



March 10, 2020

Twitter Int. Company
1 Cumberland Place
Fenian Street
Dublin

Dear [REDACTED]

Thank you for the opportunity to provide input for the ongoing review of the Defamation Act 2009.

Twitter is committed to improving the collective health, openness, and civility of conversation on our platform. Our success is built and measured by how we help encourage more healthy debate, conversations, and critical thinking. We want to foster an online environment that encourages healthy discourse.

This letter aims to highlight a challenge in Irish defamation law as it currently exists. We also propose, at a high level, a potential resolution to this issue.

Issue

The litigation process in Ireland for claims of defamation can be lengthy and expensive for all parties involved. The speed of online communications, and the public reach of content, creates an incentive to arrive at an early determination as to the likelihood of defamation.

Because of the heavy enforcement burden on online platforms, high cost of litigation, and potentially significant damages awards, platforms must choose between facing liability in court or potentially censoring non-defamatory content. If online platforms are expected to remove content upon notification alone, without a legal determination as to whether the content is defamatory under Irish law, this can lead to censorship of legitimate speech. Further, such censorship is unlikely to be brought to public attention as there will be no public court filing.

Holding online platforms liable for defamatory content published on their sites compromises the protections provided to these platforms under the terms of the e-Commerce Directive. Online platforms should not have to be the arbiters of what constitutes defamatory content until such issue is resolved by the courts. It is impracticable, if not impossible, for platforms to determine the truth or falsity of allegations posted on their sites.

Remedy

In the United States, a preliminary injunction process exists whereby a plaintiff can apply to a court for an initial ruling that a published statement is likely/capable of being found defamatory before their case enters a full litigation process. If the plaintiff receives such an order, platforms and online services will give due consideration to such an order and take action on content containing the statement where appropriate.


Benefit

An early determination mechanism as to the likely finding of defamation would be beneficial to aggrieved parties and online platforms, as it would give

platforms a legal basis on which to take enforcement action against the offending content, thereby mitigating the reach and extent of harm. It would also guard against the censorship of legitimate content by online platforms wary of liability and allow the litigation process between the plaintiff and publisher to move forward to address questions of intent, damages, etc. This type of adjudication at an early point in the claim would provide welcome clarity for all parties.

I remain at your disposal should you have any questions or comments on this.

Sincerely,


Senior Public Policy Manager, EMEA