

Defamation + Media Law Conference

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How do you take action against anonymous defamers on the Internet or Social Media?

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Why is internet publication of particular concern?

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- Global reach of the internet
- Speed of republication on other websites
- Search engines
- Anonymity
- Interactivity – social networking
- Unusual combination of malice and reach
- Seriousness?

The legal context – causes of action

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- Defamation
- Privacy
- Data protection
 - *Google Inc v Vidal-Hall & Ors* [2015] EWCA Civ 311
 - *His Highness Prince Moulay Hicham Ben Abdullah Al Alaoui of Morocco v Elaph Publishing Limited* [2015] EWHC 2021
- Harassment

The legal context – intermediary defences

- Section 5 of the Defamation Act 2013
- Section 10 of the Defamation Act 2013
- Section 1 of the Defamation Act 1996
- Regulations 17 to 19 of the Electronic Commerce (EC Directive) Regulations 2002

- Common law

	Defamation only	Defeated by notice	Substantive law / jurisdiction	Depends on practicality of proceedings	Relate specifically to the Internet
s.1 DA96	Yes	Yes	Yes	No	No
s.5 DA13	Yes	Yes	Yes	Yes	Yes
s.10 DA13	Yes	No	No	Yes	No
Regs	No	Yes	Yes	No	Yes

The legal context – potential criminal offences

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Section 16 of the Offences Against the Person Act 1861	Section 51 of the Criminal Justice and Public Order Act 1994
Section 49 of the Children and Young Persons Act 1933	Protection from Harassment Act 1997
Section 2(1) of the Obscene Publications Act 1959	Section 55 of the Data Protection Act 1998
Section 21 Theft Act 1968	Sections 28 to 32 of the Crime and Disorder Act 1998
Juries Act 1974	Section 45 of the Youth Justice and Criminal Evidence Act 1999
Section 1 of the Protection of Children Act 1978	Section 127 of the Communications Act 2003
Contempts under the Contempt of Court Act 1981	Sexual Offences Act 2003
Part III of the Public Order Act 1986	Sections 8 and section 10 of the Sexual Offences Act 2003
Section 160 of the Criminal Justice Act 1988	Section 8 of the Fraud Act 2006
Section 1 of the Malicious Communications Act 1988	Serious Crime Act 2007
Computer Misuse Act 1990	Section 76 of the Serious Crime Act 2015
Section 5 of the Sexual Offences (Amendment) Act 1992	Section 33 of the Criminal Justice and Courts Act 2015

Take a legal approach or not?

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- A legal approach may:
 - allow the identification of an anonymous guilty party;
 - deter the guilty party from proceeding with his activity;
 - provide the fullest vindication;
 - allow the recovery of damages and costs (if only as a penalty); and/or
 - result in an injunction which will bind not only the guilty party but also any third party with notice.
- Will a legal approach be counter-productive (for example will it be likely simply to elicit more abuse material or otherwise give rise to adverse comment)?
- Can other approaches be more effective or can they be run most effectively in tandem with a legal approach?

The options for a legal approach

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- Corresponding with the guilty party (if necessary through an email address, social networking site) – but remember any letter sent may simply be posted up
- Taking steps against an intermediary, for example a take-down request to an ISP or blog host
 - Priority service
- Taking steps to identify the guilty party
- Obtaining orders against the guilty party
- Notifying the police
 - [Guidelines on prosecuting cases involving communications sent via social media](#)
 - Internet generally
 - threats; targeted communications; breaches of court orders etc;
 - grossly offensive, indecent, obscene or false (high evidential threshold and public interest test)
 - Social media: violence against women and girls; hate crime; false or offensive social media profiles
 - Anonymity - orders pursuant to Section 11 of the Contempt of Court Act 1981

- Responsibility for publication – what participation is required for liability to arise?
- Content / technical means to identify those responsible
- The use of disclosure orders in Internet cases
 - *Lockton v Persons Unknown and Google*
 - *AB Bank Ltd v Abu Dhabi Commercial Bank*
- Persons unknown orders in Internet cases
- Spartacus orders

- Orders and damages can be obtained even if the identity of the guilty party is not known
 - *Brett Wilson LLP v Person(s) Unknown, Responsible for the Operation and Publication of the Website www.solicitorsfromhelluk.com* [2015] EWHC 2628 (QB) (16 September 2015)
 - *Smith v Unknown Defendant, Pseudonym 'Likeicare' & Ors* [2016] EWHC 1775 (QB) (15 July 2016)
- Can be served via an email address or even a social networking site
- Can require the guilty party to come forward and identify himself (Spartacus)
- Can restrain the guilty party from disseminating information
- May bind any third party with notice

- Internet publication may be seen as less tangible than for example newspapers publication
- But allegations published on the Internet can obtain traction – particularly if supplemented by a forum
- Publication may be small but to key individuals
- Libel
 - *Gentoo & Peter Walls v Baines & Others* - £119,000 (libel and harassment)
 - Factors: seriousness; extent and duration of publication – talk of the town; audience – key associates and stakeholders; actual damage caused – “no smoke without fire”; aggravation
 - *Brett Wilson LLP v Person(s) Unknown* - £10,000
 - *Smith v Unknown Defendant* - £10,000

Legal approaches to tackling online abuse

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