depends on the specific facts presented and the law of the applicable jurisdiction. Therefore, the general information provided herein should not be interpreted as suggesting that there would be any particular outcome in any potential case. This book is for general informational and educational purposes only. Consult a lawyer if you face any legal issues or concerns.

Supplemental Materials

This text is available in a variety of formats—digital and print. To learn more about Pearson’s programs, pricing options and customization, visit www.pearsonhighered.com.
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Most of all, I would like to thank all my students and interns, as I have learned at least as much from them as they have learned from me. Several students have made suggestions or comments on the book in its various iterations, and I am grateful for their input.
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