DEFAMATION AND INVASION OF PRIVACY IN THE INTERNET AGE

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I. INTRODUCTION

The era of anonymous defamation and Internet impersonation has arrived. Given a largely unregulated Internet landscape and boundless international access to information online, it is no surprise that the Internet has become a minefield of defamation and invasion of privacy violations.

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Problems with access and anonymity are compounded by the fact that Internet content is largely permanent, allowing victims of Internet defamation and invasions of privacy to suffer continuous harm to their reputation and right to be left alone. In yesteryear, the effects of print libel disappeared as newspapers and magazines were consigned to waste baskets or to the far reaches of stacks in a library. With Internet defamation, however, offending content almost never comes down once it has been posted. In addressing the changes in technology and media, the following will discuss current strategy and legal liabilities for defamation, including international perspectives on litigation abroad.

At the center of increasing Internet defamation is § 230 of the Communications Decency Act (CDA).[1] Passed in 1996, the Act gives Internet service providers (ISPs) virtually complete immunity against claims for Internet defamation. Although § 230 was initially approved with lofty goals of developing the Internet and promoting ISP self-regulation, the Act substantially underestimated the shape the Internet would take and its long-term effects. The rise of social media websites and Internet chat forums have completely transformed the way individuals interact and share information. Notwithstanding the Internet's positive impacts on society, it has also provided individuals with the unlimited ability to post defamatory content online.

The harms caused by callous and sometimes relentless defamers are enormous. Numerous harrowing defamation stories from our legal experience demonstrate why this issue deserves greater political attention.[2] In one case, for example, a successful attorney was incessantly taunted by a disgruntled former suitor who created a website virtually dedicated to defaming the attorney. While certain ISPs complied with takedown requests, others required injunctions. Even as counsel successfully enjoined offending websites, the defamer, who could never be physically located, continuously changed ISPs. Eventually, the defamer opted to use a foreign ISP to avoid U.S. jurisdiction over the website entity.

In another case, a California resident was falsely impersonated on Facebook by an individual living in Europe.[3] This individual executed a vendetta against the California resident by creating a false Facebook profile,

1. Communications Decency Act (CDA) of 1996, 47 U.S.C. § 230 (2012).

2. Victims' identities have been concealed to ensure their safety and privacy.

3. Impersonations have become so widespread that there are a number of support groups dedicated to raising awareness and building a sense of community for victims. See, for example, organizations such as WORKING TO HALT ONLINE ABUSE, http://www.haltabuse.org (last visited Aug. 28, 2018); and WITHOUT MY CONSENT, https://withoutmyconsent.org (last visited Aug. 28, 2018).

advertising that the victim sought to engage in homosexual activity and was looking for contact from all interested parties. Much like the first example, such personal attacks on the victim significantly impacted the victim's professional life and inflicted a great deal of personal distress. Most unfortunate of all is that the current legal framework made it very difficult for either injured party to recover from such defamation.

II. SECTION 230

A. *History Behind Section 230*

§ 230 of the CDA arose as an attempt to resolve the inconsistent rulings in *Cubby, Inc. v. Compuserve, Inc.*, and *Stratton Oakmont, Inc. v. Prodigy Services Co.*, regarding the treatment of ISPs as distributers or publishers of online content. In *Cubby*, the plaintiffs sued Compuserve for hosting defamatory content on a web page known as "Rumorville."[4] Compuserve argued that it was merely an electronic library that gave subscribers access to information sources and special interest forums, classifying it as a distributer of information content and thus relieving Compuserve of liability. Granting summary judgment to Compuserve, the court held that, since the ISP functioned the way a typical print distributor would, it exercised little editorial control and so could not be held responsible for defamation.[5]

In *Stratton Oakmont*, however, the court came to the opposite conclusion, ruling that Prodigy (the ISP) was liable as a publisher.[6] Unlike Compuserve, Prodigy maintained some editorial control over its webpages. Given this minimal control, the court determined that the ISP functioned like a full-fledged publisher and therefore should be liable for the content uploaded to its pages.[7] *Stratton Oakmont* created serious problems for ISP self-regulation by increasing the probability that ISPs would be held responsible for their information content.

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4. Cubby, Inc. v. Compuserve, Inc., 776 F. Supp. 135, 137 (S.D.N.Y 1991).

5. *Id.* at 140-41.

6. Stratton Oakmont, Inc. v. Prodigy Servs. Co., No. 31063-94, 1995 N.Y. Misc. LEXIS 712, at *3-4 (N.Y. Sup. Ct. Dec. 11, 1995), *superseded by statute*, Communications Decency Act of 1996, Pub. L. No. 104-104, § 230, 110 Stat. 56, 137-139, *as recognized in* Zeran v. Am. Online, Inc., 129 F.3d 327, 331 (4th Cir. 1997).

7. *Stratton Oakmont, Inc.*, 1995 N.Y. Misc. LEXIS 712, at *4.

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