

INTRODUCTION:**“Public Access Definitions**

The City of Manchester and the Manchester Community Access Media Corporation have implemented Public Access cable television for citizens to utilize and present individual and community-based programming. Public Access opportunities do not include “MCTV Government or Education Access”.

Cable access is made available by the franchise agreement between the municipal governments and the cable companies. Whether or not provisions for cable access are in the franchise agreement is at the discretion of the local government and its citizens.

Congress enacted the Cable Communications Policy Act of 1984 (“Cable Act”), 47 U.S.C. §521, et seq. The Cable Act provides that a “franchising authority,” (the City of Manchester), may require a cable operator (Comcast) to make channel capacity available for “PEG access programming”, as part of the franchise agreement pursuant to which the cable operator provides services to a community.

See 47 U.S.C. §531. The Act further allows a franchising authority to “require rules and procedures for the use of the channel capacity designated” for PEG programming and to “enforce any requirement in any franchise [agreement] regarding the providing or use of such channel capacity.” Id. §531(b),(c). The City of Manchester’s cable franchise agreement, adopted in October of 2000 (renewed in 2003), states that the Access Provider will establish rules, procedures and guidelines for use of the PEG Access Channels. Article 7.1 (5) Also see Section 8 of this policy & procedures book for more information. The Manchester Community Access Media Corporation (MCAM) is the designated access provider and operates Public Access (Channel 23 on the Comcast cable system) in Manchester, New Hampshire.

MCAM VISION STATEMENT:

1. MCAM is committed to providing the opportunity for free speech through open public access cablecasts, and to provide training and equipment resources, without editorial control.
2. MCAM supports the economic and social development of Manchester’s neighborhoods by working with city government and community-based

organizations to provide resources to all people including the under-served, immigrants and people with low incomes and disabilities.

3. MCAM supports active participation in the democratic process by providing opportunities for residents of Manchester to access and disperse information and to become knowledgeable users of telecommunications technologies.

4. MCAM is committed to providing adequate space and industry standard equipment in computer and video technology to fulfill its mission to serve the citizens of Manchester.

5. MCAM supports and encourages the spirit of volunteerism and celebrates the value of community service.

6. MCAM encourages artistic creation and expression through the use of electronic technologies.

FACILITY LOCATION: MCAM administrative offices and production facilities are located at 540 N. Commercial St. in the city of Manchester, New Hampshire, USA; the entrance is in the rear of the building.

FACILITY PARKING: MCAM has a limited number of “marked” spaces

available for Producers and guests...Producers are encouraged to park at a meter on Commercial Street and leave the marked spaces for your guest.

CONTACT INFO: MCAM administrative officers and staff can be contacted at 603-622-3023. More contact info is available at the website www.mcam.org

FACILITY SCHEDULE: Posted at mcam.org and at the studio“Producers are eligible to receive training for up to four (4) people per year with training for additional people available at an additional fee, per person.

Section 1 - Producership Responsibilities & Privledges

1.01.1 - A Producer is the primary provider of content on the channel. Producership in MCAM is required to use public access services. Producership is conditioned on compliance with all of these Policies & Procedures, including, but not limited to: Residency in Manchester, NH - Eighteen (18) years of age or older - Attendance of an MCAM orientation session - Completion of a Producership application and signed

Statement of Compliance - Payment of the required Producership fee

1.01.2 - A Producer has normal workday access (via an electronic swipe card) to the designated studio/production space for the creation of programs

1.01.3 - A Producer may use, on loan, designated production equipment outside the facility for the purpose of program creation.

1.01.4 - A Producer may submit pretaped programming for the channel, and be eligible for a designated timeslot.

1.01.5 - A Producer may utilize designated computer workstations for the creation of programs for the channel.

1.01.6 - A Producer shall receive technical or production assistance from the staff when available and appropriate.

1.02 - Producership Tiers

1.02.1 - Individual Producerships shall have access to all basic MCAM workshops, use of all designated MCAM media production resources, may submit programming on channel 23 (first come, first served), may

submit content to the newsletter or other MCAM technology, shall receive technical and or production advice and assistance from staff where requested and when available, shall receive all MCAM mail communications. All individual Producers must live in the City of Manchester and provide proof of residency

1.02.2 - Family Producerships shall be issued to up to four persons within the same household (at the same address) who apply together for Producership under a Family Producership, they shall have all the privileges of Individual Producership. A parent or guardian must accompany minors (under the age of 18) on MCAM premises, and a parental consent form must be on file. All family Producers must live in the City of Manchester and provide proof of residency

1.02.3 - Nonprofit Organization Producership shall be available for any firms, corporations, organizations, institutions, or others recognized as nonprofit, tax-exempt by the IRS. Groups joining MCAM under nonprofit Producership shall have all the privileges of Individual Producership. Nonprofit organizations are eligible to receive training for up to six (6) people per year with

training for additional people available at an additional fee, per person. In addition, Nonprofit Organization Producership may utilize the channel for stipulated fund-raising activities.

1.02.4 - Business Producership shall be available for any Manchester-based, for profit firms, corporations, organizations, institutions or other entities. Businesses joining MCAM under Business Producership shall have all the privileges of Individual Producership. Business Producers are eligible to receive training for up to four (4) people per year with training for additional people available at an additional fee, per person.

1.02.5 - Basic Annual Producership Fee Schedule: Producership fee is not refundable or tax deductible. The fee schedule is posted, for more information, see the Executive Director or the Membership Coordinator.

1.02.6 - Access Producer Producerships last for one calendar year from the first month joined. Members will receive notices in-hand or in the mail regarding Producership renewal. If a producer fails to renew Producership more than four months after

the first reminder, that Producer will be “expired” and may be required to attend the orientation class again.

1.02.7- Access Producer Producerships fee may be waived in exchange for volunteer services, when available, and at the discretion of the management

2. Programming and Scheduling

“First -come” and “Free speech” are abstract concepts that require implementation and, unfortunately, everyone cannot do whatever they wish, in the same space, at the same time, forever... the law of physics prevents such endeavors and access organizations are the arbiters of “fair use of limited resources” Access to channel space will be accepted on a fair and non-discriminatory basis. Once submitted, the MCAM staff may schedule programming with the goal of presenting a consistent schedule to the Manchester viewing audience.

2.01 - Personal responsibility

2.01.1 - Anyone who submits programming for playback on the access channel is personally responsible for the content of the programming. Each submitted tape must be

accompanied by a Cablecast Request form, which includes a clause indemnifying MCAM from legal action resulting from the cablecast of the program.

2.01.2 - Additionally, the form will include a signed statement attesting to the fact that the program contains no illegal material. Illegal material includes, but may not be limited to (a) any unlawful use of copyrighted material (b) any advertising material that promotes a commercial product or service (c) any material that violates local, state or federal law relating to obscenity or indecency (d) any material that is libelous, slanderous or defamatory in character or (e) material that is an unlawful invasion of privacy.

2.01.3 - MCAM encourages producers to obtain release forms from each person appearing in their program. “2.01.4 - Programs submitted for cablecast, whether created with MCAM equipment or not, must include a notice (either text or verbal) identifying the actual name of the Producer of the program.

2.02 - Submitting a program for playback

To submit a program for playback, please include the following:

www.mcam.org

2.02.1 - A video tape or disc of the program which adheres to all standards outlined in this section

2.02.2 – A Cablecast Request and Statement of Compliance form. Also see Section 2.14

2.02.3 - Technical Requirements for cablecast transmission. MCAM uses a professional level digital encoder with specific technical requirements. Programs must meet minimum audio and video technical standards or they will be returned to the producer as un-playable. Community access stations provide high-quality equipment and training to allow even the novice to create network-like productions. Poor quality content devalues the entire channel and the work of those Producers that strive to create clean audio and clear video for the viewers. You must make every effort to present quality content, free from audio/video disturbances. The only occasion where lower-quality video should be used if it is rare or imported from another country, where upon upgrading the image/sound might not be possible. Again, Programs must be of a suitable technical standard or they will be returned to the Producer as unaired, for redo or repair.

2.02.4 - MCAM will accept programs on VHS, S-VHS, MiniDV, and DVD, DVD-R—other formats may be accommodated. Producers will be notified in the event of a change in acceptable formats.

2.02.5 - Video Tapes or Discs must be clearly labeled with producer's name to aid in returning of the tape.

2.02.6 - Programs are generally scheduled in slots at the top and bottom of the hour.

2.02.7 – Viewer Warning: Programs submitted under Adult/Mature content guidelines may be preceded by a disclaimer: “This program contains Adult/Mature Content. Viewer Discretion Advised.” These programs will play after 11:00 PM and before 5:00 AM.

2.02.8 - Only after staff has encoded and cablecast a submitted tape, should the producer remove his/her tape from the facility.

2.02.9 - Producers tapes/DVDs will be placed in the designated mailbox for retrieval.

2.03 - Scheduling Playback

(1) Successful programming is a symbiotic relationship “ between the creator and the viewer. The MCAM schedule will reflect a fair and practical day and time assignment for each program to organize shows into useful categories.

(2) Programs will be organized and scheduled into specific day-parts with each night reflecting a program type, such“ as (a) religious, faith-based, (b) political, news, editorial/“ opinion (c) arts, non-profits, cultural, & innovative.

(3) The scheduling categories apply only to series programs.

2.03.1 - Regular Series Programs:

Individual program submissions will be issued a regular cablecast timeslot. MCAM requires the producer to tape and deliver their program at least one business day prior to the scheduled playback; every effort will be made to present the program in a timely manner. [See Section 2.05 for more details]

2.03.2 - MCAMs will schedule no more than one regular series program in a (7) seven-day period from any individual or group.

2.03.3 - Each regular series program submitted for cablecast will be scheduled to

play at least once. When space permits programs may be scheduled for an additional play.

2.03.4 - Producers that maintain an active schedule by submitting at least two (2) programs per month will be cablecast weekly. Producers that submit only one (1) or fewer programs per month may be located in a rotating timeslot, cablecast bi-weekly.

2.03.5 - Single-Feature Programs: Individual program submissions will be scheduled on a first come, first serve basis, upon delivery of the tape, in an available timeslot by staff assignment. MCAM requires the producer to tape and deliver their program at least two business days prior to the scheduled playback; every effort will be made to present the program in a timely manner. [See Section 2.06 for more details]

2.03.6 - MCAM staff will select times for single-feature programming and will attempt to honor requests for specific dates or times on a first-come, first served basis.

2.03.7 - Each single-feature program submitted for cablecast will be scheduled to

play at least once. When space permits programs may be scheduled for an additional play.

2.04 - Safe Haven & Community Standards

2.04.1 - Viewer Safe Haven/Adult Programming: Obscenity and Pornography are prohibited at all times.

Indecency and Profane Language may NOT be prohibited, but must be played ONLY between the hours of 11pm and 6am.

Note that obscene material only concerns sexual organs and sexual acts. Indecent material includes sexual or excretory functions or organs, and so-called profane words.

The FCC's regulations concerning safe harbor or safe haven concern only indecent programming, which is defined by the FCC as follows: "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities. Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity. Indecent programming may, however, be restricted in

order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience”. Bearing in mind that it has not necessarily been established that these rules apply to cable access TV, but only to broadcasters. The FCC traditionally refers complaints about programming under these rules back to the municipality that regulates the access center. Most municipalities have adopted the FCC standards on obscenity and indecency and enforce local community standards for cablecast.

2.04.2 - Manchester Community Access Media, Inc. will work in partnership with citizen groups, educators; businesses, governmental officials and community organizations to provide progressive, responsible and diverse programming based upon local community standards

2.04.3 - Producers are expected to alert MCAM staff to programming that may be inappropriate for younger viewers. MCAM reserves the right to restrict cablecast programming with excessively violent material, offensive language, nudity, or sexually explicit material. The time will be determined by MCAM staff, generally after 11:00 pm, and before 5:00 am, in order to

preserve a safe haven for viewing by “all audience members”. Mild Adult: intended for mature audiences only: may be aired between the hours of 11pm to 4am. This category of programming intended for adult audiences may include infrequent profanity, mild violence, and brief frontal nudity of a non-sexual or non-erotic nature. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* PG-13 rated material, and some mild R rated material, or on some network broadcast and cablecast television (TV-14 or TV-MA) after 11pm. Strong Adult: intended for mature audiences only that may include constitutionally protected “indecent” speech: may be aired between the hours of 1am to 4am. This category includes any uses or depictions of violence, profanity, or nudity that is persistent or otherwise goes beyond brief or infrequent uses. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* R, NC-17 and X rated material, or in some cable TV pay-channels or pay-per-view channels. MCAM believes that when it comes to controversial (not illegal) content in programming, the response should be to encourage more speech, as opposed to enforcing silence. Furthermore, MCAM is forbidden by law from censorship, or

content control. MCAM encourages anyone who disagrees with a program to produce counter-programming presenting an opposing point of view, or otherwise responding to the program in question. Upon receipt of a Request for Cablecast for any program, MCAM reserves the right to inform the public of a local Producer of Record's intent to cablecast a particular program to which it believes a segment of the community may wish to respond.

2.04.4 - Violation of the Safe Haven policy for adult programming will be considered a Major Offense (see Section 5.04.5 Failure of Disclosure). The City of Manchester, the cable franchiser, and MCAM encourage you to consider: your program will be cablecast into households throughout Manchester. There are situations where children in many of these households, and their television habits may not be closely supervised. You have the opportunity to make a responsible decision to limit the time of day your program will be scheduled by voluntarily stating any controversial content on your . Any program the the Producer deems contains the controvercial content noted below, should make every effort to notify the staff prior to cablecasting.

- a. **Adult Language:** Language or slang references which refer to sexual situations, or human excretory functions.
- b. **Extreme Violence:** Extreme acts of violence against people, graphic depictions of violent acts, images or sounds of violent human or animal mutilation, torture or death
- c. **Nudity:** Human nudity of a socially unacceptable nature.
- d. **Sexual Content:** Sex acts or depictions in any context.

2.04.5 - **Illegal Programming** (also see Section 8.) Please note: the courts have determined that material that is so-called “XXX” or “hardcore” pornography is legally “obscene and is not permitted to be cablecast on public access. At no times may such constitutionally unprotected“

material be cablecast on the channel. Producers of such material may be subject to prosecution.

Public Access Programming may not be used for illegal purposes. MCAM assumes no legal responsibility or liability for Public Access programming. Users responsible for illegal programming or programming containing information defrauding or intended to defraud the viewer shall forfeit their right to use Public Access facilities or air-time and be subject to

disciplinary actions of a Major Offense
(see section 5.05)

The following are examples of types of
illegal programming which are prohibited:

a. Information about any lottery, gift
enterprise, or similar scheme offering prizes
gained by lot or chance or any whole or
partial list of prizes awarded by lottery, gift
enterprise or similar scheme is prohibited.

(Violation of this rule is subject to criminal
liability under federal law, Title 18, U.S.C.
Sec. 1304.) For example, a program violates
this if it is connected with a valuable prize
awarded to any person selected by lot or
chance, if the winner is required to furnish
anything in exchange for the prize, or if the
winner is required to buy or have any
product from a sponsor of the program.

b. Material which is intended to defraud the
viewer or designed to obtain money by false
or fraudulent means is prohibited. (Violation
of this rule is subject to criminal liability
under federal law, Title 18, U.S.C. Sec.
1464.)

c. Indecent or obscene matter is prohibited.
(Violation of this rule is subject to criminal
liability under federal law, Title 18, U.S.C.
SEC. 1464.)

Any Producers providing Public Access
programming shall be required to advise

MCAM whether or not their programs involve the use of copyrighted material or material subject to other ownership or royalty rights. If so, the Producer may be asked to provide written evidence of all necessary clearances and arrangements with the program owners, copyright, trademark logo or service mark owners and owners of any performing or royalty rights before the program may be produced in MCAM facilities.

Also see Secion 8.0 of this document.

2.05 - Regular Series Programming

2.05.1 – Shows submitted to MCAM will be given “series status”, which provides a consistent timeslot for the duration of the season.

2.05.2 There are four (4) types of regular series programs

A. Half-hour Weekly: this type of program will be cablcast every week at the designated time, in order to qualify for this type of program category a Producer must commit to at least two new programs a month.

B. Half-hour Bi-weekly: this type of program will be cablcast every other

week at the designated time (rotating 1st & 3rd week with another program playing 2nd & 4th week of the month), in order to qualify for this type of program category a Producer must commit to at least one new program a month.

C. Hour Weekly: this type of program will be cablcast every week at the designated time, in order to qualify for this type of program category a Producer must commit to at least two new programs a month.

D. Hour Bi-weekly: this type of program will be cablcast every other week at the designated time (rotating 1st & 3rd week with another program playing 2nd & 4th week of the month), in order to qualify for this type of program category a Producer must commit to at least one new program a month.

2.05.3 – Actual Time Length: Half-hour series programming may not exceed 28:30 minutes in length; Hour series programming may not exceed 54 minutes in length, and both must be submitted at least one business day prior to cablecasting.

2.05.4 - Series status will be constantly reviewed for activity. Maintaining a consistent timeslot from season to season, or

even month to month, is not guaranteed. If you fail to maintain your minimum series commitment, as stated above, your slot may be revoked or reclassified without notice. If demand requires it, MCAM may redetermine timeslot assignments.

2.05.5 - If a weekly series is reclassified as bi-weekly due to the producer's inability to fulfill the delivery agreement, the producer will be eligible for weekly programming as soon as he/she can show an obvious and significant increase in production commitment. The previous timeslot may not be available.

2.05.6 - If a bi-weekly series is canceled due to the producer's inability to fulfill the delivery agreement, the producer will be eligible for continuation as long as his/her Producership is current. The previous timeslot may not be available.

2.05.7 - Series Promos Producers with weekly or bi-weekly series commitments are eligible to tape or submit a promotional "advertisement" for their show not exceeding 15 seconds. The promo should be descriptive of the Producer's intent of the program, urging viewers to watch, but not overtly topic-driven, as this promotion will

run for at least four (4) months before it may be replaced.

2.06 - Single-Feature Programming

2.06.1 - Shows exceeding the producer's current program category limitation submitted to MCAM by producers with or without a current series program will be provided a first come, first serve timeslot by staff assignment.

2.06.2 – Single-feature programming should not exceed four hours in length and must be submitted at least two business days prior to cablecasting

2.06.3 - Single-feature programming must originate from outside the MCAM studios.

2.06.4 - Each slot for Single-feature is limited to the actual and real length of the event or program.

2.07 - Live Programming

Every Producer will have the opportunity for live production. There is specific training, qualification, and show-prep required by producers prior to approval. Producers with or without a current series program will be

provided a first come, first serve live timeslot by staff assignment.

2.07.01 - Definition/Explanation of Live Programming: Live productions are those that are cablecast simultaneously as they are produced in the main studio of MCAM.

Telephone equipment for call-ins is available. The maximum length for a live program is 58 minutes. MCAM reserves the right interrupt for station ID midpoint through the program for up to two minutes. Producers must have completed at least five taped studio productions before their first live studio production. Producers have total responsibility for all guests, crew, talent and callers on the program. A delay system and personal IFB communication are available for live cablecast productions.

2.07.2 - Procedures for live programs: a. File a Pre-Production Live Request Form for a live cablecast at least one week before the date your program will be cablecast. This allows MCAM's time and to traffic and review the schedule for cablecast. All live programs must cablecast in the block category that is designated for live programs. Failure to comply with the cablecast of a live program in the

appropriate grounds for refusal.

block may be

- b. The Producer will coordinate with the production crew with all communication aspects between studio and control room, including handling of phone calls, and when/if to utilize the delay device.
- c. Producers will be considered in default of their live reservation for any of the following reasons:
 - Lateness (Arriving less than 15 min. before the live studio time.)“
 - Inadequate crew especially phone management“
 - Demonstrating a consistent inability to begin and end programming in scheduled/required time
 - Poor crew performance and resultant poor quality of programming

If a producer is in default, MCAM staff may cancel the production.

2.07.3 - Content violations occurring during live programming: The producer must sign a statement of responsibility for all program content and a live-cablecast request form prior to the production.

- a. No commercial advertising or programming prohibited by the FCC Regulations (see Section 8 of this document)

- b. Although there is no content exclusion, programming which does not have clearances, releases, or other assurances, or programming, which in the judgment of MCAM raises serious risk of legal liability, (such as copy right infringement, pornography, obscenity, etc.) may be prohibited.
- c. Live shows may be terminated in progress or delay-activated for violation of rules outlined above
- d. All live programs will be recorded at the time of cablecast in order to be replayed later and in case of disputes arising from content.
- e. In order to produce a live studio telecast, the community producer must sign a Statement of Responsibility for all program content prior to presentation.

2.07.4 - Phone Management for Live Productions

If viewer call-ins are to be included, the following policy must be strictly observed: All calls must be answered “off-air” so that the producer or his/her designee may obtain the caller’s name and telephone number. For a call to be taken live on MCAM, the producer or designated phone operator must call back the individual who wishes to talk on the program Producers must maintain a

log of names and telephone numbers of individuals who are call-in

participants. Caller names and numbers remain confidential to producer, except as otherwise may be required by a court order or legal action. MCAM will not allow “anonymous” or unidentified callers, especially regarding issues of libel, slander, obscenity, or threats to public and personal safety. Nothing in this policy is designed to censor or thwart commentary, even anonymous commentary, but rather is a precaution should any actual instance of FCC-prohibited content occur.

2.07.5 - Remember: Live programming is an involved and dynamic undertaking; any mistakes or indecisions will be apparent in real-time, for everyone to see and hear; for all its innate problems and potential pitfalls, however, comes an immediacy of communication that makes all of that worthwhile and distinctly valuable to the Producer and his/her viewers: Willful cooperation of the live- production policies (Section 2.07) and consideration for “accidental viewers” is important to the success and continuation of live programming at MCAM.

2.08 - Special Non-Profit Live Event

Current Non-Profit Organization Members are eligible to utilize the channel specifically for fundraising.

- a. They must be an active 501(c) non-profit corporation registered in New Hampshire and eligible for tax-exempt status.
- b. The purpose and method of the fundraising activity must be approved by the MCAM Board of Directors.
- c. The non-profit producer must coordinate their live program request with MCAM staff for more specified instructions.
- d. The purpose of the fundraising activity must be clearly stated during the cablecast at least once every half-hour.
- e. During an auction or similar fundraising activity within a program, credit announcements may identify particular products or services, but shall not include promotion of such products or services beyond that necessary for the specific auction purposes.
- f. During an auction or similar fundraising activity, visual exposure may also be given to a display in the auction area including the underwriter's name and trademark and product or service, or a representation thereof, but it shall not include promotion of the products or

services beyond that necessary for the specific auction purposes.

2.09 - Duplication

2.09.1 - Producers may use MCAM facilities to make VHS or DVD duplications of their own programs, as long as the copies are not sold for profit (the number of copies may be limited by the staff).

2.09.2 - MCAM stores programs in a computer drive in MPEG2 format and on DVD. Please state the exact taping date(s) of the programs you want to duplicate. There is no guarantee that the program will be available. It is recommended that every producer keep a master copy of any show that they intend for duplication or cablecast re-submission.

2.09.3 - Producers may purchase blank DVD stock from MCAM for duplication or recording of their studio program. Prices are posted.

2.10 – Failure to Play, Pre-Emption & Graphics-Insertion

2.10.1 - If a program fails to play due to mechanical failure or otherwise, it will be

rescheduled in a commensurate timeslot. MCAM will note time change notices on the automated bulletin board.

2.10.2 - MCAM reserves the right to pre-empt scheduled programs on any channel to present special or time-sensitive programming. MCAM will attempt to notify the producer of an affected program prior to such a pre-emption.

2.10.3 - MCAM may insert or overlay scrolling text or graphics script in the lower-third of the television screen with special or time-sensitive programming or public safety news or information. All pre-emptions or text overlays will be done in a consistent and nondiscriminatory time, place & manner.

2.10.4- MCAM may reduce the aspect-ratio of your program during non-prime time hours to insert or overlay text or graphics regarding community announcements or sponsors. All overlays will be done in a consistent and nondiscriminatory time, place & manner.

2.11 - Program Ownership

Producers maintain ownership of the content of the programs they produce. MCAM

reserves the right to excerpt any program that has been cablecast, for submittal to competition or contests, or for review by a formal complainant or legal authority.

2.12 - Re-runs

Due to the digital storage capacity of our master control playback, MCAM reserves the right to limit or deny regular series programming re-runs within 3 months of the original playback. If a Producer has any intention of re-running a program beyond that point, MCAM encourages that the Producer make a copy of that program for re-submission.

2.13 - “Easier Access”, “The Soapbox” & Staff Initiatives

2.13.1 - MCAM staff is committed to seeking diverse programming including programs bicycled tapes from other public access organizations. MCAM staff or Directors may use its discretion to be producer of record when it is in the interests of the community to do so. Where there are programming opportunities from outside the Manchester community, which would contribute to the diversity and quality of programming offered to the Manchester

community, as defined by the MCAM Mission Statement, the staff may exercise the prerogative to sponsor such programming as the producers of record. However, locally produced programming will have scheduling priority.

2.13.2 - “Easier Access” programs. These programs also include partnerships and other community collaborations in an environment where the access center provides the technical expertise, for those who demonstrate need, and the community supplies the content, which can include on-camera talent. This approach also may provide MCAM opportunities to pursue alternative funding resources.

2.13.3 - “The Soapbox” program is an opportunity for Manchester citizens to utilize the channel on a one-time or infrequent basis, without having to become a Producer. The Soapbox allows walk-thru traffic (generally without an appointment) to tape five minutes--head & shoulders shot--for cablecast at a designated time, usually within 72 hours of taping. “Soapbox” editorials need only show up at the Access Station during regular business hours with a government issued ID.

2.14 - MCAM Website

The mcam.org website will be the primary source for viewer contact and information regarding Public Access programming. All programming will be available for downloading and viewing on the internet; when submitting a program for cablecast on city cable, please note that you are also submitting it for access and viewing on the World Wide Web.

Each Producer will be allotted a “page” on the mcam.org site where a show-synopsis, basic contact information, and pictures. This page will also accompany web-links for downloading many of your most recent shows (VOD and podcasts) as well as a “blog” accessible to you to give your viewers updates, information and opinions.

3. Producer Orientation, Training, and Identification

3.01 - Orientation: All individuals interested in using MCAM public access services (play programming, training, volunteer and equipment use) must first attend an orientation session. Attendance is a prerequisite for Producership, training, and utilization.

3.02 - Training: All persons using MCAM equipment must be trained on the equipment they are using.

3.02.1 - Class sign-up. Classes will be made available on a first-come, first-served basis. The enrollment of each class is limited and may require a posted fee.

3.02.2 - These requirements are subject to change based changes in technology and facility opportunities.

3.03 - Facility Access & Identification

3.03.1 - All members will be issued an electronic Access Card, required to freely enter the facility. There is a \$10 deposit/replacement fee for lost cards.

3.03.2 - Members/Producers do not represent MCAM, and shall refrain from implying such representation.

4. Production and Equipment Use

Production equipment is made available for the creation of programming to present on MCAM's cable channel. Private or commercial use is not allowed. To that end, the following rules apply.

4.01 - Showing or Cablecasting Programs produced with MCAM equipment must have their first-time showing on MCAM's channel.

4.02 - Transfer & Responsibility

Access producers may use only the access equipment for which they are certified and take full responsibility for any loss or damage. A Producer must have a valid phone number and copy of their government-issued identification on file with MCAM while borrowing equipment.

4.03 - Equipment requests and reservations

4.03.1 - Requests are scheduled on a first come, first served basis. Equipment will not be considered reserved until a staff member approves an Equipment Request.

4.03.2 - Reservations, pick-ups and returns may be made during those hours designated by the MCAM staff.

4.04 - Field Production Equipment

4.04.1 - Producers are encouraged to make only one or two field reservations at a time.

A normal field equipment reservation should be no longer than a 48-hour use of equipment.

4.04.2 - Field equipment should be reserved at least one business day in advance of pick-up and no more than six weeks in advance of use for a single program.

4.04.3 - One set of field equipment per producer making the request will be authorized depending on availability and the equipment maintenance and repair schedule.

4.04.4 - Field equipment is limited to a maximum of three uses per program. The production manager must approve any exceptions.

4.04.5 - Access Producers are responsible for notifying staff if there are any problems with equipment.

4.04.6 - A Producer may be required to furnish proof of insurance for the value of the field production equipment, or make a deposit for a portion of the value of the equipment.

4.05 - Post-Production Equipment

4.05.1 - Producers are allowed to make two post-production suite reservations at a time. Use may be limited to four hours per session.

4.05.2 - Reservations should be made at least one-day in advanced of proposed use. Each Producer will be designated a file on a specified computer workstation. The Producer will make every effort to maintain their entire program at the same workstation. File storage is limited. Facility management will monitor file storage use and make any Producer aware of concerns.

4.05.3 - A person may not change wiring or connections, or use outside accessories without prior approval of staff. This includes the use of any software not currently installed on a given computer.

4.06 - Main Production Studio [Studio A]

4.06.1 - Producers are allowed to make two main-studio reservations at a time. Use is limited to 60 minutes per session for a half-hour program, 90 minutes for a one hour program, 120 minutes for a scheduled live program, including set-up and tear down. The Producer must be present during the actual recording of the program.

4.06.2 - Reservations will be accepted no more in advance than the MCAM's posted production calendar allows.

4.06.3 - The studio may be used for all general taping purposes.

4.06.4 - The certified Producer who reserves the main-studio for production may be responsible for finding crew members to work in the various studio crew positions as required by the production. MCAM staff members are generally not "crew" but are available to help facilitate the program including technical direction/switching the tapings.

4.07 - Small Studio [Studio B]

4.07.1 - Producers are allowed to utilize the small-studio on a first come/first serve basis.

4.07.2 - Use is unlimited, however, staff assistance will be extremely minimal-- Studio B may also be used for long-format (or single-feature) taping opportunities, the producer is responsible for finding crew members to work in the various studio crew positions as required by the production."

4.08 - Equipment Use Cancellations

In respect for and fairness to other producers, cancellations should be made as soon as a producer knows they will not be able to keep a given reservation.

4.08.1 - Producers failing to cancel before scheduled use will be given a written warning as a minor violation.

4.08.2 - Staff will cancel and reallocate facility and equipment use reserved by access producers who arrive more than 20 minutes past their scheduled use time.

4.08.3 - Abuse of the cancellation policy may result in suspension of access use privileges.

4.09 - Taking Care of Access Equipment

Equipment users agree to take full responsibility for equipment used by them and take every precaution to protect the equipment in their care.

4.09.1 - Never leave field equipment unattended.

4.09.2 - Never leave equipment in a car overnight.

4.09.3 - Never leave equipment visible through car or van windows, cover it or place it in your trunk.

4.09.4 - Never allow anyone to borrow your MCAM equipment.

4.09.5 - Never attempt to use equipment in hazardous environments.

4.09.6 - If equipment is stolen, file a police report immediately and notify MCAM by submitting a written report containing all the relevant details including a copy of the police report.

4.09.7 - It is the responsibility of the equipment user to reimburse MCAM for full replacement value of lost, stolen or damaged equipment.

4.10 - Your First Show

4.10.1 - For everything there is a first time. Completing your first program on MCAM can be a simple or complex task. First decide on what kind of format you want your show to be (studio talk show, a scripted teleplay, documentary, music video)

4.10.2 - Are you taping it in the studio, outside, a little of both? Once you finish the orientation and get tested on the equipment, you're ready to produce your show. Don't set your standards too high or give up too easy, the effort will be worth it.... Once you submit your first program you will receive a time slot for your show to air.

4.10.3 You've Got Access

The opportunity is there for you to take your own program to the city. Managing your own public access time slot is a wonderful opportunity.

5. Code of Conduct

The facilities of MCAM are a day-to-day work and educational environment. It is expected that all participating individuals (producers, guests, and volunteers) will conduct themselves in a responsible manner at all times and not interfere with the orderly conduct of activities and programs. All participating individuals, including staff, are asked to respect others within the work environment and while on MCAM premises. We ask that each member and their guests work for the long-term success of

Manchester Community Access Media and its goals

5.01 - Definitions

5.01.1 Facility Suspension

Loss of facility (540 Commercial St. location) privileges to include:

- Entrance into MCAM facility
- Studio Use
- Equipment Use
- Immediate return of all facility property and equipment

5.02 - Unacceptable behavior

The following actions are considered conduct that disturbs the work environment:

- Personal verbal attacks or harassment of individuals and or groups including, but not limited to, sexual, verbal or physical harassment.
- Yelling or loud and disruptive discussions
- Loitering on facility premises.
- Any conduct which disrupts the workplace environment.

5.03 - Right to refuse service

To ensure that MCAM equipment and facilities remain in good working order, are available to the broadest range of producers, and that the resources are used solely for their intended purpose, MCAM reserves the right to refuse service on a temporary or permanent basis, or otherwise initiate suspension of services, disciplinary actions, or other legal action against groups or individuals interfering or jeopardizing MCAM's operations or otherwise violating the rules and procedures.

5.04 - Requests to leave premises

MCAM staff may request that an individual leave the facilities immediately as follows:

5.04.1 - If an individual possesses, consumes, sells or dispenses alcohol or illegal substances in the MCAM facilities or premises, or

5.04.2 - If an individual appears to be under the influence of alcohol or drugs, or not in control of his/her faculties, or

5.04.3 - If an individual behaves in a threatening manner or interferes with the orderly conduct of MCAM activities, facilities or programs, or displays an

inability to properly operate production equipment.

5.05 - Major Offenses

A Major Violation will bring immediate three month-(90 day) day suspension from using equipment and/or entering facilities. A second violation shall result in forfeiture of Producership (including your right to program playback).

These include, but are not limited to the following:

5.05.1 - Theft, vandalism, or willful damage to MCAM equipment or facilities, or willful injury to or theft of the personal property of any MCAM staff person, user or guest.

5.05.2 - Falsifying or providing misleading information on forms and/or documents.

5.05.3 - Use of facilities, channel, or equipment for private, commercial or any purpose other than for the production of non-commercial programming for cablecast on the MCAM channel(s).

5.05.4 - Transferring and permitting use of equipment by non-certified users without a certified user present at all times.

5.05.5 - Breach of signed Cablecast Request form or failure to inform staff of “controversial” programming as indicated on this form.

5.05.6 - Threat, assault, verbal or sexual harassment of staff or MCAM volunteers.

5.05.7 - False representation by user of him/herself as an employee, representative, or agent of MCAM.

5.05.8 - Reconfiguring equipment, wiring, unauthorized attempted repair or attaching accessories without staff permission.

5.05.9 - Any disregard for MCAM’s operating policies and procedures.

5.05.10 - Any action that could be considered illegal under NH law.

5.06 - Minor Offenses

Minor offenses can disrupt the operations of the MCAM facility and services, and will not be permitted.

5.06.1 - Minor violations include (but may not be limited to)

(A) Failure to cancel an equipment or facility reservation. (B) Late pick-up or return of equipment without prior notification or approval (C) Mishandling of equipment (D) Smoking in the facility (E) Unauthorized entry into non-public or restricted areas of the facilities (F) Failure to clean up after facility use (G) Failure to vacate the studio in a timely manner (H) Return of functional but dirty/mis-packed equipment (I) Other violations of MCAM's rules and procedures

5.06.2 - Minor offenses that occur within a 12-month period from the date of the first violation shall result in action up to and including the following series of sanctions: (A) First Violation- Written Warning (B) Second Violation– Final Written Warning (C) Third Violation– 30 day facility/equipment suspension (see 5.03) (D) Fourth Violation– 60 day facility/equipment suspension (see 5.03) (E) Fifth or successive violations– 90 day facility /equipment suspension (see 5.03)

5.07 - Financial Responsibility

In addition to usership sanctions, members will be held financially responsible for the replacement and repair of any equipment

lost, damaged or destroyed while in their care and responsibility. Complete restitution may be required before any additional facility use is authorized.

5.08 - Complaint Process

MCAM resolves to encourage members to attempt resolution of any difficulties at the staff level. Once a person is removed for a Major Offense, they may not enter the premises until a formal hearing is held. Any complaint against a Producer will be submitted to the Executive Director for action. A complaint may be filed by any Producer or staff of MCAM. Any Producer may, however, appeal any disciplinary action using the following procedure:

5.08.1 - Once a complaint is filed, the Executive Director shall investigate the circumstances of the complaint and provide a written finding within 10 business day. This period may be extended for good cause shown.

5.08.2 - The Executive Director's written finding shall be presented to the Chair and Vice -Chair of the Board of Directors and a hearing shall be held within 10 business days of receipt of the written warning. This

period may be extended for good cause shown.

5.08.3 - The decision of the Board shall be final and binding.

5.09 - Viewer Comment Procedure

5.09.1 - Viewer comments will be recorded and issued to each Producer as applicable, including the complainant's name and contact information (where available), description the program, the date and time of the program, and the nature of the comment. MCAM will provide the complainant with the program producer's contact information upon request.

5.09.2 - If the complainant alleges that the program contains illegal material, MCAM will follow up with the following procedure: If the complaint alleges that the content of the broadcast is obscene or otherwise illegal, MCAM staff shall forward a copy of the complaint, a copy of the program on tape and the producer's release to the Board of Directors. MCAM staff shall advise them that a community member has alleged that the program contains illegal content and pursue actions based on failure to disclose

per the MCAM Policies & Procedures. The Directors may retain legal counsel for advice and direction.

5.09.3 - Only illegal content may be banned from a public access channel: libel or slander, obscenity/pornography, invasion of privacy, and copyright violations. Commercial content is banned by local agreements with the cable operators, not by NH or federal law. “Hate speech” is protected by the U.S. Constitution so long as it does not present a clear and present danger of imminent harm. Hate speech hurts! While public access stations are required to carry it, they are not prevented from reaching out to communities, acknowledging the hurt of those it is directed, and encouraging counter-programming as a suitable response. In a First Amendment forum (such as public access television) the opinions and beliefs of the mechanical operator, such as MCAM, must not be considered.

“Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied

through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence” — Justice Brandeis in Whitney v. California 271 U.S. 357 (1927)

6. Funding Programs and Sponsorship

Producers are encouraged to seek funding for the production of community access programs. Likewise, community groups are encouraged to develop supportive relationships with certified producers to promote the development of community programming. No access resources, however, may be used for commercial purposes or for personal gain. Sponsorship is the preferred process for funding of public access programs. Any other receipt of funds or in-kind by producers for community access production may be considered commercial and not allowed. Producers who may have ideas for collaborative projects between themselves

and MCAM that can serve to generate revenues to benefit public access operations, are encouraged to discuss such ideas with the Station Director.

Remember, sponsors are not advertisers: Advertisers have sway; sponsors must not. Sponsors are doing it because they believe in it.

6.01 - Misuse of Sponsorships

Any use or practice that constitutes commercial advertising will not be permitted. No qualitative or comparative claims, no direct inducements or calls to action, no overly promotional material. Any breach of the rules concerning funding or sponsorship shall be treated as a major violation. Commercial use of the channel is strictly prohibited. (See Section 8 of this document for more information).

6.02 - Sponsorship Limitations

6.02.1 - As a Producer, you have the latitude to establish your own schedule of on-air acknowledgments for specific levels of support, subject to the guidelines above. The variables you have to work with include credit length, type of credit, and frequency.

MCAM urges you to seek the advice of its staff to insure the appropriateness of your acknowledgments.

6.02.2 - Give Notice to Underwriters. You must explicitly inform all prospective underwriters and/or grantors you are a public access producer acting on your own behalf, not an MCAM official or staff member, and that MCAM does not assume any responsibility for your program.

6.02.3 - An underwriter or their representative(s) may not appear in the program they underwrite. Producers cannot “sell” channel time or production facilities to other individuals or businesses, or in any way suggest to underwriters that they are buying any advertising time or services in exchange for their support. It is important that program underwriters understand that they are making a “no-strings-attached” contribution to access programming. They are not buying any kind of advertising time or promotion of their services or products. Any underwriting support collected in excess of actual production costs must be either returned to the Underwriter or donated to MCAM.

6.02.4 - Use of Funds. All underwriting funds must be used for production expenses only, such as the costs of videotape, music rights, set supplies, and actors/talent. Because MCAM's facilities may not be used for personal gain, the producer and members of the production crew may NOT be paid for their efforts. Use of MCAM facilities for commercial, profit-making, or private use under the pretense of creating Public Access programming is a Major Violation of MCAM policy.

6.02.5 - The sponsor/contributor to the public access program cannot claim their contribution as a charitable donation to the MCAM non-profit corporation.

7. Other Conditions

7.01.1 - A Public file will be kept available which will include copies of request for playback forms and program logs. These files may be inspected during normal business hours by appointment.

7.01.2 - The mcam.org website will be the primary source for viewer contact and information regarding Public Access programming; all Producer's basic contact

info will be noted on the site, including e-mail, phone, and website (if any).

7.02 - Storage

7.02.1 - On-site storage at the production studio is available for small props (leave it at your own risk!)

7.03 - Fees

7.03.1 - MCAM shall make readily available; a current list of all fees that may apply to access services. This includes (but may not be limited to) Producership fees, tape costs, and special service fees.

7.03.2 - Any changes in fees will be announced at least 30 days prior to the effective date.

7.03.3 - MCAM cannot extend credit, and all applicable fees must be paid prior to delivery of service.

7.04 - Misrepresentation

Access producers must not misrepresent themselves as employees of MCAM or as authorized to speak for the organization. Such actions may result in suspension of access privileges.

7.05 - Facility Upkeep

All users are expected to clean up each time they use the equipment or facilities.

7.06 - Indemnification

Users of the access channels shall indemnify MCAM, the municipality of Manchester New Hampshire, and the cable provider of the Manchester Area Community against any liabilities arising out of any use of facilities and resources or out of any breach of the Operating Rules and Procedures.

7.07 - Interpretation

The Executive Director and his/her designees are authorized to interpret this Access Provider Board's Operating Policies and Procedures.

7.08 - Amendments

The Access Provider Board reserves the right to amend these policies as necessary. Producers, members, volunteers and staff will be notified of any changes. Changes will be posted to the public within 15 days of amendment approval.

8. Disclaimers and Addendum

The party signing the contract assumes liability for program content and warrants that the program(s) submitted to Manchester Community Access Media for cablecast contains none of the following:

- Advertising material that in whole or in part, enacts a call-to-action or demonstrative selling of products, services, or business for the purpose and intent of profit making.
- Commercial programming that in whole or in part, enacts a call-to-action or demonstrative selling of products, services, or business for the purpose and intent of profit making.
- The direct solicitation or appeals for funds or other things of value for any and all purposes (exception: non-profit or charitable agencies registered in New Hampshire).
- Material that is obscene as defined in New Hampshire RSA Chapter(s) 645 and 650:1. A cable operator may refuse to transmit all or a portion of “a public access program which contains obscenity, indecency, or nudity.” United States Congress Id. §§531(e), 544(d)(1).
- Any programming that constitutes or promotes any lottery or gambling

enterprise that is in violation of any local laws.

- Material which constitutes libel, slander, invasion of privacy or publicity rights, unfair competition, violation of trademark or copyright, or other unprotected speech which may violate any local, state, or federal law (see specific NH RSA Chapter(s) 91-A, 126, and 633).
- Material that has a reasonable probability of creating an immediate danger or damage to property, injury to persons, or creating a public nuisance (see specific NH RSA Chapter 633).
- Material that has a reasonable probability of causing the substantial obstruction of law enforcement or other governmental functions or services.

All editorial control and responsibility and ownership of content of Public Access programming lies with each program's Producer. Congress has prohibited cable operators from exercising "editorial control" over PEG programming, except that a cable operator may refuse to transmit all or a portion of "a public access program which contains obscenity." *Id.* §§531(e), 544(d)(1). 1974 Supreme Court case, *Miller vs. California*, 413 U.S. 15.24 defines obscenity as "A work which taken as a

whole (1) appeals to the prurient interest, (2) depicts or describes sexual conduct in a patently offensive way and (3) lacks serious artistic, political or scientific value.” To be considered obscene, all three criteria must be met.

MCAM will not knowingly permit any of the resources under its control to be used for the production or cablecasting of any material that is obscene as defined in New Hampshire Title LXII Criminal Code Section 650:5 Obscene matter , or which willfully violates copyright, or libel laws. (Also see Section 2.04 of this Policies and Procedures manual.)

Congress enacted the Cable Communications Policy Act of 1984 The Act provides that a franchising authority may require a cable operator to make channel capacity available for “PEG access programming”, and that “(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section.”as part of the franchise agreement pursuant to which the cable operator provides services to a community. See 47 U.S.C. §531.

Leach v. Mediacom [2004] states, “Rather than conferring rights onto the producers of public access programs, sec. 531(e) only describes prohibited actions of cable operators. The Cable Act merely recognizes the preexisting practice of local franchise authorities conditioning the cable franchises on the granting of [public access] channels...[A]ny rights regarding the use of public access channels are not created by sec. 531, but stem from franchise agreements between cable operators and franchising authorities. Nothing in sec. 531 suggests that Congress intended to create a private right of action in federal court to remedy the rights of third party beneficiaries of these franchise agreements,” he said.

Copyright Abuse

- Title 17 U.S.C. § 101 “Copyright protection subsists ... in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated...” No program produced or shown at MCAM may break copyright law. This includes the use of copyrighted music, and/or TV and film clips without permission or whereas the

Producer can show Fair Use i.e. Sec. 107. US Copyright Code - Limitations on exclusive rights, or said copyrighted material © may be used only if written permission has been obtained from the copyright owner (record company, film studio, TV station, etc.) by the Producer and submit-ted to MCAM.

Copyright FAQs

Essential Rule: If you did not create it, you don't own it, therefore you can't use it.

What is intellectual property? Intellectual property is a legal concept under which we manage the protection and use of products of the human mind (as opposed to the human hand). Generally, movies, music, books, magazines, art or any physical, documented representation of unique thought is probably protected by copyright law.

Is copyright law the same for words, pictures, movies, music and software? Yes, for the most part. Sure, it's easy to download and reproduce materials that you might find on the Web, but that doesn't make it lawful. Is it hard to get a copyright? No, it's easy. Under U.S. law, anything original and

creative - yes, even your diary, memos, personal correspondence - is protected by copyright. This protection is automatic, from the moment you create something, whether on paper or electronically.

If I see something and it doesn't have a copyright notice, does that automatically mean I can use it? No. A copyright notice is not required in order to have copyright protection. It is true that many things are not protected by copyright.

If I use somebody's work without permission but give credit to the author or publisher, am I still infringing on copyright? Probably. Giving credit is great, but nothing in the copyright law says that it somehow absolves you of infringement. If you are infringing, giving credit won't help you!

What about Fair Use? Sec. 107. US Copyright Code - Limitations on exclusive rights: Fair use Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for

classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include - (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors

Equal Opportunity

- Public Access is required to offer equal opportunity to the community it serves. Public Access is not required to offer equal time on its channel(s). Any trained Access Producer can create programming. Those Producers not wishing to be trained can submit programming that is within the guidelines of these policies and conforms to the Cable Act of 1984, and any federal, state, and local ordinances.

Defamation: Elements of Libel and Slander

I. WHAT IS DEFAMATION? Libel is written, slander is oral.

Defamation consists of the following: (1) a defamatory statement; (2) published to third parties; and (3) which the speaker or publisher knew or should have known was false.

What is a “defamatory” statement?

1. A statement which causes harm to reputation.

A statement is defamatory if it “tends to injure the plaintiff’s reputation and expose the plaintiff to public hatred, contempt, ridicule, or degradation.

2. Defamation Per se

Some statements are so defamatory that they are considered defamation per se; and the plaintiff does not have to prove that the statements harmed his reputation. The classic examples of defamation per se are allegations of serious sexual misconduct; allegations of serious criminal misbehavior; or allegations that a person is afflicted with a loathsome disease.

3. What Constitutes Injury to Reputation?

The plaintiff must establish proof of damage to reputation in order to recover any damages for mental anguish. However, a court will not dismiss a defamation action merely because the plaintiff already has a bad reputation. Rather the statement upon which the defamation claim is based should relate to the same matters upon which the prior bad reputation was founded, or to substantially similar matters.

4. The defendant knew or should have known that the communication was false. Defamation allows recovery for unfair damage to reputation. As a consequence, if true statements are made about a person which damage their reputation, they cannot maintain a lawsuit. Virtually all states require that the alleged defamatory statement be false before a defamation action may proceed. Truth is a complete defense to a defamation claim.

Public Officials/Public Figures: Actual Malice must be proven.

The First Amendment requires that a defamation plaintiff prove actual malice or reckless disregard of the truth when the plaintiff is a public official or public figure.

This is a much higher burden of proof for a public figure plaintiff. Instead of showing objectively that a “reasonable person” knew or should have known the defamatory statement was false, a public figure plaintiff must prove the intent of the defendant was malicious, or that they acted with reckless disregard for the truth. This allows the defendant to prove its good faith intent and efforts as a defense.

Actual Malice and Falsity must be Shown by “Convincing Clarity.”

Where the plaintiff is a public official, he must prove actual malice or reckless disregard of the truth with “clear and convincing proof”.

Who is a Public Figure?

Public Figure. A “public figure” is a person who is publicly prominent, so much so that discussion or commentary about that person amounts to a “public concern.” However, such persons are not necessarily public figures for any purpose: status as a public figure may only extend to the particular area in which they are publicly prominent.

(A) Involuntary Public Figure: become public figure through no purposeful action of their own, including those who have

become especially prominent in the affairs of society;

(B) Always Public Figures: those who occupy position of such persuasive power and influence that they are deemed public figures for all purposes;

(C) Public Figures on Specific Issues: “those who have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.”

The Opinion Defense.

The First Amendment protects statements of opinion, as distinct from statements of fact, against claims of defamation. However, the test is not the author’s mere characterization of the statement as “opinion.” A statement is an opinion when:

(A) the statement addresses matters of public concern; (B) the statement expressed in a manner that is not provably true or false; and (C) the statement cannot be reasonably interpreted as intended to convey actual facts about a person.

In addition, the U.S. Supreme Court articulated some standards to assist in determining whether a statement is intended to convey an actual fact about a person, or not: (1) is the language loose, figurative, or

hyperbolic, which would negate the impression that the speaker was seriously maintaining the truth of the underlying facts? (2) Does the general tenor of the article negate the impression that the speaker was seriously maintaining the truth of the underlying fact? and (3) is the connotation sufficiently factual to be susceptible of being proved true or false.

Privacy (non-defamation) Privacy is defined as the right to be let alone.

Elements of Invasion of Privacy

1. Unreasonable intrusion upon seclusion (our expectation of privacy can given greater relevance based on out location: such as these decreasing levels of privacy:
 - (a). Inside your home: high expectation of privacy
 - (b) In your car: less privacy
 - (c). Walking down Elm St.: even less expectation of privacy
 - (d). Being video taped at MCAM: extremely limited expectation of privacy
2. Public disclosure of non-newsworthy facts
3. False light
4. Misappropriation of name or likeness

Sources:

<http://www.abbottlaw.com/defamation.html>

Indecency & Obscenity Content

The Federal Communications Commission regulations concerning safe harbor or safe haven concern only indecent programming, which is defined by the FCC as follows: language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities.

Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity.

Indecent programming may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience. Bearing in mind that it has not necessarily been established that these rules apply to cable access TV, but only to broadcasters.

The FCC traditionally refers complaints about programming under these rules back to the municipality that regulates the access center. Most municipalities have adopted the FCC standards on obscenity and indecency

and enforce local community standards for PEG cablecasts.

MCAM does not preview or review public access programming, and will never exert “prior restraint” on a public access program. Producers are expected to act responsibly and alert MCAM staff to programming that may be inappropriate for younger viewers. MCAM reserves the right to restrict cablecast programming with excessively violent material, offensive language, nudity, or sexually explicit material.

The time will be determined by MCAM staff, generally after 11:00 pm, and before 5:00 am, in order to preserve a safe haven for viewing by all audience members.

Types of restricted content:

Mild Adult: intended for mature audiences only: may be aired between the hours of 11pm to 5am. This category of programming intended for adult audiences may include infrequent profanity, mild violence, and brief frontal nudity of a non-sexual or non-erotic nature. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* PG-13 rated material, and some mild R rated

material, or on some network broadcast and cablecast television (TV-14 or TV-MA) after 11pm.

Strong Adult: intended for mature audiences only that may include constitutionally protected "indecent" speech: may be aired between the hours of 1am to 4am. This category includes any uses of ultra profane language or depictions of nudity that is persistent or otherwise goes beyond brief or infrequent uses. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* R, NC-17 and X rated material, or in some cable TV pay-channels or pay-per-view channels.

When it comes to controversial (not illegal) content in programming, the response should be to encourage more speech, as opposed to enforcing silence. Furthermore, MCAM is forbidden by law from censorship, or content control. MCAM encourages anyone who disagrees with a program to produce counter-programming presenting an opposing point of view, or otherwise responding to the program in question.

Illegal or Obscene Programming: the courts have determined that material that is so-called XXX or hardcore pornography is legally obscene and is not permitted to be

cablecast on public access. At no times may such constitutionally unprotected material be cablecast on the channel. Producers of such material may be subject to prosecution.

Information about any lottery, gift enterprise, or similar scheme offering prizes gained by lot or chance or any whole or partial list of prizes awarded by lottery, gift enterprise or similar scheme is prohibited.

(Violation of this rule is subject to criminal liability under federal law, Title 18, U.S.C. Sec. 1304.) For example, a program violates this if it is connected with a valuable prize awarded to any person selected by lot or chance, if the winner is required to furnish anything in exchange for the prize, or if the winner is required to buy or have any product from a sponsor of the program.

Material which is intended to defraud the viewer or designed to obtain money by false or fraudulent means is prohibited.

LOCAL Restrictions or Community Standards are part of John Hasnas' The Myth of the Rule of the Law paper (1995). He explains that legally, there are many ways to interpret laws. He gives many examples and comes up with the conclusion that national standards are trumped by community standards because community standards are more explicit and exact.

The Miller test is the United States Supreme Court's test for determining whether speech or expression can be labeled obscene, in which case it is not protected by the First Amendment to the United States Constitution and can be prohibited.

The Miller test was developed in the 1973 case *Miller v. California*. It has three parts: Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, [PRURIENT; legal application, sick, morbid or shameless.]

Whether the work depicts/describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law, Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The third condition is also known as the SLAPS test. The work is considered obscene only if all three conditions are satisfied. For legal scholars, several issues are important. One is that the test allows for community standards rather than a national standard.

What offends the average person in Tulsa, Oklahoma may differ from what offends the

average person in San Francisco. The relevant community, however, is not defined.

Another important issue is that Miller asks for an interpretation of what the “average” person finds offensive, rather than what the more sensitive persons in the community are offended by, as obscenity was defined by the previous test, the Hicklin test, stemming from the English precedent: The test asks “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.”

If yes, then such was declared to be obscene. Because it allows for community standards and demands “serious” value, some worried that this test would make it easier to suppress speech and expression. They pointed out that it replaced a stricter test asking whether the speech or expression was “utterly without redeeming social value”—a much tougher standard than “serious” value. As used, however, the test generally makes it difficult to outlaw any form of expression. Much pornography has been successfully argued to have some artistic or literary value.

Some critics of obscenity law argue that the existence of Miller proves that federal obscenity laws are in fact not defined, and thus unenforceable and legally dubious. In practice, pornography showing genitalia and sexual acts is not normally obscene according to the Miller test. For instance, in 2000 a jury took only a few minutes to clear Larry Peterman, Movie Buffs video store owner in Provo, Utah, which had often boasted of being one of the most conservative areas in the US. Researchers had shown that guests at the local Marriott Hotel were disproportionately large consumers of pay-per-view pornographic material, obtaining far more material that way than the store was distributing

First Come, First Served (FCFS)

- Regardless of whether states have codified it into statutes or regulations, the rule, FCFS had its genesis in an FCC regulation circa 1972 (that was struck down in *United States vs. Midwest Video* as beyond the reach of the FCC's power), and some will say it was a product of the policies on the earliest public access channels, it is tacitly a condition in many, if not all, locales. Many franchise agreements use this language in discussing public

access. To the extent that Congress understood FCFS to be an inherent part of public access, it may be argued that pursuant to *Denver Area Ed vs. FCC* (518 US 727), any public access channel that does not provide channel time to the public on a FCFS basis is not engaged in a “PEG use” of channel capacity as its practice does not comport with what Congress understood a public access channel to be when it enacted the Cable Act.

Statement of Non-Discrimination

- No Manchester citizen (18 years or older) or group shall be denied access to the MCAM channel or facilities on the basis of race, color, sex, disability, religious or political belief, or sexual orientation.

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