

Internet Immunity

By Reg P. Wydeven
December 16, 2006

Before Britney Spears turned her husband K-Fed into Fed-Ex, the couple sued 'Us' magazine for defamation. 'Us' reported that she and Kevin Federline made a sex video and "acted goofy" in their lawyers' office when discussing the possibility of the video's unauthorized public release.

In their suit, Spears and Federline insisted the video did not exist, and therefore, no such meeting ever took place with their attorneys. Accordingly, the celebrity couple claimed that the story defamed them. The judge dismissed their suit, reasoning that in today's world, such stories may no longer be defamatory, especially when a couple puts their sexuality "squarely, and profitably, before the public eye." The judge was referring to sexually explicit footage of the couple in their reality TV show 'Chaotic' and Spears' sexually provocative performances, videos and photographs.

When the 'Us' story broke, hundreds of news sites reported it. But even if Spears' defamation suit would have prevailed, she still couldn't sue all of the other web sites that republished the defamatory story.

The California Supreme Court recently held that web sites that publish inflammatory information written by other parties cannot be sued for libel. The holding stemmed from a lawsuit filed by two doctors against a San Diego woman for posting allegedly libelous email on two web sites.

Ilena Rosenthal, the defendant, is a woman's health advocate who runs various message boards and promotes alternative medicine. Rosenthal received an email from Tim Bolen accusing one of the plaintiffs, Dr. Terry Polevoy of Canada, of stalking a Canadian radio producer. Bolen's message also harshly criticized Polevoy and the second plaintiff, Dr. Stephen Barrett of Pennsylvania, both of whom operated web sites devoted to exposing health frauds.

Polevoy and Barrett demanded that Rosenthal not post Bolen's diatribe, warning her that it was false and defamatory. Rosenthal posted the piece anyway on two newsgroups' sites. Polevoy and Barrett immediately sued her, Bolen and others for libel.

Some of the Internet's heavy hitters, including Amazon.com, America Online Inc., eBay Inc., Google Inc., Microsoft Corp. and Yahoo Inc., came to Rosenthal's defense fearing that a ruling against her would expose them to liability.

Much to their delight, the Court held that Rosenthal's actions were protected, citing the Communications Decency Act of 1996, which provides broad immunity from defamation lawsuits for people who publish information on the Internet that was gathered from another source.

"The prospect of blanket immunity for those who intentionally redistribute defamatory statements on the Internet has disturbing implications," admitted Associate Justice Carol A. Corrigan in the Court's decision. "Nevertheless ... statutory immunity serves to protect online freedom of expression and to encourage self-regulation, as Congress intended."

Since the dismissal of Spears' case, Federline has allegedly threatened to release the 'non-existent' sex tape unless Spears agrees to share custody of their two sons. Federline has denied making the threat.

Newly single, Spears made headlines again, including the cover story of 'Us', after being photographed in a short skirt not wearing underwear. Then to quote one of her hits, Oops, she did it again. And again. And again. After being photographed commando on at least four occasions, Spears will have a difficult time suing anyone for publishing the photos, for, as Judge Lisa Hart Cole so delicately put it, she only has herself to blame for putting her privates so squarely before the public eye.

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