

Publications

Hyperlink to 2012 Article at Issue in Delaware Internet Defamation Case

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The Delaware Court of Chancery is considering an argument that a hyperlink to an allegedly defamatory article, for purposes of overcoming a statute of limitations defense, constitutes republication.

In a September 30 opinion, the court denied defendant Vox Media, Inc.'s motion to dismiss, holding it "failed to carry its burden" of establishing that the plaintiffs' defamation claims pertaining to a 2012 article are barred by the statute of limitations.

Plaintiffs Stephen Perlman (an entrepreneur domiciled in California), Rearden LLC (a California company) and Artemis Networks LLC (a Delaware company) filed a defamation action on August 18, 2014 relating to two articles published in August 2012 and a third article – published on February 19, 2014 – which hyperlinked to one of the earlier articles.

The Delaware court, applying Delaware's "borrowing statute," selected California's one year statute of limitations for defamation (Delaware's is two). Thus, while the alleged defamation occurred more than a year prior to the initial complaint – plus, merely hyperlinking to previously published statements has generally been found to be insufficient to establish republication – the plaintiffs are attempting to show that Vox perpetuated the defamation, thereby restarting the clock.

Most states, including California, have enacted the "single publication rule," where the statute of limitations for a defamation claim begins to run as soon as the defamatory statements were initially published. Thus, for example, if a defamatory article were to be published in a magazine and that magazine remains on newsstands for several weeks, the entire distribution of the magazine counts as a single publication, with the statute of limitations period commencing as soon as the publication is first distributed.

Given the allegations of defamation being tied to a pair of August 2012 articles, Vox – which owns and operates websites such as The Verge, Polygon, Vox and SB Nation – is attempting to argue that the plaintiffs should have filed this action in August 2013, not a year later (this, in

addition to Vox arguing that the articles were substantially true).

The Court, however, has found that the plaintiffs – at this point – have done enough to demonstrate that it is conceivable that the hyperlinking to the prior articles constitutes republication.

Perlman v. Vox Media, Inc. background

According to the plaintiffs' complaint, Vox's The Verge published an article on August 19, 2012 containing several falsehoods. While the article was rewritten shortly after publication and included a retraction, the plaintiffs alleged it caused harm in that it attracted a large audience and was widely shared online and through social media.

Nine days later, on August 28, 2012, another article went live on The Verge, also containing allegedly false statements about the plaintiffs. This article allegedly reached hundreds of thousands of readers, generated hundreds of comments, ranked high in search, and was widely linked to on the internet.

Then, in February 2014, Vox published an article that referenced Perlman in the very first sentence and hyperlinked to the August 28, 2012 article. The plaintiffs also contend this article included defamatory statements.

The plaintiffs alleged they were irreparably harmed, including through lost business opportunities and investments as a result of the hyperlinking to the prior article. Specifically, the plaintiffs pointed to two sets of investors (both intending to invest \$100 million in plaintiff Artemis) that expressed concerns about Perlman's reputation, based on what they had read online about him. Neither set of investors invested in Artemis.

Court's republication analysis

Among other contentions, Vox asserted that the plaintiffs' claims relating to the 2012 articles are time-barred by California's one-year statute of limitations for defamation and that the 2014 article did not "republish" the August 28, 2012 article. If the Delaware courts do, however, determine that the alleged defamation from 2012 was republished in 2014, the defamation claims will have been brought in a timely manner.

As noted, this court chose to apply California law, under which "a statement on a website is not [considered] republished unless the statement itself is substantively altered or added, or the website is directed to a new audience" (citing to *Yeager v. Bowlin*, 693 F.3d 1076, 1082 (9th Cir. 2012)).

Various courts have reached the conclusion that a mere hyperlink would not give rise to republication; yet the plaintiffs alleged the 2014 article "not only restated and enhanced the allegedly defamatory material, but also directed it to a new and different audience."

Ultimately, the Delaware Court of Chancery, in denying' Vox's motion to dismiss, ruled that Vox had not shown that the plaintiffs could not prove that the 2014 article enhanced or modified the initial alleged defamation. The plaintiffs' complaint was also found to have alleged sufficient facts to support a "reasonable inference" that the 2014 article both was directed toward and actually reached a new audience.

Of course, given the denial of the defendants' motion to dismiss, the plaintiffs will still need to prove their case to prevail. But this case could be influential going forward with other internet defamation matters.

On August 19, 2014 – one day after the complaint was filed in this case – an Arizona appellate court ruled in favor of plaintiffs for **republication in a case involving Ripoff Report**. In *Larue v. Brown*, the court determined that Ripoff Report rebuttals published by the defendants restarted the statute of limitations pertaining to the original allegedly defamatory remarks, which otherwise would have been time-barred.

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