

《Summary》

Defamation and the Internet

John Middleton

Since the mid-1990s, the exponential growth in use of commercial online services and the Internet by corporations and individuals has increased the risk of service providers being held liable for defamation in cyberspace. Courts around the globe have been asked to apply traditional defamation laws to the novel legal issues presented by the new media and technology of the information age. However, the results have been mixed, leading legislatures to intervene to varying degrees to address some of the problems.

Cyberspace is widely regarded as potentially fertile ground for defamation suits. Electronic bulletin boards, for example, enable individuals to publish worldwide, without the benefit of any editorial checks, to potential audiences of thousands. Such messages can remain on the computers of subscribers indefinitely, be printed, downloaded, and re-published in e-mail. Electronic messages tend to be written in a less formal style than other communications and frequently address controversial issues. Indeed, some newsgroups are dedicated to “flaming”, the practice of posting messages which are particularly insulting or provocative and often blatantly defamatory.

One of the dangers here is that many participants do not consider themselves to be publishers when they communicate online and are

simply unaware of the legal risks associated with such activity. Most have neither access to legal advice nor the resources to compensate persons whose reputations are injured by their statements.

Cyberspace was traditionally the exclusive domain of scientists and engineers, who shared common goals and rules of conduct and generally resolved any online disputes informally through such means as the polite conventions of “netiquette”. Speech was refuted with speech. However, with the diversification of cyberspace culture, through the influx of newcomers bringing with them very different cultural, behavioural, and social expectations from the users of the past, these informal rules have broken down and participants have become increasingly litigious.

Now more than ever, Internet users must consider the implications of publishing on international networks. What is not defamatory in the society where it is written may be in another, and each single communication of defamatory material may be actionable in every jurisdiction where it is viewed.

Who should bear responsibility for defamation in cyberspace? Should online access providers be held liable for the content of all transmissions facilitated through their services? Should plaintiffs be able to bring actions in multiple jurisdictions? Should they be allowed to engage in forum shopping for the most favourable legal treatment?

In this lecture for the Surugadai University Institute of Comparative Law, I consider the liability of authors, the liability of service providers for messages posted by users of their networks, jurisdiction issues, and potential ways of limiting liability from a common law perspective, showing how the courts and legislatures in the United Kingdom, Australia, and the United States have responded over the past dozen or so years to the needs of the information age.