

Blog Law
Eric Goldman
April 2006

What is a blog?

Blogs are another form of Internet-mediated human communication. In this respect, nothing new. We've seen communication through a variety of Internet media

- Usenet
- Email lists
- Chat
- Message boards
- Personal home pages
- Review sites (like Epinions)
- Now, blogs
 - And its cousin, MySpace and LiveJournal

No rigorous boundary between blogs and its antecedents. But some new conventions:

- reverse chronological posting
- RSS feeds
- No third party editor

Consequence: new interface constantly taking real estate on my desktop.

- This interface combines various types of web content into a single interface.
- As a result, blogs are blurring into news alerts, newspapers, etc. (only difference is cognitive authority assigned to each)

But perhaps blogging is creating something new

- Low barrier to entry
- Searchable (compare email lists, chat, Usenet, message boards)
- Socialized community
 - Navel gazing tools like blogrolls, comments/trackbacks, Technorati, statistics

Consequences:

- blogs are undertaking the roles typically associated with Fourth Estate
 - watchdog—ex: Rathergate
 - setting the news: a topic that launches a blogofest may be deemed news
- major leveling of publication opportunities
 - like Ender's Game
- Proliferation of user-generated content
 - But law of large numbers means that people will do stupid things

My blogging experience

My blogs generate about 15,000 unique visitors and 100,000 page views each month. I use AdSense and get \$40-50/month.

Blogs as scholarship

- traditional scholarship takes a minimum of 6 months; typically 1 year or more
- blogs allow me to comment on topics that don't warrant full law review treatment
- blogs allow me to get comments/responses from my readers about topics I'm working on
- since I've been blogging, I write a lot fewer editorials and practitioner pieces—this time goes straight into the blog
 - but blog posts are recyclable
 - Mike's column
 - Some posts go straight into my articles

Blog has given me entrée to places I couldn't otherwise get

- reporters are routinely using the web
 - newspapers have quoted my blog a dozen times
- given me entrée to certain communities that otherwise might not know I exist (or would hear from me only occasionally)
- new business has called because of the blog (not much good)

Time commitment

- each blog post takes at least an hour (writing plus research)
- marketing a post often takes another hour (if I do it)
- more time spent keeping up on blog discussions/monitoring news sources
- time dealt dealing with comments/inquiries
- maintenance time (statistics)

Total time: about 10 hours a week

Blogging Liability

Typical liability associated with publishing law. For the most part, everything we know about Internet law generally ports over well into blog law.

Not many reported blog law cases. Some of the areas generating lawsuits right now:

- defamation. Ex: *Batzel v. Smith*, *Traffic-Power v. SEObook*
 - and associated suits to unmask anonymous bloggers
- privacy rights violations: *Steinbuch v. Cutler*
- lawsuits over being terminated for blog posting
- IP suits
 - Copyright
 - Trade secret
 - Trademark: *Faegre & Benson v. Purdy*

Blog Law and Derivative Liability

In general, nothing new here. 512 is available for hosting or linking third party infringing content. 230 covers all publisher/speaker claims.

In my Co-blogging paper, I discuss the possible circumscribing of 230 in group blogs or with respect to guest blogging.

- I predict some litigation claiming that group blogs are partnerships or that some bloggers are employers of the others as a way to get around 230.
- I expect plaintiffs to claim that guest bloggers are employees

The law does not contemplate that people engage in systematic collaborative enterprises without a financial objective. Thus, we're going to see some catharsis as judges try to figure out how to characterize collaborative blogging from a legal standpoint.