

REVIEW OF MODEL DEFAMATION PROVISIONS - STAGE 2

SUBMISSION OF WIKIMEDIA FOUNDATION, INC

A. INTRODUCTION

The Wikimedia Foundation, Inc (**Wikimedia/the Foundation**) is pleased to provide a written submission in response to the Stage 2 Review (the **Review**) of the Model Defamation Provisions (**MDPs**):

1. Draft Part A Model Defamation Amendment Provisions (**draft Part A MDAPs**);
2. Summary Paper in respect of the draft Part A MDAPs (**Summary Paper**); and
3. Background Paper in respect of the draft Part A MDAPs (**Background Paper**);

(together, referred to in this submission as the **Stage 2 Proposal**).

Wikimedia appreciates the continued work of the Meeting of Attorneys-General (**MAG**) in relation to this important law reform process, and sees the Review as a critical juncture in the evolution of Australian law.

In significant ways, Australian defamation law is out of step with that of other comparable jurisdictions like the US and the UK. These differences create uncertainty and risk for platforms that ultimately chill freedom of expression and access to information under the current Australian defamation law framework.

Public interest platforms such as Wikipedia play a crucial role in today's digital informational environment, providing free and reliable information to people across cultures, economies and socioeconomic groups. This brings with it social, economic and other benefits.

The mission of the Foundation is to empower and engage people around the world to collect and develop educational content under a free license or in the public domain, and to disseminate it effectively and globally. Information about the Foundation and the importance of defamation laws around the world to the Foundation is set out in **Annexure A**.

Wikimedia is concerned that absent significant reforms, access to freely available knowledge will be compromised due to undue weight being given to the protection of reputation.

The Foundation believes that protections for hosting companies are critical to ensure that everyone in society is treated fairly and given an equal opportunity to contribute to discourse online. Defamation complaints are important to protect people in society, but there must be a balance to how they are handled because they can also be used to inappropriately silence discourse when a defendant lacks the resources to defend their statements. Further, defamation complaints are highly difficult for intermediary platforms to investigate and address. Therefore, laws that tip the balance too strongly in favour of defamation plaintiffs will lead to policies that allow the rich and powerful to silence legitimate criticism and prevent the average Australian citizen from having a fair chance to contribute to important public matters.

It is also important for Australians to have access to free information. Access to free information and the ability to communicate is a cornerstone for a healthy democracy. As part of our pursuit to share free information globally, we want Australian users to be able to contribute to and share knowledge on Wikimedia projects. Australian participation will make our projects better and we hope for a legal environment that enables Australian users from all walks of life to participate.

Wikimedia considers that collaborative knowledge projects are deserving of protection under the law and that:

1. The providers of infrastructure for freely available collaborative knowledge projects should be able to operate without the threat of potential liability in defamation under Australian law.
2. The contributors to freely available collaborative knowledge projects should be able to contribute (in the absence of established malice) and otherwise maintain those projects, without the threat of potential liability in defamation under Australian law, subject to appropriate limits.

Wikimedia believes that there is insufficient clarity as to the current state of Australian law in respect of the liability of parties described in (1) and (2).

Wikimedia believes that there should be recognition of the unique aspects of public interest platforms such as collaborative knowledge projects, which do not resemble the operation of other platforms such as commercial social media and search engine services. There are strong policy reasons as to why peer-to-peer publications hosted by collaborative knowledge projects should not attract liability in certain circumstances, which Wikimedia says are similar to the policy underpinnings for defences supporting freedom of academic expression.

Wikimedia continues to believe that a section 230-style immunity in Australia, informed by the recent recommendations of the US Department of Justice, would strike an appropriate balance between the public interest in online content regulation against the public interests in innovation and free speech.

Wikimedia appreciates however, that the current framework for the proposed MDAPs does not incorporate a section 230-style immunity, and accordingly responds to the specific reforms which have now been proposed.

B. SUMMARY OF WIKIMEDIA'S SUBMISSION

As further explained below, in respect of the Stage 2 Proposal:

1. Wikimedia supports Recommendations 1 and 2.
2. Wikimedia supports Recommendation 3A and considers that Model A is preferable to the model outlined in Recommendation 3B (that is, Model B). However, Wikimedia suggests several amendments to proposed Model A, and raises several issues in respect of the current drafting of the relevant provisions.
3. Wikimedia does not support Recommendation 4.
4. Wikimedia does not support Recommendation 5.
5. Wikimedia supports Recommendation 6.
6. Wikimedia supports Recommendation 7.

C. RESPONSES TO THE STAGE 2 PROPOSAL

In this section, Wikimedia responds to aspects of the Stage 2 Proposal.

Recommendation 1

Conditional, statutory exemption from defamation liability for mere conduits, caching and storage services.

Wikimedia supports Recommendation 1.

The introduction of the proposed conditional, statutory exemption from defamation liability for “mere conduits” is a necessary and important reform. The providers of foundational internet infrastructure should not be liable for allegedly defamatory internet content created by third parties without their involvement. Wikimedia agrees that caching services and services that enable the storage of data should have the benefit of a statutory exemption from defamation liability.

Recommendation 2

Conditional, statutory exemption from defamation liability for standard search engine functions.

Wikimedia supports Recommendation 2.

Recent developments in Australian law will protect some search engine functions. However, the introduction of the proposed conditional, statutory exemption from defamation liability for standard search engine functions remains necessary.

The Background Paper refers to various judicial decisions, both in Australia and other jurisdictions, that have considered the liability of search engines for search results. *Crookes v Newton*,¹ in which “...the Court held that a mere hyperlink can never be a publication of its contents, as this would have a chilling effect on the internet”,² has recently been endorsed by the Australian High Court. In, *Google LLC v Defteros*,³ reflecting reasoning in *Crookes*, it was said a hyperlink is “content-neutral”,⁴ and that “facilitating a person’s access to the contents of another’s webpage is not participating in the bilateral process of communicating its contents to that person.”⁵

To the extent these acknowledgements give rise to any broader legal protections for individuals and organisations that use hyperlinking in online communications as well as for research purposes, these are promising developments. But uncertainty remains. In a different case, for example, where the search result itself is found to have been defamatory⁶ or has “enticed” a user to click on a hyperlink,⁷ it seems the outcome may be different. It is therefore desirable to clarify the law by way of the introduction of a clear statutory exemption

¹ [2011] 3 SCR 269.

² Background Paper, pg. 28.

³ [2022] HCA 27.

⁴ *Ibid*, [53].

⁵ *Ibid*.

⁶ In *Defteros* at [41], Kiefel CJ and Gleeson J note that “The result is that internet search engine results that are not themselves defamatory do not come within the purview of publication”.

⁷ Gagelar J, at [71], distinguished *Defteros* from *Google Inc v Duffy* (2017) 129 SASR 304, noting that “Unlike the position in *Duffy*, no feature of the content of the particular organic search result in the present case has been found to have operated as an enticement or encouragement to click on the hyperlink”.

from defamation liability for search engine functions. That exemption would enable the accessibility of information on the internet and would assist to guard against the chilling effect on the internet, referred to in *Crookes*.

Recommendation 3A

Model A – safe harbour defence for digital intermediaries, subject to a simple complaints notice process (alternative to Recommendation 3B).

Wikimedia supports Recommendation 3A. However, Wikimedia suggests some amendments to proposed Model A, and raises issues for further consideration.

Wikimedia remains concerned that if the wrong test is put in place for liability for defamatory content, then there is a risk that it could dampen the enthusiasm for creation of, contribution to, and maintenance of collaborative knowledge projects. That in turn could have serious public policy consequences. Wikipedia is just one example of a quality collaborative knowledge project, and Australians access it on average 9 times per month per person. This illustrates the important role it has to play in providing information to the public. Moreover, it plays this role across the world including in places where for political or economic reasons, good information is harder to come by. Health information, political information about candidates, and educational resources are some examples of the ways Wikipedia and our projects are invaluable to the lives of everyday Australian citizens. Regulatory settings should be put in place which foster and encourage the sharing of accurate information as part of collaborative knowledge projects. Those settings will need to provide appropriate protections against liability for the contributions of others, and for good faith contributions.

In circumstances where either Model A or Model B will be progressed, Wikimedia considers that on balance, Model A is preferable to Model B. This is because overarchingly, Model A is more likely to support freedom of expression on the internet. Model B in practice, would likely result in the widespread removal of legitimate, public interest content. As is stated in the Background Paper, Model B may incentivise complainants to approach internet intermediaries to simply have content taken down, which could result in “...*over-censorship and the removal of legitimate content*”.⁸ That is a serious threat to the freedom of expression and communication on the internet, which would harm the broader online information ecosystem.

While Model A is preferable to Model B, Wikimedia suggests the following amendments to draft Part A MDAP Sch 1 [6], draft section 31A (“**s 31A**”), and other relevant parts of MDAPs, as follows:

⁸ Background paper, pg. 43.

No.	MDAP		Suggested Amendment
1.	Sch 1 [1], draft section 4 .	Definition of “access prevention step”	<p>The definition should be changed so as to accommodate a situation where the digital matter:</p> <ol style="list-style-type: none"> 1. is substantially altered in response to a complaints notice, so that the factual inaccuracies identified by the plaintiff in a complaints notice (pursuant to 31A(3)(b)(iii)) are removed; or 2. flagged as being in dispute. <p>As to (1) above, for example, if a plaintiff complains about an entire webpage at a particular URL, but the relevant factual inaccuracies alleged relate to one particular statement, this amendment would allow the statement to be removed from the webpage, rather than requiring the webpage in its entirety to be “removed, blocked, disabled” other otherwise subject to access prevention.</p> <p>As to (2) above, for example, an article or a particular section in an article, on a collaborative knowledge project might be headed with a disputed information banner. The banner might state that the article’s factual accuracy is disputed.⁹</p> <p>The option of providing for these steps to occur, is consistent with broader policy aims of efficient resolution of disputes in relation to online content as well as enabling moderation of content on digital platforms.</p>
2.	Sch 1 [1], draft section 4 .	Definition of “online service”	<p>The definition should be amended to more clearly include platforms which are for educational, information, professional or other purposes. Whilst the “or other interaction” in (c) could encompass such platforms, this is not sufficiently clear.</p> <p>Subsection (c) of the “online service” definition should be amended to read:</p> <p>(c) a service to provide, encourage or facilitate social, professional, educational or other interaction between persons.</p> <p>In addition, a new category should be added:</p> <p>(e) a service to provide, encourage or facilitate the exchange or provision of information.</p>
3.	Section 31A(1)(c)(ii)	Taking of an access prevention step.	<p>It should be clarified that the access prevention step could be taken by the defendant <i>or</i> the poster, in response to a complaints notice. The digital intermediary should still have the benefit of the defence if the poster decides to take an access prevention step in response to a complaint, rather than the digital intermediary.</p> <p>For example, if the poster is provided with a complaints notice and decides to remove a comment from a forum in response, it should be clear that the digital intermediary will have the benefit of the defence set out in s 31A(1)(c)(ii).</p>

⁹ By way of example, a Wikipedia template for a disputed article is available at <https://en.wikipedia.org/wiki/Template:Disputed>.

No.	MDAP		Suggested Amendment
4.	Section 31A(5)	Malice	<p>Section 31A(5) should be omitted.</p> <p>First, evidence of malice does not negate the defence of innocent dissemination in s 32 of the MDPs, so the introduction of this concept in s 31A would create a misalignment with the pre-existing statutory defence of innocent dissemination.</p> <p>Second, it is unclear how the concept of malice will apply in the context of digital intermediary liability. The Background Paper provides an, albeit extreme, example of a digital intermediary which, amongst other things such as the invitation of pseudonymous speech, has apparently adopted general policies and practices in relation to the take-down regime, which is said to provide an possible exemplar of malice in the context of the Model A defence.¹⁰ It seems to indicate that policies and procedures, although strictly within the parameters of the take-down regime, could provide a plaintiff with evidence of malice. That is particularly concerning in circumstances where digital intermediaries may receive a high volume of take-down requests such that policies and procedures may be necessary to appropriately deal with such complaints. The Background Paper separately recognises the potential good of pseudonymous speech¹¹ (which is inconsistent with a suggestion that inviting pseudonymous speech is evidence of malice).</p>

Wikimedia has two additional concerns with the current drafting of s 31A, which Wikimedia respectfully suggest should be re-examined:

1. Section 31A(7): The current drafting may require or encourage collection of more personal information by platforms about their users, which would have a detrimental privacy impact.
2. Section 31A(b) and (c): There is a requirement that the digital intermediary have a complaints mechanism and that action be taken within 14 days. There will be a broad range of digital intermediaries. Some digital intermediaries, caught by the current proposed statutory provisions may be large corporations, whereas others may be individuals (for example, where acting as “forum administrators”). Some consideration should be given to this difference in position – in some circumstances it may not be reasonable for a finalised decision to be reached by the community consultation process within 14 days, even though the complaint and/or request may be acknowledged and discussed within this timeframe by volunteers who collaborate to improve Wikimedia projects.

Recommendation 3B

Model B – innocent dissemination defence for digital intermediaries, subject to a simple complaints notice process (Alternative to Recommendation 3A).

¹⁰ Background Paper, pg. 36.

¹¹ Background Paper, pg. 38.

For the reasons described above, Wikimedia supports Recommendation 3A (with certain amendments) in preference to Recommendation 3B.

Recommendation 4

The Commonwealth Government should give close consideration to whether an exemption from section 235(1) of the Online Safety Act 2021 for defamation law is desirable, in the interest of clarity of the law.

Wikimedia considers that section 235(1) is a sensible provision with a wide application including beyond defamation. The reforms should be consistent with it and, in those circumstances, no exemption should be necessary.

Recommendation 5

Empower courts to make non-party orders to prevent access to defamatory matter online.

Wikimedia is concerned about the practical ramifications which could flow from this proposed power.

Australian courts have for a long time recognised that injunctions in relation to defamatory speech should only rarely be granted, in the most compelling circumstances (particularly at an interlocutory stage). Whilst the rule in *Bonnard v Perryman* [1891] 2 Ch 269 militating against an injunction is no longer strictly applied, injunctions restraining defamatory speech will only be granted in the clearest of cases: see, eg. *Australian Broadcasting Corporation v O'Neill* [2006] 227 CLR 57; and, eg., *Chappell v TCN Channel Nine Pty Limited* (1988) 14 NSWLR 153. In *Chappell*, Justice Campbell cited with approval the following statement by Hunt J in *Church of Scientology of California Incorporated v Reader's Digest Services Pty Ltd*:

“... the power to grant interlocutory injunctions in defamation cases must be exercised with great caution, and only in very clear cases. A plaintiff must establish that a subsequent finding by a jury that the matter complained of was not defamatory of him would be set aside as unreasonable; that there is no real ground for supposing that the defendant may succeed upon any defence of justification, privilege or comment, and that he, the plaintiff, is likely to recover more than nominal damages only. In particular, questions of privilege and malice are not normally appropriate to be decided upon an interlocutory application. Nor will an injunction go which will have the effect of restraining the discussion in the press of matters of public interest or concern.”

Whilst these principles would remain in place if recommendation 5 were enacted, and recommendation 5 only permits orders to be made where defamation proceedings have been won or there is an injunction in place, there is a risk given the wording of the proposed provision that injunctions would be more commonly given, or may extend beyond a simple requirement that immediate steps (such as take down be taken in relation to a particular matter complained of.

Practical issues which could arise from such orders include:

- Digital intermediaries would face the unenviable task of having to keep track of orders “preventing or limiting the continued publication or republication of matter”,

and implementing them. Implementation would presumably require some monitoring of one or more webpages, which could be onerous;

- If, which sometimes happens, it later turns out that facts found to be false and defamatory are later admitted to be true, then a digital intermediary would be faced with the choice between continuing to take the relevant steps “to prevent or limit the continues publication or republication of the matter” or commencing proceedings to seek revocation of the order;
- Digital intermediaries would potentially face the burden of determining whether similar but non-identical matter was relevantly a “republication” within the terms of the order;
- Digital intermediaries would face the risk of being in contempt in the event that any of the above went awry;
- Any take down or similar orders particularly in relation to international platforms could have implications in foreign jurisdictions;

In general, when a judgment has been obtained against a respondent in defamation proceedings, publication of that matter ceases because those who might otherwise republish it are aware that they will be exposed to defamation liability if they do so. There is no demonstrated need for the additional powers proposed.

Wikimedia also considers that if Australian courts routinely make orders of the type contemplated, then this may set a worrying precedent. Key Wikimedia projects such as Wikipedia operate on the basis of a single global set of content (written by community members around the world). It is not practicable nor would it be desirable to make changes in some jurisdictions and not in others. A key public benefit of Wikimedia is that it is a key source of reliable and consistent information for people around the world. Wikimedia could well face similar orders in other jurisdictions in which there are varying political and legal systems.

In the circumstances, Wikimedia submits that it is preferable not to introduce the additional powers.

Recommendation 6

Courts to consider balancing factors when making preliminary discovery orders

Wikimedia supports recommendation 6.

Recommendation 7

Mandatory requirements for an offer to make amends to be updated for online publications

Wikimedia supports recommendation 7.

Wikimedia considers that changing the offer to make amends process by including options more appropriately tailored to digital matter, and the position of digital intermediaries, is appropriate. In particular, amending the mandatory requirements from preventing access to an offer to make amends including the ability to remove, block or disable access to the matter in question is a step towards the right direction in recognizing the various kinds of players and types of infrastructure that make up the internet.

Wikimedia suggests an additional option be included in the amendments, to the effect that flagging content as being in dispute should also be permitted to comprise part of an offer. Wikipedia pages have built-in templates which can reflect that article topics are in controversy or currently being disputed and such obvious notice reflects a more holistic balance of protecting the freedom of expression. The drafting required to effect this change is provided in Wikimedia's suggested changes to the definition of "access prevention step" as described above in respect of Recommendation 3A above.

ANNEXURE A

WIKIMEDIA AND WIKIPEDIA: A SUCCESSFUL COLLABORATIVE KNOWLEDGE PROJECT

The Foundation provides the essential infrastructure and an organisational framework for the support and development of multilingual wiki projects and other endeavours which serve this mission. The Foundation will make and keep useful information from its projects available on the internet free of charge, in perpetuity. The Foundation is funded mainly by donations and does not host advertisements.

The most well-known Wikimedia project is Wikipedia, which is a free, multilingual online encyclopedia written and maintained by a community of volunteer contributors through a model of open collaboration, using a wiki-based editing system. It is the largest and most-read reference work in history. There are more than 12 other significant projects, including for example Wikimedia Commons, which provides more than 73 million freely usable media files to which anyone can contribute, and Wikiversity, which is dedicated to improving access to free learning resources.

Further information regarding the work of Wikimedia is available at <https://wikimediafoundation.org/our-work>.

Wikipedia Editorial Model

Governance

Wikipedia is the most prominent example of a collaborative knowledge project supported by Wikimedia.

Wikimedia's goal to be fully transparent at an operational, procedural and production level is reflected in Wikipedia's democratic governance structure. There are numerous policies that regulate the operation of Wikipedia. Editorial decisions are made by a de-centralised group of users in accordance with internal mechanisms and editorial policies are updated through public discussion and consensus from the participating editors without the Foundation's participation. This system allows Wikipedia to present verified information to interested members of the public across the world.

Verifiability

There are thousands of Wikipedia pages, which are created by an extensive community of volunteer contributors. As a free, online encyclopedia of this scale that accommodates the continual and dynamic refinement of the reference pages within the encyclopedia, Wikipedia has a policy of 'verifiability'. Content must be verifiable before it can be added and the content on Wikipedia is determined by information previously published in reliable sources rather than the beliefs or experiences of editors. Further information regarding verifiability is available at: <https://en.wikipedia.org/wiki/Wikipedia:Verifiability>. Sources are constantly reviewed, and questionable sources may occasionally be "deprecated", that is identified as sources that editors are discouraged from citing in articles, because they fail the reliable sources guideline in nearly all circumstances. For example, The Daily Mail was used for many years as a source, but has been identified by the Wikipedia community as a source which should no longer be used for verification of content. Wikipedia volunteers keep an extensive list of previously discussed sources with references to those discussions, which can be found at https://en.wikipedia.org/wiki/Wikipedia:Reliable_sources/Perennial_sources.

Contributors

There are more than 41 million people who are registered to contribute to Wikipedia (informally, “Wikipedians”). There are different roles within that community including:

Editors	Editors are volunteers who write and edit Wikipedia’s articles.
Administrators	<p>Administrators (or admins) have the technical ability to rename and delete pages, block IP addresses to prevent vandalism of the wikis, protect and unprotect pages from editing, and block user accounts who have violated editorial or behavioural policies. Administrators may delete pages and impose sanctions on users to enforce the consensus of the Wikipedia community and rulings of the Arbitration Committee (described below).</p> <p>Administrators are appointed through a community review process. Users are eligible to apply for adminship after having an account for 30 days and making at least 500 edits.</p> <p>The process of removing administrative access is lengthy and often involves attempts to resolve the dispute prior to engaging in Arbitration Committee review. Former administrators can request restoration of administrator status by placing a request on the Wikipedia’s Bureaucrats’ noticeboard.</p>
Bureaucrats	<p>Wikipedia Bureaucrats are volunteer users with elevated privileges. For example, bureaucrats may grant or remove administrator status (in limited circumstances in line with community guidelines), allow bot accounts (i.e. accounts programmed to carry out automated tasks), and oversee local change usernames in conjunction with the team of global renamers.</p> <p>Bureaucrats are appointed by the Wikipedia community through the Request for Bureaucratship (RfB) process. RfB nominations are published online and remain active for at least seven days. During this period, any Wikipedia user may ask questions of a candidate and make comments about a candidate’s suitability. At the end of the discussion period, a bureaucrat reviews the discussion to evaluate whether there is a community consensus in favour of promotion.</p>
Stewards	Stewards are a small number of users who have global bureaucrat and administrative rights on all languages. They are elected through a multilingual process in which all active users of Wikimedia projects may vote. Stewards appoint local bureaucrats or admins if no others are available and also assist with site technical issues. They work closely with the Wikimedia Foundation under a non-disclosure agreement to allow them to work on matters involving private data.
Arbitrators	On some languages (notably English) there is an arbitration committee positioned above administrators that can make binding rulings on difficult disputes among editors. The arbitration committees are elected by users of that particular language and are language specific. Administrators are empowered to enforce Arbitration Committee rulings. More can be read about them at https://en.wikipedia.org/wiki/Arbitration_Committee .

Wikimedia System Administrators

Separately to Wikipedia users, Wikimedia System administrators are technical staff employed by the Wikimedia Foundation to assist with systems administration and maintenance of the Wikimedia servers. Stewards, described above, also sometimes assist with system administration activities as volunteers under an NDA.

Relevant Technical Functionalities

The Wikipedia user community uses technical tools to achieve its aims of transparency and neutrality, some of which were designed by the Foundation, and some by individual technical volunteers. For example, Wikipedia pages feature a transparency tool enabling every user, in every language version, to see a history of edits and deletions. In rare cases, such as with defamatory information, it is possible to hide a historical edit or series of edits, but both the Wikimedia Foundation and the Wikipedia community discourage this if at all possible, as history sections provide an important archive of what work was already done to avoid repeating past mistakes or doing redundant work. Additionally, every Wikipedia page prominently features a link to the “Talk” pages, where anyone can read, access and participate in the editorial decisions.

IMPORTANCE OF DEFAMATION LAWS TO WIKIMEDIA

Defamation law can have important impacts on public interest platforms, including Wikipedia and other Wikimedia projects. Each month more than 1.4 billion unique devices access Wikipedia. It has been described as an important gateway for information and research (see e.g.

https://www.independent.co.uk/news/long_reads/wikipedia-explained-what-it-trustworthy-how-work-wikimedia-2030-a8213446.html).

Many individuals throughout the world, and public figures in particular, would like to have accurate but unfavourable references to them removed.

It is important that the revised Australian defamation laws do not create a tool which can be used by people to remove accurate negative information about themselves, or to put pressure on members of the Wikipedia community to revise history.

Wikimedia has already had at least one instance in Australia of an individual complaining about a biographical entry about that individual and seeking to have the entry modified in circumstances in which the biographical entry correctly reflected the reliable media sources on which it was based. The individual did not ultimately press the complaint.

Lawsuits against Contributors

Contributors to Wikipedia have been confronted by defamation complaints in the course of contributing to Wikipedia in good faith. Such complaints could potentially have a significant chilling effect on the willingness of people to participate as contributors. This is particularly difficult in the case of Wikipedia where contributors typically add and improve information over time, adjusting wording, clarifying statements, and adding new sources as they become available. Legal complaints that prevent editors from engaging in the process of iteration and improvement can make it impossible to create high-quality articles.

Case Study: Greece

In 2014, Theodore Katsanevas commenced proceedings concerning several statements in the Wikipedia article about Mr Katsanevas in several languages that he believed were defamatory. The statements were sources from the will of former Greek Prime Minister

Andreas Papandreou, which had called Mr Katsanevas a “disgrace”. As explained in the Wikipedia article, this description was likely due to a complex family dispute regarding Mr Papandreou’s death and estate.

Mr Katsanevas sued Wikipedia administrators “Diu” and “ELLAK”. In a preliminary injunction hearing, a judge ordered that the allegedly defamatory material be removed, but then ruled in favour of Diu and ELLAK in the subsequent preliminary injunction hearing, and held that the article could remain as it was with all information and sources. As the trial neared, Mr. Katsanevas ultimately chose to withdraw his claims.

Lawsuits against Wikimedia

Wikimedia has been the subject of defamation proceedings in other jurisdictions, and has successfully defended those proceedings in circumstances where the Court has recognised that Wikimedia was a hosting provider, hosted public information, and that Wikipedia’s clear community procedure for content moderation means that complainants have the ability to themselves seek amendments to articles.

Case Study: Italy

Previti v. Wikimedia Foundation

In 2012, Cesare Previti, a former Italian Minister of Defence, sued the Wikimedia Foundation for hosting a Wikipedia article he alleged contained defamatory information.

Mr Previti sent a general letter demanding that the article be deleted without clearly identifying what content was defamatory or a link to where it was hosted, and subsequently filed the suit requesting its removal when Wikimedia did not take it down.

In 2013, the Civil Court in Rome ruled in favour of Wikimedia. The court held that as a hosting provider, the Wikimedia Foundation cannot be held liable for the content of Wikipedia articles, which it does not control. The court also noted that both Wikimedia and the Wikipedia sites themselves provide information about the open and collaborative nature of the encyclopedia.

Mr. Previti appealed the decision, claiming that the Foundation did not just host information created by third parties, but also actively participated in the creation and management of content. The Court of Appeals of Rome affirmed the lower court’s decision.

In a ruling that provides strong protection for Wikipedia’s community governance model, the Court of Appeals of Rome once again recognised that Wikimedia is a hosting provider, and that the volunteer editors and contributors create and control content on the Wikimedia projects. The Court also made clear that a general warning letter, without additional detail about the online location, unlawfulness, or the harmful nature of the content as recognised by a court does not impose a removal obligation.

Finally, the Court took notice of Wikipedia’s unique model of community-based content creation, and the mechanisms by which someone can suggest edits or additions to project content. It found that Wikipedia has a clear community procedure for content modification which Mr. Previti should have used to address his concerns. He could have reached out to the volunteer editors, provided reliable sources, and suggested amendments to the article instead of sending a general warning letter to the Foundation.

Complaints in Australia

Wikimedia has received numerous complaints from individuals based in Australia. In Wikimedia’s experience, the review processes described above have resulted in changes being made to any content which is inaccurate and defamatory.

Case Study: Australia

In 2019, an individual who claimed that content on a page about the individual was incorrect engaged directly with the Wikipedia community in respect of that content. Wikipedia's normal review processes (conducted by the Wikipedia community) led to it being removed.