

Davis Wright Tremaine LLP



# **Blogging, the First Amendment, and Other Publishing Issues for Website Operators**

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# The Media of the Future...

- Blogs are a growing part of daily life.
- Blogs can effect social and political change.
- Blogs raise novel legal questions.



# Section 230: The Text

“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.”

47 U.S.C. § 230(c)(1).



# Section 230: Congressional Intent

- Promote development of the internet without government intrusion;
- Encourage the use of blocking and filtering technologies;
- Overrule *Stratton Oakmont v. Prodigy*.



# Perverse Effects on Internet “Decency”?

- Near-absolute immunity for third-party content;
- Incompatible with legislative intent;
  - Incentives to edit content;
  - “Active” versus “passive” editing.



# Bloggers as Journalists: Reporter's Shield Laws

- Journalists' rights to keep sources confidential under state laws;
- The difficulty of defining "journalist;"
- Broad protection afforded by *Apple Computer Inc. v. Doe*.



# Today's Anonymous Pamphleteers?

- The First Amendment protects anonymity, playing a historic role in shielding government critics.
- The *Doe* cases: Some courts have protected anonymous bloggers, while others have not.



# Transitioning Newspapers Online

- Newspapers need to consider:
  - Updating internal policies with respect to journalist-bloggers, user behavior statements, and potential security breaches; and
  - Acquiring more comprehensive insurance policies.



# **“We Made an Error...”**

- State statutes give print publications an incentive to publish retractions and corrections when they have erred.
- Online publishers often fail to recognize the benefit of such actions.



# Privacy

- Bloggers disclose intensely private facts, subjecting them to actions for:
  - Invasion of privacy; and
  - Public disclosure of private facts.
- *Cutler v. Steinbuch*, still pending in D.C. federal court, is an example.



# Bloggging in the Workplace

- Risks include: disclosure of confidential information, vicarious liability, and tainting of business image.
- The First Amendment protects public employees.
- State statutes, the National Labor Relations Act, and whistleblower laws protect private employees.



# Compliance with the Americans with Disabilities Act

- The National Federation of the Blind has sued Target for failing to make its website ADA-compliant.
- Businesses should consider this risk when creating or updating websites.



# Mash-ups, Reinvented

- Combine services from two or more sites;
- Unlikely to face significant long-term legal barriers;
- Short-term considerations: contract, trademark, copyright, patent, false advertising, publication of obscenity, invasion of privacy, and rights of publicity.



# The End

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