

Jurisdiction

What happens in the case of an international journal that has an editorial office in the UK with authors in Europe or an editorial office in the US but an author in the UK?

For breach of confidence, in the absence of an express contractual agreement as to which law applies, the general rule under English law would be that the country where the obligation of confidence was breached would be the country in which to sue. However, under an agreement called Rome II, which applies to EU member states, from January 2009 the applicable law would be the country where the damage occurred. In most cases this is likely to be the place where the duty applies. So, if the journal is a UK journal and the author is French, the applicable law is likely to be English law.

In terms of data protection, jurisdiction depends on who the data controller is and where the data is held.

For libel, an author can bring a libel claim in any country where publication has taken place or defamatory content has been downloaded and where he/she has a reputation to protect. Most authors will want to sue in England because the libel laws are known to be claimant friendly. The position is of course, very different in the US with the emphasis on freedom of expression as opposed to protecting reputation.

Confidentiality, libel, peer review and the law

Conclusion

Whilst confidentiality is the bedrock to both author/editor correspondence and the peer review process, it cannot be guaranteed. A journal's policy may allow disclosure of serious misconduct to third parties. Further, in certain circumstances, confidential correspondence and reviews may be disclosable under data protection legislation, which may lead to a libel claim. Editors, therefore, are right to be cautious about confidentiality and the risks that it brings. However, there are some practical ways for journals and their editors to manage the risks of claims for breach of confidence or libel, such as:

- to have clear guidance notes for editors, authors and reviewers on the journal's policy on confidentiality;
- to have clear guidance for editors on handling hostile reviews and allegations of misconduct;
- to have a libel policy;
- to provide clear guidance for reviewers on avoiding making libellous or personal comments in reviews;
- to have an email policy; and
- to have an effective data protection policy.

Elaine Heywood

*Publishing team, Blake Laphorn solicitors
Southampton, UK
elaine.heywood@bllaw.co.uk*

I have seen the future and it works

You can always rely on older members of trades and professions to lament the decline in standards since 'their day'. A senior cardiologist bemoans the fact that newly qualified doctors know nothing of medicine. Marketing and advertising veterans complain that brand managers lack initiative and imagination and are wedded to researching every proposition to the point where creativity dies.

As a retired medical writer, I'm no different. OK so I have finally given up my war on the passive voice. I've also given in to writers—doctors and medical writers—who love to use long technical terms when short words in plain English would convey the meaning more clearly. In short, I have wearily surrendered to the kind of writers who will never use three or four words when a couple of thousand will easily do¹.

I remain pedantic, grumpy and—as I have been called once this week—a cranky pants. But do I despair for the future?

Not now I don't, because I have just read in *New Scientist* a beautifully crafted, witty and interesting piece and it comes from a student. First prize in the 2008 Wellcome Trust and *New Scientist* essay competition went to Katherine Robertson, a medical student currently doing a PhD at the University of Cambridge.

Her essay, 'Fusion cuisine: the many talents of the placenta', shows how the laboratory work of scientists ties in with the everyday work of an obstetrician.

The Wellcome Trust quotes Katherine as saying: "I was very excited to win this competition because I think the placenta is often overlooked in favour of more exotic research topics like the brain, but it is every bit as crucial".

"I hope to practise as an obstetrician in the future but winning this competition has also made me think about how I could combine that with writing, maybe for a more general audience".

She wins £1000, a two-week, expenses-paid media placement with *New Scientist* and publication of her essay in the magazine. An EMWA member in the future? I hope so. If only she hadn't slipped into the passive voice once or twice.

Geoff Hall

*EMWA President (1999-2000) and Nick Thompson Fellow
Geoffreyhall@aol.com*

Read Katherine Robertson's winning essay at:
http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh_peda/documents/web_document/WTX050707.doc

¹ A quotation from the Jake Thackray song On Again