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Loose Keystrokes Bring Lawsuits — On-Line Defamation

Psychiatrists and psychologists can no doubt venture an explanation as to why people say things in e-mail messages and on-line bulletin board postings they wouldn't dream of saying out loud, stating in a printed memo, or writing in a Letter to the Editor. Perhaps words shot into cyberspace are viewed as more ephemeral than those typed on a printed page. After all, they're only bits, bytes and electrons, so they can't come back to bite the writer, or can they?

While general principles of defamation law are well-settled, their application in the on-line world is just now being tested. In the past couple of years, there have been a small but increasing number of defamation lawsuits brought by on-line users alleging their reputations have been damaged by the false statements of others posted or "published" on-line. This article describes a few of those cases and highlights the principles of defamation law.





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this case, the plaintiff and defendant were participants in a forum on CompuServe relating to technical aspects of Borland's Paradox software product. The filed Complaint alleges that the defendant published a forum message accessible by innumerable other subscribers accusing the plaintiff of having had child molestation charges pending against him. The plaintiff vehemently denies in the Complaint that there have ever been any such charges filed or pending against him and claims that his personal and business reputation has been irrefutably damaged by the defendant's statements. The plaintiff currently participates in discussions on CompuServe's Legal Forum relating to on-line defamation, candidly discussing his case and the reputational damage that has been done by what he describes as the defendant's entirely false and mean-spirited allegations.

Another case filed in the Court of Common Pleas, Cuyahoga County, Ohio, is Suarez Corp. Industries v. Brock N. Meeks, 267513. In this case, the plaintiff had alleged defamation against the author of an on-line newsletter who had criticized the plaintiff's marketing methods in an article posted on the Internet. This case has been settled out of court by sealed agreement.

In what is remarkably the only published court opinion in an on-line defamation case, the plaintiff in *Cubby v. CompuServe*, 776 F.Supp. 135 (SDNY 1991), had [^](#)



by a periodical publication that the subscriber had uploaded onto CompuServe's system. The material was widely accessible by other subscribers and CompuServe had no opportunity to review it prior to its dissemination. The court held that CompuServe was not liable for republishing the defamatory material because its role was analogous to a bookseller with no editorial control over the periodical's content, and it did not know or have any reason to know that the material was defamatory. This case is significant in that it appears to establish a clear rule for determining service provider liability for republishing defamatory statements, holding further that once a service provider becomes aware, or has reason to be aware, of illegal activity being conducted on its system, it must take steps to stop it.

Defamation is a matter of tort law, which deals with injuries to persons or property and varies from state to state. Defamatory statements can be written (libel) or oral (slander) and may be treated differently depending on state law. In all states, however, both individuals and business entities can be defamed and sue for monetary damages. Generally, a statement is defamatory, and thus actionable (i.e., someone can be sued for it), if it is (i) false; (ii) made or "published" to a third party; and (iii) tends to injure the reputation of the person about whom it is made by lowering the respect, esteem or goodwill in which they are regarded in their community, ~~exciting~~



can result from the overall context in which a statement was made or from inference, insinuation or innuendo. Even a joke can be defamatory if it is not obviously meant or understood as such.

Determining whether a statement is defamatory requires analysis of all the surrounding circumstances by a judge or jury. For example, a statement that is merely unflattering, annoying or embarrassing is generally not considered defamatory. Additionally, a statement of opinion which is incapable of being proven true or false, such as one containing hyperbole, will not generally give rise to an action for defamation. The issue of whether an allegedly defamatory statement is one of opinion or fact is one of the more difficult and common questions in a defamation suit. Courts have held that merely prefacing an otherwise defamatory statement with the words "I believe..." is not enough to eliminate the implication that the statement was intended to communicate facts.

Some states' laws consider certain types of statements to be defamatory per se, i.e., so presumptively damaging that the plaintiff need not prove that he or she was actually injured by them. Examples include accusing someone of having committed a crime, being unfit or incompetent in their profession, having a communicable disease, or being unchaste or having committed sexual misconduct. Truth, however, is generally a complete



A plaintiff in a defamation action may need to prove the “fault” of the person publishing the defamatory statement. The level of fault which must be proved varies depending on whether the plaintiff is a “private person” or a “public figure.” Generally, a private person plaintiff need not prove any fault on the defendant’s part if the defamatory statement concerns a private matter. If the defamatory statement against a private person concerns a matter of public concern, the plaintiff must usually prove that the defendant’s statement were made at least negligently.

Plaintiffs who are public figures or officials have a much higher burden of proof in establishing defamation. They must show that the defendant’s statements were not only false, but were made with knowledge of their falsity or with reckless disregard for whether they were true or false. The rationale for the higher standards required to prove fault in defamation actions involving matters of public concern or statements against public figures is two-fold: first, the public has a First Amendment interest in receiving information about public issues; and second, public figures such as celebrities, government officials and other high-profile personalities have usually thrust themselves into the limelight and are thus deemed to have assumed a greater risk of adverse comment or publicity than private individuals.





published or disseminated on-line as in any other context. Authors and other individuals should consult an attorney knowledgeable in this area if there are any doubts as to whether their on-line communications could result in liability.

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