

Contempt of court – when true crime podcasts and docuseries break the law

MAY23

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At a glance

- + True crime podcasts and other online content regarding real-world court proceedings have become highly popular.
- + The courts are treating online publications like these as being continuously published, which mean they have a higher risk of attracting contempt of court charges than printed media.
- + A publication about particular court proceedings is generally only open to contempt charges if the proceedings are pending.
- + In this article, we explain the steps media companies can take when publishing online to steer clear of contempt charges and avoid attracting significant penalties.

In recent years, online platforms like streaming services, podcasts and video-sharing applications have taken advantage of the public's fascination with real-world court proceedings, producing engaging content focused on the pitfalls of legal procedure. Documentary series like Netflix's *Making a Murderer* and podcasts such as *The Teacher's Pet* have proved wildly popular, with tens of millions of users streaming each worldwide. However, the courts are treating online publications like these as being continuously published so they run a higher risk of attracting contempt of court charges than printed media.

Contempt of court

Contempt of court refers to any act that is reasonably likely to interfere with the administration of justice or disrespect the authority of the court. If a person publishes material that has a 'real and definite' tendency to prejudice legal proceedings, they may be found guilty of 'sub judice' contempt.

For example, this might include publishing information that could influence jurors, or disclosing confidential details about ongoing cases.

A publication may attract contempt charges even where its publisher has no intention to interfere with the administration of justice. A publication about particular court proceedings is generally only open to contempt charges if the proceedings are pending. This commences at the time an arrest is made or summons issued in criminal proceedings, or at the time the initiating process (for example, a writ) is issued in civil proceedings.

A court may punish a natural person for contempt of court by ordering imprisonment, a fine, or both. In the past year, penalties for contempt of court have included fines of \$60,000 for failing to comply with court-ordered undertakings and a prison sentence of four months for calling a registrar a suspected paedophile.

The concept of being continuously published

The assessment of a publication's tendency to prejudice legal proceedings is made at the time of publication. For printed media, such as a newspaper article, this means if publication occurs before the arrest or initiating process, there will be no risk of contempt of court regardless of how the matter evolves. However, online publications, such as online articles, podcasts and streaming services, are treated as being continuously published. This attracts a far higher degree of risk, as a publication that contains uncontroversial facts may later become highly influential on jurors when further information becomes available.

For example, when *The Teacher's Pet* podcast was originally published, proceedings were not yet on foot and there was no risk of contempt of court. However, when Chris Dawson, the subject of the podcast, was arrested in 2018, the risk of contempt was enlivened. On advice from the Office of the New South Wales Director of Public Prosecutions, the podcast was removed from download in April 2019 before Mr Dawson was charged and Hedley Thomas, creator of *The Teacher's Pet*, escaped a finding of contempt.

The importance of timing

The importance of carefully timed publications is demonstrated by the multiple contempt claims brought against Derryn Hinch. In 1986, Hinch made a broadcast outlining the criminal record of a former Catholic priest the day after he had been charged with indecent assault. Despite Hinch's arguments that he had no intention to interfere with the course of justice, he was convicted of contempt of court and served 12 days in prison. He was further convicted of breaching suppression orders and contempt of court in 2011 and 2014, resulting in five months home detention and 50 days in prison, respectively.



Mitigating the risk

Court-based media published online plays an important role in ensuring the judicial system is kept transparent and accountable. However, online content is far more likely to attract contempt of court charges compared to traditional print media.

To avoid these legal risks, journalists and media companies should exercise caution when reproducing historical content. In particular, they should stay across the progress of related criminal investigations to ensure that potentially influential content can be taken down or edited as soon as a related arrest is made or summons issued. After that point, it is important to only publish factual information that is unlikely to prejudice the proceeding. It may also be necessary to check that there are no suppression orders restricting what can be published regarding the proceeding.

As always, the media team at Wotton + Kearney is available to provide guidance and support on contempt of court and related matters.



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If you would like further information about, or guidance on, contempt of court and related matters, contact our authors, **Media Law** specialists.



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