Cyber Liability in the Blogosphere: Is it True that You are What You Tweet?

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Social media has revolutionized the way we view the world, and its cyber-savvy citizens. Phrases such as, "posting on Facebook," "tweeting," and "linkedin," are now ingrained within our daily lexicon. It is glaringly apparent that the dissemination of information via social networks can have far reaching effects, and with power comes responsibility and potential liability. Therefore, the next time you feel inclined to share a photograph on Instagram or like a post on Facebook, consider these emerging cyber liability issues.

In the United States, certain forms of cyber expression, such as "retweets" on Twitter, or Facebook "likes" may be protected under 47 USCS Section § 230, also known as Section 230 of the Communications Decency Act of 1996 (CDA). Passed by Congress as Title V of the Telecommunications Act of 1996, the CDA was initially utilized as a tool for regulating online indecency. However, on June 26, 1997, the Supreme Court unanimously ruled in Reno v. ACLU, 521 U.S. 844 (U.S. 1997) the anti-decency sections of the CDA violated the First Amendment, but Section 230, the amendment promoting free speech, was constitutional.[1] Section 230, which pre-empts inconsistent or conflicting state and local laws, holds that, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[2] This CDA immunity is applicable to cyber liability cases involving defamation and invasion-of-privacy claims. However, Section 230 may not afford the same protections to those who modify retweets or post directly to Facebook, as the individual furnishing the information may be viewed as the direct publisher or speaker.

A case addressing this question is currently awaiting consideration by the Fourth Circuit of Appeals. In Bland v. Roberts, 857 F. Supp. 2d 599, 601 (E.D. Va. 2012), a federal judge granted summary judgment in favor of the Sheriff of the City of Hampton, Virginia after six former employees filed suit after being terminated for allegedly "liking" the Facebook page of

the Sheriff's opponent. On April 24, 2012, the United States District Court for the Eastern District of Virginia, Newport News Division held that the Plaintiffs failed to establish their First Amendment freedom of speech retaliation and freedom of association claims. Specifically, the Court held that three of the four Plaintiffs bringing freedom of speech retaliation claims did not sufficiently allege that they engaged in expressive speech, while the fourth Plaintiff did not prove that his alleged speech touched upon a matter of public concern.[3] Further, the Court held that the Sheriff's admission that he knew two of the Plaintiffs at some point had been on his opponent's Facebook page, did not, "rise to the level of a genuine dispute about whether the Sheriff actually knew about the Plaintiffs' support of Adams."[4] Subsequently, the Plaintiffs appealed the ruling to the Fourth Circuit of Appeals, and while a decision has not yet been published, the American Civil Liberties Union and Facebook have filed amicus curiae briefs in support of the Plaintiffs.

Although there is currently no record of a person being successfully sued in the United States for the content of a "tweet" or "retweet" on Twitter, across the pond a different story has emerged. In March 26, 2012 New Zealand cricketer, Chris Cairns, was awarded £90,000 by the High Court in London as a result of Indian Premier League Commissioner, Lalit Modi, tweeting in January 2010 that Cairns was involved in fixing matches in 2008. More recently, Former Conservative Party official, Alistair McAlpine, sued the British Broadcasting Corporation (BBC) after a report dated November 2, 2012 incorrectly linked McAlpine to the sexual abuse of a child. Although an apology was issued by the BBC the day after the broadcast, and the libel claim was settled on November 15, 2012 to the tune of £185,000, the controversy has not dissipated. While McAlpine was not specifically named in the BBC report, approximately 10,000 Twitter users "tweeted" or "retweeted" comments which referred to the report, and implicated McAlpine by name in the abuse. As a result, McAlpine's lawyers claim they have identified approximately twenty "high-profile tweeters from whom they are seeking libel damages."[5] Although McAlpine's lawyers have not revealed the identities of the alleged

individuals, they have confirmed that they have met with officials from Scotland Yard to discuss a criminal investigation into "malicious" messages posted on Twitter.[6]

The purpose these cases serve is two-fold. First, they act as a cautionary tale to bloggers that defamatory expressions within cyber space may be subject to the same scrutiny as published libel or slanderous statements. Additionally, they demonstrate as more social media sites and devoted followers appear, the opportunities for defamation will increase, testing the limits of privacy and free speech within cyber space. Therefore, it is essential to stay abreast of exposure to liability in the blogosphere, and to consider the possible consequences one push of the "enter" key can create for private and public figures alike.

[1] Section 230 was enacted to, "promote the continued development of the Internet and other interactive computer services and other interactive media" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal and State regulation." 47 USCS § 230 (b)(1)-(2)
[2]47 USCS § 230 (c) (1)
[3]Roberts, 57 F. Supp. 2d 599, 603
[4] Id. at 606
[5]Eric Pfanner, Libel Case that Snared BBC Widens to Twitter, N. Y. Times, November 25, 2012
[6] Steven Swinford, Lord McAlpine settles with ITV for £125,000, The Telegraph, November 22, 2012

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