

Publishing Laws & Regulations

Policies & Practices

(Rev. 9-15-14)

As a newspaper we unavoidably incur some degree of risk associated with content we may choose to publish, but we must seek to avoid unnecessary risks. Accordingly, we seek to publish, everything and always, with propriety and integrity. Below I have highlighted some “hot button” issues regarding published content. I’ve offered a brief summary of each listed issue and cited several references for more information. This is not a comprehensive list, nor a comprehensive treatment of listed situations.

Bottom Line – We must avoid publishing content which may violate applicable laws or regulations. All involved in processing content of any kind must familiarize ourselves with “hot button” issues. If you encounter ANY content which raises ANY doubts about compliance, contact the Advertising Manager or Managing Editor immediately.

All Content

Libel, Defamation – ANY unflattering remark directed toward a person(s) constitutes a “red flag” warranting intentional consideration before publication. Likewise, unflattering photos or photos of people in compromising situations, could be expected to trigger legal action. As a newspaper, we enjoy substantial, but certainly not absolute, protections from charges of libel or defamation, especially with regard to public figures. Some protections and defenses exist – e.g., ambiguity of meaning, element of truth in the statement(s) made, absence of malice, etc. Instead of relying on defenses, let’s intentionally avoid unnecessarily risky circumstances.

http://www.njpa.org/njpa/legal_hotline/defamation.html, http://www.njpa.org/njpa/legal_hotline/miscellaneous.html

Invasion of Privacy – Photos which picture someone in an unflattering manner, in a compromising situation or which may serve to damage them in some way, may result in a claim. Photos taken in a public place – e.g., a large group of people – may contain persons who do not wish to be photographed. For photographs used in news and informational context, no special requirements apply. For photographs used in advertisements, special requirements do apply. Certain circumstances merit particular care – e.g., photos taken in or near a doctor’s office may merit a different standard with respect to someone’s privacy than photos taken at a large retail store or restaurant or other public location.

Copyright – Publish only information or images which we either create ourselves or we are clearly permitted to publish – e.g., by license or permission. Permission is presumed for unsolicited content submitted to us for publication. As appropriate, we will publish news stories derived from other sources by crafting (not copying) a brief summary of the news story, then giving attribution and a link to the source. Images other than our own, unless clearly in the public domain (e.g., from a government source not bearing a copyright), will be assumed to be copyrighted and will not be used without the express written permission of the copyright holder. This applies to images in whole or in part.

Advertising Content

Especially rigorous standards of compliance apply to content published for commercial, promotional purposes. For the sake of our advertising clients, for the benefit of our readers and for our own security, we must comply with the various laws and regulations. Those directly involved in advertising sales are primarily responsible for ensuring our compliance, but everyone who touches advertising content in the process of publication shares in this responsibility.

Below are listed several common “hot button” issues. If you are handling any advertisement of this nature, and you have any doubt about compliance with applicable laws or regulations, contact the Advertising Manager immediately.

Truth in Advertising – By law, advertising must be truthful and non-deceptive; advertisers must have evidence to back up their claims; advertisements cannot be unfair. <http://business.ftc.gov/documents/bus35-advertising-faqs-guide-small-business/>

Comparisons – Claims of “best” or “better than” must be based on objective evidence (e.g., survey results). <http://business.ftc.gov/documents/bus35-advertising-faqs-guide-small-business/>

Copyright – Publish only information or images which we either create ourselves or we are clearly permitted to publish – e.g., by license or express written permission. This applies to images in whole or in part. <http://www.copyright.gov/title17/92chap1.html#106>

Trademarks or Trade Names – Trademarks or Trade Names should not be published in writing or depicted in images (e.g., photographs), for advertising purposes, without express written permission. Examples: Condiment labels should not be visible in “table shots.” <http://www.uspto.gov/trademarks/law/index.jsp>

References to other people or their creative work – As a general rule, it is unlawful to use something of value which someone else has created without their permission. [Hint: A desire to publish something is an indication of value.] There are circumstances under which it is acceptable to use the name, the likeness or the creative work of someone else without permission (e.g., public domain, fair use, parody), but such circumstances are exceptions. Commercial use of copyrighted content is especially restrictive. For example, song title/lyrics or quote/likeness of a celebrity should not appear in advertisements without permission.

We will refuse to publish anything which would clearly violate the rights of a third party. In cases where we feel a violation may exist, we will recommend against publication and suggest alternatives to avoid possible violation. If a client would insist that we publish something which we feel may violate the rights of a third party, a signed statement of indemnification will be secured from the client prior to publication. Presenting this statement for signature may be sufficient to dissuade the client from publication.

The indemnification statement shall read: *[Client] desires to include [item, wording] in promotional material to be published by Cape May County Herald. Cape May County Herald has reasonable belief that a third party may claim rights to [item, wording], and has advised [Client] against publication. Notwithstanding this advice, [Client] has directed Cape May County Herald to publish [item, wording] in promotional content on their behalf. [Client] agrees to indemnify, hold harmless and defend Cape May County Herald, along with any affiliated entities, officers and employees, against any loss or expense resulting from claims, actions or proceedings based on the contents or subject matter of advertisements placed for Signor/Client, without limitation.*

Property Release – Our Advertising Contract (as of rev. 11-1-2013) includes a property release. Otherwise, images of private property may not be used in advertising without the express written permission of the owner in a property release (copy attached). Ref: American Society of Media Photographers <http://asmp.org/tutorials/property-and-model-releases.html#.UnkiTm0s-h4>. A property release may be found here: <http://asmp.org/tutorials/property-release.html#.UnkiAW0s-h4>

Model Release – If there be any doubt regarding our unfettered and perpetual license to use photographs of any individual for commercial purposes, we must either a) avoid the appearance of that person in our photographs or b) obtain a model license from that person. A good general practice in taking photos is to approach the person(s) you wish to photograph, explain to them who you are and the purpose of the photograph, ask them to write their name in a notebook in which you have placed a model release for reference. Ref: American Society of Media Photographers – a “pocket” model release may be found here: <http://asmp.org/tutorials/pocket-model-release.html#.UnkiK20s-h4>. The “valuable consideration received” is typically unnecessary, but beneficial and appropriate for circumstances in which multiple photos may be taken of a particular individual. The “valuable consideration” may consist of merely providing (e.g., emailing) copies of photo(s) to the subject.

Celebrities – If a promotional photograph would include anyone who may be considered a celebrity or could represent a “unique situation,” a model release shall be obtained before any such photo is taken. Ref: American Society

of Media Photographers – a “pocket” model release may be found here: <http://asmp.org/tutorials/pocket-model-release.html#.UnkjK20s-h4>

General Guidance on Promotional Photography – For any photography which may be used for promotional purposes– e.g., display ad or “sponsored content:

a) Do not take any photograph which should cause any reasonable concern about propriety or potential liability.

b) If a promotional photograph would include anyone who may be considered a celebrity or could represent a “unique situation,” a formal release (copy attached) shall be obtained before any such photo is taken.

c) Before taking any photograph –

Consider whether there may be items in the photo which could constitute trademark infringement and avoid picturing any items in a manner which may constitute any such infringement.

Consider whether any people may appear in the photo. If so, either avoid having any people in the photo or clearly explain the intended use of the photograph to everyone who will be pictured; expressly ask if it is okay to take the photo of them and secure assent from each person to be pictured. Do not take a photo which includes anyone who has not expressly given assent.

Free or “Complimentary” Alcoholic Beverage – Generally, a business may not offer an alcoholic beverage below actual cost. A free/complimentary beverage may be included as part of a package – i.e., with a meal, and this “included” offer may be advertised. <http://www.nj.gov/oag/abc/downloads/abchandbook02.pdf>, <http://www.nj.gov/oag/abc/faqs.html>

BYOB – An unlicensed business may allow the consumption of wine or beer only (not spirituous liquors) on the premises, but the business may not charge a set-up or corkage fee, and the business may not advertise in any way that alcoholic beverages may be brought to, or consumed on, the premises. Per NJPA’s Legal Hotline (http://www.njpa.org/njpa/legal_hotline/advertising.html), the state prohibits any BYOB advertising, including for fundraisers, etc. Violation of the statute constitutes a “disorderly person” offense. NJSA 2A:170-25.21, <http://www.nj.gov/oag/abc/downloads/abchandbook02.pdf>, <http://www.nj.gov/oag/abc/faqs.html>

This restriction applies only for content which is published as part of an advertising program or because of an advertising relationship – e.g., sponsored content. If BYOB statements are being published for non-advertisers as well as advertisers in a context which may be deemed “strictly editorial,” then the restriction need not apply.

Acceptable alternatives to BYOB language in advertisements: “Call for beverage policy.” “Call us about our beverage policy.” “For beverage policy, please call.”

Gambling – Gambling may be defined as a “pay to play” game of chance. Generally, such games must be licensed. Particular gambling rules apply to businesses with a liquor license: <http://www.nj.gov/oag/abc/downloads/abchandbook02.pdf> There are exceptions for specified charities: <http://www.gambling-law-us.com/Charitable-Gaming/New-Jersey/> <http://www.state.nj.us/lps/ca/laws/lgcstats.pdf> Advertisements for raffles must contain: the name of the sponsoring organization, the id number issued by the state, the license number issued by the municipality, the date, time and place of the allotment of the prize(s), an accurate description of the prize(s), the current retail value of the prize(s), the purpose to which the entire net proceeds are to be devoted, and the price of the ticket. Games of skill (e.g., darts, bowling) are differentiated from games of chance – see “contest” below. A “sweepstakes” involves chance

Contests and Sweepstakes – A contest is a game of skill (e.g., darts) which may or may not require payment for participation. A sweepstakes is a game of chance in which payment is not required for participation. Different rules apply for contests and sweepstakes. In both cases, it is important that rules are thoughtfully established, published and followed. Such rules might include qualifications for entrants, means of entry submission, duration of contest/sweepstakes, prize(s) to be awarded, how winner(s) shall be determined and notified, how/when prizes must be claimed, how unclaimed prizes will be handled, publication of winners. A sweepstakes example: <http://www.capemaycountyherald.com/64788-ocean+city+pops+sweepstakes>

Specialized laws and regulations apply for advertising associated with certain industries and certain categories of advertising. Here is a partial list of specialized categories and some of the distinctive advertising requirements:

Contractors - The Contractor's Registration Act requires that all home improvement contractors register with the N.J. Division of Consumer Affairs and display their registration number listed, NJHIC#, in all advertisements. <http://www.njconsumeraffairs.gov/HIC/hicpacket.pdf>

Vehicles for Sale by Dealer – Subchapter 26A of the Consumer Fraud Act stipulates requirements for advertised motor vehicles. For advertised motor vehicles, the advertisement must include certain information about the specific vehicle, including: year, make, model, last 8 digits of the VIN, number of engine cylinders, type of transmission, if a/c equipped (unless a/c is standard for that model). Used vehicles must also include actual odometer reading and indicate nature of use, if other than personal transportation by the previous owner. For an advertisement offering a group of vehicles for sale (e.g., priced \$10,000 - \$20,000, vehicles priced as low as \$5,000, monthly payment as low as \$250), the least expensive vehicle in the advertised group is considered to be an "advertised motor vehicle" under the Act. <http://www.state.nj.us/lps/ca/laws/ConsumerFraudAct.pdf>

Real Estate for sale by Broker – The broker's business name must be included in any advertising, in a type size larger than the salesperson's. Specific property advertisements must include the municipality in which the property is located. Advertisements must be non-discriminatory. Ref: N.J.A.C. 11:5-6.1 (Advertising Rules) <http://www.lexisnexis.com/hottopics/njcode/>

Political Advertising – Political advertising, display ads and paid releases, must contain the prescribed "Ordered and paid for by" disclaimer and satisfy various other requirements. Ref: attached NJPA guidelines for "Political Advertising Requirements."

Legal advertising (Public Notices) - http://www.njpa.org/njpa/legal_hotline/LegalAdvertising.html

Other Classified Advertising Categories – Other categories of classified advertising have special laws/rules (e.g., help wanted) or merit particular caution (e.g., business opportunities). Janet and Rachel are familiar with these laws; refer specific questions about such advertising to them.