



## The Internet: Anonymous Speakers to the Single-Publication Rule

By Steven Zansberg, Ashley Kissinger, and Katharine Larsen – February 15, 2011

### Subpoena to Unmask Anonymous Speakers

With a couple of notable exceptions, this past year, courts generally continued on the path of providing significant protection to anonymous online speakers. For example, several more courts adopted variations of the popular *Dendrite* test, requiring a subpoenaing plaintiff to “set forth a prima facie cause of action” and make other showings before the plaintiff may obtain the identity of one anonymously engaged in expressive speech. *See, e.g., SaleHoo Groups, Ltd. v. ABC Co.*, No. C10-0671JLR, 2010 WL 2773801, at \*4–5 (W.D. Wash. July 12, 2010) (adopting elements of *Dendrite* and quashing a subpoena in an action alleging defamation, trademark infringement, false designation of origin, and unfair competition); *USA Techs., Inc. v. Doe*, No. C 09-80275 SI, 2010 WL 1980242 (N.D. Cal. May 17, 2010) (adopting a streamlined version of *Dendrite* to quash a subpoena in action for securities fraud and defamation); *Mortgage Specialists, Inc. v. Implode-Explode Heavy Indus., Inc.*, 999 A.2d 184, 193 (N.H. 2010) (adopting *Dendrite* in a defamation action); *Swartz v. Doe #1*, No. 08C-431 (Tenn. Cir. Ct., Davidson County, Oct. 8, 2009) (applying the *Dendrite* test to factual findings made by a court after a hearing). But a few recent developments may take this fast-developing area of law in a new direction, affording less protection to some anonymous speakers.

Some courts declined to apply the *Dendrite* formulation in the cases before them (*See Dendrite Int’l, Inc. v. Doe No. 3*, 775 A.2d 756, 760 (N.J. Super. Ct. App. Div. 2001)), including the New Jersey court that decided *Dendrite* itself. *See Maxon v. Ottawa Publ’g*, 929 N.E.2d 666, 675–76 (Ill. App. Ct., 3d Dist., 2010) (rejecting the trial court’s application of *Dendrite/Cahill* standard and holding that Illinois Supreme Court Rule 224, which authorizes independent actions for the discovery of the “identity of one who may be responsible in damages,” coupled with the motion to dismiss standard provides the same level of protection given that Illinois is a fact-pleading state); *Too Much Media, LLC v. Hale*, 993 A.2d 845, 861–62 (N.J. App. Div. 2010) (rejecting a named-defendant blogger’s attempt to invoke *Dendrite*, in addition to the shield law, in a defamation action to protect the identity of her sources and more broadly asserting that the *Dendrite* standard is limited to “evaluating applications for discovery of the identity of anonymous users of Internet Service Provider (ISP) message boards” and has “never been extended beyond ISPs”); *Hester v. Doe*, No. 10-CVS-361 (N.C. Sup. Ct., Vance County, June 28, 2010) (purporting to apply *Dendrite* in a defamation action but mistakenly asserting that the standard required only a “Rule 12(b)(6) motion to dismiss analysis”).

The most significant of these cases was the Ninth Circuit’s decision in *In re Anonymous Online Speakers*, \_\_\_ F.3d \_\_\_, 2011 WL 61635 (9th Cir. Jan. 7, 2011) (withdrawing and replacing 611 F.3d 653 (9th Cir. 2010)). In one of the first federal appellate decisions in this area, the Ninth Circuit reasoned that those who anonymously engage in “commercial speech” are entitled to less constitutional protection than those who anonymously engage in political speech, and therefore should not receive the benefit of the high bar to disclosure imposed under the *Dendrite* and *Cahill* tests. *Id.* at \*6. After the panel’s initial determination that the speech at issue in that case—criticism of a company’s business practices—was “commercial speech” drew heavy criticism, the panel withdrew its original ruling and issued a new opinion that reached the same

result (affirming the trial court’s order to unmask three speakers) without determining whether their speech constituted “commercial speech.” If other courts follow the panel’s reasoning—that commercial speech is not entitled to the benefit of the *Cahill* and *Dendrite* tests—it may lead courts to develop a new test for (or to apply an existing lesser-burden test to) cases involving anonymous speech about “commercial” matters, including many matters of importance to consumers and policymakers.

The Second Circuit Court of Appeals also issued a decision in this area of law in *Arista Records, LLC v. Doe 3*, 604 F.3d 110 (2d Cir. 2010). There, however, the court broke no new ground, holding that a low-burden test should apply where the anonymous speaker is an alleged copyright infringer. The *Arista* court phrased its holding broadly—that the low-burden test “constitute[d] an appropriate *general* standard for determining whether a motion to quash, to preserve the objecting party’s anonymity, should be granted.” *Id.* at 119 (emphasis added). Whether other courts will interpret this to mean that the low-burden test should be applied to *all* requests for an anonymous speaker’s identity—whether the speech in question is infringing or expressive—remains to be seen.

Media companies have continued to invoke reporter’s privilege statutes in motions to quash subpoenas for anonymous posters’ identities with mixed success. Colorado and North Carolina joined the growing list of jurisdictions in which courts have quashed such subpoenas under state shield laws, bringing the list to seven (along with Oregon, Montana, Florida, Texas, and Illinois). *People v. Bruce*, No. 09M3247 (Colo. Springs Mun. Ct. Oct. 27, 2009) (applying § 13-90-119(2), C.R.S. to quash a subpoena issued to a newspaper website for the identity of an individual alleged to be an exculpatory witness to allegedly criminal conduct); *People v. Mead*, No. 10 CRS 2160 (N.C. Super. Ct., Gaston County, Aug. 16, 2010) (applying the North Carolina shield law, N.C. Gen. Stat. § 8-53.11, to grant a newspaper’s motion to quash a subpoena issued by a criminal defendant). However, a court in Kentucky rejected the invocation of that state’s shield law on the grounds that the statute was not meant to apply in the anonymous poster context. *Clem v. Doe*, No. 08-CI-1296, at 3 (Ky. Cir. Ct., Madison County, Mar. 26, 2010).

Another issue that is increasingly being litigated is whether website privacy policies are relevant to the decision whether to unmask anonymous posters. Several of those seeking anonymous posters’ identities have argued that website owners’ privacy policies—which generally ensure user privacy but provide that a user’s identity may be revealed under certain circumstances—diminish anonymous speakers’ expectations of privacy or even constitute a waiver of their First Amendment rights to remain anonymous altogether. Although one court in Tennessee accepted such arguments and declined to quash a subpoena (*See Swartz v. Doe #1*, No. 08C-431 (Tenn. Cir. Ct., Davidson County, Oct. 8, 2009)), two other courts found these arguments meritless. In *McVicker v. King*, 266 F.R.D. 92 (W.D. Pa. 2010), a federal court in Pennsylvania held that the privacy policy at issue, although containing boilerplate language allowing for disclosures under certain circumstances, actually created an expectation of privacy in the user when taken as a whole. In *Sedersten v. Taylor*, No. 09-3031-CV-S-GAF, 2009 WL 4802567 (W.D. Mo. Dec. 9, 2009), a Missouri federal court refused to find that users were contracting away their constitutional rights in the absence of any express waiver in the privacy policy.

## **Section 230**

The Ninth Circuit’s 2008 holding in *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008), continues to have fairly limited impact, as courts throughout the

country have distinguished it and have continued to extend immunity to websites hosting content provided by third parties. *See, e.g., Milo v. Martin*, 311 S.W.3d 210, 216-217 (Tex. App. 2010); *Shiamili v. Real Estate Group of New York, Inc.*, 68 A.D.3d 581, 583, 892 N.Y.S.2d 52, 54 (N.Y. App. Div. 2009); *Intellect Art Multimedia, Inc. v Milewski*, 2009 NY Slip Op 51912U, at \*7 (N.Y. Sup. Ct. 2009); *Blockowicz v. Williams*, 675 F. Supp. 2d 912, 914 (N.D. Ill. 2009); *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 967 (N.D. Ill. 2009); *Reit v. Yelp!, Inc.*, \_\_\_ N.Y.s.2d \_\_\_, 2010 WL 3490167 (N.Y. Sup. Ct. Sept. 2, 2010); *Black v. Google, Inc.*, No. 10-2381, 2010 WL 3746474 (N.D. Cal. Sept. 20, 2010).

In *Nemet Chevrolet, Ltd. v. Consumeraffairs.com*, 591 F.3d 250 (4th Cir. 2009), the Fourth Circuit affirmed the district court's dismissal of defamation and tortious interference with business-expectancy claims against a consumer-complaint site. The Chevy dealer contended that Consumeraffairs.com should be liable because it "'solicit[ed]' its customers' complaints, 'steered' them into 'specific categor[ies] designed to attract attention by consumer class action lawyers, contact[ed]' customers to ask 'questions about' their complaints and to 'help' them 'draft or revise' their complaints, and 'promis[ed]' customers would 'obtain some financial recovery by joining a class action lawsuit.'" *Id.* at 256–57. None of those activities was enough to make Consumeraffairs.com responsible for its users' postings, the Fourth Circuit held. There is nothing illegal about developing or joining a class-action lawsuit, and a "website operator who does not 'encourage illegal content' or 'design' its 'website to require users to input illegal content' is 'immune' under § 230 of the CDA." *Id.* at 258, citing *Roommates.com*, 521 F.3d at 1175. Nemet's allegations also weren't enough to show that Consumeraffairs.com was a content provider, since it didn't "show any alleged drafting or revision by Consumeraffairs.com was something more than a website operator performs as part of its traditional editorial function." *Id.*

In *Johnson v. Arden*, 614 F.3d 785 (8th Cir. 2010), the Eighth Circuit upheld dismissal of defamation, trademark and other claims brought by a couple who bred cats, also based on derogatory postings about their business on a consumer complaint site. The court held that the ISP that hosts complaintsboard.com could not be held liable for allegedly defamatory postings on that website *Id.* at 792. The Johnsons did not serve as the operators of complaintsboard.com. "Because InMotion was merely an ISP host and not an information content provider, the Johnsons' claims against InMotion fail as a matter of law" under Section 230. *Id.*

A California state court addressed the issue of whether someone who forwards an allegedly defamatory email after adding his or her own comments can claim Section 230's protection. The Fourth District Court of Appeals went beyond *Barrett v. Rosenthal*, 40 Cal. 4th 33, 51 Cal.Rptr.3d 55, 146 P.3d 510 (Cal. 2006), which had provided Section 230 protection to a woman who posted another person's email to Internet newsgroups without adding her own comments. (In an unpublished opinion in 2008, another California Court of Appeals panel held that Section 230 barred a defamation claim based on an email's embedded link to a website containing allegedly defamatory statements. *McVey v. Day*, No. B205465, 2008 Cal. App. Unpub. LEXIS 10462, at \*45–46 (Cal. Ct. App. Dec. 23, 2008).) The appeals court held that Section 230 protected a veteran of the South Vietnamese military who relayed an allegedly defamatory email to fellow veterans with his own neutral comments attached. *Phan v. Pham*, 182 Cal. App. 4th 323 (Cal. Ct. App. 2010), *appeal denied*, Case No. G041666, 2010 Cal. LEXIS 4419 (Cal. May 12, 2010). The defendant had forwarded a Vietnamese-language email accusing the plaintiff of having been disciplined by the South Vietnamese Navy for abusive behavior (*Id.*

at 324), and he introduced the email with his introductory comment: “Everything will come out in the daylight, I invite you and our classmates to read the following comments.” *Id.* Citing *Roommates.com*, the appellate court held that the introductory statement didn’t materially contribute to the alleged defamation. “All [the defendant] said was: The truth will come out in the end. What will be will be. Whatever.” *Id.* at 328.

In contrast, a bankruptcy court in Texas held a debtor liable in defamation for sending emails linking to a blog post with allegedly defamatory information about a former business associate. *In re Perry*, 423 B.R. 215, 269 (Bankr. S.D. Tex. 2010). Although the ruling fails to mention Section 230, the bankruptcy court held that the debtor was responsible for republishing the statements in the blog even though he was not responsible for writing or creating the post itself. *Id.* at 241.

Not all courts, however, have extended Section 230 immunity to website operators, finding sufficient involvement in generating or developing the offensive content to treat the website operator as an “information content provider.” The U.S. District Court in Connecticut refused to provide Section 230 immunity for videos entered in a contest sponsored by the Quiznos sandwich chain that criticized Subway’s offerings, saying Quiznos may have “actively solicited disparaging representations about Subway and thus [had been] responsible for the creation or development of the offending contestant videos.” *Doctor’s Assocs. v. QIP Holder LLC*, No. 3:06-cv-1710(VLB), 2010 U.S. Dist. LEXIS 14687, at \*69–71 (D. Conn. Feb. 19, 2010). Quiznos’s contest websites had encouraged video entries showing “why you think Quiznos is better” as part of an advertising campaign touting the claim that some Quiznos subs had more meat than similar Subway sandwiches. The case settled shortly after the judge’s ruling. *See Doctor’s Assocs. v. QIP Holders LLC*, No. 3:06-cv-1710(VLB), 2010 U.S. Dist. LEXIS 62667 (D. Conn. June 23, 2010).

A U.S. district court in Idaho ruled that a plaintiff’s assertion that a moderator for a bodybuilding website had posted a disparaging statement about the plaintiff’s dietary supplements was sufficient to overcome a Section 230 immunity claim in a motion to dismiss. *Cornelius v. Deluca*, No. CV-10-27-S-BLW, 2010 U.S. Dist. LEXIS 40460, at \*47–48 (D. Idaho Apr. 26, 2010).

In *City of Chicago v. StubHUB!, Inc.*, No. 09-3432, 2010 WL 3768072 (7th Cir. Sept. 29, 2010), the Court of Appeals for the Seventh Circuit certified a question to the Illinois Supreme Court, asking that court to determine whether the City of Chicago’s ordinance taxing the resale of tickets can be applied to electronic auction sites. To reach this issue, however, the court rejected StubHUB!’s claim that Section 230 barred the city from imposing a tax on it as the “provider . . . of an interactive computer service.” The court determined that the tax was being imposed not on the basis of any content posted on the Internet: “Chicago’s amusement tax does not depend on who ‘publishes’ any information or who is a ‘speaker.’ Section 230(c) is irrelevant.”

Finally, following the Ninth Circuit’s 2009 ruling in *Barnes v. Yahoo!*, 570 F.3d 1096, 1107 (9th Cir. 2009), a California state court judge ruled that a plaintiff’s promissory estoppel claim against Craigslist was outside Section 230 immunity. *Scott v. Craigslist, Inc.*, No. 10-496687 (Cal. Super. Ct. San Francisco Cty. Cal. June 2, 2010). The case is presently on appeal to the California Court of Appeals and several prominent media and Internet-based companies have filed amici briefs in support of Craigslist.

## Personal Jurisdiction

The past year saw a strong trend toward loosening the standards for applying personal jurisdiction in Internet-related defamation cases with two federal appeals courts and two state supreme courts holding that statements directed at people or businesses based in the forum state are sufficient to provide personal jurisdiction.

In a case involving a dispute over software used to trace the lineage of purebred dogs, the Seventh Circuit held that defendants in Colorado, Michigan, Ohio, and Canada could be sued in Illinois for allegedly defaming the Illinois-based businessman who developed and sold the software. *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. Ill. 2010). The fact that the defendants knew Tamburo lived in Illinois (and even included his Illinois address in some messages urging readers to harass him) was enough to establish a prima facie case of personal jurisdiction in Illinois, the court held. *Id.* at 697.

In *Silver v. Brown*, the Tenth Circuit favorably cited *Tamburo* in ruling that a New Mexico court had jurisdiction over a Florida man who created a blog criticizing a New Mexico consulting firm and its founder. No. 10-2005, 2010 WL 2354123, \*5–6 (10th Cir. June 14, 2010) (Table). The Floridian, a dissatisfied former customer of the New Mexico firm, expressly aimed his conduct at New Mexico and knew the primary effects would be felt there, the court said. *Id.*

The highest state courts in Ohio and Florida also ruled that personal jurisdiction may be exercised over individuals who post statements online about domiciliaries of those states. In *Kauffman Racing Equip., LLC v. Roberts*, 2010 Ohio 2551 (Ohio June 10, 2010), the Ohio Supreme Court found jurisdiction over a disgruntled Virginia customer who complained online about an allegedly defective engine block he had purchased from an Ohio racing engine manufacturer. Jurisdiction was proper because the disgruntled customer targeted his efforts—postings on various racing and automotive websites—at Ohio, and the plaintiff company produced evidence that five Ohioans had read those postings. *Id.* at ¶ 56. The Florida Supreme Court, answering a certified question from the Eleventh Circuit, ruled that the tort of defamation is completed when the allegedly defamatory online material about a Floridian is accessed in Florida (and thus is “published” there). *Internet Solutions Corp. v. Marshall*, 39 So. 1201, 1214-1539 (Fla 2010). Under Florida’s long-arm statute, a person commits the tort of defamation in Florida when someone in Florida reads the allegedly defamatory material. *Id.* The court repeatedly said, however, that it was answering only the question of when a court could exercise personal jurisdiction under Florida’s long-arm statute, not whether it would be a violation of due process to do so. *Id.* at 1216. Notably, the defendants in *Silver* and *Kauffman Racing* were both disgruntled former customers of the plaintiffs who had a contractual relationship with the plaintiffs (even if the claims were not contractual ones). Similar cases involving alleged defamation in the context of soured contractual relations include *Noble Roman’s, Inc. v. French Baguette, LLC*, 684 F. Supp. 2d 1065 (S.D. Ind. 2010) (a franchisor suit over online gripes by a former franchisee), and *Northwest Voyagers, LLC v. Libera*, No. CV09-378-C-EJL, 2009 U.S. Dist. LEXIS 96618 (D. Idaho Oct. 19, 2009) (an “adventure tour” company suit over negative comments on travel websites and in emails by the defendants, who got sick on a company-led tour to Mount Kilimanjaro).

In contrast to those cases, the Eighth Circuit held that posting an allegedly defamatory or trademark-infringing comment about a Missouri business (and mentioning its location) does not subject the poster to personal jurisdiction there. *Johnson*, 614 F.3d at 796–97. The court held that

Missouri did not have jurisdiction over California and Colorado residents alleged to have posted defamatory complaints about the Missouri cat breeding business: “We therefore construe the *Calder* effects test narrowly, and hold that, absent additional contacts, mere effects in the forum state are insufficient to confer personal jurisdiction.” *Id.* at 797. Similarly, the Third Circuit upheld the dismissal of a defamation action by a Pennsylvania attorney over defendants’ claims picked up by Russian-language news sites that the lawyer had participated in a smear campaign against their businesses. *Marks v. Alfa Group*, No. 09-2964, 2010 U.S. App. LEXIS 5301 at \*3-4 (3d Cir. Mar. 12, 2010). Absent more specific contacts, Pennsylvania does not have personal jurisdiction over those who make allegedly defamatory statements about its residents, the court held. *See also Scott v. Lackey*, No. 1:02-CV-1586, 2010 U.S. Dist. LEXIS 4350, \*34–37 (M.D. Pa. Jan. 20, 2010); *Stubbs v. Collins*, No. 08-cv-1567, 2010 U.S. Dist. LEXIS 17984 (W.D. Pa. Mar. 1, 2010); *Nasuti v. Kimball*, No. 09-cv-30183-MAP, 2010 U.S. Dist. LEXIS 65629 (D. Mass. June 29, 2010); *Diagnostic Devices, Inc. v. Pharma Supply, Inc.*, No. 3:08-cv-149-RJC, 2009 U.S. Dist. LEXIS 101633 (W.D.N.C. Oct. 30, 2009); *Martin v. Dobson*, No. 3:09cv00208, 2010 U.S. Dist. LEXIS 16607 (S.D. Ohio Feb. 5, 2010); *Xcentric Ventures, LLC v. Bird*, 683 F. Supp. 2d 1068 (D. Ariz. 2010).

### **Single-Publication Rule**

Courts throughout the country have continued to apply the “single-publication rule” to information posted on the Internet. *E.g., Yeager v. Bowlin*, No. Civ. 2:08-102-WBS-JFM, 2010 U.S. Dist. LEXIS 718, 38–39 (E.D. Cal. Jan. 6, 2010) (the plaintiff test pilot could not maintain a privacy and publicity action against the operators of a website selling signed lithographic prints because repeated sales of identical products are subject to the single-publication rule); *Roberts v. McAfee, Inc.*, No. C 09-4303 PJH, 2010 U.S. Dist. LEXIS 20455, 29-30 (N.D. Cal. Mar. 8, 2010) (“Under California law, website postings are subject to the single-publication rule for purposes of accrual of the statute of limitations, notwithstanding the fact that the website may operate/exist on a continuous basis.”) (dismissing a defamation claim of the company’s former general counsel over a news release announcing his firing); *Young v. Suffolk County*, No. 09-CV-3325 (JFB)(ARL), 2010 U.S. Dist. LEXIS 35368, 74-75 (E.D.N.Y. Apr. 9, 2010) (the plaintiff’s libel claims were barred by statute of limitations because under the single-publication rule, the fact an article remains accessible online does not constitute republication); *Ladd v. Uecker*, 2010 WI App 28, ¶ 12 (Wis. Ct. App. 2010) (“We reject the notion that each ‘hit’ or viewing of the information should be considered a new publication that retriggers the statute of limitations.”) (adopting the single-publication rule in Wisconsin for the first time).

Adding a new wrinkle to this body of case law, a federal court in Kentucky held that providing hyperlinks to a document posted earlier was not republication. *Salyer v. Southern Poverty Law Ctr., Inc.*, No. 3:09-CV-44-H, 2009 U.S. Dist. LEXIS 113511 (W.D. Ky. Dec. 4, 2009). The plaintiff, an attorney, claimed he was defamed by a passage in a 2006 report called “A Few Bad Men” that said he had been dishonorably discharged and barred from practicing in military courts because of his membership in a white supremacist organization. *Id.* at \*2. The court rejected his argument that a 2008 hyperlink to the 2006 report republished the allegedly defamatory material (*Id.* at \*11), explaining, “The hyperlinks, while adding a new method of access to ‘A Few Bad Men,’ did not restate the allegedly defamatory statements and did not alter the substance of that article in any manner.” *Id.* at \*16.

A New York state trial court also held that hyperlinks to other websites do not constitute republication of the content posted there. *Haefner v. New York Media*, 2009 NY Slip Op. 52765U, at \*12 (N.Y. Sup. Ct. 2009), citing *Firth v. State of New York*, 98 NY2d 365, 775 N.E.2d 463, 747 N.Y.S.2d 69 (N.Y. 2002). The case is related to the libel action against producers of the movie *American Gangster* thrown out earlier by the Second Circuit. *Diaz v. NBC Universal, Inc.*, 337 Fed. Appx. 94 (2d Cir. 2009). The plaintiffs, a group of law-enforcement officers, claimed they were defamed by accusations in a magazine article (on which the movie was based) that they stole from a convicted drug trafficker. *Id.* The plaintiffs also argued that the release of a digital edition of a book with the allegedly defamatory material was a republication for statute of limitations purposes. *Id.* at \*17. The court rejected both arguments, saying, “Although there does not appear to be any governing caselaw regarding digital ‘Kindle Editions’ of books, pursuant to the holding of *Firth v. State of New York* [supra], such editions should be treated as merely ‘a delayed circulation of the original edition,’ rather than as a republication thereof.” *Id.* at \*18.

### **Related Developments of Note**

The libel tourism bill that President Obama signed into law on August 10, 2010, codified at 28 U.S.C. 1402, includes a provision making foreign libel judgments unenforceable against providers of interactive computer services (including website operators) if inconsistent with Section 230 of the Communications Decency Act. See 28 U.S.C. 1402(c). Also, in California, Governor Arnold Schwarzenegger signed into law a [bill](#) that makes it a misdemeanor to “knowingly and without consent credibly impersonate[] another actual person through or on an Internet Web site or by other electronic means . . . for purposes of harming, intimidating, threatening, or defrauding another person.”

A federal district court in Pennsylvania ruled that that state’s “discovery rule” did not apply to publications on the Internet. *Wolk v. Olson*, \_\_\_ F. Supp.2d \_\_\_, 2010 WL 3120213 (E.D. Pa. Aug. 2, 2010). The plaintiff, described as “the most prominent aviation attorney in the country,” discovered in April 2009 that he had been the subject of an unflattering article posted on Overlawyered.com in April 2007. The plaintiff filed suit in May 2009, well beyond the one-year statute of limitations for libel claims in Pennsylvania. The plaintiff asked the court to apply the discovery rule as an equitable tolling principle because, he claimed, his injury was “not immediately ascertainable.” The court rejected this argument, finding that the discovery rule “is intended for hard-to-discern injuries, [so] it would be at odds with a cause of action based on a defamatory statement disseminated through a mass medium, like a website, and received by tens of thousands of readers.” Thus, the plaintiff’s claims were time-barred.

In its latest decision on the long-running dispute over freelancers’ intellectual property rights to material in electronic databases, the Supreme Court held unanimously that federal courts may adjudicate infringement claims even if the copyright holder did not register the work as required under 17 U.S.C.A. § 411(a). *Reed Elsevier, Inc. v. Muchnick*, 130 S. Ct. 1237, 1241 (2010). The Court reversed a Second Circuit ruling that had thrown out a settlement of a class-action lawsuit by freelancers against online databases and newspaper and magazine publishers. The high court’s ruling was narrow, however, focusing just on the jurisdictional issue and not on the merits of the settlement agreement itself. *Id.* at 1249. Irvin Muchnick and nine other freelancers had challenged the March 2005 settlement, which was meant “to achieve a global peace in the

publishing industry[.]”*Id.* at 1242. With the jurisdictional issue settled, the case goes back for a substantive ruling on the challenge to the settlement agreement.

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Steven Zansberg and Ashley Kissinger are partners in the Denver office of Levine Sullivan Koch & Schulz, LLP; Katherine Larsen is an associate in the firm’s Philadelphia office. Summer associates Peter Guarnieri (Georgetown University Law Center) and Matthew E. Kelley (The George Washington University Law School) contributed to this report.