
Flamers, Trolls and Bloggers – Are ISPs and webhosts at risk from online anarchy?

In conclusion it is worth noting that the unique qualities of the net along with the informality of net culture may extend to a reluctance on the part of net participants to pursue defamation proceedings. Despite the potentially enormous scope for actions against ISPs and ICHs, in reality there has been surprisingly little litigation as a result. Although today's blogs and flames will never become tomorrow's fish and chip wrapping, there is perhaps a culture evolving of user acceptance giving rise to a level of tolerance previously unseen in other forms of media.

* The author would also like to acknowledge the assistance of Dougal Langusch in writing this article.

1 Sydney Morning Herald 28 August 2004 article entitled 'Pest Control' by Edmund Tadres.

2 'Netiquette', www.albion.com/netiquette/book

3 [#Trolling_in_the_1990s](http://en.wikipedia.org/wiki/Internet_troll) which in turn attributes this quote to Donath, 1999

4 www.elearnspace.org/Articles/blogging_part_1.htm

5 In fact a plaintiff must establish that a defendant uploaded material onto the net to prove publication – *Ezzo v Grille* [2004] NSWSC 522

6 (1991) 776 F Supp 135

7 (1995) 23 Media L Rep 1794 NY

8 New York Court of Appeal, 2 December 1999, unreported.

9 [1997] 129 F3d 327

10 (1999) unreported

11 [1999] 4 All ER 342

12 Law Commission – Defamation and the Internet Scoping Study No. 2, December 2002

13 (1996) 71 ALJR 131

14 Curiously, the Explanatory Memorandum states that the purpose of this section is to ensure that the Commonwealth maintains control over regulating the activities of ISPs and ICHs. Presumably to prevent states and territories regulating such entities on offensive content, but it is certainly broad enough to include defamation also.

15 section 88.

16 Combined Media Defamation Reform Group, Submission in Response to Outline of Possible National Defamation Law – Attorney General's Discussion Paper, March 2004

17 Attorney General's Department July 2004

18 above at p25

19 For example the Act excludes email, certain video and radio streaming, voice telephony and of course discourages ISP's and ICH's from monitoring content by the nature of the defence. For a more detailed analysis of the Act see Eisenberg J, 'Safely out of site: the impact of the new online content legislation on defamation law' (2000) 23 UNSW Law Journal; Collins M, 'Liability of internet intermediaries in Australian defamation law' (2000) Media & Arts Law Review 209.

auDA Panel reviews domain name policy rules

Alice Grey, Paralegal, Freehills

On 9 August 2004, .au Domain Administration's (auDA) Name Policy Review Panel (Panel) released¹ an Issues Paper² as part of its review of domain name eligibility and allocation policy rules for open second level domains. The Panel was created in July 2004 to examine the domain name policy rules and provide recommendations to the auDA Board about any necessary changes to the policy.

The issues which the Panel has identified for consideration include:

- the integrity of the Australian Domain Name System (DNS) and verification of registrant identity
- opening of the Australian DNS to non-Australian registrants, and
- the length of domain name licence periods.

The Panel sought feedback on the matters discussed in the Issues Paper.

Comments were due by 30 August 2004.

¹ "auDA Panel reviews domain name policy rules", auDA media release, 9 August 2004. See: <http://www.ada.com.au/news.php?newsid=17> (last accessed 28 September 2004).

² *Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs Issues Paper - August 2004*, auDA Name Policy Review Panel. See: <http://www.ada.com.au/pdf/nprp-public1.pdf> (last accessed 28 September 2004).