

We may not be published but we're all authors now

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Lord McAlpine's legal action against the BBC and up to 10,000 tweeters could have profound consequences for other users of social networking sites. In fact, the case may change the way we use social media forever says Hugh Hitchcock, Head of Dispute Resolution and managing partner of DJM Solicitors.

Conservative peer Lord McAlpine has rightfully received a £185,000 settlement after a BBC *Newsnight* report wrongly labelled him a paedophile. He has also contacted ITV after the presenter Phillip Schofield handed the Prime Minister a list of alleged abusers live on the *This Morning* show on 8 November. Unfortunately for the broadcaster, some of the names on the list - which were taken from various internet sites - were clearly visible to viewers.

Most worryingly for those of us outside of media circles, he is also perfectly properly considering legal action against the estimated 10,000 tweeters who falsely accused him of being a paedophile on the social networking site, and have failed to withdraw or delete their statements. Through litigation McAlpine is making a very clear point – every tweet or social media post is a publication rendering the author potentially liable, and in every 140 characters we type or share, we could be inviting a lawsuit.

The increasing usage of social media, blogs and user-generated content led to the UK Government producing a new Defamation Bill in May. The new bill seeks to address the issue of who exactly is the author of content – as

secondary publishers such as forum hosts and social media sites cannot be responsible for the words of every single post that goes online through their channels.

Interestingly, on his insistence, the majority of the so-called 'McAlpine Tweeters' will only have to apologise and make a small charitable donation. But, the other 500 million Twitter users should be watching and listening carefully. This may be the first example of somebody suing 10,000 users for comments on the same subject, but it is by no means the first high-profile case of bad behaviour on Twitter that has led to legal intervention.

We only need to look back to early November for the most recent Welsh case of legal proceedings being brought for damaging online posts.

Nine people were each forced to pay £624 to a woman raped by former Wales footballer Ched Evans, after admitting to revealing her name on Twitter and Facebook.

They were all charged with publishing material likely to lead members of the public to identify the complainant in a rape case, contrary to the Sexual Offences (Amendment) Act 1992.

As this case shows, more and more people are blurring the distinctions between the kind of a private conversation you might have in the pub, or over a garden fence, and a highly visible public comment posted on the internet for the world to see. Tweets are not private and by no means disappear like words in conversation - in legal terms, every time a website is 'hit', it is considered as being republished, therefore pages can never go out-of-date unless they are

taken down. The potential audience is unfathomably large, and the mode and extent of visibility are highly relevant factors to the level of damages awarded to the defamed.

However, even after a person has deleted a post, they can still find themselves in legal hot water.

Liam Stacey, a Swansea University biology student, served a month in prison after tweeting abusive comments about former Bolton Wanderers footballer Fabrice Muamba, who suffered a heart attack on the pitch. Stacey was subsequently banned from the university for the rest of the academic year and forced to sit his exams a year later as an external candidate.

This is an example of a drunken, foolish act that has caused irreparable damage to him and his family. Stacey is no longer invited to Swansea University's traditional graduation ceremony and his job prospects will be severely affected for some time, if not the rest of his life. Did he consider the implications of his actions at the time of writing? Of course not. How many people stop to think that a post could be libellous before clicking 'tweet'?

It is not only members of the general public that have spectacularly fallen from grace online. A Caerphilly councillor was forced to pay £3,000 and legal costs to a political rival for posting a libellous comment on Twitter.

Plaid Cymru Cllr Colin Elsbury posted that Eddie Talbot had been removed from a polling station by police during a by-election in 2009. He claimed the tweet was the result of a mistaken identity and went on to win the by-election, but as far as his reputation goes, the damage had been done.

The issue facing all internet users is the very real danger linked to posting defamatory material about others online. It's scary to think that every time we update our status or press the retweet button we are risking criminal proceedings, but that is increasingly the reality.

Sharing something we find funny, or posting something accusatory about a celebrity or even a product or brand name, might seem innocuous at the time, but it could end up costing thousands of pounds at best, not to mention the long-term damage to reputation.

Further, there is no physical jurisdiction online. So, regardless of where the defamatory statement is published, if somebody has a reputation in the place it was read, the author can be sued.

If you are genuinely determined to post something potentially defamatory about another person online, be extremely careful to make sure it is based in truth and proven facts, as fundamentally this is the best defence in court. Admittedly not all untrue statements are defamatory. But the risk remains, as a claim for malicious falsehood may also be on its way to the author who recklessly says something untrue that is not technically defamatory.

But, for the majority, caution should be exercised when posting *anything* about others online, because like it or not, we are all fast becoming authors. And our words could turn out to be worth a lot more than we originally bargained for.

By Hugh Hitchcock, Director - DJM Solicitors