



Old rules apply in cyberspace

Isabelle Chan, ZDNet Asia on January 25th, 2007 (January 25th, 2007)

There is a clear legal line when it comes to blogging, and those that spread false information electronically may land themselves in legal hot water, lawyers say.

Commenting on the recent case where [two Malaysian bloggers were sued](#) for defamation by the *New Straits Times*, Singapore-based lawyer Vijai Parwani at [Parwani & Co](#), said: "It must be remembered that defamation is a legitimate action in most Commonwealth jurisdictions. The only country which champions free speech over defamation is the United States, where the law requires proof of 'actual malice' in order to succeed where the party defamed is a public figure.

"So, it is not surprising that the action in Malaysia has taken its current course," Parwani added.

Be it publishing in a traditional medium like print, or the Internet, the same rules apply.

IT lawyer Bryan Tan at [Keystone Law Corp](#) said: "Blogging is just like publishing, and just because it feels like you are writing your diary does not mean it is like your diary. A blog is a publication open to the whole world."

Mark Lim, director of law firm [Tan Peng Chin LLC](#), also noted an area where there is still a lack of definition. "Jurisdictional issues are still evolving", he said, noting that Web sites cross geographical boundaries, but "the law is still unclear in this area" of cross-border legislation.

Another potential legal issue pertains to third-party comments on blogs. Parwani noted: "Some blogs allow a third party to post comments, and this is where it gets complicated. To what extent would the blogger be liable for the contents posted on the blog by a third party?"

According to lawyers, disclaimers only go so far.

Parwani explained: "Certainly a disclaimer clause would aid the blogger in a claim against defamation, but common sense dictates that a disclaimer clause surely cannot be the panacea for the blogger if he knows the contents posted on his blog are defamatory of someone, but chooses to do nothing about it."

He added: "I am not aware of any recent case where the courts have held that a disclaimer clause would absolve the blogger of all liability, and I dare venture to add that the courts would not allow a blogger to take absolute refuge behind the cloak of a disclaimer clause if the issue were to arise."

And what about media companies that host blogs written by third parties who are not full-time employees? Well, they can still be liable, said Tan.

"I think if it is non-staff, these companies can claim they are like network service providers who enjoy protection under section 10 of the Electronic Transactions Act," he explained. "But their liability starts once they have notice of these offensive postings."

He added: "Companies running blog sites should remove blogs when requested to do so either by the authorities or the courts."

Parwani said a dose of common sense and taking responsibility for their blogs will help bloggers go a long way in avoiding a potential defamation lawsuit.

"Even if the claim is thrown out by the court at the end of the day, you certainly do not want to go down the road of having to defend the matter and incurring unnecessary legal costs along the way," he added.

For those who want to stay on the right side of the law, Parwani advised: "Keep the blog about yourself and your thoughts without having to make specific references to any particular individual.

"If you have to make reference to someone, then ensure that it is the truth and nothing but the whole truth," he added.

Unmasking the pretenders

False information in the form of phishing Web sites, or a recent example involving Microsoft and the Mozilla Firefox browser, is another area where the rule of law is clear.

In November 2006, a site proclaimed that [Microsoft had bought the Firefox browser](#). The site (screen shot below) carried the MSFirefox.com URL address, and was called the "official page of the Microsoft acquisition of the Mozilla Firefox browser".

Richard Sauer, associate general counsel of legal and corporate affairs, [Microsoft Asia-Pacific](#), told ZDNet Asia that the software vendor did not take any legal action in this case. However, he said in an e-mail: "Microsoft does investigate infringing, false or deceptive Internet postings, particularly when our customers are at risk".

"Microsoft has launched global legal enforcement campaigns targeting senders of illegal e-mail, online identity thieves or 'phishers', as well as Internet domain cybersquatters and typosquatters," Sauer said.



According to lawyers, the companies in this case--Microsoft and Mozilla--have grounds to take action.

Parwani said: "Microsoft would be able to take action for possible copyright infringement, 'passing off' or even defamation if the contents on the hijacked site were untrue and libelous."

Echoing Parwani's views, Keystone's Tan said companies in such cases have a multitude of claims. "The authorities may also launch securities action for spreading false information," he noted. "For civil action, falsehood generally is sufficient to create liability. For criminal action, this would need to be accompanied by a motive, say, to profit from such false news."

"Additional claim of unfair trade practices, which is illegal in some countries, could be mounted, too," Tan added.

Lim also noted that in the context of [phishing sites involving banks](#), a police report will generally be filed.

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