

Search engine liability and the perils of being googled



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When defamatory statements are posted online, search engines such as Google or Yahoo! act like a magnifying glass or an amplifier, bringing the world's attention to the defamatory statements and multiplying the potential damage to the plaintiff's reputation exponentially.

Unlike in the U.S., where search engines enjoy effective immunity from liability for Internet defamation, in Canada, there is no legislation or jurisprudence on the issue. As a result, in certain circumstances, search engines might be held liable for online defamation.

The perils of being googled

Assume, for example, that someone writes defamatory comments about your client on an obscure online blog. Very few people regularly read this blog. However, when a search is run under your client's name in Google, the defamatory statements appear on the first page of the search results. Anyone can then click on the search result's link, which takes them directly to the defamatory blog.

Internet defamation in Canada

Defamatory statements posted online are taken very seriously by Canadian courts. According to the Ontario Court of Appeal:

"Although internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented by only a handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the internet to replicate almost endlessly any defamatory message lends credence to the notion that 'the truth rarely catches up with a lie.'"

Liability of search engines

The common law has traditionally found defendants liable who willfully directed others to



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defamatory statements, when the defendants neither authored nor authorized their publication on premises not controlled by them. This is akin to the functions performed by search engines online.

The defendants in such cases were liable because (a) they had knowledge of the defamatory words; (b) they had the power or control to remove the words; and (c) they failed to do so promptly.

Although search engines cannot remove defamatory statements from the web, they have the capacity to remove them from their search results. It is this power that might yield a finding of liability for the search engine, if it received notice of the defamatory statements but failed to remove them promptly.

In addition, the Canadian "repetition rule" holds that repeating a libel has the same legal consequence as originating it. This rule reflects the law's concern that one should not be able to freely publish a scurrilous libel simply by purporting to attribute the allegation to someone else. The repetition rule is particularly important in the age of the Internet, when defamatory material can quickly spread from one website to another.

The repetition rule might apply, in certain circumstances,

to the search engine's cache. A search engine's cache is, essentially, a copy of a web page as captured by the search engine on a particular date. If the web page has been altered to remove the defamatory content after it was cached by the search engine, the defamatory content might still exist in cyberspace, by virtue of the search engine's cache. Under such circumstances, the search engine remains the sole publisher of the libel.

Absent proper notice, it is unlikely that search engines would be found liable for defamation. Therefore, Canadian victims of online defamation should send proper notices and take-down requests to the search engines. The notices should specify the search terms that yield the defamatory search results. They should also request the removal of the defamatory statements from the search engine's cache. ■

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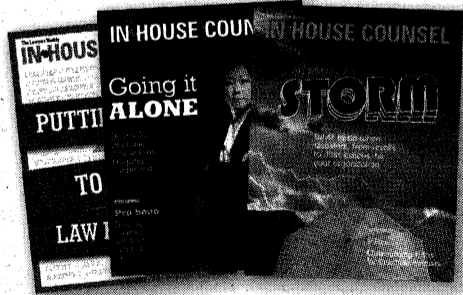
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