Definition: **freedom of the press** from *Merriam-Webster's Dictionary of Law*

The right to publish and disseminate information, thoughts, and opinions without restraint or censorship as guaranteed under the First Amendment to the U.S. Constitution. The First Amendment's guarantees of freedom of speech and freedom of the press are closely intertwined, and many cases relating to freedom of the press are couched in terms of the freedom of speech.

Summary Article: **First Amendment**
from *The SAGE Encyclopedia of Corporate Reputation*

The First Amendment is the first of the amendments to the U.S. Constitution that are known as the Bill of Rights. The First Amendment protects five essential rights or freedoms from governmental interference. It provides that Congress shall make no law abridging freedom of speech and the press, preventing the establishment of a religion, or prohibiting people from peacefully assembling to petition government for redress of grievances.

Although the amendment only refers specifically to Congress, the Supreme Court in 1925 extended the provision to the states. Today, the First Amendment applies to all levels of government.

The First Amendment is written in absolute terms, “Congress shall make no law,” but the U.S. Supreme Court has never treated it as an absolute. The Court seeks to balance the individual rights protected by the First Amendment with the right of society to regulate behavior for the good of all of its members, although the scales are weighted in favor of the individual freedoms. With respect to freedom of speech, how much the scales are weighted toward individual speech rights depends on the nature of the speech. This entry discusses first the right to free speech and then the right to petition government because these two rights directly affect corporations and their reputations.

### Freedom of Speech

The first cases challenging the constitutionality of a law on the basis that it violated the First Amendment came during the second decade of the 20th century and involved the right of Americans to speak in support of communism. At the time, the majority of Americans feared communism and wanted the speech of those advocating it curtailed. The Supreme Court ruled in favor of freedom of speech, however, and said that the government could only control speech because of its content if the speech presented a clear and present danger to society.

The clear and present danger test still applies today, but not all speech that the government seeks to curtail can be said to present an immediate danger to society. For example, the government cannot argue that restrictions on tobacco ads or defamatory statements about a corporation are required to prevent a danger to society, but regulations may still be warranted to protect other interests. In such cases, courts apply two standards of review when balancing the speech rights against societal rights depending on the nature of the speech: strict scrutiny and intermediate scrutiny.

Under strict scrutiny, the government must show that it has a compelling reason to abridge speech and that the restriction is narrowly tailored such that no more speech than necessary is restricted. The
standard makes it difficult for the government to establish that the law is constitutional under the First Amendment. The courts use the strict scrutiny standard when faced with a government's attempt at restricting political expression, because political speech, which is about issues of political and social importance, is thought to be at the heart of freedom of expression. Such speech is seen as vital to self-governance in a democracy. It is also important in the search for the truth and in facilitating peaceful political change.

In commercial speech cases, an intermediate scrutiny standard is applied. The government need only establish that it has a substantial interest in regulating the speech, that the law will directly advance that interest, and that the regulation is no wider than necessary to achieve the government's objective. Thus, when balancing commercial speech rights against the right of society to regulate business behavior, the scales are tipped in favor of corporate speech, but not to the same extent as they would be if the speech were political. It is easier for the government to win a commercial speech case and have the law upheld as constitutional. Commercial speech, which involves business transactions, receives lesser protection because it is not seen as important for the functioning of society.

Other forms of speech such as obscene expression, fighting words, and false advertising receive no First Amendment protection because they are not considered worthy of protection. Obscenity is thought to have no redeeming societal value. Fighting words, which are words that incite people to violence, are a threat to the societal order, and false advertising takes advantage of unsuspecting consumers.

**Corporate Speech**

Unlike the Fifth and Fourteenth Amendments, which refer to “persons,” the First Amendment does not indicate to whom the right to speech belongs, only that Congress cannot abridge it. Still, corporations were not considered to have free speech rights until 1978. At that time, the Supreme Court held that individuals were entitled to hear what corporations had to say on issues of political and social importance. The question, the Court declared, was not whether corporations had a right of speech but rather whether the speech itself was worthy of First Amendment protection. Political speech receives the highest level of protection regardless of the source of the speech. Thus, corporations do have the right to speak on important issues. And they cannot be compelled to disseminate views with which they disagree. But their commercial speech can be regulated.

Commercial speech is speech that proposes a commercial transaction. It receives lesser protection from government regulation than political speech because it is seen as less valuable to the functioning of society. In fact, prior to 1964, it was thought to have no First Amendment protection. But in the late 1960s and early 1970s, the Court began to grant more and more protection to such speech as it recognized its importance in consumers' daily lives.

It can be difficult to definitely classify some corporate speech as either political or commercial. For example, when Nike, the multinational athletics equipment manufacturer, faced allegations in the 1990s that it contracted with sweatshops overseas to produce its products, it fought back with a public relations campaign to make people aware of its position on the issue. An activist brought suit against Nike under the California False Advertising Act, arguing that Nike's speech was both commercial and false. In turn, Nike said its speech was political because it involved the issue of overseas labor practices and not the quality of its products. The California Supreme Court held that it was commercial speech because it was an attempt to influence consumers and it was about Nike's business practices.
The court said that Nike was free to discuss the issue in general terms but referring to its own facilities made it commercial. The decision is problematic for corporations because activists take abstract ideas and make them personal by focusing on the activities of a single corporation. That corporation must be careful in responding to any activist charges because it will have less First Amendment protection than the activists will.

**Petitioning Government**

The First Amendment also protects the right to peaceably assemble to petition government for redress of grievances. While on its face this provision would appear not to apply to corporations, it does include the right to lobby the government, which is a corporate activity. Lobbying is the attempt by special interests to persuade and influence policymaking. Lobbying can be carried out through direct contact with legislators or through indirect public relations campaigns to garner public support for the lobbyist’s position. Although lobbying is protected under the First Amendment because it entails speech as well as the petitioning of government, it can be regulated to prevent corruption of the democratic process.

The Lobbying Disclosure Act of 1995 defines lobbyists as individuals who make contact on behalf of a client with an executive or legislative branch official regarding public policies. Grassroots lobbying, in which a public relations campaign is used to influence public opinion with the intent of ultimately influencing government policy, is not considered lobbying under the act.

Lobbyists who make more than $5,000 in a six-month period for their services and in-house lobbyists who expect to spend more than $20,000 on lobbying activities in a six-month period must register with the government. Registered lobbyists are required to file statements identifying their client and detailing the general areas and specific issues on which they have lobbied.

Lobbyists who work for foreign clients must also disclose their activities. Prior to World War II, Congress became concerned with the distribution of pro-German and communist literature in the United States. To control the dissemination of this material, considered un-American propaganda, Congress passed the Foreign Agents Registration Act of 1938. Under the act and its amendments, foreign agents must report their affiliations, the way they carry out their activities, and how they disseminate information to influence American public opinion. A foreign agent for the purposes of the act includes any American who provides public relations counsel for a foreign client. As of 1996, only those who work for foreign governments must register under the Foreign Agents Registration Act. Those who work for foreign companies or trade associations must register under the Lobbying Disclosure Act.

Lobbying is an important activity for corporations. Successful lobbyists can keep government from enacting laws that restrict the way a corporation or an industry does business or can limit the impact of legislation by influencing the extent of its reach. A corporation with a good reputation will have greater success in persuading legislators to listen to its point of view than will a corporation that is viewed by the public as a company that takes advantage of consumers.

*See also* Activist Campaigns; Commercial and Political Speech; Corporate Communication Law; Corporate Political Activity; Corporate Political Reputation; Corporate Public Figures; Defamation; Libel; Media Law; Slander

**Further Readings**

https://search.credoreference.com/content/topic/first_amendment_to_the_united_states_constitution
• Meiklejohn, A. (1961). The First Amendment is an absolute. Supreme Court Review, 245-266.

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