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Introduction

The worldwide use and scope of the internet has created an unprecedented forum for the publication of defamatory statements. In recent times, the proliferation of websites whose address often takes the form of [www.rate-your-\[insert profession\].com](http://www.rate-your-[insert profession].com) brings the issue of defamation on the internet to the fore and cases relating to such websites serve to highlight the practical difficulties of litigating to protect one's reputation.

In terms of legal principle there is no difference between defamatory material being published on the internet or defamatory material being published in more traditional media such as newspapers. Who, though, is responsible in law if defamatory material is published on a website on the internet?

Some Useful Terms and Concepts

Defamation is the wrongful publication of an untrue statement about a person, which damages that person's reputation or tends to lower that person in the eyes of right-thinking members of society or tends to hold that person up to hatred, ridicule or contempt, or causes that person to be shunned or avoided by right-thinking members of society.

Defamation is a legal term that refers to two torts (i.e. actionable civil wrongs): libel and slander. Libel is defamation by communication in permanent or lasting form; slander is defamation by communication in transient form. When considering written website defamation, therefore, we are concerned only with libel.

Defences to actions for defamation include the defence of innocent dissemination and the defence of fair comment.

A legal action for defamation requires that there be (1) publication of material, (2) identification of the "defamed"; (3) the capacity of the publication to damage one's reputation, (4) damage and (5) the absence of a suitable defence.

Traditional Defamation

Traditionally, the maker of a published defamatory statement and the publisher of the defamatory statement may be liable for libel. A person who distributes a publication containing the defamatory statement may also be liable. However, different levels of

responsibility are afforded to persons at different levels of the chain of publication. Generally, retailers and libraries at the final level of the distribution chain who innocently disseminate the libellous material will not be liable for the publication; on the other hand, authors and editors (such as media organisations and printers) of the material bear a much higher level of responsibility in respect of the publication of the material.

Applying Traditional Laws to the Online Environment

Generally, website operation consists of four different levels at which the following operate: (i) the conduit provider; (ii) the host company; (iii) the website owner; and (iv) the blogger. They can be described in the following terms.

The conduit provider provides the telephonic communication network through which the electronic information is transmitted. Examples of conduit providers include Eircom, BT, NTL etc..., which in terms of facilitating communication on the internet, have a role which is similar to that of a phone company facilitating communication on its telephone infrastructure.

The host company is one that provides server space which a person can 'rent' and use to facilitate the operation of a website. Hosting365 and Hostingireland are popular hosting companies in Ireland. Usually, the host company will have no input into the content of the website and will not administer the website.

The website owner is the person who rents the server space from the hosting company and who has set up the website. The website owner administers the website.

'Blogger' is a term used to describe persons who post comments on websites, most commonly where the website contains a discussion board or a chat room.

The Conduit Provider and the Host Company

The transposition of Directive No. 2000/31/EC (also known as the Electronic Commerce Directive 2000) into Irish law by the European Communities (Directive 2000/31/EC) Regulations 2003 (the "Regulations") introduced into Irish law a distinction between three different types of intermediary internet service provider and the level of liability which may be borne by each of them in respect of information on the internet.

(i) Mere Conduit: Regulation 16 of the Regulations introduced the concept of a "mere conduit" and provides that an intermediary internet service provider will fall under the

heading of a 'mere conduit' and will not be liable for the information transmitted on its communication network if (a) the information has been provided to it by a recipient of a relevant service (as defined in the Regulations) provided by it (being a service consisting of the transmission in a communication network of that information), or (b) a relevant service provided by it consists of the provision of access to a communication network and in either case: (i) it does not initiate the transmission of the information transmitted by it in a communication network; (ii) it does not select the receiver of the transmission; and (iii) it does not select or modify the information contained in the transmission.

Accordingly, conduit providers who constitute 'mere conduits' are unlikely to be liable for the information transmitted by them. It should be noted, though, that the exemptions from liability provided for in the Regulations in respect of internet service providers is qualified by the power of the Irish courts to make an order against an intermediary internet service provider requiring the provider not to infringe, or to cease to infringe, a person's legal rights. Therefore, if a conduit provider is requested to remove defamatory material but does not do so, it may find itself having to explain itself and the circumstances to a court.

(ii) Caching: Intermediary internet service providers (most commonly host companies) will often store information on their servers temporarily (e.g. copies of website pages) so that internet users can have quicker access to that information. Regulation 17 essentially provides that the intermediary service provider will not be liable for libellous statements contained in cached pages provided the internet service provider complies with the following: (i) it does not modify the information, (ii) it complies with conditions relating to access to the information, (iii) the intermediary service provider complies with any rules regarding the updating of the information that have been specified in a manner widely recognised and used by industry, (iv) it does not interfere with the lawful use of technology, widely recognised and used by industry to obtain data on the use of the information, and (v) it acts expeditiously to remove or disable access to the information it has stored upon obtaining actual knowledge that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

(iii) Hosting: Regulation 18 provides for an exception to the liability of hosts for material published on the websites maintained on their servers which is similar to the traditional innocent dissemination exception available to retailers and libraries mentioned above.

Regulation 18(1) provides that an intermediary service provider who provides a relevant service consisting of the storage of information provided by a recipient of the service shall

not be liable for the information stored at the request of that recipient if: (a) the intermediary service provider does not have actual knowledge of the unlawful activity concerned and, as regards claims for damages, is not aware of facts or circumstances from which that unlawful activity is apparent, or (b) the intermediary service provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

What of Website Owners?

There has only been one Irish court case of note (i.e. *Maguire v Gill* (2006)) on the subject of defamation proceedings against the owner of a website but because the case was unreported there is no written judgement to which we can refer. The case came before the High Court when the applicant, who worked in the legal profession, sought an interlocutory/interim court order for the removal of defamatory material posted on one of the many *rateyour...* websites. It was claimed that although the alleged website owner was not the author of the defamatory statements, the fact that it owned, operated and administered the website gave rise to a responsibility for the defamatory material posted on the website. In an oral judgement the High Court approved the decision of the leading UK case in this area, *Godfrey v Demon Internet Limited* (2001 QB 201), that a website owner is liable for damage arising out of a defamatory publication on its website when it has notice of the defamatory content. The defamatory material was subsequently removed from the website and related High Court proceedings claiming damages arising from the defamatory website publication were not initiated.

The Blogger

The posting of a statement on a website constitutes 'publication' of that statement. Each time a person accesses that website the statement is published again. Therefore, a person who posts a defamatory statement on a website may be liable in libel for the publication of that defamatory statement.

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