

The Tale Of A Model, A Blogger, and Internet Anonymity

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I couldn't resist any longer.

By now you know the story of Rosemary Port, the blogger who had anonymously blogged about model Liskula Cohen, stating that Cohen was a "skank" and a "ho," among other choice character descriptions. You also know that a court forced Google to reveal Port's identity.

Up until that time the story wasn't that interesting to me because the case was in New York and it's not entirely unusual for an Internet Service Provider to turn over an anonymous blogger's identifying information.

It wasn't until I found out today that Ms. Port is blaming everyone but herself for her unfortunate state of affairs that it got my attention. Why did it get my attention? Because it really irks me when people don't take responsibility for their actions. **It also saddens me when someone gets burned because they believed that anonymous speech was absolutely protected under the First Amendment, regardless of the type of speech.**

Ms. Port blames Cohen for drawing mass attention to a site that had received, in her own words, "one or two hits," before Cohen filed the lawsuit. I find that hard to believe, but let's assume that only a handful of people other than Port and Cohen read the post; it still might be actionable defamation.

First, it was not Cohen who publicized the alleged defamatory statements. It was Port who used one of the most public forums known to man (AKA the Internet) to speak ill of Cohen. Sure, Cohen drew more attention to the posts, but that's not entirely relevant to a claim for defamation as I explain in my next point.

Defendants have argued many times unsuccessfully in California that Plaintiffs have defamed themselves by choosing to file a lawsuit. In other words, they argue that plaintiffs are republishing the defamatory content so they are responsible for damaging their own reputation.

What is strange about this argument is that it is in essence an admission by the party making the argument that they defamed the other party. But I'm sure the party making the argument doesn't see it that way.

In reality, in most circumstances, it is simply that the defendant misunderstood one of the basic elements of defamation law, publication. In order for a plaintiff to demonstrate a publication, he must show that the alleged defamatory statement was communicated to a third party. As long as at least one other person (other than Port and Cohen) read the alleged defamatory statements, the publication element is likely satisfied.

The third problem with Port's perspective is that it presents a rather ill-informed view of the Internet. While I admire Port's willingness to share her views online, she apparently believed that her anonymity was absolute. This is unfortunately a very common misunderstanding of the Internet. The truth of the matter is that NO ONE is absolutely anonymous on the Internet. Don't believe me? Check this out: <http://ipid.shat.net/>

Most likely when you clicked on that link above you saw your IP address and your type of computer and operating system staring right back at you.

People can find out who you are on the Internet if they want to bad enough. The way I describe this concept to my clients is by drawing an analogy to car theft. I tell my clients that a thief can take your car even if you fortify it with a club or even lo-jack. Yes, by placing those protections on your car you make it less likely, but, if they really want to steal it they will.

So while Port is correct in believing that she has a right to anonymous speech, that does not include the right to defame someone anonymously on the Internet.

Now don't get me wrong. I do not support Cohen, either. Cohen probably could have chosen a more inconspicuous way to discover Port's identity (I don't know whether she tried other methods or not). But if she went straight for the bazooka (the lawsuit) then I think may have worsened the situation in the short term. This is probably what Port was referring to when she said that Cohen "defamed" herself. What she was probably trying to express was that Cohen caused the damage to her reputation; not that Cohen caused the defamation, strictly speaking.

Further, I do not believe Cohen will prevail if the lawsuit proceeds, and even if she does, I don't believe her damages will be significant. I do not believe Cohen will prevail (although it may be close) on the "ho" and "skank" statements because they will likely be seen as epithets, which are typically not actionable. A fact-finder would examine the totality of the circumstances, of course. But I don't think a jury is going to feel very sorry for Cohen and so the damages probably won't be significant.

But the story doesn't end there.

What really blew my hair back is that Port is suing Google for allegedly having "breached its fiduciary duty to protect [Port's] expectation of anonymity," according to her attorney.

Here is what her attorney said and then I'll follow up with some commentary:

"Our Founding Fathers wrote 'The Federalist Papers' under pseudonyms. Inherent in the First Amendment is the right to speak anonymously. Shouldn't that right extend to the new public square of the Internet?"

My response is that the right to speak anonymously **DOES** extend to

the Internet. Some would even argue that such speech is given even **GREATER** protection on the Internet. Further, it is not as if Ms. Port was not given an opportunity through the judicial process to oppose the subpoena. She just didn't win. In addition, Google had no choice but to comply with the subpoena. What Port expect Google to do? Just ignore the subpoena?

Unless I a missing some very key facts (and I admit that I don't know the full story) I don't see how Port will prevail against Google. She definitely will not prevail in the court of public opinion. She will likely appear to be a blogger who just can't/won't say sorry.

At the end of the day, people do have a right to speak anonymously on the web. But the First Amendment will not protect defamatory speech, which is another way of saying that people are responsible for what they write or post.

You are not anonymous.

The quotes above were taken from the [Daily News article](#) written by [George Rush](#).

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