

AUTOMATIC

December 31, 2016

Via Email: defamationactreview@justice.ie

Defamation Act Review
Department of Justice and Equality
Bishop's Square
Redmond's Hill
Dublin 2

Dear Department of Justice and Equality:

I am the General Counsel of Automattic Inc. Our company has a long history with Ireland. Automattic's first employee was based in Cork, and we operate our activities, outside the United States, through our Irish subsidiary, Aut O'Mattic Ltd. We also have a large number of users of our products and services in Ireland and across Europe. Our concerns about how the Defamation Act of 2009 affects our users' freedom of expression is the reason for this letter.

In particular, I write to urge the Department of Justice to maintain, and further extend, the defence of innocent publication in the Defamation Act of 2009. This defence is vital to the continued growth of the Internet as an engine for the fundamental right to freedom of expression. To protect the Internet's important role as a vehicle for expression, we urge the Department of Justice and Equality to recommend measures to further remove the threat of liability that encourages online hosts to remove content following a takedown demand, and thus, act as the arbiter of online speech—a role that should not be stripped from the judiciary.

The Internet is the principal expressive medium of our time. Indeed, all of Automattic's products and services are designed to democratize online publishing so that anyone with a story can tell it. Automattic is best known for WordPress.com, which allows anyone, from bloggers, to photographers, artists, plumbers, doctors, and restaurant owners to easily create a

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website. Internet hosts like Automattic allow anyone with Internet access to express his or her beliefs, opinions, and viewpoint.

But Internet hosts are in no position to judge disputes over the content that users choose to voice. This is especially true in disputes involving allegations of defamation. Setting aside the marginal number of cases where it is obvious that content is *not* defamatory—because the content expresses an opinion, for example—Internet hosts like Automattic have no way to know whether content is (or is not) defamatory. We do not have subpoena power to collect evidence. We do not call witnesses to testify. We are not jurists. This reality is at odds with laws imputing knowledge and liability to an Internet host merely because the host receives a complaint that content is defamatory.

Even more importantly, such laws encourage Internet hosts to accept a complainant's word at face value and remove published content, without any vetting of judicial process. This system encourages rampant abuse. Aware of the liability threat that incentivizes Internet hosts to remove content, anyone who does not like a particular point of view, or does not like legitimate criticism, understands that he or she may have decent odds of silencing that speech by simply making an allegation of defamation, rather than pursuing resolution through the court system. This outcome is a serious threat to all online speech.

This potential for abuse is not theoretical. Automattic regularly receives dubious complaints of defamation. For example:

- A multi-national defence contractor lodged numerous defamation complaints against a corporate whistle blower who posted information about corporate corruption to a WordPress.com blog.
- A large European pharmaceutical firm sought, on defamation grounds, to disable an individual's WordPress.com blog, which detailed negative experiences with the firm's products. A Court later determined that this content was true, and not defamatory. If Automattic had chosen not to wait for a judicial determination, but instead eliminate any potential liability by immediately disabling this blog, we would have undermined freedom of expression.
- An international religious/charitable group brought defamation charges against an

independent blogger who questioned the organization's leadership.

Of course, valid complaints need to be addressed, and a system exists for doing so: a complainant can take legal action against the person who posted the content. This process keeps decisions regarding freedom of expression within the purview of the judiciary. Leaving such important decisions to the discretion of Internet hosts—whose main interest is protecting themselves from liability under current laws—has the result of silencing innumerable legitimate voices.

For these reasons, we urge the Department of Justice and Equality to not only maintain the defence of innocent publication as a centerpiece in cultivating the freedom of expression online, but to also place the decision of whether content is (or is not) defamatory where it appropriately belongs: before a judicial officer. We respectfully suggest that the Department consider more robust immunities for online hosts with respect to allegations of defamation for content posted by users on their sites. For example, in Brazil, under the Brazilian Civil Rights Framework for the Internet, a host is only subject to liability for the content generated by others if it does not take steps to remove content that is declared unlawful by a court of law.

We thank you for the opportunity to provide comments. If we can provide any further information or assistance to the Department's review, please do not hesitate to contact me.

Best Regards and Happy New Year,



Paul Sieminski

GENERAL COUNSEL