

# THE EDITORS' CHECKLIST

- Responding to takedown demands
- Managing online comments
- Social media policies
- The role of the adviser
- Running controversial ads
- Copyright and ownership of work
- Dealing with newspaper theft

Running a student media organization is fun and rewarding, building leadership skills that will last for a lifetime. But, let's face it, it can also be a gigantic headache. Every problem – mistakes, demands for retractions, hacked-off advertisers – is your problem, and there's usually not much “institutional memory” to fall back on.

That's where this guide comes in. The Student Press Law Center has worked with the college media since 1974, and we know the landmines and booby-traps that give editors fits. Nothing can head off every issue – and new ones are always being invented – but a set of well-thought-out newsroom policies can help you anticipate, prepare and respond when trouble arises.

This guidebook flags the recurring issues that editors most complain about, and can serve as a starting point for the unpleasant-but-necessary conversations that should take place in every newsroom at the start of the term.

Let's get started.

# TAKEDOWN DEMANDS

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As publications continue archiving more of their back issues as easily searchable online content, editors are increasingly receiving urgent demands – sometimes accompanied by threats of legal action – to pull down unflattering material. Student media seem to be particular targets, as former students issue so-called “takedown demands” upon learning that a Google search of their name reveals (to employers, co-workers or potential mates) their starring role in some published tale of campus craziness. Every new editor must anticipate such demands, and decide in advance how to handle them.

## ► Options

1. *The hard line:* Deny all takedown demands, in the interest of maintaining a complete historical record.
2. *The soft heart:* Use judgment to pull down whatever meets the editors’ standards.
3. *Complete/correct the record:* Append corrections or updates if the complainant can show that the story was wrong or has become outdated by later events.
4. *Anticipate the issue:* Avoid archiving material such as police briefs that are prone to complaints, or omit names from reports of minor infractions from the beginning.

## ► Factors to Consider

1. Was the story accurate when it was posted? If so, then the piece was not libelous at the time, and it is not libelous just because it is now available online. (And even if it was erroneous, if more than two years have passed since initial publication, any defamation claim is probably too late anyway). HINT: Make sure that all stories include a static dateline that shows when the story was originally posted. If the story was inaccurate or otherwise unlawful when it was posted, you’ll generally want to remove/edit it in a timely manner, but it’s wise to consult an attorney and determine the safest way to proceed. Changing the item may not satisfy the complainer, and it runs some risk of re-starting the time clock for a libel claim.

2. Does fairness dictate that the story be changed or taken down?

Even if you have no legal obligation to take down a story, there may be other reasons for doing so — or for considering an update. For example, were there subsequent, major developments that could leave readers with a false impression? Sometimes this can be remedied simply by posting a link to a later story.

3. Are all complaints given equal handling?

Editors will want to establish and consistently enforce a takedown policy to avoid a perception of unfairness or favoritism. Consider appointing one trained, diplomatic “point person” among the editors to filter all incoming requests.

## ► Additional Resources

*SPLC White Paper: Responding to Takedown Demands*

<http://www.splc.org/pdf/takedowndemand.pdf>

# MANAGING ONLINE READER COMMENTS



One of the key features of online media is its interactivity. While allowing reader-generated content can provide new information and valuable perspective, such forums, unfortunately, also frequently attract the lowest common denominator and devolve into name-calling, rumor-mongering and worse. News organizations are increasingly wrestling with policies and technical innovations to find the proper editorial and ethical balance.

## ► Options

1. *No moderation:* The comment page is an “anything goes” zone, allowing their readers to contribute (or spew) whatever is on their minds.
2. *Tight moderation:* Editors screen and pre-approve all comments for consistency with the publication’s editorial standards.
3. *Automated moderation:* Commercially available software filters or flags content you deem inappropriate (e.g., profanity). As a variation, some publications assign greater prominence to signed versus unsigned comments.
4. *Reader moderation:* Readers are encouraged to flag “inappropriate” material for editorial review or removal and/or vote on the value of user contributions.

## ► Factors to Consider

1. *The Law* — The federal Communications Decency Act insulates online service providers from liability for third party content such as reader comments. So as long as neither you nor a member of your publication’s staff created the content, you won’t be held liable for it — even when it’s unlawful (e.g., libelous or obscene). The CDA also allows you to pick-and-choose which comments are used — or scrub them of profanity — while still remaining immune from liability. (A different federal law offers a variation of the same immunity if a reader posts material that turns out to be someone else’s copyright-protected property — so long as you promptly investigate and respond to infringement complaints.)

Since the author of the post is himself responsible for any harm he causes, a libel lawyer may come knocking with a demand for identifying information about an anonymous commenter. Know in advance how your publication will respond — will you willingly turn over the information (after first trying to give notice to the reader), or fight to protect the author’s anonymity? Make sure your site’s terms of service do not guarantee people more anonymity than you are prepared to defend.

2. *Editorial Philosophy/Mission* — Consider your philosophy about user content: Are the comment boards primarily a public venting place, where “the marketplace” is responsible for determining the content and tone? Or are comment boards a direct extension of the publication, which readers expect to be factual and reliable? Or is your mission somewhere in between? Make sure your approach matches your vision.

3. *Ethics/Consistency* — Even though the CDA protects website hosts from responsibility for libelous statements posted by third parties, most would agree that an ethical publication would voluntarily remove material from their site that is clearly unlawful and that causes serious reputational harm. Consistency is key. Removing a controversial post in one instance while allowing a similar, or perhaps opposing, post to stand somewhere else is an invitation to charges of bias.

## ► Additional Resources

*Understanding Cybershield Law*

<http://www.splc.org/knowyourrights/legalresearch.asp?id=104>

# SOCIAL MEDIA USE



It's no longer enough just to tell your story on the news pages or newscast – you've got to incorporate Facebook, Twitter and other information-sharing platforms to reach your biggest potential audience. But these first-generation technologies didn't come with newsroom rulebooks – so it's your job to invent one. You need to consider both how your organization's "official" presences are governed, and how your staffers govern themselves when they're using social media on their own time.

## ► Options

**1. For your own online presence:** Central versus decentralized control. Should only the editor and managing editor (or news director) have the "keys" to the online presence? Or should section and page editors – or anyone on staff – be able to post items on official pages associated with your media outlet?

**2. For your staff's personal online activity:** Do you need a newsroom ethics policy addressing your staff's online activity – for instance, banning them from expressing opinions publicly about the issues, people and agencies they cover? And how much can staff members identify themselves as being part of the publication? Is it okay for the *Weekly Tribune* sports editor to have a personal, non-business Twitter stream called `weekly_tribune_sports`, or will that cause reader confusion?

## ► Factors to Consider

**1.** Who can post – and take down posts – on your news organization's website and social-media pages? One thing's clear: The answer should not be the adviser. Once an employee of the college has ultimate run/don't-run control over the publication, then the college has both the ability to censor and also the potential legal liability that comes with control. Enough people should have logins and passwords so there's never a time that a damaging post can't be pulled down (e.g., if the editor goes skiing in Switzerland in December and takes the only copy of the password with her). But allowing anyone on staff to post raises quality-control and supervisory issues.

**2.** What's the proper use of social media? Social media can be a fun and less-stuffy way to interact with the audience. But you can't let the casualness of publishing on Facebook or Twitter make you casual about professionalism. Snarky remarks about your sources, for instance, can damage your ability to gather news and, in extreme cases, can open the door to a libel claim. Decide how much editorial filtering is appropriate – e.g., should reporters be posting real-time news updates to Twitter with no one reading before publication? – and then enforce the policy consistently.

**3.** Is your staff's off-hours social media activity any of your business? Many professional news organizations are imposing ethical restrictions on what journalists can say even on personal social media sites, just as they restrict their employees from contributing to campaigns or driving around with candidate bumper stickers. You may (or may not) decide that a more relaxed policy makes sense (e.g., does it really matter so much that the person covering student government – or your cartoonist – has a Greenpeace badge on her personal website?). Again, one thing's for certain: At a state institution, a government employee should not be the one deciding whether a staffer loses her job over off-campus speech. If the adviser "fires" a reporter for Tweeting her support for a political cause, the reporter may well have a First Amendment claim against the adviser and the school. If there is to be discipline, it should go through the editors, just as in a professional newsroom. Also avoid labeling confusion. If staff members are going to have a personal online identity not filtered by their editors, then they shouldn't have the publication's name and logo plastered all over it in a way that implies it's an "official" part of your operation.

## ► Additional Resources

SPLC Report: *College newsrooms revisit ethics policies for the Twitter generation*  
[http://www.splc.org/news/report\\_detail.asp?id=1611&edition=56](http://www.splc.org/news/report_detail.asp?id=1611&edition=56)

# ROLE OF ADVISER

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As the title says, an adviser's role is to provide advice. A good adviser acts as an educational resource for the student editors. Both legally and practically, advisers can find themselves in a tricky position as they straddle the line between being an advocate for their students and, usually, a school employee. For this reason, it is crucial that both the adviser and student staff have a clear understanding from Day One of the expectations, limitations and potential "traps" inherent in the advising role.

## ► Concerns to Address

**1. Control/oversight of editorial content:** At public colleges and universities, the law is clear that advisers — like all school officials — can't overstep the students' discretionary editorial decisions. Except for extreme circumstances, the run/don't run decision belongs to the students. Likewise, the First Amendment strictly limits the authority of advisers (and all school officials) to require that material be submitted to them for review prior to publication (though students can always voluntarily ask for input, either pre-publication or by a post-publication critique). The rules for advisers at private institutions are dictated more by policy and professionalism than law. The College Media Advisers Code of Ethics states that advisers "must remain aware of their obligation to defend and teach without censoring, editing, directing or producing."

Online publishing raises new practical considerations about student-versus-faculty control: Who has the "keys" to the website? The adviser (or general manager) is often a full-time employee of the college, and might be the only person in the office when a complaint about online content arrives. If the students are uncomfortable giving the adviser the authority to pull down content from the website — or the adviser is uncomfortable having that control — then the students should develop a "coverage" plan so that at least one editor is on-call even during holidays and breaks to respond to complaints about the site.

**2. Censorship battles:** Advisers who are school employees can put their jobs at risk by challenging censorship by their bosses. In the event of a censorship fight, advisers should publicly remain on the sidelines. Students must be ready to take the leadership role, including overseeing all communication with school administrators, outside media and, when necessary, legal counsel.

**3. Institutional (and personal) liability:** A growing body of law makes clear that, in the unlikely event of a lawsuit, colleges (and individual college employees) can't be held legally responsible for editorial judgments they can't and don't control. It is in the self-interest of the college and the adviser to establish clear policies and practices from the outset that limit the adviser's pre-publication editorial role.

**4. Confidentiality:** Advisers can be placed in an untenable bind if they are made privy to the identity of confidential sources. While student journalists often can protect their sources by invoking the reporter's privilege, the privilege probably does not protect the adviser against being pressured by college supervisors. "I honestly don't know" may be the safest answer the adviser can give, and editors should consider the adviser's safety in making policies about who needs to know the identity of sources. Similarly, it's probably best if police or college authorities are seeking copies of notes, photos or other news-gathering materials that the adviser not be the one holding onto those materials. Federal law protects journalists against searches for their unpublished work product, but it's not clear whether the adviser could claim protection as a journalist.

## ► Additional Resources

*Student Media Advisers and the Law*

<http://www.splc.org/knowyourrights/legalresearch.asp?id=51>

*Advisers' Tip Sheet*

<http://www.splc.org/classroomresources/mediadisertips.asp>

*College Media Advisers Code of Ethics*

<http://www.cma.cloverpad.org/Default.aspx?pageId=1111735>

# CONTROVERSIAL ADS



College student media have become a regular target of those seeking publicity for their controversial ideas, concerns or products. Advertisers have learned that the campus firestorm that often accompanies the publication (or rejection) of a provocative ad on a hot topic can generate attention far more valuable than they could ever pay for. In recent years, student editors have wrestled with whether to publish ads denying the existence of the Holocaust, graphically depicting aborted fetuses, and arguing against “reparation” payments to the descendants of slaves. Student editors can reduce the risk of embarrassment by taking time to address the question of advertising acceptance before a publicity-seeking advertiser ambushes them.

## ► Options

1. *Everything goes*: Publish all lawful ads once the check clears.
2. *Some things go*: Reject (or require edits to) ads that fail to meet established advertising/editorial standards.
3. *Nothing goes*: Reject all issue-oriented/controversial advertising.

## ► Factors to Consider

1. It’s okay to say “no.” As long as only students are involved in the decision-making process, student media have the right to reject any ad for any reason prior to publication. At a public institution, college employees should play no role in the run/don’t-run decision. If a state employee kills an ad because of its content, the rejected advertiser may well have a First Amendment claim.

2. What is your policy? As long as an ad is lawful, the decision to accept or reject an ad can be guided by your advertising policies and editorial philosophy. Some media outlets see themselves as a pure “marketplace,” with a mission to promote wide-open debate of all ideas, even very extreme ones. Others have decided to refuse issue ads altogether, in the interest of minimizing controversy. In the middle are those who pick and choose the ads they’ll accept case-by-case. If this is you, take time to establish guidelines that you can apply consistently, that match your editorial vision and that you would feel comfortable publicly defending. Make sure you don’t hem yourself in by being so specific that your policy makes promises you can’t keep (“we will not publish any material offensive to any reader”), or is too inflexible to keep up with changing situations.

Besides controversial social or political issues, other topics worth discussing as part of your policy are ads for products and services that are illegal for some or all of your readers – from gambling to term-paper sales to drug paraphernalia – or ads that promote dangerous or unhealthy behavior (e.g., “Drink ‘Til You Puke Night”). While you are not legally responsible if someone is caught buying a term paper or becomes a gambling addict after reading an ad, some publications refuse such ads as a matter of taste.

3. Is the ad lawful? Remember that your publication can be liable if an ad contains illegal material, such as libelous accusations, obscenity, copyright infringement, or material that illegally invades someone’s privacy. This includes photos taken without proper consent, so ad departments typically require a signed “model release” if an ad includes a photo of identifiable people.

## ► Additional Resources

*SPLC Student Media Law Guide to Advertising*

<http://www.splc.org/knowyourrights/legalresearch.asp?id=45>

*SPLC Model Advertiser Indemnification Clause*

<http://www.splc.org/pdf/indemnification.pdf>

# COPYRIGHT AND OWNERSHIP



When a professional journalist collects a full-time salary for taking photos or shooting video, that material belongs to the journalist's employer. In college, the lines are blurrier. Barely-paid students don't fit neatly into the "employee" category, and with their content now potentially having an unlimited lifespan online, their ambiguous status raises increasingly important questions about who really owns their work.

## ► Options

1. *Roll the dice and do nothing:* That's what most student media do now. And it's not a problem — until there's a problem. Then it can be a big one.
2. *Make all student staff "employees:"* Pay them lawful wages and benefits, and treat them like all other university (or student media company) employees.
3. *Create an agreement:* For most student media, this is the preferred solution. And the time to do it is now — before the staff begins churning out work for another school year. A well-written, fair agreement brings clarity to an often fuzzy legal question and should give all sides what they need. (The SPLC has drafted a model copyright agreement that can provide a helpful starting point.)

## ► Factors to Consider

1. How are ownership issues currently addressed? Absent a formal employer/employee relationship, it's important that all sides understand how a student staffer's work can and can't be used, now and in the future. For example, simply providing students with a camera and/or computer in the newsroom — while a factor — does not give student media unlimited ownership of whatever the student creates with that equipment.
2. What are the needs of students and the organization when it comes to copyright ownership? For the publication, the need is certainty; a photographer can't give consent for the newspaper to use a photo, but then try to withdraw consent when the photo is posted in the newspaper's archives. For the creator, the needs include career advancement (the right to enter the work in contests and use it in online portfolios), reputation (the right to say "no" to a re-use of the work that might diminish the creator's image) and money (the right to re-sell the photo if it suddenly takes on value in years to come, such as a photo of Peyton Manning's first college football game). Consider such practical issues as, what happens if the college's PR office or athletic department wants to reuse a news photo? Who gets to say yes or no — and who gets paid if there is money to be made? The SPLC model copyright agreement is one option. It gives a student media organization the right to initial publication of a student's work and the right to re-use the work in future, noncommercial student media projects. Other uses require permission from the student creator. The creator retains all other rights, including the right to display and distribute it for career purposes.

## ► Additional Resources

*SPLC's Student Media Guide to Copyright Law*  
<http://www.splc.org/knowyourrights/legalresearch.asp?id=32>

*SPLC Model Copyright Agreement for Student Media*  
<http://www.splc.org/pdf/copyrightagreement.pdf>

# NEWSPAPER THEFT

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About a dozen times a year, college editors call the Student Press Law Center hotline to report an especially noxious and heavy-handed form of censorship: Theft of newspapers or magazines right off the racks. It's a frustrating and potentially costly experience that sometimes accompanies publication of a controversial story – but there should be legal remedies, even when the newspapers are “free.”

## ► Options

1. *Cross your fingers and do nothing*: Fortunately, the odds are that you won't be victimized.
2. *Put a price on it*: Assign a monetary value to your papers with an announcement in the papers themselves and/or on the racks. (A common policy is something like, “First two copies free; additional copies available at *The Weekly Press* offices for 25 cents.”). This may help police understand that something of real monetary value has been stolen.
3. *Tell it to the judge*: As an alternative, or supplement, to filing a criminal complaint, some publications will file a civil lawsuit – if the thief can be found – to recoup the value of the stolen papers.

## ► Factors to Consider

1. First, consult your state's law. If you are in California, Colorado or Maryland, your state has a law that explicitly makes it a crime to steal free publications. Copies of these laws are available online in the SPLC Law Library. Be aware of these laws (and if newspaper theft is a concern in your state, consider asking your state's press association to lobby for a similar law, and writing editorials in support of it).
2. Whose job is it? If you are on a campus with a police department that has criminal investigation and/or arrest responsibilities, then that agency is the one to respond in case of a theft. But sometimes, the responsibility belongs to city or county police. Know whom to call before you have to, since precious time can be wasted dealing with the wrong agency. (Also, be aware that many campuses have surveillance cameras that may have captured the theft in progress. Those tapes often are erased after a few days, so be prepared to act quickly to ask that any recordings of the theft locations be preserved.)
3. Think, in advance, about how you will respond if so many papers are stolen that your advertisers do not reach the audience they were promised. If refunds become necessary, that is real money out of your pocket and the thief ought to pay. If disciplinary proceedings do not result in repayment, a lawsuit might. Work with your advertising and circulation departments to calculate the monetary value of what has been lost.
4. Everyone on your staff is a watchdog – and a potential witness. Make sure staff members are aware that newspaper theft is a real risk, so that if they notice racks emptied across campus while headed to their 9 a.m. classes, they are alert enough to say something immediately.

## ► Additional Resources

*SPLC Newspaper Theft Forum*

<http://www.splc.org/knowyourrights/newspapertheft.asp>