

bases and CD-ROMs comprised of thousands of contributions to multiple collective works are not merely "revisions" of the original collective works.

In a similar, but unrelated, case, another group of freelance authors last October sued an online article delivery service, alleging electronic copyright infringement. The *Ryan v. Carl Corp.* lawsuit charges the defendant, the article service owned by Knight-Ridder Corp., with infringing copyrights of authors whose works it sold. It seeks damages for writers whose works were reprinted, along with an injunction halting future sales. The plaintiffs distinguish the *Ryan* case from *Tasini* on the grounds that the latter decision found that the publisher owned the copyright to its collective work — that is, the full collection of articles that comprise its publication. The *Ryan* plaintiffs claim their case involves the sale of individual articles. The defendant allegedly uses its Internet site as an index, with articles transmitted to customers via fax.

Electronics rights disputes are not limited to the United States. On February 3, 1998, a French court ruled that journalists, and not their newspaper employers, retain copyright control over articles published on the Internet. The court decided that simultaneous electronic publication of the daily newspaper *Les Dernieres Nouvelles D'Alsace* (DNA) on a World Wide Web site ([www.sdv.fr/dna](http://www.sdv.fr/dna)) owned by a DNA subsidiary, constituted a second use of copyrighted material for which journalists should have been remunerated.

### Libel

The following actions involve several aspects of libel. For an

---

## Part I

# Legal Update for Editors

*A review of the latest developments.*

By Lawrence Savell

**T**o minimize the risk of costly and time-consuming claims and litigation, magazine editors should be aware of and keep current on legal rules that can affect them. Recognizing that laws and court rulings vary around the country, this article highlights some recent developments of particular interest.

### Electronic Rights

On February 3, 1998, an appeal brief was filed by the plaintiffs in the closely-watched *Tasini v. New York Times Co.* case. *Tasini* is a suit by several freelance writers against a number of media companies for copyright infringement. It is based

on the publishers' inclusion of their newspaper and magazine articles in electronic databases and on CD-ROMs without first securing the writers' permission. Last August, the U.S. District Court for the Southern District of New York granted the defendants' motion for a summary judgment. A detailed analysis of the decision and its implications can be found at [www.mediainfo.com/ephome/news/newshtm/stories/082097n1.htm](http://www.mediainfo.com/ephome/news/newshtm/stories/082097n1.htm).

A group of twenty author/photographer organizations, also on February 3, filed an amicus brief in support of the plaintiffs. They argued that electronic data-

overview of the basics of libel law, see "Libel Law 101: A Primer for Editors," in *Editors Only* for September 1996.

### Defamatory Statement

Recent cases have emphasized the need for a plaintiff to establish that the challenged statement was indeed defamatory. For example, in *Plumley v. Landmark Chevrolet Inc.*, the U.S. Fifth Circuit Court of Appeals allowed a slander action against a car dealer and salesman to go forward. It was based on the salesman's alleged statements that an individual was gay. The court noted that the statement imputed the crime of sodomy to the individual. Traditionally, a false charge of crime is libelous.

In *Donati v. Queens Ledger Newspaper Group*, the New York Supreme Court, Appellate Division, ruled that a notice in a newspaper's "community grapevine" section stating that the plaintiffs' "secret is out," that they are engaged "after ten years as an unofficial couple," and that plaintiff's "divorce was final after waiting for two years," was susceptible to a defamatory connotation. The court explained: "The published material is susceptible of a defamatory connotation to the effect that the parties had engaged in a 10-year clandestine adulterous relationship . . . . Notwithstanding the loosening of traditional moral standards in the last few decades, the opprobrium of adultery remains with us today, as evidenced by the continued criminalization of adultery . . . ."

### Identification

A libel plaintiff must show that the challenged statement referred to (was "of and concerning") him or her. In the *Donati* case cited above, the court noted: "We further conclude that no basis exists to dismiss

the complaint insofar as asserted by the plaintiff Stella Wesolowski on the ground that the publication referred, apparently in error, to Stella Wislowski. Given the similarity of the two names and that the publication referred to the fact that the parties met at Manufacturer's [Hanover] Bank, there is no reason to conclude that the person referred to in the publication as Stella Wislowski was not readily identifiable as Stella Wesolowski to the readership of the defendant publication."

However, in *Schwab v. Reflector-Herald Inc.*, the Ohio Court of Appeals, Huron County, upheld a ruling granting a newspaper's motion for summary judgment in plaintiff attorney S. Scott Schwab's libel action, based on an article stating that "attorney Scott Schwab" was an agent for a massage parlor and that he received an indictment for felony counts of engaging in corrupt activity and promoting prostitution. The court ruled that the plaintiff failed to demonstrate that the article was directed at him, in light of the fact that: (1) it misspelled his name; (2) it listed no address for him; and (3) the plaintiff generally did not practice law in the newspaper's circulation area.

A frequently litigated issue involves the situation where a group to which an individual belongs, as opposed to the specific individual, is named. Although generally identification cannot be established by a person who happens to belong to a heterogeneous group that is defamed, an attack on a small subgroup can possibly result in liability. In *Thomas v. Jacksonville Television Inc.*, the Florida District Court of Appeal, First District, affirmed a lower court ruling that libel plaintiffs did not state a claim against a television station on behalf of a class of over 400 commercial net fisher-

men who worked or resided in the broadcast area, since a broadcast advertisement which allegedly falsely depicted the negative consequences of commercial net fishing off Florida's coast was not "of and concerning" the plaintiffs. The court noted the general rule in such situations: "One who publishes defamatory matter concerning a group or class of persons is subject to liability to an individual member of it if, but only if, (a) the group or class is so small that the matter can reasonably be understood to refer to the member, or (b) the circumstances of publication reasonably give rise to the conclusion that there is particular reference to the member." It further observed: "Plaintiffs face a difficult task when the statements concern groups; when a group is large, that is, composed of twenty-five or more members, courts consistently hold that plaintiffs cannot show the statements were 'of and concerning' them."

As demonstrated by the recent lawsuit brought by Texas cattlemen against popular talk show host Oprah Winfrey (which she won in a jury verdict on February 26, 1998), a business (as opposed to a person) can allegedly be libeled. Texas and approximately 12 other states also have "veggie libel" laws, intended to protect agricultural products from false and disparaging remarks. Although the cattlemen had initially sued Ms. Winfrey under such controversial legislation, the court in that case ruled that the Texas statute did not apply to the situation.

### "Libel-Proof" Plaintiffs

Some rare individuals are so criminally notorious that they are considered by courts to be "libel-proof" — that is, incapable of having their reputations tarnished further. In *Cerasani v. Sony Corp.*, the U.S. District Court for the Southern

District of New York ruled that a convicted felon who claimed that he had been defamed by his portrayal in the movie "Donnie Brasco" was libel-proof. The court stated that the plaintiff's reputation was "so badly tarnished" that his depiction in the film could do him little or no legal harm, such that "no reasonable jury could award him anything more

than nominal damages . . ." The court dismissed the lawsuit.

*Lawrence Savell is Counsel in the New York City office of the law firm Chadbourne & Parke LLP, where he concentrates on products liability and media law litigation and counseling. He can be reached at 212-408-5343, by fax at 212-541-5369, or via e-mail at lawrence.e.savell@chadbourne.com. ♦*

# Editors Only.

The Newsletter for Editorial Achievement

**275 Batterson Drive  
New Britain, CT 06053**

Tel.: 860-224-0386

Fax: 860-224-9094

E-mail: editorsonly@mcimail.com

Web: [http://www.tiac.net/  
users/wid](http://www.tiac.net/users/wid)

●

Editors Only is published monthly by Editors Only Publications, 275 Batterson Drive, New Britain, CT 06053. ISSN: 0735-8490. Subscriptions are \$89 in the U.S., \$95 in Canada and Mexico and \$105 elsewhere. Printed in U.S.A. Copyright © 1998 by Editors Only Publications. All rights reserved. This newsletter is confidential and for subscribers only. Reproduction without prior permission is prohibited.

●

William Dunkerley  
Editor

Patricia Donohue  
Managing Editor

●

Ask Editors Only! As a service to readers, we invite you to send us any questions you may have about editing. Perhaps you have a question about editorial management, or how other editors have handled a problem you are facing. Whatever question you have, we'd like to help. If our staff can't provide an answer, we'll seek advice from outside experts and get you the answers you need. Just contact us via e-mail, telephone, or fax with your questions.