

News Broadcasting Survival Guide

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Wisconsin Statutory Law

- **322.1203 Rules about broadcasts**

- (b) Broadcast Definition: “electronically transmit a visual image with the intent that it be viewed by a person”
- This rule also bans obscene material

- **885.14 Disclosure of information and sources by news person.**

- This is a Shield Law that requires the following for subpoenas:
 - The information or source is highly important to the proceeding
 - The information is necessary to a party’s claim or proof of a material issue
 - The information or source cannot be obtained in an alternative way
 - There is an overriding public interest in the disclosure of this information

- **885.15 Immunity**

- No person is allowed to avoid testifying in court if they have necessary evidence.
This law includes news broadcasters.

- **895.05 Damages in actions for libel.**

- (2) Wisconsin’s retraction law - if a statement is retracted, the plaintiff can only sue for actual damages (not punitive ones)

- **995.50 Right of privacy.**

- The state of Wisconsin recognizes the right to privacy.
- (2) Breaches of the right to privacy includes
 - Intruding upon someone’s privacy in a highly offensive way (gauged by the standard of a “reasonable person”)
 - Using a living person’s name for the sake of monetary gain without permission
 - Publicity of private information of a person without their consent

Federal Regulations

- **Government in the Sunshine Act - Click [Here](#)**
 - Meetings within the federal government must be open to the public unless they are under specific exceptions (for example, the Supreme Court).
- **Freedom of Information Act - Click [Here](#)**
 - Records held or created by federal agencies must be available to the public unless they fall within one of the exemptions.
 - Exemptions:
 - National security
 - Internal agency rules and procedures
 - Disclosures forbidden by other statutes
 - Trade secrets
 - Agency memoranda
 - Personal privacy
 - Law enforcement records
 - Financial records
 - Geological data
- **Electronic Freedom of Information Act - Click [Here](#)**
 - Electronically stored information from federal agencies, with some exceptions, is open to members of the public. Effectively, this act is an extension of the original act that makes it apply to digital information as well.
- **Family Educational Rights and Privacy Act - Click [Here](#)**
 - Student education records are private information that cannot be published.
- **Clery Act - Click [Here](#)**
 - Most universities are required to maintain up to date police records and report those records annually.

- **Health Insurance Portability and Accountability Act - Click [Here](#)**
 - Health professionals and institutions are protected from revealing information about individuals' private records.
- **Wiretapping and Electronic Surveillance Act - Click [Here](#)**
 - It is illegal to intercept, record, disseminate, or use a private communication without a participant's consent.

General News Rules:

- **This case established that statements could be true and still libelous. If statements are aligned in a way where they are true but still misleading, they can be considered “libel by implication”.**
 - Newton v National Broadcasting Company United States Court of Appeals, Ninth Circuit Nos. 89-55220, 89-55285 (1990)

- **It is acceptable to record people on public property. However, conversations that have a reasonable expectation of privacy (such as those between a nurse and their patient) are not able to be broadcasted without proper consent.**
 - Shulman v. Group W Productions 59 Cal.Rptr.2d 434

- **Miller Test for Obscenity**
 - Established in Miller v California
 - To be obscene, the court must find that:
 - “The average person, applying contemporary community standards” would find that the work appeals to prurient interests
 - The work depicts or describes, in a patently offensive way, sexual content specifically defined by the applicable state law, and
 - The work lacks serious literary, artistic, political, or scientific value

- **Ollman Test for Opinion**
 - Is the statement verifiable (provable true or false)
 - What is the common usage or meaning of the words?
 - What is the journalistic context in which the statement occurred?
 - Is it in a space traditionally meant for opinions or facts?
 - What is the broader social context of when the statement was made?

- Was it made in a space for opinions?

- **Media Liability for Negligence**

- Reasonably foreseeable harm
- Proximate (directly related) cause of the harm
- Caused damage

- **Libel**

- A statement of fact
- That is published
- That is of and concerning the plaintiff
- That is defamatory
- That is false
- That causes damage (or harm)
- For which the defendant is at fault

- **Actual Malice**

- Standard of fault for public figures/officials as plaintiffs in libel cases
- A statement made where the statement maker either 1 knows the information was false or 2 acted with reckless disregard for the truth
 - Criteria for “Reckless Disregard”
 - Urgency of the story - Was there time for fact checking?
 - Source reliability
 - Number of sources
 - Story believability

- **Libel and the Standards of Fault**

- Public Officials - Actual Malice
- All-Purpose Public Figures - Actual Malice
- Limited Purpose Public Figures - Actual Malice

- Private Figures - Negligence
- Libel-Proof Plaintiff - cannot have a case since their reputation cannot get worse than it is
- **Cannot bootstrap**
 - Using fame from a libel case to argue that someone has become a public figure (makes them prove higher standard)
- **Anti-SLAPP Laws**
 - SLAPP - Strategic Lawsuit Against Public Participation
 - Laws in some states to prevent frivolous lawsuits - force plaintiff to show that they will prevail in a lawsuit
 - Wisconsin does not have Anti-SLAPP laws
- **Reporting Privileges and Defenses Against Libel**
 - **Fair Report Privilege**
 - Able to report accurately and fairly on the content of official records and proceedings
 - Information must be from an “official” record or proceeding
 - Report must fairly and accurately reflect information from the record or proceeding
 - Source of the statements must be noted in the report
 - **Absolute Privilege**
 - Statement that is completely exempt from claims of defamation because the statement was made during the performance of official government duties (such as in courts or legislatures)
 - **Neutral Reportage**
 - Libel defense - reporting an accusation made by a responsible and prominent organization, even if the accusation was false
 - **Fair Comment and Criticism**
 - Protects critics from lawsuits against figures in the public eye (ie politicians, actors, etc)

- **Wire Service Defense**
 - Defendant received material containing the defamatory statements from a reputable news gathering agency (ie Associated Press)
 - Defendant did not know the story was false
 - Nothing obviously alerted the defendant that the story was false or incorrect
 - The original story was published without substantial change
- **Rhetorical Hyperbole, Parody, Satire, Letters to the Editor, Opinion**
 - Common defenses against libel
- **Statute of Limitations**
 - Libel in Wisconsin is two years
 - Varies by state
- **Retractions**
 - Removing the libelous story from the paper and printing a correction
 - (for Wisconsin-specific info, check the statutes section)
- **Newsgathering Rules**
 - People have a Reasonable Expectation of Privacy
 - Person has an actual expectation of privacy that society recognizes as reasonable
 - These rights are not absolute
- **Privacy Categories**
 - Intrusion Torts
 - Intrusion Upon Seclusion
 - Physically or technologically disturbing another's reasonable expectation of privacy
 - Defense: Consent (permission to be on property)
 - False Light
 - Making someone seem, to the public, like something they are not
 - Defense: Libel Defenses
 - Appropriation

- Commercialization
 - Protect people who want privacy
 - Prohibits using another person's name or likeness for commercial purposes (making money) without consent
- Right of Publicity
 - A celebrity's right to use their name, likeness, voice, and/or identity only when they give their permission
- Private Facts
 - Publicizing highly offensive, true private material that is not newsworthy
OR received lawfully from a public record
- Cameras in private places are illegal depending on the state
 - They are not prohibited in Wisconsin
- Confidential Sources
 - Reporters will not be protected by the court for broken promises (promissory estoppel)
 - Sometimes courts will require breach of confidentiality
 - A source will not be allowed to remain confidential if:
 - The information or source is highly important to the proceeding
 - The information is necessary to a party's claim or proof of a material issue
 - The information or source cannot be obtained in an alternative way
 - There is an overriding public interest in the disclosure of this information

General Broadcasting Rules:

- **Indecency is allowed to be regulated during a safe harbor period.**
Indecent material is material that is inappropriate or offensive, particularly to children. The safe harbor period extends from 10:00 pm to 6:00 am, and it is designed to protect children from this content.
 - FCC v. Pacifica Foundation, 438 US 726

- **The federal government is allowed to regulate who has control of air waves that people and companies are broadcasting on. It is a public resource that is very limited that should be used for the public good.**
 - Trinity Methodist Church, South v. Federal Radio Com'n, 62 F. 2d 850

- **Can a news broadcast be copyrighted?**
 - The way it is reported can be, but the facts cannot. If it is copyrighted, the broadcaster has these rights over it:
 - Reproduction of the copyrighted work
 - Creation of derivative works based on the copyrighted work
 - Distribution of copies of the work to the public by sale or other means (except CD's and computer software)
 - Performance of the copyrighted work publicly
 - Display of the copyrighted work publicly

- **What if a copyrighted material I/the studio owns was infringed upon?**
 - We must prove:
 - The work is protected by a valid copyright (original work we created in a fixed and tangible medium)
 - We own the copyright to the work
 - The work is registered with the Copyright Office

- Evidence exists that the defendant in the case directly copied the work OR had access to the work, and the works in discussion are very similar

- **Fair Use Exception Considerations (When We Can Use Copyrighted Material)**

- Was it used for monetary gain on our part or for criticism, comment, parody, etc?
 - If it was used for monetary gain, it is less likely to be fair use.
- How was the copyrighted work used?
 - Creative usage is more likely to be fair use than functional usage.
- How much of the copyrighted work was used and was it substantial?
 - The more of the work that was used, the less likely it is to be fair use. Additionally, if its use was central to the creation of the new work, it is less likely to be seen as fair use.
- What is the impact on the copyright holder's market?
 - If the material is likely to take money from the original copyright holder, it will be likely to be seen as copyright infringement.

- **Commercial Speech**

- Solely proposes a commercial transaction
- Is unrelated to the exploration of ideas, truth, science, or the arts

- **Central Hudson Test**

- The government can regulate false or misleading advertising
- The government can regulate unlawful goods and services

- **Additional regulations may occur if each of the following is met:**

- There is a substantial state interest behind the regulation
- The regulation directly advances the state's interest
- There is a reasonable fit between the state's interest and the regulation

- **When can the government prevent a publication before it is released?**

- When a communication is obscene, incites violence, or reveals military secrets
- AND the government makes a specific showing that a prior restraint is justified
 - Relevant Case: Near v Minnesota
 - All other situations - the government can only punish after the fact