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# Responsibility as an Issue in Internet Communication: Reading Flames as Defamation

by James A. Inman and Ralph R. Inman [\*]

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{1} In recent years, the popularity of the Internet has increased exponentially, and as a result, many facets of everyday life are rapidly changing. It is perhaps a natural tendency for mankind to resist change, but the Internet draws strength from society's will to complete tasks quickly and with as little physical effort as possible. Any individual with a personal computer and a modem can now order groceries, make airplane and hotel reservations, and research topics of interest with just the touch of a button. The Internet has become a mainstay of American popular culture.

{2} Many people consider the Internet to be one of the best means of communication and argue that cultural and social gaps are bridged by the anonymity that electronic communication allows. While this assumption may theoretically work well, the sad truth is that many people do not express themselves freely and fail to realize the advantage of electronic media as a cultural and social learning tool, capable of stimulating understanding and mending the tears of the American quilt. Consider the image suggested by Raymond Gay-Crosier in an address to The South Atlantic Modern Language Association, "Today's bright high school students and undergraduates . . . build their own ramparts with their PC's, hiding behind the screens on which they play games, venture into the Internet, write messages, and, yes, even a couple of poems." [1] The perspective proposed by "Is this the party to whom I am typing . . .", the title of a recent article by James LaRue in the *Wilson Library Bulletin*, gives similar ground to the anonymity aspect of Internet communication. [2]

{3} As bright minds find comfort in "hiding" on the Internet, they often fail to take responsibility for their views. Instead they sometimes elect to criticize the views of others, feeling that they are immune from harm so long as they continue to attack. Such attacks, as most Internet users know, are called flames and are all too common elements of everyday correspondence in discussion groups, newsgroups, and even one-to-one correspondence. A Web page labelled "[Free Speech on the Net](#)" offers the following as advice: "If you cannot filter what irks you, ignore it," but the truth of the matter is that repeated flames need not be ignored; flaming is serious. [3]

{4} Several Web pages offer a multi-contextual perspective on flaming. One page takes a quasi-historical

approach, even casually referring to itself as "The Unabridged History of Usenet Flaming." [4] This Web page demonstrates the *classic* ways to flame someone. A second Web page, the "Alt Dot Flame FAQ" offers a similar humorous perspective, again with ample details and examples of flaming. [5] Throughout most references made to flames, the underlying sense exists that humor is intended. Nowhere is this sense more evident than in "The Twelve Commandments of Flaming." a guidebook of sorts for the flaming fraternity; among the advice offered is "make up things about your opponent" and "when in doubt, insult." [6]

{5} The first relevant issue to any discussion of flames is whether or not such communications are wrongdoings. At first glance, flames seem to possess a cognizant relation to free speech. In the U.S. Supreme Court's 1988 holding in *Hustler Magazine v. Falwell*, Chief Justice Rehnquist stated that the First Amendment protects even "vehement, caustic, and sometimes unpleasantly sharp attacks." [7] However, the statement at issue in the *Hustler* case was a reference to drinking and the pulpit; at face value, lampooning of this nature has little to do with Internet flaming. [8]

{6} In *State v. Boyd*, the court suggests why flames cannot generally be protected as free speech: "language tending to the violation of the rights of personal security and private property, and towards breaches of the public peace, is an abuse of the right . . ." [9] On the Internet, discussions are usually private in nature, although they are often subject to public inspection. Even discussion groups consider their dialogues to be the private reflections of a number of members. When a private person is subject to another's publishing of a false and defamatory communication intentionally or negligently, wrong has been done.

{7} If flames are established as wrongdoings, how might they be classified under the law? Classifying flames as defamation, [10] "that which tends to injure 'reputation' in the popular sense; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him," seems appropriate. [11] Electronic communication currently is primarily written, so one might assume that labeling flames as libel would prove satisfactory. However, a stricter reading of this proposition demonstrates a problem: in the electronic world, one cannot simply call users "people" as such a declaration is blindly intolerant of users' ability to conceal their identity. Consider the following definitions of libel [12] : "almost any language which upon its face has a natural tendency to injure a person's reputation, either generally or with respect to his occupation" [13] and "malicious falsehood expressed by writing, printing, or by signs or pictures, which tends to bring any person into disrepute, contempt, or ridicule . . ." [14] If it cannot be established that the defendant used his account to send the flame message, a problem may exist with regard to obtaining a satisfactory remedy.

{8} Another essential component of defamation is that the injurious language must be seen or read by a third party. In considering flames, this distinction is highly relevant in that one-to-one correspondences do not meet the criteria. Henceforth, then, the discussion of flames as defamation shall be reserved to those which appear in a public arena.

{9} Moving to a more detailed examination, consider how a tort is defined in *City of Mobile v. McClure*. [15] Three elements of every tort action are: "(1) the existence of legal duty by defendant to plaintiff; (2) a breach of that duty; and (3) damage as proximate result." [16] Note that the reference to *proximate result* may be read as the establishing of proximate cause. Two key elements of the definition, *legal duty* and *proximate result*, are notably difficult to delineate, and, if *duty* cannot be established, neither can *breach*.

{10} *Duty*, as a concept, provides some interesting concerns for attorneys dealing with electronic

communication. As explained by Prosser, "[t]he statement that there is or is not a duty begs the essential question--whether the plaintiff's interests are entitled to legal protection against the defendant's conduct." [17] In a discussion group or in a newsgroup, differences of opinion are common and arguably an essential component of the learning process. In assuming that attacks of a personal nature are defamation, the term *personal* assumes special responsibility. Again, the issue of users' hiding behind false identities becomes relevant. Can a *personal* attack be waged against someone successfully in hiding?

{11} Further, in considering *proximate result*, can necessary linkage be established between the flame and the resulting offense? Offensive language is protected under the law, and one may not be able to establish a *personal* nature for the attack. If an attorney cannot establish that an attack is *personal*, perhaps the attack would then be protected under free speech. After all, if not *personal*, the flame must be considered to have been projected into the public forum or to have been written as an attack against an unknown.

{12} Clearly, the central issue becomes responsibility. Trying electronic communication defamation cases, attorneys may have a difficult time establishing *duty* and *proximate cause*. However, if all users bear ultimate responsibility for their accounts, then both components are more easily defined. Today's bright minds would not be able to hide behind pseudonyms and endless connecting points; instead, they would be held to any remark, positive or negative, that they have made. And, if every address is to have a definable user, flames will be more directly traceable, and proximate cause may be more easily established.

{13} In a world desperately in need of understanding and tolerance, disagreements are common. It is how participants in communications handle such disagreements that shapes today's complex social arena. Flames are serious, personal attacks possessing no relation to the spirit of cooperative learning or to active discussion, and they should be treated as such under the law. If the law does not keep pace with the ever-growing breadth and depth of technology, mankind will suffer.

## ENDNOTES

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[1] Raymond Gay-Crosier, *Conflicting Horizons of Expectation: Paradigm Shifts in the Profession*, SOUTH ATLANTIC REVIEW, Jan. 1995, at 1, 3.

[2] James LaRue, *Is this the Party to Whom I am Typing?*, WILSON LIBRARY BULLETIN, October 1994, at 73.

[3] Michael Sattler, *Free Speech on the Net*, <<http://baby.indstate.edu/msattler/culture/comp/free-speech.html>> (Dec. 14, 1993, updated Sept. 29, 1994).

[4] Jorn Barger, *The Unabridged History of Usenet*, <<http://www.mcs.net/~jorn/html/flamers.html>> (Aug. 15, 1993).

[5] Jack Maxfield, *In Flames We Trust*, <[http://www.sccsi.com/pjz/flames/alt\\_dot\\_flame\\_faq.html](http://www.sccsi.com/pjz/flames/alt_dot_flame_faq.html)> (Nov. 7, 1995, updated Dec. 10, 1995).

[6] Chris Rolleston, *The Twelve Commandments of Flaming*, <<http://www.infi.net/~cashman/humor/lists/flame.html>> (1996).

[7] 485 U.S. 46, 51 (1987).

[8] *Id.*

[9] 91 A. 586, 587 (N.J. 1914).

[10] BLACK'S LAW DICTIONARY, 6th ed., defines defamation as:

An intentional false communication, either published or publicly spoken, that injures another's reputation or good name. Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil. Includes both libel and slander. Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy. *McGowen v. Prentice*, La.App., 341 So.2d 55, 57 (La. 3d Cir. Ct. App. 1976) rehearing denied Jan. 26, 1977. The unprivileged publication of false statements which naturally and proximately result in injury to another. *Wolfson v. Kirk*, Fla.App., 273 So.2d 774, 776 (Fla. 4th DCA 1973).

[11] William L. Prosser, LAW OF TORTS, 739 (4th ed. 1971).

[12] BLACK'S LAW DICTIONARY, 6th ed., defines libel as:

A method of defamation expressed by print, writing, pictures, or signs. In its most general sense, any publication that is injurious to the reputation of another. A false and unprivileged publication in writing of defamatory material. *Bright v. Los Angeles Unified School Dist.*, 51 Cal.App.3d 852, 124 Cal.Rptr. 598, 604 (Cal. 2nd DCA 1972). A maliciously written or printed publication which tends to blacken a person's reputation or to expose him to public hatred, contempt, or ridicule, or to injure him in his business or profession. *Corabi v. Curtis Pub. Co.*, 441 Pa. 432, 273 A.2d 899, 904 (Pa. 1971).

[13] *Washer v. Bank of America National Trust and Savings Association*, 136 P.2d 297, 300 (Cal. 1943).

[14] *Iitzky v. Goodman*, 112 P.2d 860, 862, 863 (Ariz. 1941), quoting *Central Arizona L. & P. Co. v. Akers*, 46 P.2d 126, 131 (Ariz. 1935).

[15] 127 So. 832 (Ala. 1930).

[16] *Id.* at 835.

[17] Prosser, *supra* note 11, at 325.

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