

Australian Defamation Case Illustrates Life Without the CDA

I have frequently written on the pros and cons of the Communications Decency Act (“CDA”). Without it, no website could permit comments, but by the same token it allows unscrupulous website operators to encourage defamatory postings, and then use those postings to extort payments from the victims.

Because of the latter reality, many have suggested to me that they would like to see the CDA abolished. But a case out of Australia demonstrates just how ridiculous things get without the CDA.

Those Australians are people of few words, so I had to read a number of news accounts to piece together what had occurred. A blogger by the name of Marieke Hardy apparently picked up an anonymous on-line bully. For undisclosed reasons, Hardy decided that she had determined the identity of her mystery bully, so she posted the following comment on Twitter:

“I name and shame my ‘anonymous’ internet bully. Liberating business! Join me.”
The “tweet” then provided a link back to her blog, and there on the blog she identified Joshua Meggitt as the bully. Problem was, Meggitt was not the bully.

Meggitt sued for defamation. Hardy settled with him, allegedly for around \$15,000. But Meggitt wants more. Meggitt is suing Twitter for defamation for the tweet by Hardy.

Do you see how absurd things quickly become without the CDA? If Twitter is responsible for every comment, then to avoid defamation it would have to put a delay on all comments, and hire thousands of employees to review the comments.

We’ll call them the Twitter Censors. As of February 2012, 290 million comments are posted on Twitter each day. So if we assume a Twitter Censor could read and decide on two tweets per minute, and including the required breaks during an eight-hour shift, our Twitter Censor could review about 840 tweets on a typical day at the office. But Twitter is a tough employer, and imposes a quota of 1,000 tweets per shift. Therefore, to review all 290 million tweets, Twitter needs to hire just 290,000 Twitter Censors.

Now let’s make you one of those Twitter Censors. I want you to imagine that scenario. You sit at a computer, and Twitter feeds you the tweets to review. As each comment passes in front of the you, you must make a quick decision about whether that comment could possibly be defamatory, and only then clear it for publication. Thankfully Twitter limits each tweet to 140 characters, so there is not much to review, but you must apply your best judgment to each comment to see if anyone could be offended. So up pops the following:

“That J-Lo. She be crazy.”

Do you hit the approve or disapprove button? Was the “crazy” comment meant in a good or bad sense? Even if the person making the comment meant only that the singer Jennifer Lopez is crazy

good, if you approve the comment then every person in the world who goes by the name J-Lo could potentially sue for defamation, claiming that the post accuses them of having mental problems.

But the dispute between Hardy and Meggitt takes the scenario to an even more absurd level. Applying those facts to out hypothetical, what you really received was:

“That J-Lo. She be crazy. <http://tinyurl.com/48y28m7>”

What do you do with THAT?! Twitter requires you to review and approve or deny more than two tweets per minute. To keep your job you have less than 30 seconds to make a decision. You quickly click on the link to see why J-Lo is crazy, and you are confronted with a four and a half minute video! Do you have to watch the entire video to make sure it contains nothing defamatory? You don't have time for that. REJECTED!

And here, all the tweeter wanted to do was pass along a great video by J-Lo.

Under the best possible circumstances, Twitter would be relegated to approving only the most milk toast comments with no possible defamatory implication. In reality though, Twitter could not possibly exist if it could be held liable for every comment posted.

To all of you who just responded with a resounding, “Who cares about Twitter?”, that's not really the point. I'm talking big picture here.

It will be very interesting to see how the courts in Australia handle this case, without the guidance of the CDA. I predict the courts will end up in the same place, having to use some public policy argument to judicially create the equivalent of a CDA. If not, then I predict Twitter will turn off the service in Australia.