



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

By Email to defamationactreview@justice.ie

20 January 2017

Re:- Submission to Department of Justice & Equality on the Review of the Defamation Act 2009, December 2016

Dear Sir/Madam,

Yahoo! EMEA Limited ("Yahoo") welcomes the opportunity to contribute to the public discourse in relation to the proposed review of defamation law in Ireland (the "Public Consultation").

We have had opportunity to consult with Google, Inc. ("Google") and have kindly been provided with a copy of their submission to your office in relation to this matter (copy attached for ease of reference).

We support the submission made by Google and in particular would like to highlight the key points of this response which correspond to areas of concern for Yahoo, as follows:-

- Critical for any new Irish law in this area to be consistent with EU law having regard to the complexity of and access to the medium offered by companies like Yahoo. Therefore, the (current) E-Privacy Directive remains the most usefully drafted guiding legislation from our perspective, with the recent reforms of UK Defamation Laws providing sound template practice and procedures for consideration and perhaps expansion and/or clarification in certain areas.
- "Notice & Takedown" procedures specifically envisaged by the E-Commerce Directive and E-Commerce Regulations for information society service providers (ISSPs) in addressing notifications of allegedly unlawful information are a particularly good example, as this system strikes a careful balance between the interests of individuals affected by unlawful information and ISSPs (online intermediaries) and other internet users.

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- Principle of technology neutrality is key, along with the maintenance of equivalent thresholds for both online and offline defamation. New rules in this area should not seek to differentiate between conduct that occurs in different media, rather these should be drafted in a technology neutral fashion focusing on the defendant's conduct and not the tools that are employed. This will also support the currency of the legislation as technology continues to evolve.
- Balance between the protection of the Article 8 ECHR right to the protection of one's reputation whilst guaranteeing the exercise of Article 10 ECHR rights to freedom of expression is also critical and adoption of a statutory threshold requiring a certain level of harm to reputation in order that a defamation action may be brought in Ireland would assist in this balancing test, as well as helping to discourage frivolous or vexatious claims being brought before the Courts.
- With respect to available defences, we support the adoption of similar provisions to those contained in Section 5 of the UK 2013 Act which would discourage vexatious claims which target website operators instead of targeting the source of the defamatory content i.e. its known author. However, we would recommend that a review of the implementing procedures of this defence as laid out in the UK should be undertaken to avoid overly burdensome and at times, impracticable procedural rules, particularly given complexities of scale and multi-jurisdictional issues faced by larger website operators. We would also welcome a similar recognition to that provided under Section 5(12) of the UK 2013 Act, so that website operators are not punished for exercising responsible online citizenship.
- Intermediaries should not be forced to police the internet and this is particularly the case in the context of allegations of defamation, which can be highly fact dependant and can involve complex legal defences in which the internet intermediary cannot be expected to possess all, or any, of the relevant supporting information. It does not appear to be a desirable outcome to effectively outsource the judicial function of national courts in such cases to internet intermediaries, by requiring intermediaries to determine what should remain online and what should not.
- Jurisdiction in the digital environment is a complex issue and touches on a number of other aspects of the law including extradition of individuals, limitations to intermediary liability and remedies for the victim/claimant. There are also practical difficulties associated with cross-border enforcement of local law. We recommend that the country of origin principle apply in cases of defamation law. That principle, contained in Article 3(1) of the E-Commerce Directive, effectively provides that an information society service should follow the laws of the member state in which it is established, not the laws of each member state to which it provides its services.

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We hope that this is helpful to your review and consideration of this important issue and we would be pleased to discuss this with you further. Should you wish to do so, please don't hesitate to contact me or Emma Ascroft at eascroft@yahoo-inc.com.

Yours faithfully,



Emma Kearney
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