One Way, Or Another: Time for the introduction of the single publication rule in English libel law?
Gavin Sutter - Queen Mary, University of London
Gavin.Sutter@ccls.edu

Abstract
Since the mid nineteenth century, the ‘multiple-publication rule’ has been a core principle of English defamation law. This rule, formulated in Duke of Brunswick v Hamer\(^1\), provides that each time a copy of a defamatory article is published to a third party, it is to be treated as a new publication with a new limitation period arising. The Court of Appeal in Loutchansky v Times\(^2\) ruled that this rule applies equally to the online world as offline. This raises clear problems for those who maintain archives, exacerbated in the online context by the sheer proliferation of readily accessible archived material; for instance, the Newspaper society estimates that 90% of local and regional newspapers in the UK now have an online presence which incorporates some form of archive of material. Given the potential for defamation cases arising out of defamatory articles which may have originally been published a long time previously (in Duke of Brunswick, first publication had been made seventeen years prior to the libel action), the multiple publication rule has potential to cause severe difficulty to mounting a defence to a libel action. For instance, a newspaper journalist who wrote a defamatory article many years ago may have retired, died, or even simply have a poor recollection of the circumstances, and no accurate records in relation to the factual background to the article. Also, the rule raises a severe conceptual difficulty for the application of a limitation period. The limitation period for libel actions under English law is set at twelve months, however, if a new period begins to run upon each and every individual supply of a copy of the defamatory article to an individual, then any such time-limitation is effectively impotent.

In Gregoire v GP Putnam & Sons\(^3\), the US courts explicitly rejected the multiple publication as “unsuited to modern mass publishing” – this in 1948! Instead, the US has a ‘single-publication’ rule, which provides that one edition of a defamatory article is for the purposes of a limitation period published once, at time of first publication; once that first limitation period has been exhausted, no action may be brought in defamation in respect of that publication. This rule was applied in the internet context in Firth v State of New York.\(^4\) Obviously, this is a much more straightforward system, greatly preferable from the perspective of the media. In December 2002, the Law Commission published a

\(^1\)[1849] 14 QB 185
\(^2\)[2002] 1 All ER 652
\(^3\)(1948) 298 NY 119
\(^4\)(2002) NY Int 88
study\textsuperscript{5} which suggested the adoption of a single publication rule as one potential for reform of English libel law, however, no firm suggestion to this effect was made – it was simply suggested as an option, and a non-committal conclusion citing the need for further research reached. This paper will seek to explore whether a strong case for adopting a US-style single-publication approach in English law can be made, with specific reference to application in the online context. The analysis will include not only the potential benefits of such a move, but also any potential negative consequences, conceptual and otherwise, for the English rules on publication in general. Of particular interest here will also be some consideration of the application of these rules to cross-border internet, where place of publication may not necessarily be within the same jurisdiction as the place of uploading (see, for example, the Australian case Gutnick v Dow Jones\textsuperscript{6}, and a range of English cases which have followed its approach to online publication, including Harrods v Dow Jones\textsuperscript{7} and Don King v Lennox Lewis\textsuperscript{8}).

\textsuperscript{5} Law Commission [2002] Defamation and the Internet: A Preliminary Investigation, Scoping Study No 2, December

\textsuperscript{6} [2002] HCA 56

\textsuperscript{7} 2003 WL 21162160, [2003] EWHC 1162

\textsuperscript{8}[2004] EWCA Civ. 1329,