

A Sense of Decency

by Eric P. Bergner

About a week after the bombing of the Federal building in Oklahoma City a man operating a business out of his Seattle home got an unsettling phone call. The caller was irate about an ad posted on an America Online bulletin board-which included the Seattle man's first name and phone number-offering tasteless T-shirts that celebrated the bombing. The caller left a derogatory message on the man's answering machine and hung up.

That would have been fine, except that the Seattle guy hadn't placed the ad on AOL and wasn't selling obnoxious T-shirts. He was the victim of a cruel hoax.

The man got more calls, some threatening his life. Relying on his phone line to run his business, the man couldn't change his telephone number. AOL assured him the posting would be removed. But a similar fake ad soon appeared. AOL repeatedly promised the man that the account from which the messages originated would be closed. But new messages were posted, and the man received more death threats. Eventually, he received police protection. The threats only ended after an Oklahoma City newspaper exposed the hoax.

The Seattle man sued AOL, alleging that the online service should be held liable for negligently failing to remove the defamatory postings, refusing to post retractions of those postings and failing to screen for similar postings after it had been put on notice of the problem. He had no one else to sue, because it wasn't clear exactly who posted the message. To top things off, the court dismissed his case against AOL. The dismissal was not surprising. The Communications Decency Act declares that no provider of an "interactive computer service shall be treated as a publisher or speaker of any information provided by another information content provider." In other words, AOL, as a sponsor of online message boards, cannot be treated as the publisher of defamatory statements posted on its boards. The law reflects a recognition that it would be virtually impossible for an online service provider to screen large numbers of postings for problems-and that to promote free speech on the Internet, the distributor of an online defamatory statement should not be liable for its content. So AOL walked away from the lawsuit unscathed-other than the legal fees it incurred defending the suit, both in the lower court and on appeal, and the bad press that was generated by the ordeal.

The lesson learned from this case is that it does not always make good business sense for Web sites to let defamatory postings remain on message boards. False statements on a Web site reflect poorly on the proprietor. If you are looking to instill a sense of trust and reliability in whatever goods or services you are purveying on the Web, enabling the publication of false statements is a bad idea. Leaving a defamatory statement on your message board will win you no points with the victims of the statement, their family and friends or anyone else they may be able to contact-like the news media. Victims may be so outraged that they will sue you regardless of the federal statute and force you to pony up legal fees and even settlement money to make the lawsuit, and bad press, go away.

The Web-site proprietor who assumes an active role in sanitizing message boards will not become a publisher of-that is, liable for-the objectionable statements removed from the message boards. If, in undertaking to clean up your message board, you inadvertently fail to remove a defamatory message, you still should not be liable for defamation. The Communications Decency Act contains language intended not to discourage this kind of involvement by the message board's sponsor.

To ensure prompt response to objectionable postings, Web sites should create a set of procedures both for notifying the person who posts an offensive message and for ensuring the message is removed. While the Communications Decency Act does not offer a set of procedures for this sort of thing, other statutes do. These procedures can be incorporated into the Web site's legal page, which should also contain disclaimers and reservations of rights specific to the message board. The prompt removal of objectionable postings from your message boards should generate goodwill-and preserve the integrity of your site.

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