

Hyperlinks Not a Republication for Purposes of the Single Publication Rule

No Limit to Liability if Links Retriggered Statute of Limitations

By Edward J. Sholinsky

Single Publication Rule

The United States Court of Appeals for the Third Circuit, predicting Pennsylvania law on a matter of first impression, held in *In re Philadelphia Newspapers, LLC*, No. 11-3257, 2012 U.S. App. LEXIS 15419 (3d Cir. July 26, 2012) (precedential), that providing a link on a website to an allegedly defamatory article is not republication for purposes of the Single Publication Rule or the statute of limitations. Rather, the Court held that linking is akin to referencing an article, which courts have long held is not republication.

Background

The plaintiffs had been litigating a state-court claim against the *Philadelphia Inquirer* for publishing allegedly defamatory articles in 2008 about plaintiffs' management of a charter school in the Philadelphia suburbs. While the state litigation was pending, the owners of the *Philadelphia Inquirer* petitioned for bankruptcy. Plaintiffs then filed a claim in the bankruptcy court, alleging that Philly.com (the *Inquirer's* website) defamed them by publishing an editorial after the bankruptcy filing that linked to and, allegedly, "endorsed" the 2008 articles.

Plaintiffs argued that publishing the editorial linking to the 2008 articles was a separate, post-bankruptcy tort (which, unlike the original pre-bankruptcy tort, they could litigate in the bankruptcy court as an administrative expense) because the links "republished" the original, pre-bankruptcy stories. The debtors argued in response that the linking did not republish the original stories, and that the single publication rule barred plaintiffs from suing a second time for the pre-bankruptcy stories.

Both the bankruptcy and district courts rejected the plaintiffs' claims. The Third Circuit affirmed.

For the plaintiffs to be able to recover for the alleged defamation by the debtors, they had to establish that Philly.com had republished the allegedly defamatory articles by linking to them on its website. Under the single publication rule, an article is actionable when it is first published and not on some later date when it is recirculated. The rule does not apply to a "republication" in which the original defamatory material is edited or put into a new form.

The Court addressed two questions that no Pennsylvania court had addressed before: (1) whether the single publication rule applies to Internet publications; and (2) whether linking to a story constituted a type of republication that is outside the protection of the single publication rule.

The Court answered the first question in the affirmative. Following the Fifth and Ninth Circuits, and New York's state courts, the Third Circuit predicted that Pennsylvania would "extend the single publication rule to publically accessible material on the Internet." 2012 U.S. App. LEXIS 15419, at *30. The Court, applying the reasoning of those courts, held that there was no principled reason to distinguish between traditional publication mediums and electronic publication. *Id.* at *29-30.

Addressing the second question, the Court held that linking to a previously published article on the Internet did not constitute a republication that made the linking separately actionable from the original publication. Under "traditional" defamation law, republication requires "retransmission of the allegedly defamatory material." *Id.* at *31.

For Internet publications, however, the Court followed those courts that had "distinguish[ed] between linking, adding

(Continued on page 6)

There would be no limit to a publisher's liability if each new link to an article re-triggered the statute of limitations, the Court reasoned.

(Continued from page 5)

unrelated content, or making technical changes to an already published website (which they hold is not republication), and adding substantive material related to the allegedly defamatory material to an already published website (which they hold is republication).” *Id.*

Applying this distinction, the Court held, “advances the statute of limitations’ policy of ensuring that defamation suits are brought within a specific time after the initial publication.” *Id.* at *33. There would be no limit to a publisher’s liability if each new link to an article re-triggered the statute of limitations, the Court reasoned.

The Court analogized linking to referencing an article, which has not traditionally been considered republication. *Id.* at *33-34. The Court found this reasoning particularly appropriate to the Internet, where “[p]ublishing a favorable reference with a link . . . is significantly easier” than is directing a reader to an article in traditional publishing mediums. *Id.* Thus, even though referencing and linking to an article “may allow for easy access” to allegedly defamatory material, “they do not amount to the restatement or alteration of the allegedly defamatory material in the [a]rticles necessary for republication.” *Id.* at *34.

The Third Circuit in *In re Philadelphia Newspapers, LLC* set important precedent for online publications. Online publishers in Pennsylvania can now link to and reference previous stories with less fear that doing so will retrigger the statute of limitations or create new liability.

Edward J. Sholinsky is a partner at Schnader Harrison Segal & Lewis LLP in Philadelphia. Plaintiffs were represented by David A. Barnes, Obermayer, Rebmann, Maxwell & Hippel, Philadelphia. Philadelphia Media Network was represented by Sunish Gulati, Akin, Gump, Strauss, Hauer & Feld, New York.

Search the MLRC MediaLawLetter Online

Issues dating back to 1997.
A great research tool.

www.medialaw.org



©2012

MEDIA LAW RESOURCE CENTER, INC.
520 Eighth Ave., North Tower, 20 Fl.,
New York, NY 10018

BOARD OF DIRECTORS

Susan E. Weiner (Chair)
David S. Bralow
Mark H. Jackson
Marc Lawrence-Apfelbaum
Eric Lieberman
Karole Morgan-Prager
Kenneth A. Richieri
Mary Snapp
Kurt Wimmer
Elizabeth A. Ritvo (DCS President)

STAFF

Executive Director

Sandra Baron

Staff Attorneys

Maherin Gangat

Robert Hawley

David Heller

Michael Norwick

MLRC Fellow

Lindsey Davis

MLRC Institute Fellow

Dorianne Van Dyke

MLRC Administrator

Debra Danis Seiden

Publications Assistant

Jacob Wunsch