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Jurisdiction in Internet Libel Cases

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I. Introduction

Among the most difficult issues posed by the global character of Internet communication is the question of jurisdiction: is it appropriate for a state court to assume jurisdiction over a communication received in that state (the state of the "forum"), when it has been placed on the World Wide Web, or "uploaded," in another state? If the courts of the forum state exercise jurisdiction and apply their own law, liability may be imposed on the sender of the communication, even though the state where the message was uploaded would hold it immune from liability—either on grounds of ordinary statutory law, or on the basis of a constitutional provision concerning free speech. This problem is likely to arise when countries take different approaches to the regulation of free speech, especially in the context of pornography, hate speech, and privacy.

This article is concerned with the difficulties that arise in the context of libel law, where decisions in Australia, England, and Canada indicate that these countries' courts may assume jurisdiction over, and eventually award damages in respect of, defamatory Internet communications emanating from the United States. These decisions may be regarded as problematic in the United States on the ground that they wrongly deter free speech on the Internet: for example, website operators and Internet Service Providers (ISPs) in New York will have to be aware of the risks of a libel suit in any country where their messages can be received, at least if there is a claimant in that country whose reputation has been damaged by those messages. These risks chill freedom of speech unacceptably and endanger the use of a means of communication characterised as "the most participatory form of mass speech yet developed. . . ."[1]

Part II of this article will examine the well-known decision of the

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1. ACLU v. Reno, 929 F. Supp 824, 883 (E.D. Pa. 1996).

High Court of Australia in *Dow Jones & Co. v. Gutnick*.[2] It remains the most important ruling of a common law court in this area. The decision carefully considered the arguments of principle, in particular, whether there are good reasons to adopt principles of libel jurisdiction for the Internet that are different than those developed for the press and broadcasting media.[3] Furthermore, it is the only ruling of the highest appellate court in any common law jurisdiction to consider these arguments. Part III of this article will examine some decisions of the Court of Appeal in England and of the courts in Canada: for the most part, these courts have adopted an approach similar to that of the High Court of Australia in rejecting the argument that the traditional approach to libel jurisdiction should be modified for the Internet. Part IV outlines three alternative approaches, two of which reflect approaches taken in the United States to intra-continental libel suits. Courts in the United States have developed a rule under which they will assume jurisdiction over an out of forum libel defendant only when it is clear that the defendant had "targeted" the communication to readers in the forum state.[4] The adoption of this approach by courts outside the United States might reduce the "chilling effect" of the claimant-friendly libel law in other countries on American website operators because they would be exposed to a libel action in other countries only when they direct their messages at readers in these countries.

Behind the divergent views concerning jurisdiction in Internet libel cases lie fundamental questions of principle. One such question is the extent to which the Internet is really different from satellite broadcasting and other means of global communication. Another question is how the balance between freedom of speech and reputation should be struck in this context. A technical issue is also relevant to a discussion of jurisdiction: is it practical for an ISP to control the geographical destination of the communications it transmits? These questions are discussed in Part V. The article concludes in Part VI that there is a case for some modification of the traditional common law approach to jurisdiction in Internet libel cases, as a modification would better balance free speech and reputation interests; however, more extreme arguments in favor of free speech should be rejected.

II. *Dow Jones & Co. v. Gutnick*

Gutnick, a businessman domiciled in Victoria, brought a libel action in its Supreme Court in response to allegations of money-laundering

2. (2002) 210 C.L.R. 575.
3. *See id.* at 599-600.
4. *See* Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 773-74 (1984).

published by Dow Jones in *Barron's Online*, a website that material was uploaded to in New Jersey.[5] Access to the website was primarily by subscription: there were about 1,700 subscribers from Australia, including, it seems, a few hundred from Victoria.[6] Gutnick and Dow Jones agreed that the Victoria courts should only decline jurisdiction if, on the principle of *forum non conveniens*, it was inappropriate to try the case in Victoria; they also agreed that the law of the place where the libel was committed would govern the action.[7] However, the parties disagreed about where the tort was committed.[8] The High Court of Australia upheld the judgement of Justice Hedigan, from the state supreme court, that the libel was published, and thus the tort committed, when the allegations in question were downloaded by Dow Jones subscribers in Victoria.[9] It was only after the allegations were downloaded that damage was done to the claimant's reputation. Therefore, it was proper for the state court to assume jurisdiction and apply its law.[10] The principles developed in newspaper and broadcasting cases were applied: if a United States magazine, with circulation in London or Sydney, defames a businessman domiciled in one of those cities, the English or New South Wales courts would have jurisdiction to consider the claimant's libel action.[11]

The High Court rejected Dow Jones' argument that New Jersey's law should be applied simply because New Jersey was the place where the publisher maintained its web servers.[12] According to the High Court, application of New Jersey law would not do justice to the interests of a claimant in protecting his reputation.[13] The United States' single publication rule, under which a communication heard at the same time by two or more people is treated as a single publication, did not affect the matter: the rule had been formulated to prevent multiplicity of suits within the United States, and should not be adopted to determine

5. *Gutnick*, 210 C.L.R. at 594-95.
6. *See id.* at 643-44.
7. *Id.* at 596.
8. *Id.*
9. *See id.* at 595-96.
10. *See id.* at 642 (Kirby, J., concurring). Implicit in this determination, there are at least two questions: whether the forum court has jurisdiction, and if it has jurisdiction, which law it should apply under its choice of law rules. In practice, the issues are often conflated. If it is appropriate for the forum court to exercise jurisdiction because the tort was committed in that state, the forum usually applies the law of that state.
11. *See, e.g.*, Berezovsky v. Forbes, Inc., [2000] 1 W.L.R. 1004 (H.L.) (holding, 3-2, that a well-known Russian businessman, resident mostly in England, could bring libel proceedings in the forum in response to statements in *Forbes* magazine, which had a circulation of about 2,000 subscribers in the forum (out of a total circulation of 788,000)).
12. *Gutnick*, 210 C.L.R. at 596, 598-600.
13. *Id.* at 598-600.

jurisdiction in international cases.[14] Finally, the High Court did not believe it was proper to depart from the traditional common law principles for determining jurisdiction in libel actions to accommodate the World Wide Web.[15] The judgement of four members of the Court doubted whether the Internet had a "uniquely broad reach."[16] Regardless of the breadth of reach of any means of communication, the High Court concluded that those who provide information know of the possible far-reaching effects their information may have and, by implication, take the legal risks associated with the dissemination of that information.[17]

In a separate concurring opinion, Justice Kirby admitted that the Internet should at least prompt reconsideration of libel rules formulated for the traditional press and broadcasting media.[18] It was very difficult for website operators to determine the geographic location of users accessing their sites.[19] According to Justice Kirby, the arrival of the Internet "suggests a need to adopt new principles . . . in responding to questions of forum or choice of law that identify, by reference to the conduct that is to be influenced, the place that has the strongest connection with, or is in the best position to control or regulate, such conduct."[20] Nevertheless, he concluded that it would be wrong for the High Court to depart from the usual common law rules in this case.[21] Although the Internet presents novel features, it has much in common with other global means of communication.[22] Moreover, Justice Kirby believed it was undesirable to formulate special rules for a particular technology.[23] In particular, the appellant's argument that the place of uploading or place of publisher's control should be considered the place of publication would, given the predominance of United States based web-servers, extend the application of libel laws in the United States to the prejudice of other countries' laws with which the claimant is more closely connected.[24]

Perhaps the most powerful argument for Dow Jones was that, unless the common law approach was modified, Internet publishers would have to consider the libel laws of every country in which their messages could be downloaded in case a claimant chose to bring an action in one of those

14. *Id.* at 601-05.
15. *Id.* at 606-07.
16. *Id.* at 605.
17. *Id.*
18. *Id.* at 630-35 (Kirby, J., concurring).
19. *Id.* at 617 (Kirby, J., concurring).
20. *Id.* at 625-26 (Kirby, J., concurring).
21. *Id.* at 629-30 (Kirby, J., concurring).
22. *Id.* at 630-31 (Kirby, J., concurring).
23. *Id.* (Kirby, J., concurring).
24. *Id.* at 633-35 (Kirby, J., concurring).

countries.[25] Such widespread threat of suit would certainly have a chilling effect on Internet speech.[26] The High Court, however, believed this fear to be exaggerated.[27] First, a claimant could only obtain substantial damages if he enjoyed, as Gutnick did in Victoria, a reputation in the forum.[28] Second, a claimant would be reluctant to commence proceedings unless he was confident that he could enforce a judgement in his favour.[29] Moreover, a publisher can identify the legal systems in which the publisher may be exposed to libel liability and, in most cases, will know, or should know, where the potential claimants live and have reputations.[30]

III. English and Canadian Cases

The approach of the English courts in libel cases is similar to that taken by the High Court of Australia. In the leading English case, *King v. Lewis*,[31] the Court of Appeal upheld the decision of the lower court that the claimant, a boxing promoter who was a citizen of the United States and a resident of Florida, could bring a libel action in England in response to allegations made by the defendants (a world champion heavyweight boxer, his promotion company, and his New York attorney) that were posted on a California website.[32] The court invoked the presumption that the appropriate forum for the trial is the place where the defamation is committed: the defamatory statements were published in England, and the claimant, a well-known figure in that country, had a reputation to protect there.[33] The Court of Appeal rejected the single publication rule, as well as an argument that the normal jurisdictional rules should be modified for Internet publications.[34] The Court of Appeal did, however, suggest that the trial judge in an Internet case might have wider discretion when determining which forum is appropriate.[35] The trial judge in this case properly exercised his discretion when he dismissed the defendants' submission that New York would be a more appropriate forum, pointing out that an action brought in that state would almost certainly fail.[36] Furthermore, the defendant

25. *Id.* at 598-99.
26. *Id.*
27. *See id.* at 596.
28. *Id.* at 609.
29. *Id.*
30. *Id.*; *see also id.* at 642-43 (Kirby, J., concurring).
31. [2005] E.M.L.R. 4 (C.A.).
32. *Id.* at 63.
33. *Id.* at 54-55.
34. *Id.* at 58.
35. *Id.* at 58.
36. *Id.* at 62-63; *see also* New York Times v. Sullivan, 376 U.S. 254, 281-82 (1964)

argued that courts should stay libel proceedings when the defendants do not "target" their publication at readers (or Internet users) in England.[37] While this approach has been adopted in the United States in intra-continental libel suits, the Court of Appeal dismissed the approach as uncertain and open to manipulation.[38]

A trial judge should consider a number of factors when deciding whether England is an appropriate forum in which to litigate a libel case arising from a global publication. Among these factors is the extent to which the claimant has a real connection with England: if the connection is only tenuous, the court is unlikely to exercise jurisdiction.[39] In light of this principle, Eady, J., in *Richardson v. Schwartzenegger*, held that Anna Richardson—a well-known television host, United Kingdom citizen, and resident of England—could bring defamation proceedings against Arnold Schwartzenegger, Sean Walsh, Schwartzenegger's campaign spokesman, and a Hollywood publicist, Sheryl Main.[40] Richardson was suing in response to a story in *The Los Angeles Times,* published both in hard copy and on the Web, that she had concocted allegations that Schwarzenegger had sexually assaulted her.[41]

Another factor a judge should consider is whether the harmful statements have been published in other jurisdictions.[42] For example, it would be appropriate for a court to decline jurisdiction where the claimant has no real connection with England, or where the extent of publication in England was trivial in relation to other jurisdictions.[43] In a more recent case, the Court of Appeal dismissed, as an abuse of process, defamation proceedings that were brought in response to serious libel allegations accessible by hyperlink from the *Wall Street Journal On-line*: it was established that only five subscribers had followed the hyperlink, three of whom were connected with the claimant.[44]

The Canadian courts apply similar jurisdictional principles. They assume jurisdiction over foreign defendants where the claimant shows a real and substantial connection between the action and the forum.[45] These principles have recently been applied in a libel case by Justice Pitt

(requiring claimant to show actual malice in a libel action).

37. *King*, [2005] E.M.L.R. at 58.

38. *Id.* at 58-59; *see also infra* Part IV.

39. Richardson v. Schwartzenegger, [2004] E.W.H.C. 2422, para. 23 (Q.B.).

40. *Richardson*, [2004] E.W.H.C. at paras. 2, 31.

41. *Id.* at para. 2.

42. *Id.* at para. 23.

43. Kroch v. Rossell, [1937] 1 All. E.R. 725, 726-27 (C.A.) (involving a claimant without well-known reputation in England sued in reponse to allegations in French and Belgian newspapers with small circulation in England).

44. Dow Jones & Co. v. Jameel, [2005] E.M.L.R. 16, 374-75 (C.A).

45. *See, e.g.*, Morguard Investments, Ltd. v. De Savoye, [1990] 3 S.C.R. 1077; Tolofson v. Jensen [1994] 3 S.C.R. 1022.

of the Ontario Superior Court of Justice when he dismissed a motion by the *The Washington Post* to dismiss an action brought by the plaintiff, an international civil servant, in response to allegations published in 1997 both in the newspaper and on its website.[46] Arguably, the case was more difficult than *Gutnick* or *Richardson* because the plaintiff was working in Kenya when the allegations were published.[47] The plaintiff had only settled in Ontario at the end of the previous year, and only became a Canadian citizen in 2001.[48] However, Justice Pitt did find that the newspaper "should have reasonably foreseen that the story would follow the plaintiff wherever he resided."[49] He also discussed *Dow Jones & Co. v. Gutnick* approvingly, stressing the High Court's statement that those who put information on the Internet do so knowing the possible reach of the information.[50] Finally, while Justice Pitt concluded that the District of Columbia, where the newspaper is published, would be an equally appropriate forum, he believed that this fact was an insufficient basis for disturbing the plaintiff's choice of forum.[51]

IV. Alternatives to the Traditional Approach

There a number of possible alternatives to the traditional common law approach, under which each state where publication takes place can claim jurisdiction and may, depending on its choice of law rules, apply its own substantive law. The first possible alternative is that only the state where the publisher initially published the communication has jurisdiction. In Internet cases, the state of initial publication would be the state where a defamatory message was first placed on a server; the courts of another state would have to disclaim jurisdiction, even if an action was brought by a plaintiff wholly resident in that state and the communication was directed to its public. This alternative is really a variant of the United States' single publication rule, which is used to avoid a multiplicity of libel actions in different states based on one publication. It makes some sense to adopt this type of rule to settle small differences in the libel law between the states or countries in the United States or Europe, where there are broad common standards in libel law. It is much harder to see why jurisdictions such as England, or the states in Australia, should take this approach when their libel laws differ so markedly from libel laws in the United States, where the law has

46. Bangoura v. The Washington Post, [2004] 235 D.L.R. (4th) 564, paras. 22, 31, *rev'd*, [2005] CarswellOnt 4343.
47. *Id.* at para. 1.
48. *Id.* at paras. 1, 25.
49. *Id.* at para. 24.
50. *Id.* at paras. 41-45.
51. *Id.* at para. 37.

become, for constitutional reasons, favourable to defendants. As Justice Kirby noted in *Gutnick*, because of the large number of web-servers in the United States, the adoption of a rule such as the single publication rule would extend the reach of United States' law, and the jurisdiction of United States' courts, to defamation actions brought by Australians and other foreign citizens in response to damage occasioned to their reputation within their own country as a result of Internet publication.[52] As it is difficult for claimants to succeed in a libel action in the United States, and almost impossible for public officials and figures to do so, such a change may cause worthy reputations to go unprotected. Thus, while the traditional jurisdictional approach may chill Internet speech, the adoption of the single publication rule might well entail the abandonment of reputation rights.

Under a second alternative, courts in the forum could only exercise jurisdiction in Internet (or other) libel suits emanating from another state when it is clear that the defendant has "targeted" the communication at readers in the forum state. This approach has been adopted in a number of recent United States cases, notably *Young v. New Haven Advocate*[53] and *Revell v. Lidov*.[54] However, as already noted, this approach has been rejected by the Court of Appeal in England as lacking certainty and as open to manipulation.[55] The judges in that case did not explain this view. Nevertheless, it is unclear what "targeting" really means: is it crucial that the website containing the defamatory allegations is primarily directed to readers in the forum state, or only that the particular defamatory allegations were directed to readers in the forum state? Additionally, "targeted" could be interpreted as meaning the allegations were targeted at a plaintiff resident in a particular forum, regardless of whether or not the majority of readers interested in the allegations concerning the plaintiff also lived there. In *Young*, the Court of Appeals for the Fourth Circuit held that the courts in West Virginia could not assume jurisdiction in a libel action brought by a resident of that state, although it was clear that the allegations were directed against him; instead, what mattered was that the article was of most interest to readers in

52. *See* Dow Jones & Co. v. Gutnick, (2002) 210 C.L.R. 575, 633.

53. 315 F.3d 256 (4th Cir. 2002) (holding that West Virginia courts have no jurisdiction to try a libel action brought by the prison warden in that state in response to allegations published by a Connecticut newspaper on its website concerning treatment of Connecticut prisoners sent to serve their sentence in West Virginia jails; the allegations were of primary concern to, or targeted at, readers in Connecticut).

54. 317 F.3d 467 (5th Cir. 2002) (holding that Texas courts have no jurisdiction over a libel action brought by a Texas resident in response to allegations on an Internet bulletin board hosted by Columbia University when the allegations made no reference to Texas, and the article was not directed at Texas readers).

55. King v. Lewis, [2005] E.M.L.R. 4, 58-59.

Connecticut, as it discussed the implications of sending convicted criminals in that state to jail in West Virginia.[56] It seems, therefore, that the crucial question for the court is whether the publication targeted readers in the forum state. This basis for jurisdiction might not do justice to the interests of a plaintiff, resident in one state and with significant standing in that community, whose reputation has been damaged by a publication of more concern to readers in another state.

These difficulties would not occur under the third alternative approach: the courts of the forum could only assume jurisdiction over defamatory Internet communications uploaded by a defendant in another state when the defendant should have foreseen that the claimant would suffer a loss to reputation rights in the forum state as a result of computer users' downloading the allegations. The adoption of this approach would satisfy some of the objections of the High Court of Australia in *Gutnick*.[57] In particular, a defendant would not have to check the defamation laws of every country from Afghanistan to Zimbabwe; instead, he would only be subject to the jurisdiction of the courts of a state in which he should reasonably foresee that a publication would damage reputation rights.[58] The *Young* case would probably be decided differently, as it was surely foreseeable by the publisher of the New Haven newspaper that the reputation of the West Virginia prison warden would be injured.[59] Equally, the English Court of Appeal might have decided *King* differently, as it was far from clear that the defendants should have appreciated that the reputation of the boxing promoter, a resident of Florida and a United States' citizen, would be injured in England.[60]

V. Some Issues of Principle

This article has discussed, in a technical manner, the approaches which have been taken, or which could be taken, to jurisdiction and choice of law disputes in Internet libel cases. But underlying the question of which approach is most appropriate are two fundamental issues of legal principle and, possibly, a technological question pertinent to the Internet. This Part will address these matters, as a sensible resolution to the problems of jurisdiction and choice of law is otherwise impossible.

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56. *Young*, 315 F.3d at 262-64.
57. *See supra* notes 12-30 and accompanying text.
58. *See* Dow Jones & Co. v. Gutnick, (2002) 210 C.L.R. 575, 609.
59. *See* Young v. New Haven Advocate, 315 F.3d 256 (4th Cir. 2002).
60. *See* King v. Lewis, [2005] E.M.L.R. 4 (C.A.).

A. *In This Context, is the Internet Different Than Other Means of Global Communication?*

The High Court of Australia in *Gutnick* questioned whether the Internet was really different than television services, such as satellite broadcasting, in its reach.[61] A global broadcasting service such as CNN or BBC Worldwide is as readily obtainable in a number of countries as any website. Of course, the Internet is different from broadcasting or newspapers in that it enables individuals and small businesses to disseminate their messages around the world as freely as giant media corporations. Thus, the Internet is rightly regarded as a significant development for free speech.

The question, however, is whether the jurisdictional rules developed for the traditional mass media should be abandoned. Certainly, the imposition of libel liability, resulting from the assumption of jurisdiction by courts in Australia or England, might deter individuals and companies from using the Internet, or at least persuade them to use it more cautiously. But is this wrong? A defamatory allegation put on the Internet can spread around the world immediately, causing potentially enormous damage to its victim's reputation.[62] Moreover, while newspaper and broadcasting lawyers check that their journalists and other contributors do not infringe upon libel laws, there are no similar controls on the participants to a bulletin board or discussion group. Thus, while the Internet may well be different from other means of global communication, the differences can be used to argue either for or against the application of traditional jurisdictional and other libel law rules, which may lead to the imposition of liability for libel.

B. *The Balance Between Free Speech and Reputation Rights on the Internet*

The real disagreement of principle concerns the balancing of free speech and reputation rights. *Gutnick,* and other English decisions adopting its approach to libel jurisdiction and choice of law in Internet cases, allow actions to be determined on the basis of what may be regarded as the claimant-friendly defamation laws of Australia or England. On the other hand, the adoption of United States' principles, such as the single publication rule or the "targeting" approach, would mean that, in many circumstances, the forum court would have to deny

61. *Gutnick,* 210 C.L.R. at 605.

62. *See* Michael Hadley, *The* Gertz *Doctrine and Internet Defamation*, 84 VA. L. REV. 477, 491-98 (1998).

jurisdiction, resulting in an action being able to be brought only where the communication was uploaded to the server. Defamation proceedings would almost certainly fail in the United States, particularly if the claimant were a public official or public figure. Hence, the dispute about the appropriate state for jurisdictional purposes becomes a surrogate for the disagreement about the correct balancing of free speech and reputation rights.

It is, of course, natural for English or Australian courts to take the view that they have jurisdiction to hear a libel action brought by a claimant whose reputation has clearly suffered in the forum as a result of allegations originally published elsewhere. In the exercise of their discretion of whether to hear the action, one consideration is how much weight to give an argument that courts in the United States will refuse to enforce foreign libel judgements which could not be obtained in the United States without infringing on First Amendment rights.[63] In *Gutnick*, Justice Kirby implied that Australian courts should at least take this argument into account when considering whether it would be proper to assume jurisdiction or apply the law of New South Wales or Victoria.[64]

Nevertheless, it would appear to be a mistake to give this argument much weight. First, it confers on United States courts a decisive voice on the balancing of reputation and free speech rights: an Australian or English judge would in effect be ruling that he would not consider a libel action, in other respects properly before him, because any judgement in favour of the claimant would be regarded as contrary to United States public policy, and thus unenforceable. Second, the argument assumes that the only, or principal, object of a libel action is to obtain an enforceable award of damages. Contrary to this assumption, a libel verdict in London or Sydney would vindicate the claimant's reputation rights, or perhaps give emotional satisfaction to the claimant, even though he could not obtain financial compensation, unless the United States defendant had financial assets in the jurisdiction. The non-enforceability of foreign judgements that contravene the First Amendment may alleviate United States defendants' fears of violating the libel laws of other countries, but this does not provide a strong reason why courts in other countries should abstain from exercising jurisdiction, or applying their own defamation laws, when it would otherwise be proper to do so.

63. *See* Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992); Matusevitch v. Telnikoff, 877 F. Supp. 1 (D. D.C. 1995).

64. *Gutnick*, 210 C.L.R. at 628-29 (Kirby, J., concurring).

C. *A Technological Argument*

Many free speech arguments concerning the Internet have particularly strong force because the disseminators of messages and website operators normally have no means of controlling who can download communications on the Internet. The United States Supreme Court has, for example, struck down Congressional attempts to limit the dissemination of pornography on the Internet because it is difficult, if not impossible, to ensure that indecent material is kept away from children without also preventing adults from accessing the material.[65] This difficulty was appreciated in *Gutnick*.[66] Unless the website operator uses a subscription system, there is no way in which it can determine in advance the geographic location of users accessing messages on its site. Furthermore, a subscription system is far from wholly reliable, as residents in Australia could use a United States credit card and billing address to secure access to an American site. Nevertheless, future technological developments might make it possible for an operator to use software to ensure that its messages are not communicated to jurisdictions where there is reason to believe that the courts would exercise jurisdiction to hear defamation proceedings and impose liability. The availability of such software would weaken the argument of website operators and ISPs that their speech on the Internet might lead to the imposition of liability in a range of claimant-friendly jurisdictions. On the other hand, operators can plausibly argue that the use of geographical location software is expensive and unreliable; moreover, users may find ways to evade access restrictions imposed by its employment.[67]

VI. Conclusion

Jurisdiction in Internet libel cases has become a controversial issue. It presents, in a particularly acute form, the divergent approaches of the United States courts and those of other common law jurisdictions to the balancing of free speech and reputation rights. It is difficult to believe that this conflict will be resolved by an international convention. Moreover, it would be unreasonable to expect the courts of either the United States or of other countries to abandon principles of libel formulated for decades in the context of the traditional press and

65. Reno v. ACLU, 521 U.S. 844 (1997); Ashcroft v. ACLU, 542 U.S. 656 (2004). It is relatively easy to control access to pornographic material by making it available only on a subscription basis and checking that subscribers are adults with a credit card, although a subscription system may be expensive to operate.

66. *Gutnick*, 210 C.L.R. at 617-18 (Kirby, J., concurring).

67. For consideration of these issues, *see* Horatia Muir Watt, *Yahoo! Cyber-Collision of Cultures: Who Regulates?* 24 MICH. J. INT'L L. 673 (2003).

broadcasting media.

There is no clear reason why the Internet should be singled out for special treatment. It is widely used by individuals and enhances their freedom of speech, but equally, the Internet has an enormous potential to spread defamatory material and inflict damage on individuals and business. At most, the courts of England and other common law countries should be more willing to exercise their discretion not to hear a libel actions under *forum non conveniens* principles, especially when it is clear that the defendant had no reason to foresee that its statements would damage the claimant's reputation in the forum. The difficulties discussed in this article might be lessened by a more flexible approach. However, it would be wrong for courts to abandon their traditional approach simply because their decisions would not be enforced in the United States.

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