

SLANDER AND LIBEL ON THE INTERNET...BEWARE WHAT YOU SEND, IT MAY BE A PUBLIC FORUM!



So, you figure that what you say on your computer or your web site is your own business, like a private letter, and that free speech allows you to say pretty much what you want without the danger of a law suit?

Wrong.

Depending on who you send e mail to, or how you use the internet, information you send can be considered a public communication which is subject to the law of slander and libel and could expose you to significant litigation and liability.

A San Jose jury just awarded **\$775,000** to a company which commenced action against two former research scientists who had worked for them...and who posted libelous information about their former company on a web site and on various internet message boards. Of that \$775,000, **\$350,000** was to compensate the company for damages it had suffered and **\$425,000** was for punitive damages. (See articles on **American Litigation** and on **Torts** on the articles page of this web site.)

The judgment is based on an intentional tort, thus it is likely that bankruptcy would NOT eliminate this judgment. While the defendants claim they will appeal, they also state that they are living on their retirement already and face economic catastrophe.

In short, the scientists are probably ruined by their wrongful use of the internet and one can expect that they also probably spent in excess of a quarter of a million dollars in fees and costs in defending the case!

THE LAW OF LIBEL AND SLANDER

Recall that libel is written defamation and slander is oral defamation of a person or entity. Key to the tort is that an untrue statement which causes harm to the plaintiff is made...and that the statement is received by third parties to the detriment of the plaintiff.

Damages can be both compensatory (to pay you for what you lost) and punitive (to damage the wrongdoer for doing wrong).

To be actionable, the untrue statement should have damaged the plaintiff and not be privileged (e.g. stated in court under oath or to an attorney in private, etc.)

FACTS OF THE CASE

The jury found that the two research scientists libeled the company and its executives by posting more than 14,000 defamatory and often vulgar messages on more than one hundred Internet message boards and their own Web site. The type of comments posted included accusations of extra marital affairs, being dangerous to children, accusing management of video taping bathrooms, being chronic liars and hallucinating. The two defendants continued such activity even during the trial.

The question posed was whether web sites and/or message boards had any particular privilege or would it be equivalent to any other type of public dissemination of untrue statements.

The Jury and Judge answered clearly that what you say on a web site or a message board is a public utterance and if it is untrue, you are liable just as if you had run an announcement in a newspaper libeling someone...with the difference that circulation can be world wide and in the millions just by clicking on the mouse.

LESSONS FROM THE CASE

1. Even private e mails can be considered dissemination of libel. You must assume that if you use the internet, you enter a public forum and you are libel for any untrue statements that hurt anyone.
2. Just because it is the web and there is an aura of "freedom" about what people say in the privacy of their own home, you are still in public when you send a message or post a message on a website or message board.
The new technology has not given you added protection...indeed, what used to require a great deal of effort to spread around, such as putting an ad in the paper, now is accomplished by the click of a mouse...with even wider circulation.

3. And the issues of jurisdiction may be equally frightening. Your web page is seen all over the world. The situs of the suit is where the wrongful act occurred. You insult someone on your website, and if that person lives in Bolivia and the article is read in Bolivia...there is a good chance you will be sued in Bolivia...etc. Be careful what you say and do on the web...if you slander or libel someone, you may end up in court wherever they were damaged!

4. Do not confuse the seemingly private nature of working on your own computer with the protection inherent in working in private. In reality, there is nothing more "public" than the internet...it is easy to create, whatever you send is gone forever and can not be retrieved, and it is instantly world wide. Remember-even if not insulting here, it may be insulting in other cultures. To accuse an American of not taking care of his or her father is not a particularly extreme insult. To make the same accusation of a Chinese son is a tremendous assault that will enrage. Once you click the mouse your message is world wide and read by anyone who has a computer. Be careful.

5. So far, this liability has applied to web sites and message boards. It is predictable that it will soon apply to any e mail that you knew or had reason to know would be forwarded to third parties. The well known tendency of people to send e mails far more extreme than other types of communication must be carefully controlled. And remember...even if you delete an e mail, it is normally simply stored in another part of your computer and easily retrievable by someone versed in computers.

