

Legal Regulation & Education: Doing the Right Thing?

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Defamation on the Internet in Hong Kong: The Position Thus Far

Of late there has been increasing discourse on the liability of Internet intermediaries, notably whether 'new intermediaries' which provide conduits, platforms and services for other's people's speech and communications will be regarded as primary publisher, subordinate distributor or mere conduits? In the first highest appellate court decision in Hong Kong dealing specifically with website host's liability for defamatory postings made on the forum by third parties, the Court of Final Appeal (CFA) in *Oriental Press Group Ltd v Fevaworks Solutions Ltd* held that an Internet forum provider is not like a notice board owner and not a main/primary publisher. Instead the forum provider is a subordinate publisher and having proved that they had taken all reasonable steps to remove the offending defamatory content from circulation upon becoming aware of such content were successful in relying on the common law defence of innocent dissemination.

The CFA's decision is a significantly ground-breaking because it provides a definitive stance on who can be liable as a main publisher and it confirmed the position of the common law defence of innocent dissemination vis a vis section 25 of Hong Kong's Defamation Ordinance and its availability as a defence to subordinate publishers.

The aim of the paper is to examine the CFA's decision and the English Court of Appeal's decision in *Tamiz v Google Inc* and to suggest that in an era of free and pervasive open communication platforms, the time may be ripe to re-think whether a greater level of protection should be afforded to ISPs and Internet intermediaries in Hong Kong for defamation.