



Media Notes

Not a “G’Day” Down Under for Publishers

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Have you seen the popular television show featuring Steve Irwin, a.k.a. “The Crocodile Hunter,” on the Discovery Channel? Audiences are mesmerized as the host wades through the waters of Australia in search of dangerous crocodiles, and risks his life as he wrestles them to the ground. Recently, a U.S. publisher has been wrestling with a dangerous “crocodile” of a different sort in the courts of Australia and unfortunately, it appears the reptile has won the initial round.

Australia’s highest court recently issued an opinion that has the potential to adversely impact every publisher whose content is accessible via the World Wide Web. In Dow Jones & Company, Inc. v. Joseph Gutnick, the High Court of Australia decided that a U.S. publisher was subject to jurisdiction in Australia and must defend a libel action filed there solely because the allegedly defamatory article was accessible to Australian Internet users. The Australian High Court is the first court of last appeal in any common law jurisdiction to have addressed this important issue in a defamation case.

The case stems from an article published in the U.S.-based Barron’s magazine. The article reports on an Australian gentleman’s questionable business dealings and his association with a convicted money launderer. The businessman, Mr. Gutnick, filed a libel action against Dow Jones, the publisher of Barron’s magazine, alleging that the article contained false statements that harmed his reputation.

Mr. Gutnick argued that because the article was made available on the Internet, and was accessed by Australian residents, the trial court in Melbourne could exercise jurisdiction over the publisher. It is important to note that the article was written in the U.S., the magazine is headquartered in the U.S. and the magazine’s web server on which the article was uploaded is in the U.S. Furthermore, the magazine has only three Australian subscribers. Despite the publisher’s nominal contacts in Australia, the High Court agreed with Mr. Gutnick and held that the publisher is subject to jurisdiction in Australia.

Because of Gutnick’s far-reaching implications on all media companies whose content is published on the Internet, Media/Professional Insurance joined 16 media companies, including Amazon.com, The Associated Press, CNN, The New York Times, Time, Inc. and Tribune Company, in filing a “friend of the court” brief with the Australian High Court, urging the Court to reject the plaintiff’s argument that a defendant subjects itself to a foreign jurisdiction solely by publishing content on the Internet.

As a result of the Gutnick decision, any media company that makes content available over the Internet may be subject to jurisdiction in Australia. Thus, publishers may now need to consider the standards of Australian libel law in prepublication reviews and risk management. Further, other Commonwealth nations, including Canada, New Zealand, Hong Kong and the United Kingdom, give great weight and deference to Australia’s High Court decisions, and courts in other jurisdictions may be influenced by the ruling as well. Legal experts fear that the Gutnick ruling may ultimately result in U.S. Internet publishers being hauled into courts in countries throughout the world where the defenses to media liability claims are generally far less favorable.

Australia’s High Court ruling is at odds with recent rulings in the U.S. In December 2002, courts in Virginia and Texas refused to assert jurisdiction over publishers from other states in similar cases. Both U.S. rulings resulted in close opinions that hinged on determinations that the publishers did not intend to direct their website content to the out-of-state jurisdiction. Unfortunately, non-U.S. courts confronted with similar issues in the future will likely look to the High Court of Australia for guidance instead of these recent U.S. court decisions. Media law experts have suggested convening an international conference to consider remedies to the problems created by the Gutnick decision. In the meantime, when it comes to media liability claims, publishers should remain wary of the potential dangers lurking in the swamps of international jurisdictions.

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