

# Chapter 2

## The Legal Context of News Literacy

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### ABSTRACT

*The legal context for news literacy includes international human rights law, regional policymaking and governance, national legislation and regulatory efforts. Additionally, news literacy is enhanced by understanding certain legal concepts, including balancing of interests and logical reasoning using analogies. A fundamental question on which law contributes is the definition of news or journalism. Given the increasing presence of disinformation and misinformation in the marketplace of ideas, the news literate citizen must be able to critically analyze not only the content of news but also the environment—legal and otherwise—in which it exists and with which it interacts. The goal of this chapter is to expand on these and other aspects of the legal context of news literacy.*

### INTRODUCTION

Five areas of knowledge and skills have been identified as the “core of news literacy”: the context in which news is produced, the process of news creation, the content of news, the circulation of news, and factors related to news consumption (Tully et al., 2022, p. 1593). This chapter focuses on the legal framework in which news exists, including the “legal protections and constraints in which content producers within and outside of news organizations operate in global contexts” (Tully et al., 2022, p. 1594). The global context is critical due to the cross-border nature of modern communication technology. The legal and constitutional protections for

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news in the United States, including those under the First Amendment to the U.S. Constitution, function within a broader global system of international human rights law standards.

The chapter first explores the background and connections among news literacy, law and communication technologies. This exploration includes discussion of the emerging issues relating to regulation of artificial intelligence, social media and online content algorithms. The chapter then examines global standards for news literacy, primarily as reflected in the Sustainable Development Goals (SDGs) and the Convention on the Rights of the Child. After discussing the expectations for public news literacy education under these international legal norms, the chapter turns to the legal context of news literacy within regional and national legal frameworks. One of these frameworks is the European Commission's 2021 effort to establish harmonized rules for artificial intelligence, known as the "Artificial Intelligence Act." The chapter then considers the role of law in defining news, followed by an examination of how the law addresses intent in relation to false information. While the marketplace of ideas metaphor suggests that unintentional falsehoods, or misinformation, can be corrected through the collective rational behavior of citizens, contemporary circumstances have highlighted its limitations in protecting news from the harmful effects of intentional falsehoods or disinformation.

A series of legal doctrines in U.S. constitutional law and international human rights law already distinguish disinformation from misinformation. The difference in legal status between intentional and unintentional falsehoods is embodied in the doctrine of actual malice, which originates from the 1964 U.S. Supreme Court decision in *New York Times Co. v. Sullivan*. A related concept appears in Article 19 of the International Covenant on Civil and Political Rights (ICCPR; United Nations General Assembly, 1976). Following a discussion of these standards, the chapter examines other contributions of legal concepts to the field of news literacy and their role in helping news consumers develop analytical skills. A basic understanding of legal principles, such as the burden of proof, evidentiary rules, and balancing of interests, can enhance the analytical tools available to news consumers. Within the concept of balancing interests, news consumers should understand the values underlying legal protections for news, including the pursuit of truth, the facilitation of democratic decision-making, the provision of a societal safety valve, the oversight of government power, and the promotion of social cohesion and compromise. Discussion of these topics is accompanied by AI-related examples that could be integrated into media literacy curricula.

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