

Defamation

Factual background

An Internet content portal enters into a licensing agreement with a popular blogger to disseminate the items posted on the blog - which consists principally of news relating to public officials and political figures - to users of the portal through a special section of the portal and regular email alerts. The syndication deal provides that the portal will pay the blogger \$3,000 per month as a “royalty payment” and that the portal reserves the right to remove any content that the portal determines violates its policies.

In the midst of a scandal at the White House, the blogger reports that a newly hired presidential aide has a history of spousal abuse. The portal posts the report in full and distributes it to its customers by email.

Litigation proceedings

The aide sues the blogger and the portal for defamation. The portal files a motion for summary judgment, contending that Section 230 of the federal Communications Decency Act of 1996 provides it with immunity from liability for republishing the allegedly defamatory blog post. The plaintiff responds that the payment of licensing fees and the reservation of a right to remove objectionable content deprive the portal of the protections of Section 230.

Outcome

The court stays discovery while it considers the motion. Six months later, the court grants summary judgment for the Web portal, but allows the case to proceed against the blogger.

Costs

The total cost of litigating this case for the portal would be expected to be in the range of \$250,000. [This loss scenario is based on *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998).]

Copyright infringement

Factual background

The publisher of a Web site for fans of motocross racing provides information and commentary about competitions and exhibitions taking place at various venues. The leading promoter of these events produces audio and video coverage, which it broadcasts and distributes via radio, television, and the Internet. The promoter does not charge for access to its live “streaming webcasts,” which it makes available to users of its own Web site. The fan site, in turn, provides its readers with “real time” access to the webcasts via its own site - enabling users to see and hear the coverage of events without ever visiting the promoter’s Web site.

Litigation proceedings

The promoter sues for copyright infringement, alleging that the fan site effectively makes unlawful copies of the webcasts when it provides users with a way to watch the events without viewing the advertising on the promoter’s Web site. The fan site responds that the “linking” technology it uses involve no copying of the promoter’s content. The promoter seeks a preliminary injunction to prevent the fan site

from providing access to the webcasts by any means other than a direct link to the promoter’s home page. Following limited discovery and motions practice, the court grants the preliminary injunction and orders an accelerated discovery schedule, setting the case for trial within six months. The fan site appeals the injunction and successfully obtains an order staying all pretrial proceedings pending the outcome of the appeal.

Outcome

After briefing on the appeal is complete, but before oral argument, the parties reach a settlement that involves no compensatory payment to the plaintiff.

These scenarios each are based on a real case or claim and, although not all of them involved Hiscox insureds, they are illustrative of the losses media companies routinely experience. Stated loss and defense costs are either actual, based on public sources or authorized disclosures, or closely estimated. The types of claims illustrated generally fall within the initial scope of coverage afforded by the typical Hiscox media liability policy form, but whether and to what extent a particular claim would ultimately be covered depends on the specific policy wording and the actual facts relevant to the claim.

Costs

The total cost of litigating this case for the publisher would be expected to be approximately \$530,000. [This loss scenario is based loosely on *Live Nation Motor Sports, Inc. v. Davis*, No. 3:06-CV-276, 2006 WL 3616983 (N.D. Tex. Dec. 12, 2006).]

Misappropriation of name/likeness

Factual background

A Web site for sports enthusiasts develops an Internet-based program that allows users to participate in “fantasy” baseball leagues that involve competitions based on the actual performances of professional baseball players. To facilitate the game, the site compiles statistics for each player on a daily basis and also provides game participants with news and information relating to each player - including profiles, analysis of past performance, and injury reports. The site does not use any player photographs or team logos.

Litigation proceedings

The baseball league, claiming ownership of its players’ rights of publicity, sues the Web site for misappropriating the players’ names and identities for commercial advantage. Following multiple failed mediation sessions and several months of fact and expert discovery, the parties file cross-motions for summary judgment.

Outcome

The court grants summary judgment to the Web site, concluding that there is nothing about the fantasy game that suggests any endorsement or sponsorship by the players themselves, that mere use of players’ names in conjunction with their playing records does not constitute use of the players’ personas or identities, and that First Amendment protections extend to the Web site’s presentation of information in the context of a game. The league appeals the ruling and loses.

Costs

The total cost of litigating this case for the Web site would be expected to be approximately \$875,000. [This loss scenario is based loosely on *C.B.C. Distribution & Marketing, Inc. v. Major League Baseball Advanced Media, L.P.*, 443 F. Supp. 2d 1077 (E.D. Mo. 2006).]

Public disclosure of private facts

Factual background

The editor of a politically oriented gossip blog learns of an online diary written by an unidentified staff assistant who purportedly works in the office of an unnamed U.S. Senator. The diary, which is available on a publicly accessible Web site, contains detailed discussions of the staff assistant’s sexual activities, including intimate liaisons with a colleague in the Senator’s office, who is identified by his initials (“S.R.”) and several physical attributes. The blog editor publishes an item revealing the existence of the diary, quoting excerpts from it, and linking to the Web site where it is posted. The resulting publicity causes the diary’s author to reveal her identity.

Litigation proceedings

S.R. sues the diary’s author for invasion of privacy based on the public disclosure of private facts and intentional infliction of emotional distress, and he later amends his complaint to assert the same claims against the publisher and editor of the blog. The parties conduct nearly seven months of discovery (including discovery motions practice) and engage in extensive briefing on issues relating to the blog’s potential liability.

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Outcome

The court grants summary judgment for the publisher and editor of the blog on the grounds that the suit was time-barred by the applicable statute of limitations. The plaintiff does not appeal.

Costs

The total cost of litigating this case for the blog's publisher would be expected to be approximately \$325,000. [This loss scenario is based loosely on Steinbuch v. Cutler, No. 05-cv-0970 (D.D.C.).]