

publications management

strategies for corporate



Be aware of libel, privacy, copyright issues to prevent content problems down the road

THINK Ahead to Avoid the LEGAL LOOP

If you're one of the folks running a custom publication, you're probably a smart cookie when it comes to the legal stuff. You know libel is bad. You know defamation will come back to bite you like a frenzied shark.

BY JOHN-HENRY DOUCETTE

4 PM Portfolio

Breakaway from the pack by creating a unique, high-quality, and profitable publication.

7 Big Talker

Expandable and profitable, this publication is a must-read for all those who are interested in the business and legal aspects of publishing.

8 An E-Eddie Bauer

Maximize your profits by creating a profitable online publication.

And nobody but nobody, wants to get the customer — or their company, for that matter — sued. Still, we don't do back flips over taking our work to the lawyers.

Michael Winkleman, 49, publisher of custom titles at American Lawyer Media in New York, is a journalist and publisher by trade, though as a college student he jokes he considered attending law school "for about 25 minutes." You might think that working on titles such as *L*, a magazine for young law students, or *New York Lawyer*, makes the thought of running content by attorneys more palatable.

No so.

"If there's a way to keep that from happening, you're better off," Winkleman recommends. "If the client is adamant about going to the lawyers, you don't want to push that button too far, but you try to think it through. What are the lawyers going to do? What are they going to say? Then you head them off at the pass."

In publishing, some editors view the intervention of attorneys as another piece of doing business, while others try to avoid them like a diabolical, marauding plague that can gum up a production schedule faster than The Blob engulfed that telephone booth outside the diner.

Certainly in custom publishing,

tions over the ownership of content (particularly work provided by freelancers) and even product liability.

Depending on the nature of their content, he says some custom publications — even in the form of a lifestyle magazine — may be viewed as advertising in some courts.

Lawrence Savell, 43, specializes

"It's BALANCING BUSINESS CONCERNS with LEGAL CONCERNS, and this lets the publisher do what it does best with the LEAST AMOUNT of LEGAL RISK."

— Lawrence Savell, Chadbourne & Parke

there are different concerns than a traditional magazine's focus on libel, invasion of privacy or First Amendment law issues. But these things still exist in our universe, and an expert on media defense law tells *Publications Management* that custom publishers often face legal ques-

in product liability and media law defense for Chadbourne & Parke in New York, and he has written and lectured extensively on legal issues facing the magazine industry. He says custom magazine publishers and editors should establish strong working relationships with their

Avoid the LEGAL LOOP

own attorneys and they may want to do the same with the lawyers of their clients.

But Savell isn't an advocate of "knee-jerk" dashes to the lawyers — just better sensitivity to legal issues.

"It's definitely an art," Savell says of dealing with counsel. "The businesses that seem to be the most successful are the ones that see lawyers as a necessary evil and try to get the lawyers involved as early as possible when there is a question. They know an ounce of prevention is worth a pound of cure. It's balancing the business concerns with the legal concerns, and this lets the publisher do what it does best with the least amount of legal risk."

Steps to Deal with Legal Eagles

Savell says the best first step is a telephone call. After that, run the potentially offending material past an attorney via e-mail or hard copy. The last step is reviewing a manuscript, particularly in cases where clients wish to review all content in their magazines.

Winkleman recalls instances such as the latter and one in particular in which he and editors were able to head lawyers off. The story was a how-to column that gave

basic tips on establishing an IPO, and, like in stock tip columns that claim their recommendations are for entertainment only, the publisher reasoned that there was a slight chance of liability if the advice was misapplied or led to losses.

"We did do a disclaimer that this is not to be construed as legal advice 'For real legal advice consult your attorney.' We didn't consult attorneys about that, but we, the editors, determined we should run a disclaimer. Most of our titles are technical or lifestyle. There have been a couple of times with clients where they've wanted to run it by lawyers and there have been a couple of battles."

If a client is set on running content by its attorneys, Winkleman prefers to pick his battles.

"If I thought it was going to drastically change the style or compromise the meaning of a story, I would bring that to the lawyer and try to get my point across," he says.

For an internal publication such as *Invent*, a worldwide magazine for employees of Hewlett-Packard, editor Jay Coleman feels he has a cordial relationship with corporate attorneys. Coleman, 50, says lawyers are necessary in some cases, but editors can make "higher, common sense decisions"

in preparing copy — whereas lawyers might prefer caution to the point of muddling clarity.

"I've dealt with a lot of other internal editors and one of my colleagues in the oil industry talked about going through 13 different reviews, including [one by] a corporate lawyer, before getting his content out," Coleman says. "It's not quite like that for us. A year ago, when we were spinning off part of our company, and there was going to be an IPO, some legal questions came up. In a case like that, we were in close touch with lawyers...but we have no standard legal review of stories."

Lawyers, Coleman adds, are by nature careful folks, and sometimes hesitate over the slight chance of legal risk. Coleman says there have been instances where getting the word out to employees outweighed this.

At Southern Progress Corp., the Birmingham, Ala., parent company of *Southern Living* and other popular commercial magazines, the same legal checks and editing steps apply to titles produced by its relatively young custom publishing division as to commercial publications. Stephanie Patton, the company's 32-year-old corporate marketing manager, says that attorneys do not generally review content, but legal

Story at a Glance

- Develop a relationship with attorneys at the outset.
- Don't give them carte blanche control to say and do anything, but be realistic about when a libel concern could rear its head.
- Try to head attorneys off at the pass by avoiding potential conflict over controversial or sensitive issues.
- An editorial team member well versed in media law is a huge plus.
- Don't forget the freelance side of things — have clear-cut contracts/agreements about who owns the content.
- Think like an attorney and ask yourself, "Is there anything here that I can use as the basis for suing somebody?"
- Realize that some courts will view custom publishing as advertising.

Editor & Publisher: DEBRA ZIMMERMAN MURPHEY

phone: 602/395-5850; direct: 301/392-3643;

fax: 301/392-5477; e-mail: debram@mcmmurry.com

Art Director: HEIDI EASUDES

Contributing Editor: JENN WOOLSON

Circulation Marketing Director: SCOTT M. ACCATINO

Production Manager: SALLY HAND

Chairman & President: PRESTON V. MCMURRY, JR.

Chief Operations Officer: CHRISTOPHER MCMURRY

Chief Financial Officer: CHARLES WILSON

Advisory Board:

DWAYNE FLINCHUM, President, Flinchum Inc.

WALLY GIBBS, V.P. Production, McMurry Publishing, Inc.

BILL GUBBINS, President, Bill Gubbins Inc.

RENEA NICHOLS, Professor, The Walter Cronkite School of Journalism and Telecommunication

ROB SUGAR, President, AURAS, Inc.

ANN WYLIE, President, Wylie Communications

DIANA POHLY, Partner & President, Pohly & Partners

ISSN 1525-7444

Publications Management® is published 24 times a year by McMurry Newsletters, a division of McMurry, 1010 East Missouri Ave., Phoenix, AZ 85014.

McMurry Newsletters, 2000. *Publications Management* grants one-time reproduction rights when the newsletter and McMurry are fully credited. Single copy price: \$20.

For multiple copies, call 1-602-395-5850.

**MCMURRY
PUBLISHING**

CPC

Reading Someone Else's Copy? Get YOUR OWN subscription!

Yes! I want your proven publishing tools, tips and techniques right at my fingertips. Please start my subscription to *Publications Management*, the premier strategy newsletter for corporate and custom publishing. Send me one year (24 issues) for just \$299.

NAME _____

TITLE _____

DEPARTMENT _____

COMPANY _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____ FAX _____

E-MAIL _____

CHARGE MY: VISA MC AMEX

CARD NO. _____ EXP. / _____

SIGNATURE _____

CHECK ENCLOSED (payable to PUBLICATIONS MANAGEMENT)

Mail to: Publications Management, P.O. Box 500
Missouri City, TX 77459

H001215

Avoid the LEGAL LOOP

relationships are established with clients early in the development of magazines.

"Probably the biggest point we discuss with our customers is who owns the rights to content," Patton says. "Now, they might own the title of their magazine, but we own any content. They have the rights to use any photos on their Web site, but they have to credit us."

Sally Reilly, the 44-year-old corporate counsel for *Southern Progress*, adds: "That area has really expanded in the past few years because of the

Internet. Those issues have not yet been resolved. Traditionally, we've already gotten print publication rights, and now everybody's online. There's a lot of give and take with our freelance contributors when we design contracts."

Expert Advice to Work with Freelancers

During a presentation in October at the *Folio*: Show in Manhattan, Savell spent a large portion of his talk speaking about freelance contracts. He

recommends making contracts as detailed as possible, based on the needs of the magazine, including possible indemnity provisions and specific grants of rights.

Editors may want to even specify the details of the story, such as word length or topic, in the contract.

"Get it in writing," he notes. And more than once.

Once content hits the editing stage, Savell says the best thing a custom magazine can do to protect itself legally, is view its magazine as might a plaintiff bent on suing.

"Think, 'Is there anything here that I can use as the basis for suing somebody?'" Savell explains.

"And if you do that, maybe by making some minor modifications, you can provide some serious insulation down the road. If it's a larger corporation that has a legal

department, by all means run it by them. There's no such thing as a stupid question."

Editors well versed in media law will generally have fewer and more meaningful dealings with attorneys, he says.

"If you put something out there that says something negative about a [com-

peting] company and it's false, you have a potential defamation," he says.

"It's not just things in the abstract, but it's juxtaposition, too. There have been privacy and libel actions by people who have given their permission to have their image used and then found it in an article on, say, prostitution..."

"And someone could view a custom magazine as an advertisement," he continues, "if the content is supporting a brand or a product. The most important issue is that custom publications are still subject to the same rules as everyone else. It's still a publication. It still contains information that goes to a third party. It could still be the basis for a claim."

So think, he says, before putting your custom publication's equivalent to the Good Housekeeping Seal of Approval, on anything.

"I've worked on a lot of magazines where we've done recommendations or product guides," Winkleman comments after hearing about product liability claims against publishers (though many have resulted in decisions favorable to the publishing industry).

"I've never really worried about that," he adds.

"Maybe I should have." ♦

Writer Shares Insight about Frivolous Suit

When I was a cub reporter at a metro newspaper in Virginia, I was sued for libel, defamation and preventing an individual from achieving his First Amendment rights. It was an unusual case, in that I was added to an existing suit for not quoting the plaintiff. He was a lone picketer I had briefly spoken with — not interviewed — at a public event. Around the newsroom, I jokingly referred to this case as libel por nada since I had neither mentioned nor alluded to the individual in the story.

Until the case was dismissed as frivolous, however, the laughs my spectacular witticism earned were nervous ones.

The reason?

Though the defense was successful, after a few weeks of preparation and hearing, the suit cost the paper a whole bunch of money for attorney fees.

Faced with a world where those who are looking to sue what they perceive as a deep-pocketed company, these types will invariably find something upon which to dangle their brief. Given that, Lawrence Savell, an attorney who specializes in product liability and media law defense for Chadbourne & Parke in New York, recommends that magazine editors think like a potential plaintiff when reviewing content.

Though custom magazines are generally lifestyle publications or soft-sell ad pieces, Savell advises that libel should still be on every editor's checklist, since even a perceived slight can lead to a suit.

"Basically, every communication you put out now has to be looked at under a microscope because it could offend someone or convey the wrong message," Savell says.

"Now with the Web, you have this product going out all over the world. You have not only tremendous exposure, but also tremendous possible liability."

So when you look at a piece, no matter how trivial the topic, keep this in mind: Okay, if I wanted to sue Publisher X, what can I sue over here? And go ahead — be far-fetched.

"There are some very creative plaintiff lawyers out there," Savell says.

"Couple that with a jury's tendency to be sympathetic to plaintiffs, and you can end up with a big decision against you."

This is why Savell, who often lectures on media defense law issues, often starts presentations with a list of libel decisions and the punitive damages awarded plaintiffs. The numbers — millions and millions roll off Savell's tongue without pause — usually help make audiences of editors more receptive toward seeking counsel's counsel as soon as a question arises.

"They realize that any of these numbers would knock out their business," he says.

"You can do everything right, and if you're hauled into court it could still cost big money."

Even if you're innocent.

Even, unfortunately, in a case of libel por nada. — JHD

