

## INTERNET

I have a graduate student whose life has been dogged by a story which appeared on the web many years ago and which has long since been retracted. It is an old allegation that the police have clarified was and remains without foundation. Despite this, Google now ensures that this old 'news' is at the top of the in-tray of any prospective employer who chooses to run a quick check before extending to him the offer of either an interview or a job. My former student languishes unemployed despite all his qualifications, the victim of a new technology that the law has yet to tame: if people believe that there is 'no smoke without fire,' what can he or she do when this censorious smoke is allowed to linger for ever? Maybe as a current research student of mine argues, there should be a legal 'right to be forgotten' – a moment after which the web can no longer reach from the past to dominate and control. This is a vibrant field of new challenges for the law. Another student is examining how our supposed liberty to roam the web is in fact being narrowly circumscribed by internet service providers who can subtly determine what we 'find' in our 'searches' by taking into account the sort of person they think we are and the sums of money they have received from businesses in return for which we are being unknowingly guided to 'find' their products first. A further cause of concern is uncontrolled vanity publishing on the web, which it now seems can include vile accounts of the rape and murder of well-known personalities: the prosecution of Darryn Walker under the Obscene Publications Act 1959 (for writing about the kidnap, rape and murder of a real girl band) failed last week because the Crown could not jump through hoops embedded in the case law in the 1960s and 1970s to make it harder to ban writers like D H Lawrence and Hubert Selby. But surely this is not the right legislative model for the disinhibited, anything-goes culture of the world-wide-web?

Pre web, the banal fantasies of a Darryn Walker would have stayed on his own computer or on a few hand-written pages stuffed into a drawer in his home with the rest of his 'literary' outpourings. This easy access to a mass market is also available to web bloggers whose interventions in cyber-space – often nasty, angry and abusive – have become such a feature of this new way of communicating. Their comments are often anonymous: behind exotic name tags, bloggers vent their spleen at the world at large and (often) specific individuals in particular. Here though the law has begun to mount something of a fight back. In a recent High Court case involving an anonymous blogger, 'Night Jack', who wrote regularly about police work and various social and political issues broadly related to the administration of justice, the *Times* newspaper has successfully resisted proceedings for an injunction to prevent it revealing his true identity, something which the paper's reporter had discovered not through any breach of confidence but through a process of deduction and detective work, mainly using information available on the Internet.

'Night Jack' argued that he (for we now know it was a he – a serving police officer) had a legally enforceable right to maintain anonymity, as did all bloggers who would (as his lawyer put it) be 'horrified to think that the law would do nothing to protect their anonymity' in circumstances such as those faced by the Claimant. Mr Justice Eady was unimpressed. There was no reasonable expectation of privacy in a case such as this. 'Night Jack' was not concerned with protecting information about his private life, his family or sexual relationships for example. All he wanted to do was 'hold forth to the public' without revealing who he was, and this failed the (objective) test of

what it was reasonable to expect. Even if it did not, and 'Night Jack' had such an initial entitlement to privacy, on facts such as these Mr Justice Eady held that this right would be clearly overridden by the newspaper's entitlement to point out who it was who was taking such a strong line in this particular blog. Was it a senior or a junior figure, one with a grudge, somebody inside or outside the law? The public was entitled to know so that it could evaluate the credibility of 'Night Jack's' various ponderings and (from time to time) vitriolic abuse. As his lordship remarked, 'Blogging is essentially a public rather than a private activity.'

Eady J has surely (and not for the first time) got the balance right. Of course there may be a need to reveal public wrongdoing and this should be capable of being done without fear of public retribution – but this remains entirely possible via established media outlets, where journalists have great experience in separating out the cranks from the potential 'deep throats'. This was only marginally the case here: 'Night Jack' wanted to enjoy the luxury of engaging in public affairs, of judging all those he desired to judge, without subjecting himself to the rule of public accountability that he so enthusiastically insisted upon for others. Night Jack's motive for concealment appears to have been to avoid disciplinary proceedings at the hands of his police authority but other bloggers have different goals for adopting nom-de-plume's in their virtual lives as ostensibly authoritative commentators. Whatever the rationale the consequence of such anonymity is often the abandonment of restraint: there are few more depressing activities than to read the spleen vented under such cover in the 'blogosphere', a world full of quaintly named experts on everything whose certainty is invariably matched by their anger and in whose minds known figures in the real world are (through stupidity, corruption or venality) always falling far short of what is required of them – a mistake/failure which (it is implied) the bloggers would certainly not make themselves if they were to turn their talented selves to the matter in hand. They are like modern day graffiti artists, but without the graffiti and the art. It is surely no bad thing that they now know that if a newspaper were to seek to 'out' them, the law of privacy would not automatically ride to their assistance.

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