

The Limits of Free Expression: Defamation in the Internet Age

September 11, 2012

Further Reading

The right to freedom of expression protects individuals as they seek and share information, engage in debate, and voice criticism—but free expression is not without limits.

As the Internet has expanded, courts have grappled with the challenge of protecting free expression while upholding other rights, such as privacy and reputation, which are also enshrined in international human rights doctrine.

Defamation law protects privacy and reputation. If a citizen journalist publishes an article that falsely accuses an individual of wrongdoing, that individual can sue under defamation law, forcing the journalist to retract the false statement. However, the picture becomes more complicated if, for example, a citizen journalist accuses a government official of corruption and the truthfulness of the allegation is unknown. This scenario requires courts to balance a citizen's right to free expression against the right to reputation of the government official. Government officials should be subject to a higher degree of scrutiny and criticism than an ordinary citizen.

Unfortunately, defamation law has been used in some countries by the rich and powerful not merely to defend privacy and reputation, but also to quash legitimate speech, including criticism of government officials and comment on matters of public interest.

Today, CDT is releasing a paper that describes how the framework provided by international human rights principles should be applied to limit such abuses of defamation law. It discusses, for example, the practice of charging defamation as a criminal offense, which human rights bodies have consistently condemned. While some countries have de-criminalized defamation, others have refused to do so; Russia recently *re-criminalized* it.

The paper also examines the practice of "libel tourism," wherein wealthy individuals take advantage of loose jurisdictional rules to sue journalists and others in countries with rules that tend to favor defamation plaintiffs. This practice is facing possible reform in England, which had been a "defamation forum of choice" for movie stars and oligarchs alike. When American movie actress Cameron Diaz, a US resident, wanted to file suit against a US-based tabloid, *The National Enquirer*, she took her case to England, where it was accepted on the grounds that defamatory statements appearing on the tabloid's website could be read online in the UK.

Aggressive application of defamation not only limits the speech of the defendants in specific cases, it also has a chilling effect on other users, who may choose not to express themselves for fear of facing expensive litigation.

Human rights instruments implicitly endorse defamation laws by recognizing rights to reputation and privacy. However, if not carefully applied, defamation laws can have a chilling effect on speech, endangering the rights of individuals engaging in expression and of those entitled to seek and receive information, opinions, and ideas. The paper we release today, "Defamation in the Internet Age: Protecting Reputation without Infringing Free Expression," aims to explore the tensions between these rights using examples from a diverse range of jurisdictions around the world and to suggest how the balance should be struck.



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