



IS MY WEB SITE LEGAL?

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This FAQ considers personal web sites that present text and images of the author for free to the general public. Additional legal rules will apply to web sites that sell merchandise, charge for admission, or gather information from minors.

Can the government impose more restrictions on web sites than on other kinds of speech?

No. In the landmark ruling of Reno v. ACLU, 521 U.S. 844 (1997), the United States Supreme Court held that the government has very little power to restrict speech on the internet. The Federal Communications Commission has some authority to regulate the use of the limited public airwaves, but these broadcast rules do not apply to the internet. As a general rule, if it would be legal to say something on the sidewalk, it will be legal to say it on the internet.

Can I criticize people on my web site?

Usually yes. The constitution protects speech that has a critical or negative tone just as much as it protects speech with a positive tone. However, a speaker could be sued for defamation (also known as libel or slander) for making injurious false statements about another person. To prevail in a defamation suit, the person bringing the lawsuit must prove four things:

- (a) The speaker made a false statement of fact. Opinions and insults are not facts. "My neighbor robbed a bank" is a statement of fact that will either be true or false. "My neighbor is a jerk" is a statement of opinion that cannot be proven true or false in court, so it can never be the basis for a defamation action.
- (b) The statement was not protected by a legal privilege, such as the attorney/client privilege, doctor/patient privilege, priest/penitent privilege. Statements on a web site open to the general public will not be protected by a legal privilege.
- (c) The speaker had the proper mental state. Speakers cannot be punished for making legitimate mistakes about the facts. Courts have two different tests to decide if an error of fact was legitimate or not. In cases brought by public figures like government officials or celebrities, the plaintiff must prove that the speaker had "actual malice" (the speaker knew that the statement was false, or had reckless disregard for truth or falsity). New York Times Co. v. Sullivan, 376 U.S. 254 (1964). In cases brought by private individuals, the plaintiff could also prevail by proving that the speaker was negligent (the speaker should have known the statement was false).
- (d) The statement was capable of injuring reputation. "My neighbor is left-handed" might be false, but it is not capable of injuring reputation.

Can I publish personal information about someone on my web site without their permission?

Usually yes. In general, the First Amendment protects the publication of legally obtained information. Bartnicki v. Vopper, 532 U.S. 514 (2001). This includes names, addresses, and phone numbers. Sheehan v. Gregoire, 272 F.Supp.2d 1135 (W.D.Wash. 2003). However, some types of information (such as trade secrets or medical information) may be protected by specific laws. Also, a person could sue for invasion of privacy if another person publicized highly offensive private facts that are not of legitimate concern to the public.

Can I criticize businesses or corporations on my web site?

Yes. It is legal to post a "gripe site" that criticizes a business or corporation. False statements on a gripe site are subject to the general rules of defamation law.

Can I use the name of a business or corporation on my web site?

Yes. Trademark laws protect businesses and consumers by prohibiting the deceptive sale of merchandise under the same name, or a confusingly similar name, as used by an earlier source of the goods. Not every use of a company's name is a trademark violation, only use of the name to designate the source of goods or services. It is not a trademark violation to mention the name or trademark of a business in the context of a gripe site that complains about that business.

Can I use the name of a business or corporation as the address of my web site?

It is not a trademark violation to operate a gripe site whose name incorporates and comments on a business, like www.ihateXYZcorp.org or www.XYZcorpsucks.com. Taubman Co. v. Webfeats, 319 F.3d 770 (6th Cir. 2003). The answer more complicated if web address consists only of the name of the company being criticized, as in www.XYZcorp.com. Although this is not trademark infringement if the site merely contains criticism, it may be a form of illegal "cybersquatting" (the term for registering the name of an existing company as a URL in order to sell it back to them). Bosley Medical Institute v. Kremer, 403 F.3d 672 (9th Cir. 2005).

Can my web site talk about sex?

Yes. Erotic speech and pictures containing nudity are not automatically obscene. Government may pass laws against "obscene" expression, but those laws must be very narrow in their scope. The government may only ban as "obscene" material that: (a) appeals to the average person's prurient interest in sex; (b) depicts sexual conduct in a manner that is "patently offensive" to community standards; and (c) taken as a whole, lacks serious literary, artistic, political, or scientific value. Miller v. California, 413 U.S. 15 (1973).

Child pornography is another matter, because children are harmed when the images are made. For this reason, there are strong state and federal laws against the manufacture, sale, and possession of child pornography. New York v. Ferber, 458 U.S. 747 (1982). If the images are created without the involvement of real children (as happens with computer-generated images or photographs of

youthful-looking adults), then the ordinary obscenity rules apply, and not the stricter rules against child pornography. Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

Can my public school expel or suspend me for what I post on my web site?

No. Schools have some authority to regulate how students behave on campus or at school-sponsored events. They may also control the use of the school's computers. However, public schools have no authority to control what students publish on the internet from non-school computers.

Can I be sued or prosecuted for content that other people post on my bulletin board or blog outside of my control?

No. A federal law says that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1).

Can my internet service provider take down my web site without my permission?

Yes. A federal law gives ISP's immunity for removing or restricting public access to "material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." 47 U.S.C. § 230(c)(2). Relying on this law, many ISP's will quickly remove personal web sites when they receive any type of complaint. It may be necessary for the author of a controversial web site to shop around for an ISP who has a commitment to freedom of speech.

What should I do if I get sued about my web site?

Some homeowner's insurance policies or general liability policies provide coverage for lawsuits based on the insured person's speech. This is sometimes referred to as coverage for "advertising injury." Check your policy, and if in doubt contact your insurer to see if they have a duty to find you a lawyer.