

A New Barrier To Removal of Defamatory Web Content?

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Someone anonymously posts false, libelous statements about you or your organization on a third party website. You file a lawsuit against the poster and obtain a permanent injunction from the court for the removal of the content. What happens if, despite the injunction, the site refuses to take down the post?

Three individuals of the Blockowitz family recently found themselves in this very position. The Blockowitzs filed suit in federal court in Illinois against two web posters and obtained a default judgment against them. The court then issued a permanent injunction ordering the defendants to remove the allegedly defamatory content from several websites including facebook.com, myspace.com and ripoffreport.com. Because the defendants were not responding, the Blockowitzs presented the injunction to each of the websites, asking them to remove the posts. All of the sites did so, with the exception of the Ripoff Report website. The Blockowitzs then filed a motion for enforcement of the injunction against Xcentric Ventures, LLC, the operator of ripoffreport.com.

In considering the motion, the court looked at Federal Rule 65(d) which governs the enforcement of injunctions against a non-party. The rule requires that the non-party be acting in concert with or be an agent or representative of the enjoined party. The Blockowitzs argued that the terms of service for the web site demonstrated that Xcentric was acting in concert with the defendants. The terms of service expressly prohibit the posting of defamatory content, but also stated that content would not be removed, even at the poster's request. The court, while sympathetic to the Blockowitzs' plight, disagreed and found that there was no evidence that Xcentric "intends to protect defamers and aid them in circumventing court orders."

The implications of this decision suggest that it could become more difficult to secure the removal of defamatory web content. Note that most sites do not have a stated "no removal" policy like that of Xcentric -- at least not yet. Whether the Blockowitz decision will influence other website operators to adopt such a policy remains to be seen.