



Call for submissions to the review of the Defamation Act 2009

Technology Ireland Submission

16 January 2017

Technology Ireland is the technology sector association of Ibec. Representing over 200 members, we advocate on behalf of Ireland's indigenous and foreign direct investment (FDI) technology companies to Government and policy makers. Technology Ireland welcomes the opportunity to submit comments to the public consultation on the review of the Defamation Act 2009.

Online defamation is a serious issue and it is timely to review the provisions of the Act given the rapid advancement in technology, the internet and social media. Working together with all stakeholders, the right balance can be achieved that safeguards the rights of individuals to protect their reputation and the right to freedom of expression. The following points summarise the technology sector's views on key aspects to consider in reviewing the 2009 Act.

1. Developing a vibrant digital economy

Beyond technological advances, core to a vibrant and properly functioning digital economy is the principle of responsibility. Responsibility for the impact of content generated and posted should lie with those who have created it. Internet intermediaries - in most cases - are not the publisher, editor or author of content. Therefore, pressure to shift liability for online content away from those who are actually responsible for generating and posting content should be scrutinised and resisted. Without such legal protection, the development of innovative online products to create, share and find content will be stifled.

An approach that places accountability on the individual for defamatory material posted online is needed. This approach encourages citizens to be responsible online users. The Defamation Act 2013 of England and Wales (Section 10) is a strong example of such an approach and should be considered in the current review. Section 10 clearly states that defamation claims should not be brought against parties that are not the author, editor or publisher.

Website operators should also be protected by a defence similar to Section 5 of the 2013 Act, where it is a defence to show that third-party content complained of was not posted by the website operator. This defence should not be invalidated by the website operator moderating such content posted by users, as this would act to discourage operators from undertaking responsible moderation.

2. Consistency with existing European legal frameworks

Irish defamation legislation should match the legislative provisions as set out in the E-Commerce Directive, thereby providing consistency with wider digital single market goals. It is essential that legislative reform recognises the role of online intermediaries - as oppose to that of a publisher or editor – and that liability is attributed correctly and in line with the E-Commerce Directive.

3. Thresholds for defamation action

New rules that differentiate defamatory conduct that occurs online versus offline should be avoided. The same rules and thresholds for defamation should apply to content regardless of where the act is committed. Focus must remain on individuals’ conduct rather than the tools employed.

In addition, the adoption of a statutory threshold requiring a certain level of harm to reputation in order that a defamation action is brought, should be considered. Such a test or threshold will discourage trivial or vexatious claims, ensure effective use of court resources and avoid defamation law being used to suppress legitimate criticisms or expressions of facts important to the public interest.

o---ENDS---o