

# Internet free speech under attack in San Francisco libel suit

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A libel trial taking place in San Francisco could have major implications for freedom of speech on the Internet, according to the American Civil Liberties Union (ACLU).

The case involves an English professor, Daniel Curzon Brown, who teaches at the City College in San Francisco. Brown claims that a web site set up by a former student in 1997 has carried libellous comments about him.

The site, teacherreview.com, was set up by Ryan Lathouwers as an online resource for students trying to decide what classes and teachers to select. The site allows students to post reviews of their teachers together with lecturers' comments. Since its launch in September 1997, more than 5,000 individual reviews of 600 City College instructors have been posted and the site has been visited more than 100,000 times.

In October 1999 Brown filed a class action lawsuit on behalf of himself and all other City College employees "who have been or will be defamed by the content of Teacher Review". His suit seeks monetary damages and an injunction prohibiting the posting of "defamatory" reviews on the web site and prohibiting either City College or the Associated Students from linking to the site.

In fact, the rest of the 1,700 teaching staff at the college have ignored the comments posted or avoided the site itself. Brown has singled out particularly vicious comments relating to his sexuality and mental state. In one posting he is described as "homomaniac, racist and mentally ill". The majority of comments, however, are by students expressing their opinion of his teaching. They include comments such as "pompous" and "the worst teacher I have ever had the opportunity of knowing."

The site includes a "bottom 10" of the teachers who

have received more than 25 reviews and Brown ranks fifth on that list.

The ACLU has come to the defence of Lathouwers in the interests of free speech as protected under the First Amendment to the US Constitution. Other defendants in the case—the San Francisco Community College District, which is the governing body of City College, and the Associated Students of City College—agree that the First Amendment covers the comments.

Ann Brick of the ACLU California staff said, "The Teacher Review website is a perfect example of how the Internet functions as a unique and valuable information source. If permitted to proceed, this case would sound the death knell for any website or bulletin board allowing members of the public to exchange opinions."

Lawyers acting for Lathouwers said, "Imagine a liberal arts professor unable to tolerate his students expressing their own opinions, and unwilling to allow students to draw their own conclusions from what others have to say. Fortunately, the First Amendment prevents people like Professor Curzon Brown from using lawsuits to silence their critics."

At present US Internet Service Providers (ISP) are protected under the 1996 Communications Decency Act, which essentially allows ISPs immunity from libel laws. In a number of previous cases, the US courts have upheld the position that an ISP is not liable for the content carried on their service. In a legal brief presented by the ACLU in October 1999 they argue that the purpose of the 1996 legislation was twofold. Firstly its purpose was "to maintain the robust nature of Internet communication and, accordingly, keep government interference in the medium to a minimum". The argument is cited from a failed case against America Online in 1997. The law was also "to

encourage service providers to self-regulate the dissemination of offensive material over their services without fear of incurring liability or reserving the power to do so or for having exercised that power imperfectly," the lawyers argue.

The ACLU argue that in adopting the 1996 legislation, Congress "made a policy choice ... not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages".

Previous precedents are no absolute guarantee, however, against the erosion of free speech on the Internet. With the number of cases against ISPs increasing, it is entirely possible that one of these will set new precedents within the US. Even if this is not the case, such is the international character of the Internet that it is by no means clear where a US-based provider would stand if it were subject to legal action by an overseas court.



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