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Social Media as a Problematic New Forum for Defamation Lawsuits

BY [SHANA FEIBUS](#) / ON APRIL 16, 2016

Gone are the days where a celebrity's biggest worry is what will be printed about her in the hottest magazine. Magazines are no longer flying off the shelves or being tossed onto lawns in America as frequently as they used to be. Usage of traditional media, such as magazines, cable news, and newspaper, has fallen.^[1] In 2015, the Pew Research Center found that weekday circulation of newspaper is down 19% since 2004 and viewership of cable news is down 8% from 2014.^[2] Consumers have not stopped reading or listening to the news. They are simply receiving their news from elsewhere.

Individuals have directed their attention to their computers or smartphones—places where they can receive instant access to a wealth of information. Specifically, many consumers have turned to social media. In 2014, the Pew Research Center asked adult Internet users where they received their news from within the past week, and nearly half of those surveyed pointed to Facebook.^[3] Usage and popularity of social media platforms, like Facebook, is staggering. As of August 29, 2015, Facebook had 1.5 billion monthly users.^[4] As of December 31, 2015, Twitter, another social media platform, had 320 million monthly users.^[5]

Consumers are not only using social media to read the news, however. The soaring usage of social media has turned it into a new forum for defamation lawsuits. Over the past few years, many social media defamation cases have surfaced in Australia and the United Kingdom, and their frequency is increasing. In August, Slater and Gordon, an Australian law firm, said 48% of the defamation inquiries they received involved information posted on social media.^[6] In November, Thomson Reuters discovered that social media defamation cases in the UK rose 38% from the previous year.^[7]

The United States is following suit. Recent celebrity social media defamation cases are receiving a lot of attention in the media. In August 2015, Courtney Love, a famous actress and musician, had to pay \$350,000 to settle a twitter-based defamation lawsuit.^[8] This year's celebrity twitter defamation controversy is centered on James Woods, a famous actor.^[9]

Woods noticed a post on his twitter account by an anonymous user named "Abe List" that insinuated that he is addicted to cocaine.^[10] In July 2015, fearing the wide reach of the Internet and the impact the post could have on his name and reputation when the post was sent to thousands of Abe List's followers and hundreds of thousands of his own followers, Woods filed a \$10 million lawsuit claiming that Abe List defamed him.^[11] Last month, a Los Angeles judge denied Abe List's attempt to prevent the lawsuit from moving forward.^[12] The

judge ruled that the case could proceed because Woods sufficiently established that he could succeed on his claim.[\[13\]](#)

Given that social media usage is continually increasing and the recent influx of social media defamation cases, it is important to identify why users are posting this type of information so we can stop these cases from ultimately flooding the courts.

One reason could be because social media users do not realize that social media is something to take seriously. In the Woods case, Abe List's central claim in his motion to strike was that his post was not a fact, but rather a political hyperbole and something typical of Twitter culture.[\[14\]](#) This claim exemplifies the argument asserted by a Kansas City lawyer in his law firm's blog: that individuals view social media conversations as "innocent chatter," and not as a place where posted statements remain forever.[\[15\]](#)

A lack of education on and exposure to the dangers of social media may be contributing to its users' misunderstanding that social media is a safe space devoid of legal consequences. Wiggin, a UK law firm, found that 46% of individuals aged 18 to 24 did not know that if they posted an unsubstantiated rumor about someone on social media that they could face defamation charges.[\[16\]](#)

A former USC linguistics professor testified on behalf of Woods that Abe List's syntax in the post suggested that he was making a factual statement.[\[17\]](#) This was the evidence that convinced the judge to allow Woods' case to move forward last month.[\[18\]](#) The judge said that Abe List's post is a "well-established linguistic structure widely used to characterize people with shorthand factual information."[\[19\]](#) If all it takes for a social media defamation case to move forward is a showing that a defendant used a certain syntax that probably comes natural to most people, social media users are seriously at risk, and so are our courts for case flooding.

As a second-year student at Benjamin N. Cardozo School of Law and a Staff Editor on the Cardozo Arts & Entertainment Law Journal, Shana Feibus plans to make her mark as an intellectual property lawyer.

Sources:

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[\[2\]](#) *Id.*

[3] *Id.*

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[16] Brian Wheeler, *Twitter users: A guide to the law*, British Broadcasting Corp. (Feb. 26, 2014), <http://www.bbc.com/news/magazine-20782257>.

[17] Goldman, *supra* note 13.

[\[18\]](#) Goldman, *supra* note 13.

[\[19\]](#) Gardner, *supra* note 9.