

Chapter 13

A UK Law Perspective: Defamation Law as it Applies on the Internet

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ABSTRACT

The development of the Internet raises challenges in the application of defamation, given that the click of a mouse can communicate a defamatory statement instantly to thousands of people throughout the world. This can pose a serious threat to the reputation of an individual or company. This chapter considers: (1) the laws of defamation applicable to the Internet, including analysis of the Defamation Acts 1952 and 1996 and the E-Commerce Directive; (2) the way UK law is currently being applied in practice, including discussion of the key UK cases in this area; (3) the Internet defence in the Defamation Act 1996, which can protect innocent disseminators of defamatory material over the Internet; and (4) future reform of defamation law in the UK.

INTRODUCTION

Defamation involves the protection of the personal brand (in terms of a person's reputation), and the corporate brand (in respect of goodwill and reputation). Defamation occurs when there is publication to a third party of words or matters

containing an untrue imputation against the reputation of individuals, companies or firms which serves to undermine that reputation in the eyes of right thinking members of society generally.

The development of the Internet raises challenges in the application of defamation, given that the click of a mouse can communicate a defamatory statement instantly to thousands of people throughout the world. This can pose a

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serious threat to the reputation of an individual or company. To-date, Internet service providers (ISPs) have been the subject of defamation actions from those who claim they have been libelled on the Internet. However, the risks apply to all players on the Internet, including search engines, usenet hosts, website design companies and companies who use the Internet for sales or marketing purposes.

This chapter considers: (1) the laws of defamation applicable to the Internet, including analysis of the Defamation Acts 1952 and 1996 and the E-Commerce Directive; (2) the way UK law is currently being applied in practice, including discussion of the key UK cases in this area; (3) the Internet defence in the Defamation Act 1996, which can protect innocent disseminators of defamatory material over the Internet; and (4) future reform of defamation law in the UK.

This chapter is based on the law as at 15 September 2010.

GENERAL PRINCIPLES

Definition of Defamation

A defamatory statement is one which tends to lower the claimant in the estimation of right-thinking members of society generally (*Sim v Stretch* [1936] 2 All ER 1237). For a plaintiff to have an action for defamation, the plaintiff must show that the words complained of:

- Are defamatory;
- Identify or refer to the plaintiff; and
- Are published by the defendant to a third party.

Once the plaintiff has established the points above, the defendant will need to prove the truth of the statement or establish that he can benefit from one of the other defamation defences, such as fair comment or privilege. The plaintiff is not

usually required to prove that he has suffered damage to his reputation or even that he had a good reputation in the first place. However, if he has a generally bad reputation, which can be proved, his damages will be reduced.

The rules as to:

- When a statement is defamatory;
- Who may sue;
- When publication has occurred; and
- Whether a defence applies,

are laid down in centuries' of English case law. This case law is also supplemented by:

- The Defamation Act 1952;
- The Defamation Act 1996 (the "Defamation Act"); and
- The EC Directive on electronic commerce (Directive 2000/31/EC) (the "E-Commerce Directive") The E-Commerce Directive is given effect in the UK by the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) (the "E-Commerce Regulations").

Defamation and the E-Commerce Directive

Despite lobbying by ISPs, the E-Commerce Directive does not change the law of Internet defamation in the UK. The provisions in the E-Commerce Directive are broadly consistent with the Defamation Act, and can be summarised as set out below.

ISPs providing hosting services (i.e. the hosting of newsgroups and websites) receive partial immunity from libel actions (Article 14 of the E-Commerce Directive). An ISP will be immune if it does not have:

- Actual knowledge of illegal activity or information; or

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