

Chapter 14

14 Public Relations and the Law

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Objectives

At the end of this chapter students will be able to:

- Understand the differences between and the regulation of political and commercial speech
- Appreciate how privacy and copyright laws affect the practice of public relations
- Identify the higher burden of proof public officials and public figures have in libel cases
- Recognise the increasing role public relations has in the judicial system

14.1 INTRODUCTION

There are many fine lines when it comes to Public Relations and the law. Nowadays, there are so many rules and guidelines that it is almost impossible to keep up with all of them. Just having the basic knowledge of these areas will help you, as a Public Relations professional, in the future.

14.2 LIBEL AND DEFAMATION

Public relations professionals should be thoroughly familiar with the concept of libel and slander. Such knowledge is crucial if an organisation's internal and external communications are to meet legal and regulatory standards with a minimum of legal complications.



Libel was a printed falsehood and *slander* was an oral statement that was false. Today, there is little difference in the two, and the courts often use *defamation* as a collective term.

Defamation is any false statement about a person (or organisation) that creates public hatred, contempt, ridicule, or inflicts injury on reputation. A person filing a libel suit usually must prove that:

- 1 The false statement was communicated to others through print, broadcast, or electronic means.
- 2 The person was identified or is identifiable
- 3 There is actual injury in the form of money losses, loss of reputation, or mental suffering
- 4 The person making the statement was malicious or negligent.



Libel suits can be filed against organisational officials who make libellous accusations during a media interview, send out news releases that make false statements, or injure someone's reputation.

Accurate information and a delicate choice of words must be used in releases. For example, a former employee of a reputable advertising agency claimed she was libelled in an agency news release that stated she had been dismissed because of financial irregularities in the department she headed. Eventually, the lawsuit was dismissed because she couldn't prove that the agency acted in a 'grossly irresponsible manner'.

In situations involving personnel, organisations often try to avoid lawsuits by saying that an employee left 'for personal reasons' or to 'pursue other interests' even if the real reason was incompetence or a record of sexual harassment.



Another potentially dangerous practice is making unflattering comments about the competition's products. Although comparative advertising is the norm, a company must be cautious. Statements should be truthful, with factual evidence and scientific demonstration available to substantiate them.

14.3 INVASION OF PRIVACY

Invasion of Privacy is an area of law that particularly applies to employees of an organisation. Public relations staff must be particularly sensitive to the issue of privacy in at least four areas:

- i employee newsletters
- ii photo releases
- iii product publicity and advertising
- iv media inquiries about employees

14.3.1 Employee Newsletter

It is not true to say that an organisation has an unlimited right to publicize the activities of its employees. Company newsletters are considered as commercial tools of trade. This distinction indicate that editors should try to keep employee stories organisation-oriented. Most lawsuits and complaints are generated by ‘personals columns’ that may invade the privacy of employees. For example, although ‘Mr and Mrs John Lim honeymooned in Japan’ or ‘Mary Lim is now a grandmother’ may sound completely innocent, the individuals mentioned – for any number of reasons – may consider the information a violation of their privacy. The situation may be further compounded into possible defamation by ‘cutesy’ editorial aside in poor taste.



One should avoid anything that might embarrass or subject an employee to ridicule by fellow employees. Guidelines to remember when writing about employee activities are:

- Keep the focus on organisation-related activities.
- Have employees submit ‘personals’ in writing
- Double-check all information for accuracy
- Ask yourself if the information will embarrass anyone or cause someone to be the ridiculed.
- Do not rely on second-hand information – confirm the facts with the person involved.
- Do not include racial or ethnic designations of employees in any articles.

14.3.2 Photo Releases

Public relations departments, should take the precaution of:

- 1 filing all photographs
- 2 dating them, and
- 3 giving the context of the situation.



This includes the use of old photos that could embarrass employees or subject them to ridicule. In other cases, it precludes using photographs of persons who are no longer employed or have died and this method also helps to make certain that a photo taken for the employee newsletter is not used in an advertisement.

If a photo of an employee or customer is used in product publicity, sales brochures, or advertisements, the standard practice is to obtain a signed release.

14.3.3 Product Publicity and Advertising

An organisation must have a signed release on file if it wants to use the photographs or comments of employees and other individuals in product publicity, sales brochures and advertising. An added precaution is to give some financial compensation to make a more binding contract.

Written permission should also be obtained if the employee's photograph is to appear in sales brochures or even in the corporate annual report.



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14.3.4 Media Inquiries about Employees

Because press inquiries have the potential of invading an employee's right of privacy, public relations personnel should follow basic guidelines as to what information will be provided on the employee's behalf.



Employers should give a news reporter only basic information such as:

- 1 confirmation that the person is an employee
- 2 the person's title and job description, and
- 3 date of beginning employment or if applicable, date of termination

Unless it is specified by law or permission is given by the employee, a public relations person should avoid providing information about an employee's salary, home address, marital status, number of children, organisational memberships and job performance.

14.4 COPYRIGHT LAW

Should a news release or a corporate annual report be copyrighted? Can a Disney cartoon be used in the company magazine without permission? What constitutes copyright infringement?

These are some questions that a public relations professional should be able to answer. It is important to know the copyright law for two reasons:

1. what organisational materials should be copyrighted, and
2. how correctly to utilise the copyrighted materials to others.

Before proceeding further, it is important to know what copyright means. In very simple terms, *copyright* means protection of a creative work from unauthorised use. A copyright does not protect ideas, but only the specific ways in which those ideas are expressed. For example, an idea for promoting a product cannot be copyrighted, but brochures, drawings, news features, symbols, slogans, and anything that expresses a particular idea can be copyrighted.

Because much money, effort, time and creative talent are spent on organisational materials, copyright protection is important. By copyrighting materials, a company can prevent competitors from capitalising on its creative work or producing a facsimile brochure that tends to mislead the public.

The law presumes that materials produced in some tangible form is copyrighted from the moment it is created. This is particularly true if the material bears a copyright notice. One of the following methods may be employed:

- Using the letter 'c' in a circle © followed by the word *copyright*.
- Citing the year of copyright and the name of the owner.



This presumption of copyright is often sufficient to discourage unauthorised use, and the writer or creator of the material has some legal protection if he or she can prove that the material was created before another person claims it. A more formal step, providing full legal protection, is official registration of the copyrighted work within three months after creation. Registration is not a condition of copyright protection, but it is a prerequisite to an infringement action against unauthorised use by others.

14.4.1 Fair Use versus Infringement

Public relations people are in the business of gathering information from a variety of sources, so it is important to know where fair use ends and infringement begins.

Fair use means that part of a copyrighted article may be quoted directly, but the quoted material must be brief in relation to the length of the original work. For example, it may only

be one paragraph in a 800-word article and up to 250 words in a long article or book chapter. Complete attribution of the source must be given regardless of the length of the quotation. If the passage is quoted verbatim, quote marks must be used.

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14.4.2 Copyright Guidelines

A public relations person should keep the following in mind:

- Ideas cannot be copyrighted, but the expressions of those ideas can be.
- Major public relations materials like brochures, video CDs, motion pictures and annual reports, etc., should be copyrighted to prevent unauthorised use by competitors.
- Any copyrighted material intended directly to advance the sales and profits of an organisation should not be used unless permission is given.
- Copyrighted material should not be taken out of context, particularly if it implies endorsement of the organisation's services or products.
- Quantity reprints of an article should be ordered from the publisher.
- Permission is required to use segments of television programs or motions pictures.
- Permission must be obtained to use segments of popular songs from a recording company.
- Photographers and freelance writers retain the rights to their works. Permission and fees must be negotiated to use works for other purposes than originally agreed upon.
- Photographs of current celebrities or those who are now deceased cannot be used for promotion and publicity purposed without permission.
- Permission is required to reprint cartoon characters, such as the Simpsons and the Shriek.
- In addition, cartoons and other artwork or illustrations in a publication are copyrighted.
- Government documents are not copyrighted, but caution is necessary if the material is used in a way that implies endorsement of products or services.
- Private letters, or excerpts from them, cannot be published or used in sales and publicity materials without the permission of the letter writer.
- Original material posted on the Internet and World Wide Web has copyright protection.
- The copyrighted material of others should not be posted on the Internet unless specific permission is granted.



14.5 TRADEMARK LAW



What does Coca-Cola, McDonald's, Levi's, Canon, the Olympic rings and the logo of Proton have in common? They are all registered trademarks protected by law.



A TRADEMARK is either a word, phrase, symbol, or design, or combination of words, phrases, symbols, or designs which identifies and distinguishes the source of the goods or services of one party from those of others. The concept of a trademark is not new. The ancient Egyptians carved marks into the stones of the pyramids, and the Middle Ages craftsmen used guild marks to identify the source and quality of products. What is new is the proliferation of trademarks and service marks in modern society.



A SERVICE MARK is the same as a trademark except that it identifies and distinguishes the source of a service to both trademarks and service marks whether they are word marks or other types of marks. An 'SM' in small capitals in a circle.

Normally a mark for goods appears on the product or its packaging, while a service mark appears in advertising for the services.



Organisations take the step of designating brand names and slogans with various marks. The registered trademark symbol is a superscript, small capital 'R' in a circle - ®.

A 'TM' in small capital letters indicates a trademark that is not registered. It represents a company's common-law claim to a right of trademark or a trademark for which registration is pending.



Trade mark protection in Malaysia is governed by the Trade Marks Act 1976 and the Trade Marks Regulations 1997. The Act modelled along the Acts of some of the industrialized countries provides effective and adequate protection for registered trademarks in Malaysia.

14.5.1 What can be protected as a trademark?

Any name, word, number, logo, label, letter or a combination thereof may be registered as a trade mark so long as it fulfills certain requirements, namely:

- It cannot be confusingly similar to a previous or existing trade mark
- It must be distinctive
- It cannot be generic
- It cannot have direct reference to the character or nature of the goods/services
- It cannot be a geographical name or surname
- It cannot be deceptive or confusing
- It cannot be scandalous or offensive

At present, smells and sounds cannot be registered as a trademark in Malaysia.

14.5.2 How long does registration take?

From the time your application is filed, it takes about 2-3 years for the Certificate of Registration to be granted (assuming a smooth process). If there are objections or oppositions, the process will be slowed down considerably.



14.5.3 How long does registration last?

Upon grant, your trade mark will be valid for 10 years from the date of filing. Upon expiry you may renew your trade mark for subsequent periods of 10 years each. So long as your trade mark is continually renewed, it can be valid indefinitely.

14.5.4 The role of Public Relations Practitioners

Public Relations practitioners play an important role in protecting the trademarks of their employers. They safeguard trademarks and respect other organisational trademarks in the following ways:

- Ensure that company trademarks are capitalised and used properly in all organisational literature and graphics.
- Distribute trademark brochures to editors and reporters and place advertisements in trade publications, designating names to be capitalised.
- Educate employees as to what the organisation's trademarks are and how to use them correctly.
- Monitor the mass media to make certain that trademarks are used correctly. If they are not, send a gentle reminder.
- Check publications to ensure that other organisations are not infringing on the registered trademark. If they are, the company legal department should protest with letters and threats of possible lawsuits.
- Make sure the trademark is actually being used.
- Ensure that the trademarks of other organisations are correctly used and properly noted.
- Avoid the use of trademarked symbols or cartoon figures in promotional materials without the explicit permission of the owner.

14.6 LIABILITY FOR SPONSORED EVENTS

Public relations personnel often focus on the planning and logistics of an event: they must also take steps to protect the organisation from liability and possible lawsuits.



14.6.1 Plant tours and Open Houses

Plants tours require detailed planning by the public relations staff to guarantee the safety and comfort of visitors. Consideration must be given to such factors as logistics, possible work disruptions as groups pass through the plant, safety, and amount of staffing required.



Guides should be well versed in company history and operations, and their comments should be somewhat standardised to make sure that key facts are conveyed. At the beginning, the guide should outline to the visitors what they will see, the amount of walking involved, the time required and the number of stairs. This warning tells visitors with heart conditions or other physical handicaps what they can expect.

Almost the same points are applicable to open houses. Such an event calls for special logistical planning including arranging for extra liability insurance, hiring off-duty police for security and traffic control, arranging to have paramedics and an ambulance on site, and making contractual agreements with vendors selling food or souvenirs.

14.6.2 Promotional Events

These events are planned to promote product sales, increase organisational visibility, or raise money for charitable causes. The public relations person should be concerned about traffic flow, adequate restroom facilities, signage and security. Off-duty police are often hired to handle crowd control, protect celebrities or government officials, and make sure no disruptions occur.

Liability insurance is necessary. Any public event sponsored by an organisation should be insured against accidents that might result in lawsuits charging negligence. The need for liability insurance also applies to charitable organisations if they sponsor a run or a race. Participants should sign a release form that protects the organisation against liability in case of a heart attack or an accident.



14.7 SUMMARY

There are now practically little difference between libel and slander; the two are often collectively referred to as defamation. The concept of defamation involves a false and malicious communication with an identifiable subject who is injured either financially or by loss of reputation or mental suffering. Libel suits can be avoided through the careful use of language. Some offensive communications will fall under the 'fair comment' defence; an example of this would be a negative review by a theatre critic.

Companies cannot assume when publishing newsletters that a person waives his or her right to privacy due to status as an employee. It is important to get written permission to publish photos or use employees in advertising materials, and to be cautious in releasing personal information about employees to the media.

Copyright is the protection of creative work from unauthorised use. It is assumed that published works are copyrighted, and permission must be obtained to reprint such material. The 'fair use' doctrine allows limited quotation, as in a book review. Unless a company has a specific contract with a freelance writer, photographer, or artist to produce work that will be exclusively owned by that company, the freelancer owns his or her work.

A trademark is a word, symbol, or slogan that identifies a product's origin. These can be registered with the Intellectual Property Division, Ministry of Domestic Trade and Consumer Affairs.



Plant tours, open houses, and other promotional events raise liability issues concerning safety and security. Liability insurance is a necessity.

14.8 CASE STUDY:

What would you do?

Kopitiam, a chain of coffee shops has hired you as director of public relations and marketing. Some of your ideas include:

1. a series of advertisements showing pictures and quotes from satisfied customers.
2. hiring a freelance photographer to build up a photo file for use in possible magazine articles, brochures, newsletters, and advertising
3. reprinting and distributing various magazine articles that have been written about the company
4. starting an employee newsletter with emphasis on employee features and 'personals'
5. including in the newsletter and advertisements, cartoons about coffee drinking from various publications.
6. citing a government study that rates the quality of coffee beans from round the world, and pointing out that Kopitiam uses only the highest-quality beans
7. writing a news release that quotes a survey showing that eight out of ten serious coffee drinkers prefer Kopitiam
8. creating a homepage on the Internet that would include pictures of famous people drinking a cup of coffee.

Prepare a memo outlining the legal and regulatory factors that should be considered in implementing the above activities.

14.9 QUESTIONS

- 1 Why do public relations staff and firms need to know the legal aspects of creating and distributing messages?
- 2 How can a public relations person take precautions to avoid libel suits?
- 3 What is the concept of fair comment and criticism?
- 4 What precautions should a public relations person take to avoid invasion of privacy suits?
- 5 What basic guidelines of copyright law should public relations professionals know about?
- 6 How do public relations people help an organisation protect its trademarks?
- 7 If an organisation is sponsoring an open house or a promotional event, what legal aspects should be considered?

