



## **COMMUNITY ASSOCIATION WEB SITES: WHAT YOUR ASSOCIATION SHOULD KNOW**

by Russ Klemm

Today, more and more community associations (both condominium and homeowners), are establishing their own "web sites" which function as both a newsletter and "electronic bulletin board" for the membership. The expansion of community associations into cyberspace is expected to accelerate, as a projected 60% of American households will have some access to the Internet by the end of the year 2001.

There are many obvious benefits to an association either establishing or utilizing a web site, including the ability to communicate with the membership nearly instantaneously and interactively through the establishment of a community association electronic bulletin board. There are, however, potential pitfalls about which your community association should be aware if it operates or sponsors its own web site.

In recent years, the Internet has become a potential vehicle for the dissemination of defamatory information on the Internet. Additionally, the related "tort actions" for invasion of privacy and intentional infliction of emotional distress have been brought against Internet Service Providers (such as America OnLine and Prodigy). There are also cases where web site operators have been accused of posting libelous material on the Internet. A community association-run web site could, therefore, potentially become a defendant in a defamation or other tort action, even if that association was without knowledge and was not an active participant.

Under Florida law, defamation is actionable if a defendant "publishes" a false statement about the plaintiff to a third party and that statement causes injury to the plaintiff. The posting of deliberately false information about an individual on a web site would provide the necessary "publication" component for a cause of action for defamation, specifically an action for liable.

There are, at this time, no Florida appellate cases that have held an association liable for defamation in connection with an association-run web site. In a recent Florida case dealing with the issue of whether a web site can be held to be a "media defendant", the court did hold that "someone who maintains a web site and regularly publishes Internet magazines on that site might be considered a "media defendant." Many association web sites regularly publish the association's newsletter via the web site. This activity which could adversely affect the association if it publishes defamatory material.

It seems even more likely that an association could become involved in a defamation case where it maintains an electronic bulletin board. With such a bulletin board, any member of the association or, potentially, even a non-member third party may have the ability to post defamatory material on the association-sponsored web site. Thus, defamatory communications posted by such member or third party could become the basis for the association becoming embroiled in litigation as a media defendant.

Congress has recognized this potential exposure to organizations operating web sites and also has sought to provide for the private “blocking” and screening of offensive material. In 1996, Congress passed the Communications Decency Act, which could limit the liability of a community association sponsored web site by stating that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another “information content provider.” The courts have applied the Communications Decency Act so as to exempt both Internet Service Providers and other interactive computer services from claims of defamation, where the offending material was posted by unrelated third parties. Query: would a member of an association be ruled to be an “unrelated” third party so as to exempt the association from liability?

While the Communications Decency Act may provide some protection to an association which is sponsoring or running a web site, the association could, nevertheless still be at risk potentially, to defend itself in a court far away. There are recent cases that have allowed defendants in Internet defamation cases to bring the cause of action at the place the defamation “occurred” which, in some cases, has been held to be the defendant’s residence. In such a case, an association could be forced into defending a defamation action which has been filed in a court hundreds or even thousands of miles away from the association.

If your association has a web site, or is considering establishing one, there are steps that can be taken to limit any potential liability. Your association should consider the following:

- Never include or allow any member to include any negative or embarrassing information or statements about any members of the association or any individuals in the contents of your web site.
- If the web site uses the name of your association, but is not owned or controlled by the association, make this fact clear on the association’s “home page.”
- Post on the web site a statement of policy that the association does not control the content of its “bulletin board” and reserves the right to refuse access to any member who posts false, malicious or otherwise unacceptable material on the web site.
- Check with your insurance agent or attorneys to determine whether the web site will have any impact on your association’s insurance coverage.

The Internet can be a very useful tool for your association in gaining access to and communicating with the association’s membership and as a means of encouraging participation in the association by its membership. In the near future, more and more associations will turn to Cyberspace to conduct association business and to strengthen the association’s sense of community. 📧