

Online Rants Not Always Free Speech

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WASHINGTON — Those with quick access to the Internet and the urge to rant online ought to think twice – what you post could come back to haunt you, in court.

As the number of Internet users and electronic bulletin boards soars, so has the tendency for people who use the perceived anonymity of the medium to lash out or "flame," as it is called in cyber-speak, against public and private figures, companies and institutions.

But with the increased venting comes more and more lawsuits from corporate lawyers who have discovered posters' identities and sued them, arguing that their flaming has crossed the line from free speech to defamation.

"People don't think about it," said Lee Tien, a lawyer for the Electronic Frontier Foundation, an advocate for free speech and privacy on the Internet. "They think what they say is more like a conversation and that the words are effervescent and disappear into the air, and often they are not. As a result, the things people say are likely to come back to bite them."

Since a Florida appellate court forced Internet service providers in October 2000 to divulge the identities of eight online posters who were being sued for comments they made about a former corporate CEO, many states have allowed lawyers to compel ISPs to reveal the identities of their users without evidence of wrongdoing.

Big ISPs like America Online and Yahoo! have softened the blow by giving their users advance notice that they are giving their identities away, leading to a hike in the number of lawsuits.

In December, Varian Medical Systems in California won a \$775,000 jury verdict against two former workers who accused managers on at least 100 message boards of discriminating against pregnant employees and being homophobic.

Miami lawyer Bruce Fischman recently won a suit against a former employee of HealthSouth who anonymously posted hundreds of messages about a CEO's wife

having lewd sexual affairs. The defendant was forced to give money to women's rights groups and to teach illiterate people to read.

"I'm not a zealot, but I don't believe that the right to speech is the right to hurt someone," Fischman said. "Companies aren't going to take this sitting down."

But not all cases against online posters are necessarily valid, sending free speech advocates scrambling to set standards that protect anonymity on the Internet while striking a balance between true defamation and protected speech.

"People will sue for defamations that are clearly not defamation – they sue for hurt feelings and name calling," or if they want to quell employee dissension, said Robert Corn-Revere, a First Amendment lawyer in Washington, D.C.

That being the case, not every suit is successful.

In February 2001, a California federal court ruled that online posters cannot be sued when they are stating opinions, as protected under the anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes there. Nineteen states have such statutes, which protect the right of citizens to publicly criticize a corporation, government or organization without fear of retribution.

In January, a New Jersey judge dismissed a lawsuit against a Web master who ran a site used by some 60 anonymous posters to criticize Emerson borough government officials. While some of the criticisms were clearly defamatory, the judge quashed subpoenas for the identity of all 60 posters and said a narrower request might be acceptable.

Les French, who went by the handle "Whadayaknow," was tracked down by his former company IteX Corp. in 1998 after he issued complaints about the company. They sued him for misrepresenting the firm, but he counter-sued and won \$40,000, which he used to set up a non-profit foundation to help other anonymous posters.

"Anonymity gives birth to free speech," he said at the time. "It encourages people to say things that are really on their minds."

But Fischman said anonymity is fleeting and not all free speech will be protected. Offenders will be subject to the power of the subpoena.

"I'm sure there are people and companies that abuse the privilege. I can assure you that not all (subpoenas) are meritorious. But in our legal system, plaintiffs have the right to proceed in court."

