

COIN WORLD

Internet freedom

By **Armen R. Vartian** | 01-24-11

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In a previous column, I discussed the fact that defamatory statements in free-flowing discussions on numismatic message boards and blogs ordinarily do not result in any liability for the host or moderator of the Web site.

This is because of the federal Communications Decency Act of 1996, which immunizes anyone "provid[ing] ... an interactive computer service" from liability for the statements of others made through that service.

But suppose someone offended by anonymous online statements wants to learn the identities of the "speakers."

Does the host have to reveal those identities?

Seeking identities

This isn't just a theoretical question, because I personally am aware of multiple instances where people used the Internet to complain about coin dealers and auction houses by name, but without the speaker identifying himself or herself.

Sometimes the site itself is hosted by someone connected with numismatics, but in other cases it could be a newspaper's Web site or a business or precious metals blogger.

We start with Americans' fundamental freedom under the First Amendment to say whatever we please about our countrymen and their businesses. A recent federal court of appeals noted that in the ratification debates for the U.S. Constitution, both sides (including James Madison, Alexander Hamilton and John Jay on the pro-ratification side) addressed the public through anonymous leaflets and publications. However, that same court noted that in the nonpolitical context, anonymous speech has "great potential for irresponsible, malicious, and harmful communication."

The court went on to say that in the case of false statements, the "speed and power of internet technology makes it difficult for the truth to 'catch up' to the lie."

So what about someone who reads something defamatory about his or her company online and wants to find out who said it. Obviously that information cannot be available unconditionally, because that would eliminate the First Amendment right to free (anonymous) speech.

In June 2010, the U.S. Supreme Court upheld a Washington state law requiring the state to disclose the names of anyone signing a petition for a state referendum.

The court noted the need to protect citizens' rights to anonymous speech, but also indicated those rights could be limited if there was a sufficient state interest and not too great a burden on the speaker.

Standard for disclosure

More recently, a California federal court dealt with a company that believed that its competitor was using anonymous Internet posts to undermine its business. The court applied a rather stringent standard for disclosure, namely that the plaintiff has to show facts from which the court could grant it summary judgment against the speaker(s) for defamation or other wrongful acts.

In doing so, the court declined to follow other decisions that required only that the plaintiff show a "prima facie," or minimal basis, for its claim. The difference is that while a plaintiff might be able to allege that a speaker's statements are false and defamatory, a summary judgment standard essentially requires the plaintiff to prove it before he or she can even learn the defendant's identity.

Although we all believe in freedom of speech, I think the court may have gone too far.

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