

New York Court Rejects Effort to Identify

Digital Media and Data Privacy Law Blog

on 02.13.2010

Posted in Newsroom Subpoenas

In yet another data point on the status of anonymous Internet speech, a New York judge this week quashed a subpoena seeking the identity of a person who had posted comments on a newspaper website.

We have covered this topic in a number of prior posts, for example [here](#) and [here](#), as courts have grappled in the past year with the question of when to enforce subpoenas to media organizations that would compel the identification of an anonymous Internet speaker. Such subpoenas have been examined both from a First Amendment perspective, in terms of the constitutional right to speak anonymously, and from a shield law perspective, as many of these subpoenas are problematic under state laws giving media organizations a qualified right to resist subpoenas. Surveying these cases reveal that context matters -- is the party seeking disclosure a would-be defamation plaintiff seeking the identity of a defamer or a routine civil litigant; is the party a law enforcement agency or grand jury seeking information in connection with a criminal investigation.

In the recent New York case, an Orange County, New York grand jury issued a subpoena to the Chronicle, a weekly serving Chester and Goshen, New York. The grand jury was apparently investigating comments that appeared on the Chronicle's website concerning the former superintendent of the Chester school system. Because grand jury proceedings are secret, other aspects of its investigation are not publicly available.

At the hearing on whether to enforce the grand jury's subpoena, the presiding judge took the comments at issue into chambers and reviewed them with the district attorney. According to local reports, after reviewing the comments, the judge indicated he did not believe they were criminal in nature. Accordingly, he quashed the subpoena, concluding that the identity of the person or persons who posted the comments at issue was not critical to the matter being investigated by the grand jury. Although the case was apparently argued from a First Amendment anonymous speech perspective, the court's approach is also consistent with the standard found in many shield statutes, which often require the party serving the subpoena upon a reporter to establish that the information sought is essential to a claim or defense in the pending matter.

The court appropriately recognized that in order to overcome the First Amendment right to anonymous speech, the party serving the subpoena must articulate a compelling justification. If the party cannot establish that the sought-after information -- here the identity of the speaker -- is

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critical to a pending proceeding or investigation, then by definition no compelling justification exists.

We will continue to monitor court decisions in this area.