

Liability for Student Media

With the power of the press (even if the “press” is a laptop and a Web site) comes significant legal responsibility. Although no journalist is required to be ethical, open-minded or fair (however those terms might be defined), a reporter who libels someone, invades his privacy or infringes copyrighted material can be sued and required to pay money damages.

Student journalists and school officials often look at the issue of liability from vastly different perspectives. Fear of liability can prompt some school administrators and advisers to perceive student publications as fraught with danger, the literary equivalent of a loaded gun. Students, on the other hand, may see liability as a non-issue, or at least one that has no relevance to them because they believe that they will not be held responsible for what their publications publish. Both sides are misguided. In fact, the threat of liability to the student media falls somewhere between these two extremes.

While it is important that everyone involved with high school or college student media understand where the lines of liability will most likely fall, no one should buy into the notion that eliminating risk is more important than good journalism and an editorially independent student press.

WHO CAN BE HELD LIABLE?

The general principle behind legal liability is that any person who should and reasonably could have prevented an injury from occurring can be held responsible for it. Thus in the context of a libel claim against a newspaper based on a news story, the reporter who wrote the story¹ and any editors or other staff members who had significant responsibility for overseeing its inclusion in the paper² could be required to pay for the damage to reputation the story caused. In the words of one court, “Everyone who takes a responsible part in the publication is liable for the defamation.”³

That same reasoning applies to student journalists, even those who are minors.⁴ A 16-year-old high school student reporter who libels a teacher will not be shielded from responsibility by her youth. More than one high school journalist has called the Student Press Law Center when threatened with a libel lawsuit and been surprised to learn that she can be sued and ordered to pay damages. Practically, few libel plaintiffs are inclined to sue high school students individually because of the appearance that they are “picking on a kid who made a mistake” and because they know that they are not likely to collect much of a damage award from a cash-poor student. But if they choose to make such a claim against a minor, the law will not keep them from doing so.

On the other hand, those who have borne no significant role in publishing a defamatory or other unlawful statement can generally escape liability, regardless of their age. For example, a business manager or other non-editorial employee of a student publication will not be liable for a defamatory statement where he had no direct participation or knowledge of its production.⁵ Similarly, the author of an originally non-defamatory statement is not liable for editing changes, made without her knowledge, that convert the statement from innocent to actionable.⁶

Student media advisers often ask the Student Press Law Center if they can be held liable for the student publications they advise. The short answer is that they are legally in the same position as the school itself. If they dictate content decisions to student editors, they likely will be liable. Where they leave content control to students, even if they do offer advice and suggestions on particular stories but make clear (ideally by a written policy)

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that they are leaving the final decision to the editors, they can avoid liability.⁷

ARE MOM AND DAD LIABLE FOR WHAT JOHNNY WRITES?

Parents normally are not responsible for the speech of their children. As of 2007, there were no published court decisions holding parents civilly liable for the unlawful speech of their child. But according to legal scholars, parents can be held responsible for the harm caused by their minor children in certain circumstances and some states have established this responsibility by statute.⁸ The circumstances where parental liability exists, however, will be rare. Only when parents are aware of their child's unlawful expression and fail to act reasonably to control it will they be held responsible for what their child publishes.

Of course, if parents play an independent and active role in the publishing process — for example, by editing their daughter's article before it is published in an underground paper or contributing their own column to their son's Web site — they can be held responsible for their own work.

SCHOOL LIABILITY: PUBLIC COLLEGES PROTECTED

At a public college or university, a school that does not censor or otherwise control the content of a school-sponsored student publication should be protected from liability for what students publish.

While libel, invasion of privacy and other content-based lawsuits against college publications are relatively rare, college administrators still may be concerned about their potential liability for what their students publish. For a person suing, a college or university is often the most desirable defendant because it can afford to pay a greater amount of money damages than an asset-poor student newspaper or student staff members. They are frequently described as having the “deep pockets.”

The good news for anxious administrators is that courts have said that public colleges and universities will not be held financially liable for what their student media publish as long as the school is not censoring or exercising some other form of content control. Thus, schools that exercise a “hands-off” editorial policy are in a better position to avoid liability for student media mistakes than those that carefully screen and approve content prior to publication.

Plaintiffs trying to reach the “deep pockets” of a university have attempted to argue various legal theories. Some have tried to claim that the school should be held liable for its student media because it functions as the publisher. For commercial media, publishers are generally liable for everything published under their name.⁹ However, in the student media context, comparable positions may not exist. Most student publications do not have a named “publisher,” and those that do typically do not allow them to interfere with content decisions of student editors. The private publisher of *The Los Angeles Times* is different from the president of California State University. As one federal appeals court noted, a public “university is clearly an arm of the state and this single fact will always distinguish it from the purely private publisher....”¹⁰

In one of the first cases to reject such a “publisher” theory, a Louisiana state court refused to impose liability on Southern Louisiana University of New Orleans for a libel claim brought against that school's student newspaper. In *Milliner v. Turner*,¹¹ members of the faculty sued for libel after the student newspaper called them “racists” and “proven fools.” The Louisiana Court of Appeals held that the university could not be held liable because it did not have the authority to control the content of newspaper. The court found:

The relationship between a university and its student newspaper is anomalous and cannot be compared with a publisher and its newspaper. The latter may exercise censorship to the fullest, as it deems commercially proper to do so, but the former is almost completely barred from censoring its student paper since that would be prior restraint and would impede the free flow and expression of ideas....We find the First Amendment of the United States Constitution would

bar [the university] from exercising anything but advisory control over the paper, therefore, exempting the university from liability or responsibility.¹²

Those suing student media have also tried to claim that colleges are responsible for the acts of their student media staffs because the students act as “agents” of the university. The “agency” legal theory is often asserted by those hoping to hold “deep pocketed” employers responsible for the actions of their employees while on the job. To make such a claim, however, it is necessary to show, among other things, that the employer has the right to control his employees in the performance of their duties. Financial sponsorship alone does not create an agency relationship.¹³ Applying this “agency” theory to the relationship between a public college and its student media simply does not work; a consistent body of case law makes clear that public colleges are constitutionally prohibited from exercising practical control over the day-to-day editorial operations of student media.

The “agency” theory was first rejected by a New York court after the student newspaper at the State University of New York’s Binghamton campus published a letter to the editor that described two students at the school as members of the “gay community.” The students filed a libel suit in which they named the university as a defendant. The court ruled in *Mazart v. State*¹⁴ that the university could not be held liable because it did not have the right to control the content of the newspaper; therefore, no agency relationship could be established. The court rejected the students’ agency claim even though it noted that the newspaper was funded in part by student activity fees, that the university provided office space, desks and janitorial services at no cost and that students working on the publication could receive English credit for their efforts.

These factors were insufficient, however, “to overcome the university’s lack of control over the newspaper.... Such accoutrements are nothing more than a form of financial aid to the newspaper which cannot be traded off in return for editorial control.”¹⁵

The reasoning of *Mazart* was reaffirmed in a case against Clemson University in South Carolina.¹⁶ In that case, the university was held not responsible for an alleged defamatory article printed in its student newspaper because the paper was not subject to prior review by university officials.

The court found “[t]here is overwhelming authority across the country in support of the position that a public university which does not censor or otherwise control the content of a school-sponsored newspaper is not liable for what is published by the students in the student-run newspaper.”¹⁷

A New York court similarly rejected the agency theory of liability in *McEvaddy v. City University of New York*.¹⁸ As in earlier cases, the court found it irrelevant that the university provided the paper with a faculty adviser and funding. The key, the court said, was that the university was legally prohibited from exercising — and, in fact, did not exercise — control over the content of the newspaper that would justify the imposition of liability.

The issue of vicarious liability was most recently confronted by a Minnesota state appellate court when a professor sued St. Cloud University for an allegedly defamatory article published in the student newspaper.¹⁹ The court acknowledged the “plethora of connections”²⁰ between the student newspaper and the university, which the professor pointed out, but rejected his claim that the university could be held liable based on either a “university as publisher” or agency theory. Of particular relevance to the Minnesota court in shielding the university from liability was a university system policy that prohibited school officials from exercising any control over student-funded publications.²¹

Another possible theory for university liability is negligence. To prevail, the person bringing suit would have to establish that the university had a legal responsibility to protect others from harm — for example, by providing student staff with editing guidelines and

procedures for avoiding the publication of libelous material — but failed to do so. Such a theory was rejected in the *Mazart* case, discussed above.²² The court noted that college students are legally adults, not children; therefore, the university had no duty to provide or enforce editing guidelines because as adults college student journalists were presumed to already know how to perform their editing responsibilities.

As the cases above indicate, school officials seeking to avoid liability for their student publications are best served by simply keeping their distance. This is legally consistent with the restraints imposed on public colleges by the First Amendment; it also comports with common sense. As one legal scholar has said, “There is simply no justification for imposing liability on a state university that is powerless to prevent the alleged harm.”²³

On the other hand, these cases also indicate that where a public college, including its administrators or student media advisers, interfere with the content decisions of students (despite the First Amendment prohibitions against such action), the school can be held legally liable for that publication’s content. In such cases the school would not only be setting itself up to be sued for First Amendment infringement by students, it would also be exposing itself to liability for any content-based mistakes its students make. For public colleges and universities under the jurisdiction of the federal Seventh Circuit Court of Appeals and its decision in *Hosty v. Carter* (discussed in detail in **Chapter 6**), the incentive for enacting policies designating student media as public forums would seem to be even stronger because of that case’s implication that the school could be held responsible if it was reserving the right to censor.

LIABILITY AT PRIVATE SCHOOLS

The situation *may* be different at private universities and high schools. While a school policy, state constitution or state law may offer some free speech protection, the First Amendment does not prohibit private schools from censoring or regulating the content of their student publications.

If a private school adopts a written policy that gives content control over student publications to student editors, such a policy could protect the school from liability.

Because of the lack of a First Amendment bar to censorship, an agency theory of liability may be more successful where school officials fail to set up clear boundaries prohibiting administrative censorship. For example, in *Wallace v. Weiss* a student sued the University of Rochester for libel based on material published in a student publication.²⁴ The court refused to dismiss the case against the university, saying that a private school is not limited by the First Amendment in its ability to censor as a public school would be. “The University ... may well be responsible for the acts of the organization, at least insofar as the University has the power to exercise control,” the court said.²⁵ The court said it would be up to the university to show at a full trial that it did not have the power to exercise control. (The case ultimately was settled out of court so there was no final ruling on the issue.)

Although the decision in *Wallace* suggests that private schools could be held liable for what their student publications publish,²⁶ the ruling certainly did not settle the issue. The decision suggests that if a private school adopts a written policy that gives content control over student publications to student editors, the legally binding restrictions such a policy may place on the school could protect it from liability.²⁷ As a matter of deference, a court may hesitate to second-guess a private school’s judgment that allowing student publications to operate without prior review or controls is the better educational practice.

In fact, at least one court did find that a private university was protected from liability for material published by the student newspaper at the school. In that case, a New Jersey appellate court ruled that Princeton University was not liable for alleged defamatory statements made in the *Daily Princetonian*.²⁸ The *Daily Princetonian* is the primary student newspaper operating on campus and is separately incorporated. The court made no mention of that fact, other than noting that the publication was “independent.”

“[D]efamatory statements that appeared in the independent University publications are not attributable to Princeton and its administrators,” the court concluded.²⁹

Just as in public schools, it appears the best way for a private school to protect itself from liability is to prohibit school officials from interfering with content decisions made by student editors. A clear, strong written policy affirming the right of student editors to make all editorial decisions in exchange for students assuming all responsibility for content would present the strongest basis for protecting the school from liability.³⁰ If faced with a lawsuit, the school could argue that the policy is a legally enforceable contract that creates an independent contractor relationship with the students and prevents the school from exercising control over the students’ activities as they would with university employees. A similar argument could be made at schools where state constitutional provisions protect student press freedom (and in California, where the state legislature has given private school students free press protections³¹).

Other precautions that can be taken to limit university exposure include: (1) printing a disclaimer in every edition (and/or on the Web site or broadcast) emphasizing the medium’s separate operation from the school and stating that all views expressed are not necessarily those of the school; (2) administering funds apart from those of the university in a separate account; or (3) becoming an independent legal entity, for example, by incorporating.

PROTECTION FOR ONLINE SPEECH: SECTION 230

Despite the fears of many school officials — some of whom have enacted greater restrictions limiting online student speech — schools are probably less at risk for what their students publish in an online version of their publication than they are for what appears in the traditional print version of the student newspaper. That is because a federal law — Section 230 of the Communications Decency Act — limits the liability of users or providers of “interactive computer services” (which specifically includes systems operated by “educational institutions”³²) for material created or provided by someone else.³³ In other words, where school employees have played no editorial role in creating content in an online student newspaper, Congress has said the school will not be held responsible even where the offending material is housed on the school’s computers.

Section 230 also provides some protection to student media staff. In addition to shielding its school host, Section 230 would also likely protect student media from liability for libelous or other unlawful material posted on their Web site by a third party. For example, Section 230 probably limits a student newspaper’s liability for reader comments or statements posted to a message board or reader-response forum on the newspaper’s Web site.

Note that the law provides a shield from liability only for content created or provided by an outside party. A student publication remains completely responsible for anything the staff itself produces and posts online. Section 230 does include a so-called “good samaritan” provision that allows an online student publication to screen and delete material, including any unlawful or other “inappropriate” material, posted to its Web site by outsiders without incurring liability. However, were a staff member to substantially rewrite or add words to a letter to the editor or a comment posted by a reader, the newspaper risks crossing the line between merely allowing for distribution of the material (and being protected by Section 230) and “creating” the work, thereby assuming responsibility for it.

The law also does not provide protection from violations of federal criminal statutes or infringements of others copyrights.³⁴

Another word of caution: While Section 230 of the Communications Decency Act inarguably provides significant protection for online speech, the law — like the Internet itself — is relatively new and some key questions remain unanswered. For example, while

it is clear that large Internet service providers such as AOL and Microsoft are protected from liability, it is not entirely settled that Web site operators or newsgroup hosts are covered, although a growing number of courts have indicated that they are.³⁵ Online publishers should be aware of and understand the protections available under Section 230. They must also understand that the scope of those protections is still evolving.

PUBLIC HIGH SCHOOL LIABILITY

As a result of the *Hazelwood* ruling, public high school officials have greater authority to control some school-sponsored publications, as discussed fully in **Chapter 5**. It is reasonable to expect, however, that officials choosing to exercise such editorial control will also bear greater financial responsibility for mistakes that student media staffs might make and administrators fail to catch. Where a principal insists on mandatory prior review and approval of a student newspaper she is, in effect, giving the publication the school's official "seal of approval" for which the school district can probably be held at least partially accountable. On the other hand, if a public secondary school establishes a policy that gives students press freedom and limits administrative interference, a strong argument can be made that — like a public college — it should be shielded from liability if damaging content is published.

The SPLC has yet to turn up a single published court decision in which a public high school has ever been held legally liable for something in a student publication anywhere, anytime.

Many of the state laws and school district policies that establish free press protections for high school students have recognized this. Like public college administrators, officials at these schools are legally prohibited from interfering with editorial content except in narrow circumstances specified by law. In such cases — again, just like at a public college — it will be more difficult to show that student journalists act as "agents" for the school so as to justify imposing institutional liability.³⁶ The issue is even clearer in Colorado, Iowa, Kansas and Massachusetts, where student free expression statutes explicitly limit the liability of school officials for material in student publications unless they have interfered with the content decisions of student editors.³⁷

Unfortunately, high school administrators frequently attempt to use the potential for liability as an excuse to control editorial content. In fact, the risk is extremely low. To date, the Student Press Law Center has found no published court decision anywhere in the country where a high school was held financially liable for the content of its student media. Liability for student media, while a concern, ought not to overrule sound educational policy and a commitment to journalistic excellence.

Some questions remain for courts to answer. In the meantime, public high school officials may best be able to protect themselves from liability by allowing their student media to operate independently and ensuring their students have the resources and support — specifically including competent, trained journalism advisers — to succeed.

UNDERGROUND PUBLICATIONS

Barring unusual circumstances, a school bears no legal responsibility for the content of an independent, "underground" student publication (even where it is distributed on school grounds) or a private, off-campus Web site created by students.³⁸ The situation is somewhat akin to the liability a bookstore would have for material in a magazine it sells to the public. Neither the school nor the periodical vendor has in any way determined the content of those materials being distributed and thus should bear no responsibility for them. However, outside the school setting, courts have indicated that a distributor can be held responsible if he knows the contents of a publication are libelous or reasonably should have known.³⁹ Thus schools exercising prior review of underground publications or assuming some responsibility for private Web sites dramatically increase their potential liability for the contents of those publications. Again, the best way a school can protect itself from liability is to distance itself from the content of a publication.

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LIBEL INSURANCE

To buy, or not to buy: that is the question. For student media, the question is not always an easy one to answer. Some college student publications — particularly those with a large circulation and substantial assets — have accepted libel insurance, like newsprint and keyboards, as a routine cost of doing business. But libel insurance can be expensive, prohibitively so for many student media operations. Also, some have argued that for most student media, which are generally small, asset-poor operations, insurance may actually provide an incentive to sue that might not otherwise exist. Proponents, on the other hand, argue that libel insurance provides peace of mind — for both student media and anxious school administrators. It can also buy editorial freedom. Where school officials, fearing lawsuits, are reluctant to turn over the reins of editorial control to students, libel insurance may provide the boost of confidence they need to finally let go.

Rates for insurance vary considerably. Probably the biggest factors affecting the cost of an insurance policy are circulation and location. Insurance costs for a daily college newspaper with a circulation of 25,000 in a major metropolitan city will understandably be much higher than a policy issued to a weekly student newspaper in a more rural setting with a circulation of under 1,000.

Most media insurance policies cover such claims as libel, invasion of privacy and copyright infringement. “Errors and omissions” coverage for printer’s errors is almost always an additional charge.

If a student publication decides to purchase insurance, it is important to shop carefully. For example, one of the key questions to ask is who gets to decide whether a story is retracted or corrected. Many editors believe that the newspaper, not the insurance company’s lawyer, should decide whether to publish a retraction and what should be in it.

Other factors to consider include whether there are discounts for publishing without incidents for a set period of time, whether the policy covers intentional or malicious acts, whether the insurance company will pay attorneys’ fees in addition to the policy limit on judgment costs and whether the policy covers punitive damages.

If you are interested in exploring the possibility of libel insurance for your publication, contact a local insurance agent. The Student Press Law Center also maintains a list of companies that have offered libel insurance to student media.⁴⁰

SUMMARY

In truth, this discussion of liability gives the issue an importance it probably does not deserve. Despite some of the high-profile libel and invasion of privacy lawsuits against the commercial news media in past years, lawsuits based on material published in student publications remain exceedingly rare. In any given year, the Student Press Law Center rarely learns of more than two or three libel, privacy or copyright infringement lawsuits that are filed against high school and college student media anywhere in the country. Most of those cases eventually are dropped or are settled out of court. The risk is especially low for high school student media.

To be sure, the notion of being faced with a lawsuit is disturbing. But the rarity of such claims suggests that school officials, advisers and even students that allow fear of liability to drive their management of a student publication are doing themselves, their publication staffs and their readers a grave disservice. If the potential for liability were the most important criteria for determining the value of a student activity, extra-curricular athletics, which prompt far more lawsuits than student media, should have been disbanded long ago.

The reality is — as with most of life's endeavors — the specter of legal liability can never be completely erased from student journalism. It is, therefore, important that student staff be made aware of the individual responsibility a free press brings with it. Ensuring that a publication staff has a basic knowledge of the law — and their responsibilities under it — is your best assurance that liability is an issue you will rarely have to confront.

ENDNOTES

- 1 See, e.g., *Havalunch, Inc. v. Mazza*, 170 W.Va. 268, 294 S.E.2d 70 (W.Va. Dec 11, 1981) (student staff writer of college newspaper sued for writing tongue-in-cheek, humorous review of local restaurant that included comment, "Bring a can of Raid if you plan to eat here;" appeals court reversed jury's award of punitive damages).
- 2 See, e.g., *Faulkner v. Martin*, 45 A.2d 596 (N.J. 1946) (finding that managing editor of a newspaper is liable for the publication of a libelous article, whether or not he knows of the publication, since "it is his business to know, and mere want of knowledge constitutes no defense.").
- 3 *Lewis v. Time Inc.*, 83 F.R.D. 455, 463 (E.D. Calif. 1979), *aff'd*, 710 F.2d 549 (9th Cir. 1983).
- 4 See 42 AM. JUR. 2D, *Infants* Sec. 127 (2008) ("[M]inority is not a shield against tort liability....").
- 5 *Sakuma v. Zellerbach Paper Co.*, 77 P.2d 313 (Calif. App. Dist. 1938) (business manager not responsible for libel published in foreign language newspaper that he did not and could not read).
- 6 *Montandon v. Cox Broad. Corp.*, 45 Cal.App.3d 932, 936 (Calif. App. Dist. 1975).
- 7 See, e.g., *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466 (Minn. App. 2005), *review denied*, 2005 Minn. LEXIS 347; *McEvaddy v. City Univ. of New York*, 633 N.Y.S.2d 4 (N.Y. App. Div. 1995), *appeal denied*, 642 N.Y.S.2d 195 (N.Y. 1996); *Mazart v. State*, 441 N.Y.S.2d 600 (N.Y. Ct. Cl. 1981); *Yeo v. Town of Lexington*, 131 F.3d 241 (1st Cir. 1997) (en banc), *cert. denied*, 118 S. Ct. 2060 (1998).
- 8 See Note, *The Development and Current Status of Parental Liability for the Torts of Minors*, 76 N. DAK. L. REV. 89 (2000). See also RESTATEMENT (SECOND) OF TORTS Sec. 316 (1965), which discusses the duty of a parent to control the conduct of his child.
- 9 See, e.g., *Worrell-Payne v. Gannett Co.*, 49 Fed. Appx. 105 (9th Cir. 2002) (Virginia-based publishing company sued for statements published in *The Idaho Statesman*).
- 10 *Bazaar v. Fortune*, 476 F.2d 570, 574, *aff'd en banc with modification*, 489 F.2d 225 (5th Cir. 1973) (per curiam), *cert. denied*, 416 U.S. 995 (1974).
- 11 *Milliner v. Turner*, 436 So. 2d 1300 (La. Ct. App. 1983).
- 12 *Id.* at 1302-03.
- 13 *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003) (finding that private company's financial sponsorship of Web site did not "support an inference that [company] possessed practical control of [Web site's] editorial content," which is required to establish an agency relationship). See also *Matson v. Dvorak*, 46 Cal.Rptr.2d 880 (Cal. App. 1995) (holding that a party whose "only contribution to a political campaign is financial, and who is not involved in the preparation, review or publication of campaign literature, cannot be subjected to liability in a defamation action for statements contained in that literature").
- 14 *Mazart v. State*, 441 N.Y.S.2d 600 (N.Y. Ct. Cl. 1981).
- 15 *Id.* at 606. A similar sentiment was expressed by a federal court in Massachusetts, which found the fact that a school financially supports a publication fails to make the college president "ultimately responsible for what is printed." *Antonelli v. Hammond*, 308 F. Supp. 1329, 1336 (D. Mass. 1970).
- 16 *Lentz v. Clemson Univ.*, No. 95-CP-39-66 (S.C. Ct. of Common Pleas Dec. 20, 1995) (unpublished).
- 17 *Id.* at 6.
- 18 633 N.Y.S.2d 4 (N.Y. App. Div. 1995), *appeal denied*, 642 N.Y.S.2d 195 (N.Y. 1996) (TABLE).
- 19 *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466 (Minn. App. 2005), *review denied*, 2005 Minn. LEXIS 347.
- 20 The court noted: "[I]t is undisputed that SCSU plays a role in selection of the *Chronicle's* editor, business manager, and faculty advisor; provides start-up operating funds at the beginning of each year; requires the *Chronicle* to undergo a certification process each year; allows the use of SCSU's trademarked logo; provides equipment, services, and facilities free of charge; provides a full-time faculty advisor employed by SCSU whose role is to represent and protect the interests of SCSU; requires the *Chronicle* to have a constitution and bylaws, which state that it exists for the benefit of, and concerning, the students, faculty, staff, administration, and St. Cloud community; and requires the *Chronicle* to submit an annual recognition form listing officers and pledging its compliance with all SCSU policies and procedures in the code of conduct and student-organization manual." *Id.* at 472, fn. 1
- 21 The policy read, in part: "[s]tudent-funded publications shall be free of censorship and advance approval of copy, and their editors and managers shall be free to develop their own editorial and news coverage policies." *Id.* at 469.
- 22 *Mazart*, 441 N.Y.S.2d at 607.
- 23 Ruth Walden, *The University's Liability for Libel and Privacy Invasion by the Student Press*, Vol. 65 Journalism Quarterly No. 3, p. 702 (Fall 1988).
- 24 *Wallace v. Weiss*, 372 N.Y.S.2d 416 (N.Y. Sup. Ct. 1975).
- 25 *Id.* at 422 ("A private university may be in a position to take precautions against the publication of libelous matter in its student publications. At least it may issue instructions and guidelines to those in charge of student publications so those persons are made aware of the dangers of libel and ways to safeguard against it.").
- 26 *Id.* ("By assisting the organization in its activities, it cannot avoid responsibility by refusing to exercise control or by delegating that control to another student organization.").

- 27 In addition to a binding legal agreement, a state constitution or statute might also provide a legal basis for protecting a private school from liability. For more information, see Chapter 6.
- 28 *Gallo v. Princeton Univ.*, 656 A.2d 1267 (N.J. Super. 1995).
- 29 *Id.* at 1275. See also *Dow v. New York Univ.*, 786 N.Y.S. 2d (N.Y. County Sup. Ct. 2004) (holding that “since [the newspaper] has its own First Amendment rights, over which NYU exercised no control,” an order limiting NYU’s speech did not apply to the student paper).
- 30 See, e.g., *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003) (finding that sponsorship agreement between private company and Web site that clearly prohibited company’s right to control editorial content defeated “agency” claim and protected company from liability for alleged libelous statements published on Web site).
- 31 Cal. Educ. Code sec. 48950 (high schools), sec. 94367 (colleges).
- 32 47 U.S.C. Sec. 230 (f)(2). But see Ray August, *Issues in Higher Education: Gratis Dictum! The Limits of Academic Free Speech on the Internet*, 10 J. LAW & PUB. POL’Y 27, 47 (1998) (law professor argues the statute only provides immunity for private organizations and believes that public schools could be held liable as publishers for unlawful content posted to their Web sites if they screen content).
- 33 47 U.S.C. Sec. 230.
- 34 47 U.S.C. Sec. 230(e). A separate federal statute, the Online Copyright Infringement Liability Limitation Act (OCILLA), 17 U.S.C. Sec. 512 (a)-(k), provides limited insulation for operators of Web sites that innocently host third-party content that turns out to be pirated copyright material. The Act establishes a safe harbor that allows a Web site operator to escape liability for infringement by promptly removing infringing content. The OCILLA is explained in greater detail in Chapter 9, Online Media.
- 35 *Chicago Lawyers’ Comm. v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008); *Carafano v. Metrosplash.com Inc.*, 207 F. Supp. 2d 1055 (C.D. Cal. Mar 11, 2002), *aff’d on other grounds*, 339 F.3d 1119 (9th Cir. 2003) (finding Web site Matchmaker.com to be an “interactive computer service provider” for purposes of Section 230 immunity); *Schneider v. Amazon, Inc.*, 31 P.3d 37 (Wash. Ct. App. 2001) (online retailer Amazon.com not liable for negative book reviews posted by readers to its Web site under Section 230). See also *Stoner v. eBay, Inc.*, 2000 WL 1705637, at *1 (Cal. Super. 2000) (online retailer eBay’s status as an interactive computer service provider was not disputed for purposes of Section 230).
- 36 See, e.g., *Yeo v. Town of Lexington*, 131 F. 3d 241 (1st Cir. 1997) (en banc), *cert. denied*, 524 U.S. 904 (1998) (finding that high school student journalists, unlike publication advisers and other school officials, were not “state actors” when they rejected advertisement submitted to student yearbook); *Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426 (2002) (finding that high school students do not “act for” teachers or other school officials when grading classmate’s work).
- 37 Colo. Rev. Stat. Ann. Sec. 22-1-120(7); Iowa Code Ann. Sec. 280.22(6); Kans. Stat. Ann. Sec. 72-1506(e) (1993); Mass. Gen. Laws Ann. ch. 71, Sec. 82.
- 38 In 2002, a Los Angeles teacher was awarded \$4.35 million in a suit against the Los Angeles Unified School District, claiming that the district failed to take immediate corrective action against students that the teacher claimed sexually harassed her by publishing an underground newspaper that jokingly suggested she was a porn star. The teacher did not sue the students. However, the jury award was thrown out, and a new trial granted, in light of changes to a state sexual harassment liability law. In granting the school district’s request for a new trial, a judge noted, “[P]ublic schools cannot, by reason of various and significant constitutional and due process limitations, exercise the level and nature of control over student conduct that private employers can exercise over adult employees.” *Adams v. Los Angeles Unified Sch. Dist.*, No. BC-235667 (Super. Ct. Los Angeles, June 7, 2002) (unpublished). *Later proceedings* at 2004 WL 1834405 (Cal. Ct. App. Aug. 17, 2004); 2007 WL 68104 (Cal. Ct. App. Jan. 11, 2007).
- 39 See, e.g., *Hartmann v. American News Co.*, 171 F.2d 581 (7th Cir. 1948), *cert. denied*, 337 U.S. 907 (1949).
- 40 For a list of insurance companies that have provided libel insurance to student media see the SPLC Web site at: <http://www.splc.org/legalresearch.asp?id=28>.