

## Sheffield Wednesday Football Club Scores a Website/Blog Defamation Goal

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**Websites and blogs that allow third parties to post content face potential defamation risk. This needs to be managed.**

**Sometimes the Courts will require them to hand over contact details for those third parties. Judgment calls are needed.**

[www.owlstalk.co.uk](http://www.owlstalk.co.uk) allows Sheffield Wednesday fans to post comments on their Club.

Some of the fans were strident about the Club's management. Sheffield Wednesday, related directors and the CEO decided that some of these comments were defamatory. They sued the owner of the website for defamation.<sup>1</sup>

It's not just the source of a defamatory statement (that is, the person who writes to the site) that can be liable for defamation. People and companies associated with the website or a blog can be liable too. That is so, even if the third party comment is downloaded onto the site without direct control by the site's operator. Radio stations are liable for statements made by someone calling in on live talk-back. Likewise for websites and blogs.

So, websites and blogs need to take real care. Steps to minimise risk should be taken, extending beyond the sort of guidelines and disclaimer on the [www.owlstalk.co.uk](http://www.owlstalk.co.uk) site.<sup>2</sup>

Owlstalk is a typical example of how these sites work. Someone wanting to comment gives their email address, a password, and a username (which is invariably a pseudonym).

Particularly if email addresses such as Hotmail and Gmail are accepted, these third parties may be difficult to track down (that's

why some sites don't allow those types of addresses). This could leave the website or blog exposed to liability without any recourse. They could be sued for a third party's defamation and not be able to recover from the source of the defamation, as they can't track down that person.

In the Owlstalk case, the Sheffield Wednesday parties decided they wanted to sue the originators of the comments as well. But they didn't know who they were. Only Owlstalk had access to relevant information.

So they asked for an order from the Court requiring the owner of Owlstalk to divulge contact details for those people.

The legal principles applied are relevant here in New Zealand as well. This is the so-called *Norwich Pharmacal* order.

The Sheffield Wednesday parties successfully obtained orders that Owlstalk must divulge some but not all of the contact details.

It's not every situation or comment that will justify such an order. The Courts balance issues such as the severity of the statement, the strength of the case, privacy issues, the degree to which the parties being asked to divulge (in this case Owlstalk) were involved in the alleged defamation, etc.

One of the useful things about this judgment is that it sets out and applies guiding principles. Also, it was written by an expert in the field: a co-author of one of the leading texts on defamation (Gatley on Libel and Slander).

When confronted with an application for orders like this, some website providers and other operators (such as ISPs) will abide the decision of the Court rather than voluntarily providing information or opposing disclosure. That's what happened here with Owlstalk.

<sup>1</sup> *Sheffield Wednesday and others v Hargreaves* [2007] EWHC 2375 (October 2007).

<sup>2</sup> <http://www.owlstalk.co.uk/forums/index.php?act=boardrules>

It's also what Google did in a copyright privacy case which we reported on last year: *Seeking Information from ISPs and Internet Content Providers about People to Sue: How Google Handled It.*<sup>3</sup>

Whether to hand over information and sources is an issue that journalists and the Courts have grappled with for years. These types of issues crop up on-line as well.

Sometimes this will be the safest course, as there are conflicting drivers, legal and otherwise, including Privacy Act obligations in New Zealand.

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<sup>3</sup> <http://www.wigleylaw.com/Articles/LatestArticles/seeking-information-from-isps-and-internet-content/>

In conclusion, websites and blogs accepting content from third parties face significant risk, such as defamation, copyright, etc. They need to design and implement an optimal approach which minimises risk (although this cannot be entirely avoided).

Sometimes they'll be asked to divulge information. The Police or another enforcement agency (eg: Department of Internal Affairs) may ask for this to happen. Often a search warrant should be insisted on by the provider. In civil cases (such as Owlstalk and the Google situation), the cases noted above provide guidance.

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