

BOOK REVIEW

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International Libel and Privacy Handbook: A Global Reference for Journalists, Publishers, Webmasters, and Lawyers, 2d ed.

Charles J. Glasser Jr. (ed.)
Bloomberg Press:
New York (2009)

452 pages; \$49.95 (paperback)

Media law is evolving at an accelerated speed. A good illustration is a regular supplement of various media law treatises.¹ This is all the more true when it comes to libel and privacy law in the United States and abroad. For example, *Carter-Ruck on Libel and Slander*,² a standard treatise on international and comparative libel law,³ is currently being expanded to include privacy.⁴

International Libel and Privacy Handbook is the latest example of the systematic attention from American and foreign law practitioners to media law in general and libel and privacy in particular. It was revised for its second edition only three years after its first edition was published in 2006.⁵ In his updated preface, Charles J. Glasser Jr., global media counsel to Bloomberg News, observes on the moral of *Galloway v. Telegraph Group Ltd.*,⁶ the 2006 British libel case:

More often than not, doing less simply looks unfair. In nations without a rich tradition of a First Amendment, facts that look like a “cheap shot” usually work against the press. The journalist should aim for neutral reporting. Adopting questionable facts as true and then commenting on them without clearly acknowledging whether or not they are known to be true and without giving the subject a fair chance to respond can lead to trouble.⁷

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Regardless of whether international and foreign law should or should not be cited by American judges,⁸ Glasser’s book and similar titles are of more practical relevance than ever to the press and lawyers representing the press. As David Kohler and Lee Levine, authors of the just-published *Media and the Law*, stated, “[E]ven those with a primarily domestic focus need to have at least a basic understanding of some of the differences between U.S. and international media law. And those international publishers who seek an audience in the United States also need some comparative understanding.”⁹

International Libel and Privacy Handbook is not so much analytical as descriptive. Its primary approach tends to be more foreign law than comparative law,¹⁰ although some authors note U.S. law in their chapters.¹¹ Indeed, that is the very strength of the book. The book mostly comprises the thoughtful answers from lawyers and scholars from the selected nations to twenty-one of the most troubling issues relating to libel, privacy, and other media law topics.

More than half of the questions focus on libel law. Among the libel questions are

- What is the locally accepted definition of libel?
- May corporations sue for libel?
- Is product disparagement recognized, and, if so, how does that differ from libel?
- What is the fault standard(s) applied to libel?
- Is there a recognized protection for opinion or fair comment on matters of public concern?
- Is there a privilege for republishing statements made earlier by other, bona fide, reliable publications or wire services?¹²

The book also delves into the following privacy questions:

- Is a right of privacy recognized (either civilly or criminally)?
- May reporters tape-record their own telephone conversations for

note-taking purposes (not broadcast) without the consent of the other party?

- If it is permissible to record such tapes, may they be broadcast without permission?¹³

International Libel and Privacy Handbook addresses other concerns affecting freedom of the press, such as the conflict between free press and fair trial, prior restraint, the journalistic privilege to confidential sources, and subpoenas directed at media organizations. It also touches on Internet law and regulations by asking whether Internet publishers are treated differently in substance, procedure, or both. Directly relevant to international and comparative law in the book is “Are there any cases in which the courts enforced a judgment in libel from another jurisdiction against a publisher in your jurisdiction?”¹⁴

The bulk of the 452-page book centers on twenty-two jurisdictions (Australia, Belgium, Brazil, Canada, China, England, France, Germany, Hong Kong, India, Italy, Japan, Malaysia, the Netherlands, Poland, Russia, Singapore, South Korea, Spain, Switzerland, Thailand, and the United States). The reason for selecting these jurisdictions is unclear, although it is hardly surprising that thirteen of the selected countries are in Europe and the Americas.

Africa and Central and South America receive scant attention. The book includes nothing from the fifty-three nations of Africa and only one of the twenty-plus Latin American countries. Some discerning readers might wonder why Africa and Latin America are almost entirely ignored. There is no doubt that freedom of the press in several African and Latin American countries has been examined over the years.¹⁵

From a foreign and comparative perspective, Argentina is conspicuously missing. The South American country should serve as an interesting case study of the U.S. export of its actual malice doctrine abroad. The Argentine Supreme Court has adopted the American libel law defense in a more liberal way. In applying actual malice to public officials,

public figures, and private individuals who have been involved in matters of public interest, the Argentine Supreme Court held: “[T]he injured party must show that the media acted with ‘actual malice’ and that the publisher of the news story knew that the statement was false or acted in reckless disregards of its truth or falsity.”¹⁶

Each chapter provides a concise background on the judicial system and sources of law in each country discussed. Nearly all the chapters address the central questions by focusing on statutory law and case law. Hence, journalists should find the chapters helpful in preemptively handling libel litigation. Some chapters are more comprehensive than others. Among the best chapters are those on Belgium and Switzerland. They are thorough and contextually detailed.

Though not explicitly pointed out, some foreign media laws seem analogous to American law. For example, the neutral report doctrine in Spanish law¹⁷ might parallel the U.S. neutral reportage libel defense¹⁸ insofar as Spanish courts distinguish neutral report from the fair report privilege as applied in American law.

The chapter on the Middle East is below par. The lack of the legal resources on media laws in the Middle East explains why it is no more than a sketch of the political culture, the legal system, and the media-related incidents in seven Middle Eastern countries.¹⁹ Few of the questions underlying the book’s theme receive searching attention in the chapter. Consequently, the chapter deviates so far from the book’s country-specific substance and structure that it detracts from the overall quality of the volume.

Separate from the nation-by-nation chapters are the two essays on book publishing and on privacy in England. The book publishing essay revolves around special issues regarding publishing agreements for authors and publishers, including insurance coverage and print-on-demand self-publishing.²⁰ Given that legal issues related to book publishing are rarely examined, the book publishing essay is a valuable addition. The privacy essay is insightful; it answers why and how privacy is gaining ground as a tort in Britain in connection with the impact of the European Convention on Human Rights on English law.²¹

The recommended reading of sixteen sources could have focused less on the United States and easily could have been

more extensive and current. The inclusion of several Article 19 publications and *Carter-Ruck on Libel and Slander* would have made the list more international. The more recent edition of *Gatley on Libel and Slander* also could have been listed.

Regardless, *International Libel and Privacy Handbook* is an excellent guide for professional communicators and lawyers. Further, its value is not necessarily limited to journalists. With the exception of a few chapters, the book is judiciously documented. Its refreshingly extensive index is another reader-friendly feature. Many journalism and media law scholars will find the book extremely relevant to their research on foreign law. As the first of its kind, the book offers a wide range of foreign laws on libel and privacy in the era of Internet communication. **□**

Endnotes

1. See, e.g., MEDIA, ADVERTISING, AND ENTERTAINMENT LAW THROUGHOUT THE WORLD (Andrew B. Ullmer ed., 2009) (the two-volume treatise on media, advertising, entertainment, and art law of more than thirty countries is supplemented annually).

2. PETER F. CARTER-RUCK & HARVEY STARTE, CARTER-RUCK ON LIBEL AND SLANDER (5th ed. 1997).

3. See Kyu Ho Youm, *Journalism Law and Regulation*, in THE HANDBOOK OF JOURNALISM STUDIES 285 (Karin Wahl-Jorgensen & Thomas Hanitzsch eds., 2009) (noting the “enduring value” of CARTER-RUCK ON LIBEL AND SLANDER).

4. The reviewer has co-authored a South Korea section for the Carter-Ruck book (forthcoming).

5. For a review of the first edition of *International Libel and Privacy Handbook*, see Kyu Ho Youm, *International Libel & Privacy Handbook: A Global Reference for Journalists, Publishers, Webmasters, and Lawyers*, 85 JOURNALISM Q. 694–95 (2008).

6. 2006 H.R.C.R. 13, 2006 EWCA Civ. 17 (Civ. Div.).

7. INTERNATIONAL LIBEL AND PRIVACY HANDBOOK XX (2d ed., Charles J. Glasser Jr. ed., 2009).

8. See Adam Liptak, *Ginsburg Shares Views on Influence of Foreign Law on Her Court, and Vice Versa*, N.Y. TIMES, Apr. 12, 2009, at A14.

9. DAVID KOHLER & LEE LEVINE, MEDIA AND THE LAW 781 (2009).

10. MARCI HOFFMAN & MARY RUMSEY, INTERNATIONAL AND FOREIGN LEGAL RESEARCH:

A COURSEBOOK 1 (2008).

11. See, e.g., Janmejy Rai et al., *India*, in INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, *supra* note 7, at 139 (noting the Indian Supreme Court’s adoption of the U.S. actual malice standard).

12. INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, *supra* note 7, at 1–2.

13. *Id.* at 2.

14. *Id.* Enforcement of foreign libel judgments in the United States has been a growing concern since the early 1990s. See Kyu Ho Youm, *Suing American Media in Foreign Courts: Doing an End-run Around U.S. Libel Law*, 16 HASTINGS COMM. & ENT. L.J. 235–64 (1994). In April 2008, New York became the first state to prohibit libel tourism, and Illinois followed suit. Congress is considering a similar law against enforcement of foreign libel judgments against American authors and media in the United States. See Sarah Staveley-O’Carroll, *Libel Tourism Laws: Spoiling the Holiday and Saving the First Amendment*, NYU J. L. & LIBERTY 4 (forthcoming), available at <http://ssrn.com>.

15. See, e.g., Gregory Pitts, *Democracy and Press Freedom in Zambia: Attitudes of Members of Parliament Toward Media and Media Regulation*, 5 COMM. L. & POL’Y 269–94 (2000); Susana N. Vittadini Andres, *First Amendment Influence in Argentine Republic Law and Jurisprudence*, 4 COMM. L. & POL’Y 149–75 (1999); Michael Perkins, *International Human Rights and the Collegiation of Journalists: The Case of Costa Rica*, 4 COMM. L. & POL’Y 59–86 (1999).

16. Vago c. Ediciones La Urraca, Supreme Court, Fallos 314: 1517 (1991), discussed in Pablo Crescimbeni et al., *Argentina*, in MEDIA, ADVERTISING AND ENTERTAINMENT LAW THROUGHOUT THE WORLD, *supra* note 1, § 1:15.

17. Almudena Arpón de Mondivil, *Spain*, in INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, *supra* note 7, at 383.

18. For the most detailed critical analysis of neutral reportage as a problematic libel defense in U.S. law, see David A. Elder, *Truth, Accuracy and Neutral Reportage: Beheading the Media Jabberwock’s Attempts to Circumvent New York Times v. Sullivan*, 9 VANDERBILT J. ENT. & TECH. L. 551 (2007).

19. Charles J. Glasser Jr. with Ava Macalpin, *Middle East*, in INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, *supra* note 7, at 184–201.

20. Slade R. Metcalf, *Special Issues for Book Publishers*, in INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, *supra* note 7, at 406–14.

21. Amber Melville-Brown, *Shooting Stars: Privacy Claims in the UK*, in INTERNATIONAL LIBEL AND PRIVACY HANDBOOK, *supra* note 7, at 416.