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Digital Defamation

I have been freely expressing my thoughts, ideas and opinions for years on the internet. I have done so without malice, but sometimes with disregard to the privacy interests of others. On a few occasions I have received spiteful e-mails detailing issues that people have taken with my website. On more than one occasion I have seen threats of legal action. Matters of defamation no longer rest with the media alone, the Internet makes available a global audience to hear what any individual says. How can individuals protect themselves from liability and what can't I say on my website?

First, defamation must be looked at generally. For a claim of libel or slander to stick there must be a publication to one (other than the person defamed), which includes a false statement of facts that is understood as being of (and concerning) the plaintiff and tending to harm the reputation of the plaintiff.¹ If the plaintiff is a public figure then actual malice must be proved.² The established defenses for defamation claims are truth, opinion, retraction, the libel-proof plaintiff and fault.³

The defense of truth is absolute, but difficult to prove truth.⁴ The defense of opinion is easier to show, it looks to see if the reasonable reader or listener would understand the statement as being a verifiable fact.⁵ A verifiable fact is one capable of being proved false.⁶ A comment's context can transform what appears to be a factual statement into a hyperbole or an opinion, which is often the case on message boards and websites.⁷ In Vogel v Felice, plaintiffs brought a libel claim for being referred

1 Abbot, Greg. *Basic Elements of Defamation Law*, available at <http://www.abbottlaw.com/defamation.html>

2 EFF. *Bloggers' FAQ - Online Defamation Law*, available at <http://www.eff.org/bloggers/lg/faq-defamation.php>

3 *Lamb v Rizzo*, 391 F.3d 1133, 1134-1139 (10th Cir. 2004) (which accounts for libel-proof, need citation for the other defenses), Abbot, Greg.

4 EFF. *Bloggers' FAQ - Online Defamation Law*.

5 *id.*

6 *id.*

7 *id.*

to as the top-ranked “Dumb-Asses” on a website.⁸ Defendant prevailed as “dumb-ass” is not “a provably false factual assertion.”⁹ The Vogel court also decided that hyperlinking the plaintiff's names to satan.com was not defamatory, it merely conveyed the website's author thought there was something devilish about the plaintiff.¹⁰

Retractions sometimes protect the author or speaker.¹¹ Some states require a request for a retraction before a defamation suit may be brought. In Mathis v Cannon, the Georgia Supreme Court upheld the disallowance of a punitive damage award where the plaintiff did not request a retraction.¹² Missouri does not have a statute concerning retractions, but Missouri courts do look at retractions in determining damages.¹³ Retractions are typically required to be “substantially as conspicuous” as the defamatory remarks they address.¹⁴

Libel-proof plaintiffs have reputations so tainted that allegedly defamatory statements have no ill effect.¹⁵ In the United States most states do not allow defamation suits where the defamed party is dead.¹⁶ No states allow a plaintiff in a defamation suit to be a group.¹⁷ A defendant can claim that the statements were not prima facie defamation, but instead complimentary or neutral, and if believed by the jury, be fully protected.¹⁸

Fame and notoriety affords less protection from defamatory remarks, putting the potential plaintiff on less advantageous grounds.¹⁹ Some people gain the status of limited purpose public figures,

8 Vogel v Felice, 127 Cal. App. 4th 1006, 1010 (Cal. App. 2005)

9 *id.* at 1019-1020 (*quoting* Moyer v. Amador Valley J. Union High School Dist. 225 Cal. App. 3d 720, 724 (Ct. of App. CA 1st App. Dist. Div. 1 1990)).

10 *id.*

11 EFF. *Bloggers' FAQ - Online Defamation Law*

12 Mathis v Cannon, 276 Ga. 16, (Ga. 2002).

13 See: Glover v. Herald Co., 549 S.W.2d 858, (MO Sup. Ct. 1977), Coats v. News Corp., 355 Mo. 778; 197 S.W.2d 958, (MO Sup Ct 1946), and Edwards v. Nulsen, 347 Mo. 1077; 152 S.W.2d 28, (MO Sup Ct 1941).

14 84 A.R.R.5th 169, 2b (updated March 2005)

15 Lamb v Rizzo, at 1134-1139

16 Dean, John W. Defaming The Dead: A Legal Remedy for Absurd Charges That LBJ Murdered JFK, available at <http://writ.news.findlaw.com/dean/20040312.html>

17 Answers.com. *Libel and Slander*, available at <http://www.answers.com/topic/slander-and-libel>

18 Berry, Gregory Torts II, available at <http://www.law.howard.edu/faculty/pages/berry/torts/finalreview.htm>

19 EFF. “Bloggers' FAQ - Online Defamation Law”

as seen in Gertz v. Robert Welch, Inc.²⁰ Richard Gertz represented the family of a man slain by a police officer.²¹ The *American Opinion*, a monthly magazine published by Robert Welch, Inc., warned of a national conspiracy to frame police officers, executed by communist sympathizers.²² The article claimed that Gertz was a communist and he had framed the police officer in the case.²³ Gertz listed misstatements from the article, explaining that he was not a communist, was not involved in the criminal case against the police officer and did not frame the police officer.²⁴ The court determined Gertz would be counted not as a private person but a limited purpose public figure.²⁵

On appeal, the Supreme Court explained public officials and public figures have greater access to the media to counter defamatory statements, and public officials and public figures seek public acclaim and thus risk public scrutiny.²⁶ This case heavily relied on an earlier case, New York Times v. Sullivan, which required that actual malice or fault must be shown on the part of the defendant in defamation cases where the plaintiff was a public figure.²⁷ The lower court's determination, in Gertz, stating punitive damages could not be recovered in the absence of malice regardless of the individual being a private or public person stood uncontested by the Supreme Court.²⁸ The Court explained that a public figure gains “pervasive fame or notoriety.”²⁹ The Court also discussed that an individual can inject “himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.”³⁰ The Sullivan malice test was expanded to include plaintiffs in matters concerning their limited purpose public status.³¹ The Supreme Court deemed Gertz a private person as

20 Gertz v Robert Welch, Inc., 471 F.2d 801, 803-805 (7th Circ. 1972)

21 *id.*

22 *id.*

23 *id.*

24 *id.*

25 *id.* at 804-805

26 Gertz v Robert Welch, Inc., 418 U.S. 323, 342-343 (1974)

27 New York Times Co. v Sullivan, 376 U.S. 254, (1964)

28 Gertz v Robert Welch, Inc., 418 U.S. 323 (generally)

29 *id.* at 351

30 *id.*

31 *id.* at 339-340

“he took no part in the criminal prosecution of Officer Nuccio,” and “he never discussed either the criminal or civil litigation with the press and was never quoted as having done so.”³²

The Associated Press researched the issue to see in how many cases the higher ‘fault’ standard was needed. AP estimated 95% of libel cases do not involve high profile public figures, most involve normal people and local newspaper stories.³³ Newspapers face libel charges more frequently than television news faces slander charges.³⁴ Regardless of which forum the statement is aired many news providers carry media liability insurance.³⁵ Media liability insurance does not typically cover the cost of trying the case, but instead insulates the news provider by paying the damage awards against the insured.³⁶

Individuals running blogs and websites can not afford to pay typical libel damage awards, nor the cost of media liability insurance, nor the costs of an attorney in many instances. In Meeks v Suarez Corp (1994) Meeks authored the Cyberwire Dispatch.³⁷ In the Cyberwire Dispatch Meeks said many negative things about the Suarez Corporation and its president, largely citing the state’s attorney general for Meeks' article.³⁸ Suarez eventually allowed the case to be settled for \$64 as it became evident that Meeks would not likely lose a defamation suit.³⁹ Despite Meeks’ extremely strong position the costs of the procedure were far to cumbersome for him to withstand with no institutional backer and no insurance.⁴⁰

Teshia Miller was a San Francisco tattoo artist who gained control of a tattoo FAQ with most

32 *id.*

33 Wikipedia. *Slander and Libel*, available at <http://en.wikipedia.org/wiki/Libel>

34 *id.*

35 InsureNewMedia.com, *Media Liability Insurance Explained*, available at <http://www.insurenwmedia.com/pages/media-liability.asp>

36 Wikipedia.

37 Eden, Eric. *Libel & Defamation in the Information Age*, available at <http://www.writing.upenn.edu/~afilreis/defamation-in-cyberspace.html>

38 *id.*

39 *id.*

40 *id.*

content contributed by tattoo artists.⁴¹ One entry about a local artist stated that his vision was failing and that he tended to hurt his customers.⁴² That entry was in the FAQ as Teshia received it, and a lawsuit immediately fell on her.⁴³ She swiftly edited the entry to a less objectionable statement that his vision was not what it once was, then the case was dropped.⁴⁴

In Medphone v DeNigis, DeNigis faced an extreme libel charge from Medphone.⁴⁵ Medphone sought \$100 million in damages.⁴⁶ Medphone makes medical instruments and was a Fortune 500 company.⁴⁷ DeNigis posted on Prodigy's MoneyTalk Forum, saying Medphone appears to be a fraud amongst other things.⁴⁸ DeNigis faced a fierce uphill battle in the face of a horrifying penalty where he must prove the truth in his statements, or show they were clearly stated as opinions.⁴⁹

Individuals of limited means may be referred to as judgment proof in the context of lawsuits as we have here.⁵⁰ Pockets too deep to attack for gain, but the same trait that makes them immune to judgment makes the threat of legal action more frightening, more powerful. These defendants of limited means can not afford to protect themselves, as seen above, and threats of action may freeze their free expression. California, followed by many states, passed laws to prevent the chilling of free expression, the laws are known as anti-SLAPP laws.⁵¹ SLAPP stands for "Strategic Lawsuit Against Public Participation."⁵² SLAPPs are typically without merit and serve to encumber those who speak out against large groups, blow whistles, or write scathing commentaries to their local newspapers.⁵³

41 *id.*

42 *id.*

43 *id.*

44 *id.*

45 *id.*

46 *id.*

47 *id.*

48 *id.*

49 *id.*

50 84 A.L.R.5th 169 *at* 2b

51 California Anti-SLAPP Project, "California Statutes," available at: <http://www.casp.net/calstats.html> (for CA's anti-SLAPP statute only)

52 California Anti-SLAPP Project, "Introduction," available at: <http://www.casp.net/intro.html>

53 *id.*

Kansas has no anti-SLAPP law in place. A bill was proposed in 1997 but eviscerated by amendments from the state bar.⁵⁴ Missouri does have an anti-SLAPP law in place, which allows for a special expedited motion to dismiss concerning speech at public hearings or in quasi-judicial settings.⁵⁵ Missouri's anti-SLAPP law has been applied in a pair of cases.⁵⁶ In Mandel et al. v. O'Connor et al., the court stopped a mayor from suing citizens who criticized the mayor for failing to investigate possible city charter violations.⁵⁷ In State ex rel. Diehl v. Kintz, Diehl was sued for statements he made at a public hearing, the trial court declined to dismiss the charge.⁵⁸ The appellate court dismissed the case for failure to state a claim upon which relief can be granted, citing the intent of the legislators.⁵⁹

Bloggers Protected from Third Party Comments

Blogs, or web logs, are easy ways for people to add content to the Internet. Google's Blogger, Amazon's Xanga and Sixapart's Livejournal are just a few ways for Internet users to post content to the web and I have used each of them. An important feature to many bloggers, which is a fundamental feature in forums and discussion boards, is the ability of others to leave comments. Most frequently the creator of a blog has the ability to set limits on feedback to posts. Livejournal offers a full array of commenting options. The first is open commenting, which is the default. In open commenting, anyone can comment on any post, and the comment will appear immediately. Secondly, one can make the entire blog private, where it can only be read by logged in users, which were approved by the blog's author. Commenting can be set to exclude anonymous users whether they are not logged in, or logged in and choosing to comment anonymously. Commenting can allow for a list of users to be able to

54 California Anti-SLAPP Project, *Kansas: Proposed Statute*, available at <http://www.casp.net/stateka.html>

55 R.S.Mo. § 537.528

56 California Anti-SLAPP Project, *Missouri: Statutes and Cases*, available at <http://www.casp.net/statemo.html>

57 *id.* (interpreting: *Mandel et al. v. O'Connor*, 99 S.W.3d 33 (Ct. of App. E.D.Mo. 2003)).

58 *id.* (interpreting: *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, (Ct. of App. E.D.Mo. 2005))

59 *id.*

comment immediately with everyone else subjected to comment screening, where the administrator allows or blocks the comments at a later time.

From my own experience, when there are very few regular visitors comment screening almost entirely chokes off discussions. Rarely have my posts received attention after the passage of a week. Any step that slows the visibility or availability of comments stifles discourse. Much of the discussion that arises in reaction to a post happens very soon after posting and a new or unknown user's comment can add much to a discussion. With relaxed commenting controls, however, a blog can be used to channel hate speech and defamatory comments.

47 USC § 230, from the Communications Decency Act offers some protection from third party comments on blogs. It defines an 'information content provider' as anyone "that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service."⁶⁰ It provides 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."⁶¹ Posting anonymously, or under a pseudonym, does not acquire the full protection of 47 USC § 270(c)(1), as an affirmative showing that you are the actual poster of the defamatory content skirts the protection.⁶²

47 USC § 270 was designed, largely, to protect ISPs much in the same way that a distributor or common carrier is protected.⁶³ Common carriers are entities that have no editorial control over the information they carry.⁶⁴ A telephone company is an example of a common carrier, as they act as a passive conduit between parties and have no opportunity for editorial control.⁶⁵ A distributor is analogized to a public library, which is held liable only if the distributor has "actual knowledge or

60 47 USC § 230(f)(3) (2005)

61 47 USC § 230(c)(1) (2005)

62 84 A.L.R.5th 169, 2a (2005)

63 *id.* at 2a

64 *id.*

65 *id.*

should have reasonably known of the defamatory nature of the work.”⁶⁶ Bloggers are Internet service providers insofar as they allow third parties to contribute content to their blog.⁶⁷

A blogger, or anyone with a forum or bulletin board on the Internet, is likely to be held accountable for the posts of third parties where the blogger, or other administrator, claims they will regulate the content.⁶⁸ Where a blogger has made no “conscious choice” to regulate, they are not required to regulate posts or comments in advance before posting, but to act reasonably after being put on notice concerning defamatory statements.⁶⁹ In a case where an employee sued an airline for remarks posted on an electronic bulletin board, claiming the employer was liable for hostile work environment for the allegedly defamatory remarks.⁷⁰ The court's dicta analogized the electronic bulletin board to a normal bulletin board, stating that the producer of the bulletin board can not be held accountable for the content that is put up by others.⁷¹

International Jurisdictions and Damages

The laws of the United States strongly favor the defendant, but the laws abroad are very salient in matters of digital defamation. The American favoritism to the defendant is rooted in our First Amendment, and is not generally seen in other countries.⁷²

In some nations, certain libelous statements create something far worse than liability in a civil suit, they produce criminal charges. Zimbabwe’s Public Order and Security Act of 2001 creates a

66 *id.*

67 EFF. *Bloggers' FAQ - Section 230 Protections*, available at <http://www.eff.org/bloggers/lg/faq-230.php>

68 84 A.L.R.5th 169 at 4a (interpreting *Cubby, Inc. v CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991)).

69 *id.* at 4b (interpreting *Barrett v Rosenthal*, 12 Cal. Rptr. 3d 48, 87 P.3d 797 (Cal. 2004)).

70 *id.* (interpreting *Blakey v Continental Airlines, Inc.*, 164 N.J. 38, 751 A.2d 538 (NJ 2000)).

71 *id.*

72 Johnson, David R. *Volume Controls in Cyberspace? -- Hard First Amendment Questions in the Age of Electronic Networking*, available at <http://www.cli.org/DRJ/volcont.html>

criminal offense to try any who dare insult the President.⁷³ European nations agreed to be bound by a convention to recognize the freedom of expression.⁷⁴ The European Convention also limits that recognition, creating many exemptions for the infringement of that freedom.⁷⁵ “This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”⁷⁶ “The exercise of these freedoms... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for the protection of the reputation or rights of others” along with many other enumerated purposes for the limitation of free expression.⁷⁷ But Article 10 does generally preclude criminal libel charges of the likes seen in Zimbabwe.

Many countries which agreed to the European Convention had criminal defamation laws which protected political figures over private figures, such laws were framed to be in accordance with the exceptions found in Article 10.⁷⁸ An Austrian statute authorizing fines against publications speaking out against public officials was struck down as being in opposition of Article 10 in Lingens v Austria.⁷⁹ In Lingens, an Austrian paper printed negative remarks about the current Chancellor, in violation of Article 111 of Austria's Criminal Code.⁸⁰ Lingens was fined for his remarks.⁸¹ Lingens could not prove the truthfulness of his statements as they were his opinions, under Austrian Law Lingens would have failed.⁸² But the court found the imposing of fines against Lingens was a violation of Article 10 of the European Convention, further finding such fines would likely deter journalists and hamper the press.⁸³

73 Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2001: Zimbabwe*, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8411.htm>

74 European Convention on Human Rights and Fundamental Freedoms, Article 10

75 *id.*

76 *id.* at (1)

77 *id.* at (2)

78 Practical Access to Democracy in Central and Eastern Europe, *Criminal Defamation Laws Frequently Fail to Pursue a Legitimate Aim*, available at http://www.bghelsinki.org/fe/suggestions_en.html

79 Lingens v Austria, available at <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/0/55babb6b1b20bbd9c1256640004c2384?OpenDocument>, (1985).

80 *id.*

81 *id.*

82 *id.*

83 *id.*

The defenses available in European countries may resemble those available here, for example, in the United Kingdom there are three carved out defenses: justification, fair comment and privilege.⁸⁴ In a defense based on justification the defendant sets out to prove the truth of their statements.⁸⁵ One must be careful with this defense as failure to prove the truth opens the defendant to aggravated damages.⁸⁶ In the event that the defendant loses, subsequent media coverage after the defense of justification is asserted, may result in the aggravating of damages.⁸⁷ A fair comment is one a reasonable person would make, even if the defendant in the instant case is motivated by disdain.⁸⁸ The final category of defense is privilege. Anyone speaking in Parliament, or is under oath, or anyone accurately and fairly reporting comments taken in either circumstance are fully protected by privilege.⁸⁹ The British High court explains that “malice is notoriously hard to prove, particularly where a newspaper is unwilling to disclose its source.”⁹⁰ “The temptation to apply the blanket protection afforded to the media in *New York Times v Sullivan*... has been rejected in the United Kingdom by a succession of well-qualified committees on the reform of defamation law.”⁹¹ The defenses bare some similarity to our own, but the exceptions included within the text of Article 10 causes a fair amount of divergence from our First Amendment and its associated case law. The English courts favor the wronged individual, who’s reputation has been harmed and privacy invaded, whereas our nation favors free expression.

Australia largely follows the United Kingdom, but one case set Australia apart on the issue of

84 YourRights.org.uk, *Defences to a Claim of Defamation*, available at <http://www.yourrights.org.uk/your-rights/chapters/right-of-free-expression/defamation/defences-to-a-claim-of-defamation.shtml>

85 *id.*

86 *id.*

87 *id.*

88 *id.*

89 *Reynolds v Times Newspapers Ltd & Others*, ICHRL 148 (28 October 1999), available at <http://www.worldlii.org/int/cases/ICHRL/1999/148.html>

90 *id.*

91 *id.*

defamation.⁹² In Gutnick v Dow Jones, the Australian Supreme Court held foreign Internet publications which defamed an Australian and damaged his Australian reputation could be held accountable under Australian libel law.⁹³ Although Gutnick illustrates a far broader reach imposed by Australian courts, the damages are limited to the portion that occurred within the jurisdiction of the court.⁹⁴ It does seem to be some cause for concern that those in the judicial driver's seat may not understand the technologies at issue, Justice McHugh had some strange remarks which can be read in the transcript of Gutnick.⁹⁵ An example of one of McHugh's more confused remarks: "I assume there is a silicone chip there with circuits which are connected which can no doubt be seen with an electron microscope but which cannot be seen by the naked eye and they are activated by electrical impulses but I assume that there is nothing up there in what is called hard copy in other contexts."⁹⁶ American jurisdiction is limited to the target of the publication, and makes use of the 'single publication rule,' but damages for all states can be collected in a court of one state.⁹⁷

Canada generally follows the United Kingdom's precedent. Canada stands out for having awarded, and upheld, the largest defamation award ever. In Hill v The Church of Scientology, the court specifically rejected the United States' Sullivan actual malice test.⁹⁸ Morris Manning, counsel for the Church of Scientology, held a press conference on the courthouse steps alleging that the Church of Scientology planned to bring a contempt charge against Hill, a Crown attorney, claiming he had misled

92 Mitchell, Jonathan. *Defamation and Intellectual Property Rights on the Internet*, <http://jonathanmitchell.info/internet>

93 Clarke, Roger. *Defamation on the Web: Gutnick v Dow Jones*, available at <http://www.anu.edu.au/people/Roger.Clarke/II/Gutnick.html>

94 Mitchell, Jonathan.

95 Clarke, Roger.

96 High Court of Australia Transcripts. *Dow Jones & Company, Inc v Gutnick M3/2002*, available at <http://www.austlii.edu.au/au/other/hca/transcripts/2002/M3/2.html>

97 *Keeton v Hustler Magazine, Inc.*, 465 U.S. 770, (1984) (only 10,000 to 15,000 copies of Hustler were distributed to New Hampshire per year, a very small portion of their entire circulation, but NH had the friendliest statute of limitations for the libel action. It was ruled that the plaintiff could bring the case in NH and collect for all damages to their reputation from all states)..

98 *Hill v Church of Scientology*, File No: 24216, (July 20, 1995), case available at: http://www.lexum.umontreal.ca/csc-scc/en/pub/1995/vol2/html/1995scr2_1130.html

the judge and breached orders sealing certain documents.⁹⁹ Hill was subsequently awarded \$1.6 million (Canadian) and was upheld on appeal.¹⁰⁰ The Canadian court has also held criminal libel charges as valid in Canada.¹⁰¹

Truly a shot across the bow, in the same manner as Gutnick, came about due to Don King's legal scuffle with Lennox Lewis. Lennox Lewis's legal representative posted on a forum that Don King had made anti-Semitic remarks.¹⁰² King, a US resident, decided to sue Lewis's representative, who was also American.¹⁰³ King chose to sue Lewis in England.¹⁰⁴ King stated in court that his reputation in England was harmed by the Internet post.¹⁰⁵ The United Kingdom judge decided the case could be brought in England.¹⁰⁶ The approach here adopted by the United Kingdom is in line with Australia, after Gutnick, but goes further. Gutnick allowed an American content creator to be sued in Australia by an Australian for content not targeting Australia. Lewis allowed an American content creator to be sued in England by an American for content not targeting England.

England and Australia are not by any means alone in believing they can haul potential defamation defendants, with suits arising out of the Internet into their courts. From Germany: “any undertaking that is actively involved in the Internet... must expect to be sued in foreign courts.”¹⁰⁷ From Scotland: a “person who sets up [a] website can be regarded as potentially committing a delict in any country where the website can be seen, in other words in any country in the world.”¹⁰⁸

In March of 2005, the European Court of Justice ruled that “a European court having

99 *id.*

100 *id.*

101 R v Lucas, File No: 25177, (April 2, 1998), note 48, available at http://www.lexum.umontreal.ca/csc-scc/en/pub/1998/vol1/html/1998scr1_0439.html

102 Lewis and Others v King, WC2A 2LL Royal Courts of Justice, Strand, London, (19 October 2004), available at <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2844/lewis-v-king.htm>

103 *id.*

104 Robins, Jon. *Don King allowed to sue over Internet libel in the UK*, available at <http://lawzone.thelawyer.com/cgi-bin/item.cgi?id=112699&d=205&h=207&f=259>

105 Lewis and Others v King.

106 *id.*

107 Mitchell, Jonathan. (*quoting* Maritim, 2003 ILPr 17, at 297)

108 *id.* (*quoting* Bonner Media v Smith, 2003 SC 56) (*also of note*: a delict is the European version of a tort).

jurisdiction in a delict action could not refuse to exercise that jurisdiction on forum non conveniens principles even if the more convenient court was a non-European one.”¹⁰⁹

Conclusion

The innocent free speaker in the United States has many protections, with defenses of truth and opinion. An individual is likely to enjoy the free speech they believe they are due. But there may lurk hidden, unforeseen plaintiffs, both at home and abroad, that can exercise foreign courts' broad jurisdiction rules. In light of many of the above cases, forum non conveniens does not appear to offer the protection it once did. Horizontal, international forum shopping will be greatly encouraged. Some nations find jurisdiction based on the harm to the reputation within the nation. Other nations disallow defenses that we enjoy. It stands to reason that plaintiffs will find those nations with the ripest rewards, fewest defenses and broadest discretion of jurisdiction for potentially defamatory acts on the Internet. In the absence of an international convention concerning Internet-based jurisdiction, or res judicata between nations, there can be no certainty that remarks concerning others will not cause the author to be hauled into a far away court for defamation.

¹⁰⁹ *id.* (interpreting Owusu v Jackson, [2005] QB 801)