

Chilled Books: Managing Defamatory Content in Non-fiction Trade Publishing

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Abstract : Non-fiction genres (autobiographies and biographies, true stories and criticism, investigative journalism and narrative journalism) have enjoyed increasing sales in the English-language publishing territories over the last decade, but writing the tell-all or exposé is not without consequences: defamation laws cast a “chilling effect” by regarding reputation above publications with a public interest element. This is evident in the many publications that have been amended or pulped after publication. These communications, alterations and negotiations indicate that the threat of legal action forms part of the editorial decision-making around such publications, the presence of which could be attributed to strict defamation laws. In the UK and Australia, particularly, defamation law has proved notoriously biased in favour of plaintiffs. The legal obstacles have prompted law reform by way of section 4 of the UK Defamation Act, which allows for editorial assessment into whether the statement/s made are in the public interest; as of July 1st 2021, the NSW Government in Australia also implemented reforms to help steer the law towards more flexibility in the digital age – the most interesting of these developments for commercial publishing being the new ‘public interest’ defence (s 29A), which is modelled on the UK’s section 4 and which most states in Australia have now integrated into their respective state laws (Queensland, new South Wales, Victoria and South Australia, with the remaining states committing at a later date). This paper will outline and discuss the preliminary findings of a 1-year project that aims to explore how potentially litigious content is managed in unpublished non-fiction manuscripts in two countries identified as having strict defamation laws: Australia and the UK. Significantly, it expects to indicate the burden of current defamation laws on publishing practice and publishing outputs in these countries by interrogating in-house editorial processes and the likelihood of editorial management in a ‘post negotiation space’, where the activities and communication between authors and editors are reconstructed, if necessary, to correct the author/publisher power balance and affirm the business relationship. In doing so, the project asks: has the threat, explicit or implicit, of defamation action produced a significant chilling effect in trade non-fiction publishing in the UK and Australia?

Keywords : defamation, publishing, socio-legal, authorship, editing, literature

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