

Community Access Partners of San Buenaventura
Producer's Legal Guide
Revised January 23, 2002

CAPS operates the community access channel as a public forum following applicable federal, state and local laws governing the right of free speech.

The First Amendment of the United States Constitution provides that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances." (While this amendment is directed at the U.S. Congress, the same free speech protection is provided citizens of each state via the Fourteenth Amendment to the U.S. Constitution.)

The California Constitution provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." Article 1, Section 2.

The meaning and effect of these provisions has, of course, long been the subject of much debate and legal interpretation. However, it is reasonably clearly established that freedom of speech (and expression) is one of our most cherished and protected rights as Americans. Nevertheless, this right is not absolute and the debate continues as to what, if any, limits can be imposed by legislative bodies on the right of free speech.

Laws are developed to help people operate in a complicated society; they are the rules of the game. It is important for people to protect themselves and those with whom they work by knowing the laws that place limits on freedom of speech. This guide is merely a summary of some of the most typical laws and rules that community producers must face. It is not a complete listing of all laws and rules which may affect you and is necessarily general in content and does not attempt to address specific situations. Each producer is individually responsible for compliance with all applicable laws.

Since your programs are transmitted by CAPS over cables rather than broadcast over radio or other airwaves, these cable television program presentations are referred to as "cablecasts." The preparation of the programs and their cablecast to the audience involve many laws. In order to comply with the law, it is important to become familiar with the laws that affect you as a cable program producer/provider.

Definitions and examples of the more important legal issues are as follows:

1. Breach of Contract

Simply stated, a contract is an agreement between two or more persons. It can either be a written agreement or a verbal one. You should be aware that a verbal contract is usually "worth the paper it is written on." As this old saying indicates, it is almost always better to get a written agreement than a verbal one. A breach of contract occurs when one of the persons who makes the agreement intentionally refuses to do what he/she agreed to do, or prevents the other person from doing what the other person agreed to do.

For example, if you agree with CAPS to borrow video equipment and return it in its original condition, you would breach the contract if you did not return the equipment or if the equipment was damaged when you returned it. When you sign a Cablecast Request Form to play a program on the access channel, you are entering into a legal contract which has serious consequences if there is a misrepresentation or other false statement. One key aspect of this agreement with CAPS is that you are affirming that the content of your program falls within the guidelines of protected speech and does not contain any illegal matter or unprotected speech.

2. Copyright

Copyright laws protect the exclusive rights of authors and creators to their writings and artwork. The purpose of a copyright is to encourage authors and creators to write and create by allowing them to be the ones to profit from their writings and artwork for a certain period of time. Anyone who uses copyrighted materials without permission of the copyright owner may have to pay fines or other penalties.

It is possible to use copyrighted material as long as you obtain permission from the person who owns the copyright. This permission may be limited to certain circumstances or it may be extremely broad, depending on the agreement between the copyright owner and you.

For example copyrighted songs may be used in movie soundtracks with the permission of the copyright holder. In this situation, the credits of the movie generally indicate that the song has been used with the permission of the copyright owner. Other examples include: using photographs printed in magazines, recording musical performances and using a portion of someone else's video production in your own video production. In each case, you need to obtain written permission from the copyright owner (i.e. the magazine that published the photograph, the performing musician or the producers of the other video production).

3. Indemnification Agreement

An "indemnification agreement" is a contract by which you agree to pay for any damage resulting from your actions.

Automobile insurance is a type of indemnification agreement as insurance companies agree to pay for any damages resulting from accidents caused by the insured driver. In the context of cable programming activity, when you are certified to use CAPS' facilities or channel time, you will sign an indemnification agreement (the Cablecast Request Form) with CAPS, so that if CAPS is sued for something said in your program (for example, a libelous remark), you will have to pay for any damages. As another example, if someone trips and falls on a cable during one of your productions and then sues CAPS, you will be responsible for paying for all damages and attorney fees incurred by CAPS.

4. Invasion of Privacy

Invasion of privacy generally deals with the unlawful disturbance of a person's privacy. The following are ways in which this may occur:

Public Disclosure of Private Facts

Public disclosure of private facts is the presentation of the intimate details of someone's private life to other people without his or her permission. This generally does not apply to facts about people who are already well known in the community. For example, you cannot legally cablecast information regarding an ordinary person's criminal record, though it is probably legal to describe the criminal record of a public figure such as a candidate for public office.

Use of One's Name or Likeness

The unauthorized use of another's name or likeness may be an invasion of privacy. The unauthorized use of another's name or likeness for monetary gain is one of the most common examples. For example, someone named Joan Smith could not name her fitness center "Michael Jordan's Fitness Center" unless Michael Jordan allowed her to do so. The celebrity name "Michael Jordan" is being used to attract people to the fitness center for the profit of Joan.

Publicity Placing One in a False Light

Publicity that creates a false impression of another person may also constitute an invasion of privacy. You cannot lead people to believe that a person has views that he does not really have or has done things that he has not actually done. For example, you may not produce a show that discusses racial violence while showing a picture of John Smith on the screen unless John Smith is somehow associated with such violence. The showing of the picture would unlawfully associate an innocent person, John Smith, with something with which he is not associated.

Intrusion into One's Seclusion or Solitude

This last method of invading one's privacy involves a person intruding into places that are normally considered to be private. For example, cablecasting secret photographs of a person in his or her home is unlawful and transmitting conversations recorded with hidden microphones in a person's home would also be unlawful. To avoid problems in this area, always inform people that the videotape you are making may be cablecast. To be safe, you should obtain written permission of the subjects of your programming when there is a chance someone may consider your videotaping an invasion of privacy. CAPS will provide a Personal Release Form as an example for you to use.

5. Libel and Slander (Defamation)

Libel is false material directed at the eye, usually in print or television. The false material must tend to injure or harm a person's reputation in order to be libel. A false statement in a newspaper such as "John Smith stole money from the orphanage" would be libel, assuming that John Smith did not steal money from the orphanage.

Slander is similar to libel as both involve false material that tends to injure or harm a person's reputation. Slander, however, is directed toward the ear, such as verbal statements or statements over the radio. If the statement "John Smith stole money from the orphanage" was broadcast over the radio, that statement would be considered slander, assuming that John Smith did not steal money from the orphanage.

Libel and slander are frequently dealt with together under the legal label "defamation."

6. Obscenity

The United States Supreme Court had determined that "obscene" expression is **NOT** protected by the First Amendment right to free expression. Therefore, governing bodies – such as the U.S. Congress and the California Legislature and local communities – may prohibit obscene expression and impose penalties if such expression is published or broadcast or cablecast.

Obscene expression has been defined by the U.S. Supreme Court as material:

Which an average person, applying contemporary community standards, finds as a whole appeals to the prurient interest; and

Which depicts, in a patently offensive way, sexual conduct specifically defined by applicable law;
and

Which taken as a whole lacks serious artistic, political or scientific value.

{Miller VS California, 413 US 15 (1973)}

Like many legal definitions, this definition is ambiguous. Rather than providing examples of obscene material, it may be best to remember one Justice of the United States Supreme Court who remarked “I cannot define ‘obscene material,’ but I know it when I see it.”

With regard to obscene material, community producers are personally liable for “knowing it when they see it.” If you cablecast obscene material, you could be held criminally liable. It also would be a violation of your agreement with CAPS, potentially leading to permanent suspension of your access privileges.

Remember, obscene expression has been regulated and prohibited altogether by both the Federal Government and by the State of California. {U.S. code 1468 and California Penal Code 311.2} Such activity is made a crime and is punishable by fines and/or imprisonment.

7. Indecent/Harmful Matter

In addition to prohibiting obscene matter, the Federal Government and California Legislature have attempted to go a step further in regulating permissible speech/expression. The U.S. Congress has initiated a category of ‘indecent’ {18 U.S.C. 1464} and California, one of harmful matter {Penal Code 313 et seq.} The intent, in each instance, is that the community has a valid interest in protecting children from viewing indecent/harmful material. The Federal Communications Commission (FCC) is the regulatory agency created by Congress to implement, and enforce when necessary, the rules limiting the cablecast of indecent material upon complaint.

The FCC has adopted a rule that indecent material could be measured by a two-prong test: 1) the material can be determined to be indecent if it described or depicts sexual or excretory organs or activities; and 2) the broadcast must be patently offensive as measured by contemporary community standards for the broadcast medium. (The FCC has stated that this test is not a local one and does not encompass any particular geographic area. The community standard is of the average broadcast viewer.)

However, unlike obscene expression which is banned at all times, indecent material is protected by the First Amendment and cannot be banned entirely. It may, however, be restricted in order to avoid its broadcast during times of the day when there is reasonable risk that children may be in the audience. The FCC had adopted a rule that indecent material may only be broadcast after the hours of 10:00pm and before 6:00am, without prosecution by the FCC. {60 FR 44439}

In order to comply with Federal guidelines, CAPS will only cablecast programs containing adult material between the hours of 11:00pm and 5:00am.