ARE TWITTER USERS LIABLE FOR REPUBLISHING THE DEFAMATORY TWEETS OF OTHERS?

Under the republication doctrine (known as the **"multiple publication rule"**), repeating false and defamatory statements has traditionally triggered liability for the repeater. However, some confusion has emerged regarding retweeting the posts of others on Twitter, the popular microblog site. Does retweeting the defamatory statement of another open the retweeter to liability? This article examines exceptions to the republication doctrine such as the single publication rule, the wire service defense, and the Communications Decency Act (CDA) to answer this question. A review of court opinions leads to the conclusion that Section 230 of the CDA provides a powerful shield for users of interactive computer services such as Twitter.

When to claim Immunity?

There can be no question that tweets can be the subject of libel lawsuits. The British common law extended liability to those who repeated the libelous publications of others through the republication doctrine, which rests on the proposition that "any person who takes part in making the defamatory matter known to another may also be liable." This rule became standard in US defamation law. Repeating the defamatory statements of another should not shield the repeater from liability because of the potential for additional harm caused by the circulation of the statement, which may itself enhance the believability of the statement merely by being repeated enough times. Those who played a "secondary part in disseminating defamation" such as libraries, news vendors, booksellers, and other distributors, were only able to claim immunity when they could prove that they had no reason to believe the publications were libelous. In addition, most US states have adopted a version of the "single publication rule," either through legislation or court ruling.

The policy underlying the defense that distributors of news articles should not be liable for the content provided by third parties unless they know it to be false or otherwise exercise editorial control over the story – instead is representative of how the classic republication rules have been applied to Internet publications.

Moreover, US courts have uniformly ruled against the proposition that online publication is continuous publication that indefinitely tolls the statute of limitations.

Is the CDA's safe harbor for ISPs?

In the Internet era, the coverage of the single publication rule clearly only protects original publishers and passive distributors, not those who make a conscious choice to spread potentially defamatory information. As such, when the libel of one publisher is republished – or retweeted – by another publisher, it is unlikely that the single publication rule would serve as an adequate shield for the republisher. Twitter itself would certainly be treated as a distributor, rather than a publisher, because it does not exercise editorial control over its users; as Twitter notes in its Terms of Service, content is the responsibility of its creator. But Twitter users who retweet the content of others are making a conscious choice to repeat this content, making them appear to be more classic republishers than distributors. However, The CDA may provide a more robust shield for some, if not all, republication via Twitter. Of primary interest for this article is the CDA's safe harbor for internet service providers and users, contained in one seemingly simple sentence in Section 230 of the act: "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."

Retweeter liability depends on two issues:
1. whether courts would extend near blanket immunity for providers to users, and
2. the extent to which adding comments to the original tweet would make the user fall qualify as an "information content provider."

Hat Tip

A retweet with no comment of your own can easily be seen as a sign of approval of what you're relaying. These cautions apply even if you say on your Twitter profile that retweets d o not constitute endorsements." But this policy has come under fire from several critics who saw it as overly restrictive and misunderstanding of what retweeting actually means With this in mind, the immunity granted by Section 230 to Twitter users who retweet, and even comment on the retweets of others by embedding the original tweets into their own posts, makes more sense. A retweet may be an endorsement, but it also may not, and the plain language of Section 230 reflects Congressional intent that web users should not take on defamation liability for statements originating from third----party content creators.

On the other hand, a "hat tip," designated by HT followed by a username, gives credit for pointing you in the direction of something interesting, a "nod in acknowledgement that they provided you with the fodder (but not the content) for that tweet." This use, which is preceded by the Twitter user's own thoughts, comments or assertions, is less likely to be granted immunity under Section 230.

Compiled by SCM (2019) from
When Retweets Attack: Are Twitter Users Liable for Republishing the Defamatory Tweets of Others? Working paper (April 2012), Daxton R. "Chip" Stewart, Texas Christian University,d.stewart@tcu.edu