

## Defamation in 140 Characters or Fewer

### Digital Media and Data Privacy Law Blog

on 08.15.2009

Posted in Defamation

The Twitter phenomena has seemingly gone viral this summer. What started out as a quirky way for people to send brief (140 characters or fewer!!) updates on their daily activities, thoughts, or opinions, is now a major source of breaking news. From the streets of Iran to the Pittsburgh Steelers' practice field, correspondents of all stripes are Tweeting first, blogging second, and (maybe) writing a story for the crusty old newspaper third.

It should come as no surprise, then, that we are just now seeing our first claims for Twitter defamation. As has been widely discussed, a Chicago area real estate company has sued a former tenant for defamation based on a Tweet (that is, a message sent via Twitter) she sent to her 20 followers. The Tweet said "You should just come anyway. Who said sleeping in a moldy apartment is bad for you? Horizon Realty thinks it's okay." Horizon is seeking \$50,000 in damages based on harm to the company's business reputation.

While commentary on the suit has focused on the company's perhaps overly litigious approach to what was at most a very minor annoyance, the suit does raise some interesting legal issues.

First, the fact that the Tweet only went to 20 readers may be legally significant to the issue of how much Horizon's reputation was really harmed, but it does not make the words any less defamatory. All Horizon would need to show is that the post went to *even one* third party.

The harder question is whether the Tweet was, in fact, defamatory. Does the Tweet accuse Horizon of maintaining moldy apartments as a matter of fact, or is it simply opinion or commentary not intended to be interpreted as a statement of fact? The former is actionable (unless it is true, of course), the latter is probably not. The ultimate answer to that question is less important, for our purposes, than the fact that it is a close legal question that is not going to be dismissed easily or cheaply.

While this lawsuit raises more chuckles than anything else, it should give pause to reporters, editors, and publishers of all varieties. Twitter is meant to be an intimate kind of affair—readers getting an insider's view of someone's day-to-day existence, for better or for worse. This intimacy, and the short-hand nature of the medium itself, breeds an informality that can be very dangerous for reporters and others with a lot of subscribers and a high profile. When your White House correspondent Tweets about a breaking news event, thousands of readers may be seeing that

message, a message that was not edited, not vetted, and probably not even seen by anyone other than the reporter before it went out. That problem is exacerbated by the fact that many blogs and other news organizations now pick up and re-publish Tweets from high-profile reporters (and, yes, politicians).

Again, that level of intimacy and immediacy is what makes Twitter popular, but it should give newsrooms heartburn as well. The bottom line is that you can easily defame someone in 140 characters or fewer, but even the best lawyer in the world can't draft a successful motion to dismiss that short.