

## Sue thy neighbour—study reveals the dark side of the digital universe

March 12 2018

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Credit: University of Technology, Sydney

Private individuals rather than public figures have emerged as the primary source of defamation in the digital age, a study by the Centre for Media Transition at the University of Technology Sydney shows.

Over a five-year period between 2013 to 2017 just over one in five (21

per cent) of plaintiffs in defamation case judgements were public figures – and just over a quarter of defendants (25.9 per cent) were [media companies](#).

The findings contradict common assumptions about public figures being the main users of defamation laws.

They show it is more common for [private individuals](#) to be the plaintiffs in defamation actions. Private individuals are also more likely to be the defendants (sometimes with their employers).

It also confirms that NSW is the defamation capital of Australia, with more matters reaching a substantive decision than the rest of the country combined.

In addition to the five-year snapshot, the study also looked at 2007 as a "pre-social" comparison.

"The proportion of digital cases – arising from publication in social [media](#), websites, email and messaging – has increased substantially, from just over 17 per cent in 2007 to more than 53 per cent in 2017," said co-director of the Centre for Media Transition Professor Derek Wilding.

"The landscape for legal disputes around reputation is changing, as the question 'who is a publisher' continues to evolve."

The study identified 189 core cases, and in total it located 609 decisions related to these cases, and another 322 cases that were still running from earlier years or just starting out. The study captures information on defamation matters over this period, but the full picture on defamation is likely to involve even more litigation activity.

"As the law evolves, we see publishers – whether big or small – caught

up in many protracted disputes," Professor Wilding said. "This chain of litigation requires a major commitment of time and resources from plaintiffs and publishers alike."

The Centre for Media Transition, a joint venture between UTS Law and the Faculty of Arts and Social Sciences, has been set up to examine new business models for journalism, best practice in journalism and the legal and legislative restrictions that affect journalism, civil debate and the public's right to know.

Professor Wilding said the study highlighted the growing influence of social platforms and websites not affiliated with media companies as the source of legal disputes.

The study showed a wide variation in the form of digital publication:

- There were 16 cases involving Facebook posts, 20 involving emails, four involving tweets and two involving text messages
- There were 37 cases involving websites not affiliated with media organisations, Facebook or Twitter
- There were three [cases](#) (all relating to search results) in which Google was the defendant.

Professor Peter Fray, co-director of the centre and a former news editor, executive and journalist said, "This study prompts us to think about the conditions for free expression in this country.

"Developments in technology and user expectations provide many of us with the opportunity to publish our views. There must be a role for public policy in moving us away from costly and time-consuming legal disputes."

The report, Trends in digital defamation, is available for download [here](#).

Provided by University of Technology, Sydney

Citation: Sue thy neighbour—study reveals the dark side of the digital universe (2018, March 12)  
retrieved 20 September 2024 from

<https://phys.org/news/2018-03-sue-thy-neighbourstudy-reveals-dark.html>

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