

## **Final Year Project Research Proposal**

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**Course:** Law & Accounting

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**Proposed Project Title:** An investigation into the law of defamation on the Internet.

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### **Background:**

The rise in the popularity of the Internet in recent years has led to a huge increase in the number of potentially defamatory comments being published by ordinary citizens. Such comments also have a much higher potential to do damage to a person's good name, given the millions of Internet users who exist throughout the world. Traditionally, publishers would be professional book or newspaper publishers, who would have some knowledge of defamation law. The average internet publisher, however, be it by way of email, bulletin boards or web sites, is an ordinary member of the public.

### **Issues:**

One of the principal issues in the area of Internet defamation is that of jurisdiction. It is possible for me to use a computer in Ireland to post a potentially defamatory comment on a site maintained by an American company about a French citizen. The inherent international nature of the Internet makes this a likely occurrence. Under the Brussels Convention (implemented in Ireland by the Jurisdiction of Courts and Enforcement of Judgements (European Communities) Act 1988) a tort case may be heard here if the harmful event occurred here. The European Court of Justice have held (in *Sheville & others v. Presse Alliance SA*<sup>1</sup>, where a French newspaper distributed in the UK was sued in England) that in libel cases, a plaintiff may sue for the total damage caused by the libel in the country of publication (i.e. France in this example) or else sue in each jurisdiction where the publication was distributed (i.e. England) for damage arising in that jurisdiction. This judgement was

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<sup>1</sup> Judgement of March 7<sup>th</sup> 1995

followed by Barron J. in our High Court in *Jay Murray v. Times Newspapers Ltd*<sup>2</sup>. In some instances there is an agreement between the parties as to where action will lie (for example in order to sign up for Yahoo!'s services, you must agree that your relationship with them will be governed by Californian law).

Another prominent issue is the liability of Internet Service Providers (ISPs). If I post a defamatory comment on a bulletin board, is the maintainer of the board liable as a publisher? This issue has arisen in the US in two well-known cases. In *Cubby v. CompuServe*<sup>3</sup> the defendants were held to be a distributor, rather than a publisher (similar to a newsagents) because they neither knew nor had reason to know of the defamation. Contrast this with the decision in *Stratton Oakmont, Inc. v. Prodigy Services Co.*<sup>4</sup>, where the defendants were held liable because they held themselves out to be monitoring their boards for inappropriate content. As many commentators have pointed out<sup>5</sup>, these decisions seem to suggest that to avoid liability, ISPs should do as little as possible to monitor the content of their bulletin boards. In the US itself, this area has been legislated for in the Communications Decency Act 1996, which provides that no ISP will attract liability by efforts made in good faith to restrict objectionable material.

I propose to conduct a more detailed investigation into these areas, along with any other issues that arise following further research. This may include such issues as the potential conflict between the right to privacy<sup>6</sup> (given the strong feeling toward Internet anonymity which exists<sup>7</sup>) and the right to good name<sup>8</sup>, which may arise if the identity of people making defamatory comments is unknown. The Working Group Recommendation made reference to this potential conflict.

### **Methodology:**

The research for this project will consist of consulting journal articles, textbooks, case law and the Internet itself for information on this topic.

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<sup>2</sup> High Court, unrep, 12 December 1995

<sup>3</sup> 766 F Supp 135 (SD NY 1991)

<sup>4</sup> 1995 NY Misc. 23 Media L. Rep. 1794.

<sup>5</sup> Edwards L. “Defamation and the Internet: Name Calling in Cyberspace”

([www.law.ed.ac.uk/c10\\_main.htm](http://www.law.ed.ac.uk/c10_main.htm)), Johnston, Handa & Morgan “Cyber Law” Stoddart, Toronto, 1997

<sup>6</sup> *Kennedy v. Ireland* (1987) IR 587 – Right to privacy includes right not to have telephone calls monitored

<sup>7</sup> Recommendation 3/97 *Anonymity on the Internet*, Adopted by the European Working Party on Data Protection on December 3<sup>rd</sup> 1997

<sup>8</sup> Art 40.3.2° Bunreacht na hÉireann