

# PBS Standards

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## Privacy

*Please note: This material is for informational purposes and does not constitute legal advice. Consult with counsel for any specific guidance on candidate appearances.*

### Overview

Privacy issues can arise in many situations, such as in undercover/hidden camera investigations and when determining whether to publish sensitive information. While the laws of each state differ, please keep in mind the following legal issues:

### Trespass

It is against the law to enter someone else's private property without consent. There is no First Amendment defense to trespassing. This arises in the reporting context in a few ways:

#### **Reporting in private places**

If you knock on someone's door and they tell you to leave, you have to leave. You can continue to shoot footage or ask questions from a public sidewalk, but individuals have the right to tell you to get off their property. The same goes for businesses.

For example, a reporter in Arizona was convicted of trespassing when he went through a closed but unlocked gate posted with a "no trespassing" sign. The reporter was attempting to interview a fired police officer who was facing murder charges in a shooting. The reporter rang the doorbell and introduced himself, but was asked to leave. Although the reporter peacefully complied, a judge fined him \$300 and sentenced him to one year unsupervised probation.

"Reporters who are in violation of a criminal trespass statute are not exempt from prosecution simply because they are exercising a First Amendment right," [a superior court judge in Phoenix wrote](#).

#### **Undercover Investigations**

If you lie to gain access to somewhere you would not otherwise be permitted to go, that is still trespassing. The *Food Lion* case is a well-known example. ABC reporters applied to work at Food Lion grocery stores, but they withheld information about their ABC employment on the applications and fabricated references. Based on their access to employees-only areas of the stores, and by using hidden cameras, the reporters published a report on unsafe food practices at the stores. A federal appeals court found the reporters liable for trespass. See *Food Lion, Inc. v. Capital Cities/ABC Inc.*, 194 F.3d 505 (4th Cir. 1999).

## **Emergencies**

When you are covering an emergency situation (such as a fire) that takes place on private property, there may be greater leeway. In instances where the custom and practice is to allow reporters to follow emergency personnel onto private property, courts have found that a trespass did not occur.

## **Accompanying police inside homes**

The Supreme Court has held that law enforcement officers violate the Fourth Amendment's protection against unlawful searches and seizures when they permit members of the media to accompany them into private homes while conducting searches or arrests.

The government had argued that the presence of journalists could help publicize efforts to combat crime and facilitate accurate reporting on law enforcement activities. But the Court in *Wilson v. Layne* stated, "Surely the possibility of good public relations for the police is simply not enough, standing alone, to justify the ride-along intrusion into a private home." 526 U.S. 603, 613 (1999).

The Court, however, has not ruled on whether journalists themselves could be liable for violating the Fourth Amendment rights of homeowners in such circumstances.

## **Intrusion Upon Seclusion**

Intrusion upon seclusion is a legal action that prohibits intruding, physically or otherwise, upon the solitude or seclusion of another if the intrusion would be offensive to a reasonable person. An illegal intrusion can occur when eavesdropping on a conversation or using a camera with a zoom lens to videotape someone. To prove intrusion, courts will ask plaintiffs to show that they had a "reasonable expectation of privacy." Activities that occur in public likely will not qualify.

(Intrusion is similar to trespass but not quite the same. For example, entering someone's yard without consent would constitute trespass but not intrusion if the yard was visible to anyone driving down the street.)

## **Drones**

Using drones or other remote cameras/recording devices to capture footage on private property can be a form of intrusion upon seclusion. Many states have adopted legislation to address the use of drones, and some of these laws prohibit the use of drones to record images of an individual or privately-owned property without consent. Some of these laws have a newsworthiness exemption. You should consult with local counsel before using drones to record images.

## **False Light**

False light is very similar to defamation; it prohibits portraying someone falsely, if the falsity would be highly offensive to a reasonable person and the publisher had knowledge that the matter was false or acted with reckless disregard as to whether or not the matter was false.

The difference between false light and defamation is that a plaintiff suing for false light does not have to show damage to their reputation.

### **B-Roll**

Be careful when using generic video footage or file photos when reporting about activities that might be considered questionable.

For example, you might use B-roll of a street in a story about a rise in violent crime in a particular neighborhood, and inadvertently create the impression that someone pictured in the footage is engaged in illegal activity. For this reason, it might be appropriate to blur faces and other identifying information (like license plates) when using B-roll.

### **Distorting and misquoting**

False light can include the distortion of materials or photographs to give a false impression or misquoting someone (including taking remarks out of context) in a manner that materially alters the meaning of the words such that they could constitute a false statement.

As such, great care should be taken during the editing process. The [PBS Editorial Standards](#) state, “The objective of the editing process is to collect and order information in a manner that fairly and accurately portrays reality. Producers must ensure that edited material remains faithful in tone and substance to that reality; they should not sensationalize events or create a misleading version of what actually occurred.”

### **Public Disclosure of Private Facts**

Public disclosure of private facts is a legal action that prohibits disclosing facts about another person’s private life, if the facts disclosed would be highly offensive to a reasonable person and if they are not of legitimate public concern.

### **Where are they now?**

Assuming that you are reporting on matters of public concern, public disclosure of private facts may not be triggered frequently. One area where it comes up, however, is in “where are they now?” features, which report on individuals no longer in the public eye. If such stories simply recount the past, then there is little risk. If, however, the stories push beyond history, you should be prepared to explain *why* the information is being published or broadcast, i.e., for reasons other than simply embarrassing or humiliating the person.

### **The opposite of defamation**

In order for a plaintiff to win a defamation claim, the plaintiff must establish that the information published against them is false. Publishing *true* facts about an individual can also cause damage, though. The “public disclosure of private facts” tort exists to protect against these damages in certain situations where the harm to the individual outweighs the benefit to the public.

## **Right of Publicity**

Right of publicity (sometimes referred to as misappropriation) is a legal action that prohibits using another person's name, image, likeness, or voice without their consent, particularly if that use is for commercial purposes.

### **Advertising, not news**

News reporting typically would not trigger a claim for right of publicity/misappropriation. It typically is fine to use a person's name or image in connection with a news report, if there is a real relationship between the individual and the story. The right of publicity/misappropriation can, however, arise when someone's name or image is used in advertising or other types of promotional content.

### **Deceased rights**

In some states, the deceased (or rather, their estate) still enjoy a right of publicity—typically meaning that the deceased person's name, image, likeness, or voice cannot be used to advertise/promote a service or product without the estate's permission.

## **Use of Illegally-Obtained Materials**

On a different note, what if you are given materials that you know were obtained illegally—for example, a recording made in a two-party consent state without the consent of all parties—but you weren't involved in the illegality?

### **You can publish if not involved in collection of the material**

The First Amendment protects the disclosure of illegally-obtained materials by parties who did not participate in the illegal conduct. In *Bartnicki v. Vopper*, a radio host aired a recording of an intercepted phone call regarding union negotiations. Two of the participants in the call sued the radio host. The Supreme Court found that the host was not liable, because he had no involvement in illegally intercepting the recording. 532 U.S. 514 (2001).

### **You cannot aid and abet**

In contrast, if you support, request, or are somehow involved in the collection of the illegally-obtained material, you may be liable to a party aggrieved by the publication of this material.

**If you have any questions, please contact PBS Standards & Practices at: [standards@pbs.org](mailto:standards@pbs.org)**