TWIBEL RETWEETED: TWITTER LIBEL AND THE SINGLE PUBLICATION RULE

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Abstract

In the age of Twitter libel,[1] libelous tweets can be retweeted for further dissemination, at times after the publisher actively solicits others to retweet the tweet.[2] Should courts eschew the single publication rule with the broadcast of an actively solicited retweet, deeming the retweet a republication of the defamatory original tweet and restarting the clock on the statute of limitations against the publisher?[3] This Article will argue that the single publication rule should not be applied in the situation given the publisher's role in actively soliciting for the retweet such that the retweet is a reasonably foreseeable publication by a third party, the nature and purpose of the retweet in reaching a new group, and the defamatory content presented in the retweet itself.

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[1] *See infra* Part II.B (referencing libel on Twitter as "Twibel").

[2] *See infra* Part II.A (explaining the process of retweeting that spreads libelous tweets).

[3] *See infra* Part I.A–B (summarizing the single publication rule).

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Introduction

Darcy, a dog owner, takes her beloved dog daily to Pawdorable, a popular dog day care in town. Darcy chooses Pawdorable because it advertises that it feeds only organic food to the dogs in their care. Darcy thinks her dog is sensitive to non-organic food as it would throw up if fed with non-organic food, so it is important to her that her dog be fed only organic food, even at day care. One day, after picking up her dog from the day care, the dog throws up. Irritated, Darcy goes on Twitter to express her frustration, albeit to only a handful of people who follow her there: "Dog owners, please retweet: Pawdorable feeds your dog non-organic food! So much for their ad saying only organic food is served."[4]

Pawdorable loses a customer, one of Darcy's followers on Twitter, as a result of Darcy's tweet. The loss is a minor one to Pawdorable, and as such, it goes unnoticed. Meanwhile, nobody actually takes up Darcy's solicitation to retweet her tweet for over a year—until Darcy gains a new follower on Twitter, Tom, a fellow dog owner who meets Darcy at a local dog park. Tom finds the old tweet on Darcy's Twitter profile timeline thirteen months after she tweeted it, then proceeds to retweet it to *his* followers, all 208 of them—almost all of whom, in turn, do not follow Darcy on Twitter and have not seen Darcy's original tweet. Thirteen months after Darcy's original tweet, as a result of Tom's retweet, word spreads around town that Pawdorable is a fraud because it feeds their dogs in daycare with non-organic food. Pawdorable loses quite a few customers as a result, enough for Pawdorable to notice this time and to investigate. Pawdorable sues Darcy for defamation.[5]

Would Pawdorable's claim be barred by the statute of limitations?[6] The state's statute of limitations for defamation is one year,

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[4] *See Jury Sides with Courtney Love in First-Ever 'Twibel' Case,* ASSOCIATED PRESS REPORTER (Jan. 25, 2014, 9:01 AM), *archived at* http://perma.cc/7DUM-LVGR (discussing the circumstances of a person using the method of Twibel as a way to express one's dissatisfaction with a personal experience).

[5] *See infra* Part I.A (defining general defamation law). This situation is presented as a hypothetical. All characters appearing in it are fictional. Any resemblance to real persons and companies are coincidental.

[6] *See infra* Part I.B (defining the single publication rule).

which is not unusual.[7] If Tom's retweet of Darcy's tweet does not count as a republication of her original tweet more than a year previously, Pawdorable's defamation claim would be time-barred, and it would be without recourse.[8]

While courts are likely to apply the single publication rule to the broadcast of an actively solicited retweet such as the one in the above hypothetical, which would disallow for the restarting of the clock on the statute of limitations for a libel claim, this Article argues that the single publication rule should not be applied given the publisher's role in actively soliciting for the retweet, the nature and purpose of the retweet in reaching a new group, and the defamatory content presented in the retweet itself.[9] Instead, the actively solicited retweet should be considered a republication of the defamatory original tweet, restarting the clock on the statute of limitations for the defamation action against the publisher.[10]

Part I of this Article will present general defamation law and the single publication rule, from its inception to its relatively recent foray into the Internet.[11] Part II will discuss Twitter, the practice of retweeting, and libel on Twitter ("Twibel").[12] Part III will explore the conflicting nature of defamation law as likely applied to Twibel retweets.[13] Part IV will predict how courts will rule should a libel case involving an actively solicited retweet arise.[14] Part V will ex-

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[7] *See Defamation Statute of Limitations in the 50 United States*, KELLY WARNER, *archived at* http://perma.cc/3JAG-TAHN (listing the statute of limitations for defamation lawsuits by state); *Time Limits To File a Defamation Lawsuit: State Statutes of Limitation*, FINDLAW.COM, *archived at* http://perma.cc/KW2W-PB5C [hereinafter *Time Limits*] (providing a state-by-state list of statutes of limitations for defamation lawsuits).

[8] *See infra* Part I.B (defining the single publication rule).

[9] *See infra* Part V (discussing how the single publication rule should not be applied to actively solicited retweets).

[10] *See* Traditional Cat Ass'n, Inc. v. Gilbreath, 13 Cal. Rptr. 3d 353, 362, 360 (Ct. App. 2004) (finding that the statute of limitation for a defamatory post is tolled until the plaintiff discovers the web-based publication).

[11] *See infra* Part I (tracking the history of general defamation law and the single publication rule).

[12] *See infra* Part II (describing Twitter as a social media platform and libel that occurs on Twitter).

[13] *See infra* Part III (explaining the conflicting defamation laws as likely applied to libelous retweets).

[14] *See infra* Part IV (forecasting that the single publication rule will probably be applied in the case of actively solicited retweets).

plore reasons for courts not to apply the single publication rule in the case of an actively solicited retweet.[15]

I.Defamation Law and the Single Publication Rule

A.General Defamation Law

Defamation is a dignitary tort with ancient roots, one that has to do with the injury to the plaintiff's good name, be it a person's name or a company's name.[16] It takes place when a defendant publishes to a third party a false statement referring to the plaintiff that besmirches the plaintiff's reputation.[17] The statement must be factually based, and not just be the defendant's opinion.[18]

Slander and libel make up the two types of defamation.[19] Slander refers to defamatory communication that is more transitory in nature, and is generally associated with defamation through oral

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[15] *See infra* Part V (asserting that the single publication rule should not be applied to cases of actively solicited retweets).

[16] *See* RESTATEMENT (SECOND) OF TORTS § 561–62 (1977) (finding a publication of defamatory matter concerning a corporation is subject to liability dependent upon the corporations profit or non-profit status); W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS § 111, at 771–73 (5th ed. 2004) (establishing defamation is made up of twin torts, libel and slander, leading to an invasion of the interest in reputation and good name of a person or corporation).

[17] *See* RESTATEMENT (SECOND) OF TORTS § 558 (1977) (outlining elements of defamation); KEETON ET AL., *supra* note 16, § 111, at 773 (finding that defamation tends to injure the reputation in the popular sense). Furthermore, "[a] communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." RESTATEMENT (SECOND) OF TORTS § 559 (1977) (defining defamatory communications); *see also* Danielle M. Conway-Jones, *Defamation in the Digital Age: Liability in Chat Rooms, on Electronic Bulletin Boards, and in the Blogosphere*, 29 A.L.I.-A.B.A. BUS. L. COURSE MATERIALS J. 18, (2005), at 18–19 (evaluating defamatory statements when a defendant publishes a statement to a third party that causes damage to plaintiff absent privilege).

[18] *See* RESTATEMENT (SECOND) OF TORTS § 566 (1977) (comparing the legality of publishing defamatory statements of fact versus statements of opinion); KEETON ET AL., *supra* note 16, § 113A, at 814–15 (noting statements of opinion cannot be the basis of legal action).

[19] *See* KEETON ET AL., *supra* note 16, § 112, at 785 (discussing two forms of actions for defamatory publications).

communication.[20] Libel is reserved for the kind of defamatory communication with a more permanent nature, which is generally associated with written defamation.[21]

Slander, in turn, has a more stringent damage requirement than libel for the plaintiff to be able to win his case.[22] Thus in the case of slander, the plaintiff must show that his reputation is injured through proof of special damages, unless he can show that the slander in question fits into one of the four specific categories of slander per se.[23] Libel, however, taking into account the more permanent quality of the defamatory communication, relaxes the damage requirement for the plaintiff and simply assumes the plaintiff's damages.[24] Furthermore, the status of the plaintiff matters in a defamation suit.[25] A higher constitutional standard is applied for public officials or public figures to prevail in their defamation suit.[26]

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[20] *See* RESTATEMENT (SECOND) OF TORTS § 568 (1977) (defining slander); KEETON ET AL., *supra* note 16, § 112, at 785–88 (articulating distinction between slander and libel actions).

[21] *See* RESTATEMENT (SECOND) OF TORTS § 568 (1977) (distinguishing definitions of slander and libel); KEETON ET AL., *supra* note 16, § 112, at 785–88 (examining the development of libel law).

[22] *Compare* RESTATEMENT (SECOND) OF TORTS § 569 (1977) (indicating ability to prove liability for libel without showing of special harm), *and* KEETON ET AL., *supra* note 16, § 112, at 788 (finding slander is not actionable without proof of actual damages), *with* RESTATEMENT (SECOND) OF TORTS § 575 (1977) (stating publisher of slander will be liable for any special harm done to defamed individual), *and* KEETON ET AL., *supra* note 16, § 112, at 795 (explaining libel is actionable without proof of actual harm to reputation but damages are determined by extent of harm proven).

[23] These are slanderous (1) imputations affecting business, trade, profession, or office; (2) imputations of criminal conduct; (3) imputations of loathsome disease; or (4) imputations of sexual misconduct against a woman. *See* RESTATEMENT (SECOND) OF TORTS §§ 570–74 (1977) (outlining per se slanderous statements that are liable without proof of special harm); KEETON ET AL., *supra* note 16, § 112, at 788–95 (declaring non-pro se forms of slander need not prove special damages).

[24] *See* RESTATEMENT (SECOND) OF TORTS § 569 (1977) (supporting contention that damages may be recovered for defamation without proof of harm to reputation); KEETON ET AL., *supra* note 16, § 112, at 795 (concluding that damages were presumed without having to prove actual harm).

[25] *See* N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (introducing the constitutional standard of "actual malice" for public officials to prevail in a defamation action relating to their official conduct).

[26] *See id.* at 279–80 (requiring proof of knowledge of the statement's falsehood or reckless disregard of whether the statement is true for a public official to recover

Having one's name defamed hurts because it hurts one's "honor, reputation, and self-esteem,"[27] which are "the most personal interests recognized by a civilized society."[28] In fact, the wise understand that "[a] good name is to be more desired than great wealth."[29] A person's reputation rightly receives protection from defamation under the law.[30]

B.The Single Publication Rule

The single publication rule limits the number of suits that can be brought against a single defendant by treating a single defamatory communication, even when published to more than one person, as giving rise to only one cause of action.[31] The clock on the statute of

damages for defamation); *see also* Harte-Hanks Commc'n, Inc. v. Connaughton, 491 U.S. 657, 692–93 (1989) (reaffirming "actual malice" standard for public officials); St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (further clarifying what "actual malice" entails). The standard was later extended to include public figures as well. *See also* Curtis Publ'g Co. v. Butts, 388 U.S. 130, 148, 152–54 (1967) (noting that there is a public interest in debating the qualifications of a public official, such that officials may only recover damages when a publication deliberately or recklessly publishes false information). *But see* Victoria Cioppettini, *Modern Difficulties in Resolving Old Problems: Does the Actual Malice Standard Apply to Celebrity Gossip Blogs?* 19 SETON HALL J. SPORTS & ENT. L. 221, 241 (2009) (noting how celebrity gossip blogs' conduct may fall short of actual malice, but the standard should not be disturbed).

[27] James H. Hulme, *Vindicating Reputation: An Alternative to Damages as a Remedy for Defamation*, 30 AM. U. L. REV. 375, 413 (1981); *see also* Anita Bernstein, *Social Networks and the Law: Real Remedies for Virtual Injuries*, 90 N.C. L. REV. 1457, 1485 (2012) (discussing the inadequacy of money damages to restore loss of reputation).

[28] Hulme, *supra* note 27, at 413*; see also* Bernstein, *supra* note 27 (suggesting containment and erasure as restorative measures for plaintiffs in defamation cases).

[29] *Proverbs* 22:1 (New American Standard).

[30] *See* Little Rock, Newspapers, Inc. v. Dodrill, 660 S.W.2d 933, 935 (Ark. 1983) (explaining that a crucial part of defamation is injury to reputation).

[31] *See* Ogden v. Ass'n of the U.S. Army, 177 F. Supp. 498, 502 (D.D.C. 1959) (explaining that the aggregate of all copies of a publication amount to only one cause of action); *see also* RESTATEMENT (SECOND) OF TORTS § 577A cmt. b (1977) (explaining that the single publication rule is an exception to avoid multiple suits of a publisher for each copy of a single publication). The Uniform Single Publication Act of 1952, establishing the same rule through legislation, has been adopted in seven states. *See id*. at Reporter's Note*; see also* Andrew Thomas, *Repose in Cyberspace: The Single Publication Rule Online*, L.A. DAILY JOURNAL., (Nov. 10, 2011), *archived at* http://perma.cc/ZD3R-95VF (noting that other states have adopted the rule judicially).

limitations starts at the time of publication.[32] The rule is an American invention from the mid-twentieth century;[33] American case law departed from the English common law tradition on this issue.[34]

Hence if the defendant publishes a million copies of a book containing defamatory content against the plaintiff, there is only a single publication, even if a million different people buy and read the book.[35] The clock on the statute of limitations would run from the day of the publication of the book, not from the day that each of the million copies of the book is bought by the different readers.[36]

The rationale for the single publication rule is expressly stated in the Restatement Second of Torts: to "avoid multiplicity of actions

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[32] *See* Yeager v. Bowlin, 693 F.3d 1076, 1081 (9th Cir. 2012) (stating that there is a single cause of action for mass publications that accrues on first publication); *see also Ogden*, 177 F. Supp. at 502 (discussing the "American doctrine," which states that the cause of action accrues and the statute of limitations begins to run at the date of the original publication).

[33] *See Ogden*, 177 F. Supp. at 502 (establishing the single publication rule as controlling law in the jurisdiction).

[34] *See* KEETON ET AL., *supra* note 16, § 113, at 800 (noting that American courts have departed from the English rule, in cases of venue or statute of limitations, by accepting the single publication rule as law); *see also* Duke of Brunswick v. Harmer, (1849) 117 Eng. Rep. 75, 77 (Q.B.) 189 (setting forth the multiple publication rule, which allows a separate cause of action for each individual publication of a libel)*; see also* Daxton R. Stewart, *When Retweets Attack: Are Twitter Users Liable for Republishing the Defamatory Tweets of Others?*, 90.2 JOURNALISM & MASS COMMUNICATION QUARTERLY 233, *reprinted in* SELECTED WORKS OF DAXTON R. STEWART 1, 7–17 (Sept. 8, 2014), *archived at* http://perma.cc/3FXY-QV84 (detailing the history of the single publication rule in United States case law); Sapna Kumar, *Website Libel and the Single Publication Rule*, 70 U. CHI. L. REV. 639, 639–40 (2003) (describing how the American single publication rule evolved from the English multiple publication rule); Lori A. Wood, *Cyber-Defamation and the Single Publication Rule*, 81 B.U.L. REV. 895, 897–900 (2001) (discussing the development of the single publication rule as "an exception to the multiple publication rule"); *The Single Publication Rule and Online Copyright: Tensions Between Broadcast, Licensing, and Defamation Law*, 123 HARV. L. REV. 1315, 1317–23 (2010) [hereinafter *The Single Publication Rule*] (providing in-depth discussion of the utility of the single publication rule and the development of the rule in American courts); Thomas, *supra* note 31 (comparing English and American jurisdictions).

[35] *See* RESTATEMENT (SECOND) OF TORTS § 577A cmt. c, illus. 3 (1977) (highlighting the explicit example that a magazine read by a million people is still considered a single publication).

[36] *See Ogden*, 177 F. Supp. at 499, 502 (discussing the statute of limitations to bring cause of action for libel).

and undue harassment of the defendant by repeated suits by new individuals, as well as excessive damages that might have been recovered in numerous separate suits."[37]

An exception to the single publication rule would apply when the defendant makes a publication that is "intended to and does reach a new group."[38] When the same defamatory material is published first in a morning edition of a newspaper, for example, then in the evening edition of the same newspaper, a second publication is deemed to be borne with the evening edition of the paper.[39] Similarly, there is a new publication with a television or radio rebroadcast of the same program later on the same day, a new edition of a book (as opposed to new *printings* of the *same* edition), or the publication of a paperback of a previously hardback edition of a book.[40] In all these circumstances, because the second publication is aimed at a new audience, the new publication is a separate publication and gives rise to a new cause of action.[41] Additionally, there would be a republication when a third party publishes the statement, and this action is "reasonably foreseeable" by the original publisher.[42]

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[37] RESTATEMENT (SECOND) OF TORTS § 577A cmt. b (1977); *see also* Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 777 (1984) (discussing protection of defendants against multiple suits in New Hampshire).

[38] RESTATEMENT (SECOND) OF TORTS § 577A cmt. d (1977).

[39] *Id.* (noting that republication of a defamatory statement in a later edition reaches new audiences and justifies a new cause of action). *But see Yeager*, 693 F.3d at 1082 (noting that "a statement made in a daily newspaper is not republished when it is repeated in later editions of that day's newspaper").

[40] *See Yeager*, 693 F.3d at 1082 (indicating that a previously published hardcover book is considered "republished" when it is later printed in paperback); RESTATEMENT (SECOND) OF TORTS § 577A cmt. d (1977) (noting that separate publications would reach new audiences and would justify a new cause of action).

[41] RESTATEMENT (SECOND) OF TORTS § 577A cmt. d (1977) (noting the justification is based on the multiple incidents of defamation raising multiple causes of action, while the single publication rule was intended to protect from raising multiple causes of action for every copy distributed from a single distribution).

[42] *See* KENT D. STUCKEY ET AL., INTERNET AND ONLINE LAW § 2.03[6] at 2-94 (2013) (asserting third-party republication can result in a new cause of action); *see also* Hickey v. St. Martin's Press, Inc., 978 F. Supp. 230, 237 (D. Md. 1997) (noting that "liability may attach where a repetition of defamatory material is a natural and probable consequence of defendants' actions," or if it was "reasonably foreseeable by the defendants"); Shepard v. Nabb, 581 A.2d 839, 845–46 (Md. Ct. Spec. App. 1990) (remanding the case for determination of whether alleged libelous re-

With the advent of the Internet, courts were faced with the question of whether to apply the single publication rule to defamation that takes place on the Internet.[43] Some had argued they should; some had argued they should not.[44] In the seminal case of *Firth v. State*, New York was the first to answer the question in 2002, and it answered with a resounding yes.[45] The court ruled that a statement published on a website is not continually republished by virtue of its remaining on the website.[46] This approach has since been widely followed by other jurisdictions.[47]

marks were the "natural and probable consequence" of an earlier publication, supporting a cause of action against the original publisher).

[43] *See, e.g.*, Odelia Braun, Comment, *Internet Publications and Defamation: Why the Single Publication Rule Should Not Apply*, 32 GOLDEN GATE U.L. REV. 325, 328–29 (2002) (stating that the court in Firth v. State, 706 N.Y.S.2d 835, 843 (N.Y. Ct. Cl. 2000) determined that the single publication rule should be extended to the Internet).

[44] *See id.* at 332 (arguing that the single publication rule should not be applied to the Internet); *see also* Kumar, *supra* note 34, at 640 (arguing that libel plaintiffs were under-protected under the single publication rule as applied to the Internet); Wood, *supra* note 34, at 895 (arguing that the single publication rule should be applied to the Internet).

[45] *See* Firth v. State, 775 N.E.2d 463, 467 (N.Y. 2002) (affirming the decision of the appellate court that the single publication rule applied to allegedly defamatory statements posted on an Internet site).

[46] *See Yeager*, 693 F.3d at 1082 (holding that under California law, a statement remaining on a website without a new audience is not republication); *see also Firth*, 775 N.E.2d at 466–67 (stating policy concerns that the republication exceptions would hinder the information flow on the Internet, thereby limiting its advantages).

[47] *See In re* Phila. Newspapers, L.L.C., 690 F.3d 161, 174 (3d Cir. 2012) (stating that courts have distinguished Internet republication issues by holding that adding links, unrelated content, or making technical changes that does not substantially alter or add new material does not constitute a republication); *see also* Oja v. U.S. Army Corps of Eng'rs, 440 F.3d 1122, 1130–32 (9th Cir. 2006) (summarizing how courts have applied the single publication rule to Internet-based information); Van Buskirk v. N.Y. Times Co., 325 F.3d 87, 89 (2d Cir. 2003) (stating that New York adheres to the single publication rule); *Gilbreath*, 13 Cal. Rptr. 3d at 362 (holding that due to the *Firth* case, New York adheres to the single publication rule for webpage publication); McCandliss v. Cox Enters., Inc, 593 S.E.2d 856, 858 (Ga. App. 2004) (finding that the single publication rule applies to limit endless retriggering of the statute of limitations, multiplicity of suits, and harassment of defendants); *Firth*, 775 N.E.2d at 466 (holding that the single publication rule would apply to Internet defamation cases); Alan J. Pierce, *New York's Appellate Courts Wrestle with Significant Issues in Internet Defamation Cases*, 76.2 ALBANY L. REV. 1053, 1054 (2013) (maintaining that the single publication rule applies to Internet

However, the exception to the single publication rule has been preserved as it is applied to the Internet.[48] So if a website containing the defamatory statement is modified such that the website is directed to a new audience or if the statement is substantively modified, then the statement is republished.[49]

As to the statute of limitations for defamation, a statement is published when it is "first made available to the public,"[50] and the clock on the statute of limitations begins to run from that moment.[51] Thus for a statement published online, the statement is considered published when the statement is first posted on the website, regardless of

defamation cases); *The Single Publication Rule*, *supra* note 34, at 1320–21 (noting that virtually every other court has cited *Firth* in their reasoning to allow the multiple publication rule); Amy Harder, *When Defamation Goes Online*, 37 THE NEWS MEDIA & THE LAW (Sept. 9, 2014), *archived at* http://perma.cc/QRY5-578T (stating single publication rule cuts off liability a year after the initial publication); Edward J. Sholinsky, *Hyperlinks Not a Republication for Purposes of the Single Publication Rule: No Limit to Liability if Links Retriggered Statute of Limitations*, MLRC MEDIA L. LETTER (Media Law Resource Center, Inc., New York, N.Y.), Aug. 2012, at 5 (addressing the Pennsylvania court that held that the single publication rule applies to Internet publications).

[48] *Compare Yeager*, 693 F.3d at 1082 (explaining that a work cannot be considered republished unless it is within the original "single integrated publication"), *with Firth*, 775 N.E.2d at 466 (explaining that when new audience is reached, a new cause of action arises), *and* RESTATEMENT (SECOND) OF TORTS § 577A cmt. d (1977) (delineating that a single publication on a different occasion that is intended to and does reach a new group can produce two causes of action).

[49] *See Yeager*, 693 F.3d at 1082 (holding that a statement on a website is not republished unless it is substantively altered or added to, or the website is directed to a new audience); *Firth*, 775 N.E.2d at 466 (highlighting that the subsequent publication is intended to reach a new audience); Stewart, *supra* note 34, at 7–17 (discussing that any form of publication qualifies as publication for libel purposes). One court casts republication as such: when the defamatory content is "put forth in a new form." *See* Salyer v. S. Poverty Law Ctr., 701 F. Supp. 2d 912, 918 (W.D. Ky. 2009).

[50] *See Yeager*, 693 F.3d at 1081–82 (noting that "[i]n print and on the [I]nternet, statements are generally considered 'published' when they are first made available to the public").

[51] *See id.* at 1081 (highlighting that the rule limits tort claims to a single cause of action that accrues upon the first publication of the communication); *see also Ogden*, 177 F. Supp. at 502 (maintaining that a defamatory publication gives rise to a cause of action at the time of the original publication, and thus the statute of limitations runs from that date).

when it may be read by visitors to the site.[52] The statutes of limitations for defamation cases are generally short—in many jurisdictions, a year.[53]

The strong protection for speech on the Internet from the perspective of the application of the single publication rule is consistent with the trend of strong protection of speech on the Internet generally.[54] Internet users and service providers alike enjoy robust protection in the name of free speech and the free flow of information on the Internet.[55] If defendants in defamation have enjoyed strong protection under the forms of traditional media, that protection has grown only more robust with the Internet, actually making defamation cases harder to win when it takes place online than it would be in traditional media.[56]

II. Twitter and Twibel

As this Article focuses on libel on Twitter as the medium, a look at Twitter and its users who tweet and retweet is warranted.

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[52] *See Yeager*, 693 F.3d at 1081–82 (observing that identifying statements are considered published once they have been made publicly available); *see also The Single Publication Rule*, *supra* note 34, at 1319 (citing Hamad v. Ctr. for Jewish Cmty. Studies, 265 F. App'x 414, 417 (5th Cir. 2008)); *Nationwide Bi-Weekly Admin.*, 512 F.3d at 146; *In re* Davis, 347 B.R. 607, 611 (W.D. Ky. 2006); *Traditional Cat Ass'n*, 13 Cal. Rptr. 3d at 355 (indicating that the statute of limitations begins to run from date of the publication or broadcast of tortious statement).

[53] *See Time Limits*, *supra* note 7.

[54] *See* David Samson, *The Future of Reputation: Gossip, Rumor, and Privacy in the Internet*, 7 J. HIGH TECH. L. 1 (2007) (reviewing DANIEL J. SOLOVE, THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY IN THE INTERNET (2007)) (discussing freedom of speech in relation to Internet publications); Wood, *supra* note 34, at 907 (noting the protection of Internet speech provided by limited liability under the single publication rule).

[55] *See* Brandon Wiebe, *BART's Unconstitutional Speech Restriction: Adapting Free Speech Principles to Absolute Wireless Censorship*, 47 U.S.F. L. REV. 195, 217 (2012) (noting that the "Internet epitomizes free speech principles in a way no other medium of communication can").

[56] *See* Lili Levi, *Social Media and the Press*, 90 N.C. L. REV. 1531, 1573 (2012) (describing how cases involving Internet defamation are harder to win); s*ee also* Pierce, *supra* note 47, at 1084 (stating that traditional mass media rules for defamation are being applied more vigorously to the Internet).

A.Twitter, Tweeting, and Retweeting

Twitter is a microblogging and social networking website.[57] Since its launch in 2006, its popularity has soared and it has rapidly gained users around the world.[58] Twitter has amassed over 500 million users as of 2012.[59] Its users can "tweet" messages of up to 140 characters and "follow" other users.[60] Twitter users produce 500 million tweets per day, more than doubling the statistics in just two years.[61] The average Twitter user has 208 followers as of October 2012.[62]

The posted messages on Twitter, also called tweets, can be read by the public on the Internet, even by those who do not have a

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[57] *See About Twitter*, TWITTER, *archived at* http://perma.cc/RW4D-REND (describing the purposes and particular uses of Twitter's services); *see also* Issie Lapowsky, *Ev Williams on Twitter's Early Years,* INC.COM (last updated Oct. 4, 2013), *archived at* http://perma.cc/4ZER-L5TP (discussing Twitter as a social network and microblogging site).

[58] *See* André Picard, *The History of Twitter, 140 Characters at a Time*, THE GLOBE AND MAIL (Mar. 20, 2011, 10:39 PM), *archived at* http://perma.cc/3WSR-FJ4T (explaining the history of Twitter, its revenue sources, and its impact on the media, business, and politics).

[59] *See Twitter Reaches Half a Billion Accounts More than 140 Million in the U.S.*, SEMIOCAST (July 30, 2012), *archived at* http://perma.cc/6BBA-MGFH (analyzing statistics of Twitter's geographic distribution of user accounts, profiles, and posted tweets).

[60] *See* Patrick H. Hunt, *Tortious Tweets: A Practical Guide to Applying Traditional Defamation Law to Twibel Claims*, 73 LA. L. REV. 559, 578 (2013) (explaining how Twitter users interact with one another through "following" and posting tweets); *see also* Joe Trevino, *From Tweets to Twibel*: Why the Current Defamation Law Does Not Provide for Jay Cutler's Feelings*, 19 SPORTS LAW. J. 49, 58 (2012) (describing the services provides by Twitter for its users); *About Twitter*, *supra* note **Error! Bookmark not defined.** (describing how Twitter facilitates interaction between its users); *Getting Started with Twitter*, TWITTER, *archived at* http://perma.cc/T36Y-ZTSJ (explaining how to use Twitter and that tweets are limited to 140 characters).

[61] *See* Raffi Krikorian, *New Tweets per Second Record, and How!*, THE TWITTER ENG'G BLOG (Aug. 16, 2013), *archived at* http://perma.cc/9593-GZ47 (analyzing statistics regarding frequency of posted tweets by Twitter users); *see also* Katy Steinmetz, *What Twitter Says to Linguists*, TIME (Sept. 9, 2013), *archived at* http://perma.cc/HBT2-SA4W (discussing Twitter's impact from the perspective of a communications and language researcher).

[62] *See An Exhaustive Study of Twitter Users Across the World*, BEEVOLVE (Oct. 10, 2012), *archived at* http://perma.cc/8DRL-PHN9 (analyzing data of Twitter user profiles, user demographics, and global distribution).

Twitter account.[63] Alternatively, these tweets can be made private, in which case only the user's followers on Twitter can read them.[64] The wide reach of the Internet is captured nicely in Twitter.[65] Tweets reach far and wide—the way they are designed to in the world of social networking—with users' reading and further disseminating these tweets through their own activities on Twitter.[66]

For example, Twitter users may band together in discussing a topic or a piece of information by tweeting about it while making use of Twitter's hashtag feature, symbolized by the icon "#."[67] In Twitter's own words, "People use the hashtag symbol # before a relevant keyword or phrase . . . in their [t]weet to categorize those [t]weets and help them show more easily in Twitter [s]earch."[68] Moreover, "[c]licking on a hashtagged word in any message shows you all other [t]weets marked with that keyword."[69] Hence a topic may gain more attention as a "Trending Topic" on Twitter when more and more people use the hashtag feature while discussing it.[70] It is not unheard of for a topic or a news event to gain traction first on Twitter, before

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[63] *See About Public and Protected Tweets*, TWITTER, *archived at* http://perma.cc/D4FE-LQYZ (explaining the differences between public and protected tweets and the various restrictions imposed); *see also Protecting and Unprotecting Your Tweets*, TWITTER, *archived at* http://perma.cc/CSE6-3BA5 (describing the process by which a user may protect their tweets through "Security and privacy settings"). Twitter provides its users this tip: "What you say on Twitter may be viewed all around the world instantly. You are what you [t]weet!" *See Terms of Service*, TWITTER, *archived at* http://perma.cc/KY2B-QA5W (providing Twitter's "Terms of Service" outlining guidelines and policies for Twitter users).

[64] *See About Public and Protected Tweets*, *supra* note **Error! Bookmark not defined.** (explaining the meaning of "Protected Tweets").

[65] *See* Michaelangelo Flores, *Twitter in Internet Marketing,* MICHAELANGELO FLORES OFFICIAL BLOG, *archived at* http://perma.cc/67D7-8PT8 (describing the wide and extensive reach of Twitter in Internet marketing).

[66] *See* Trevino, *supra* note 60, at 58 (describing how Twitter users can share thoughts and concerns with the world).

[67] *See* Hunt, *supra* note 60, at 580 (pointing to the importance feature of hashtagging); *see also Using Hashtags on Twitter*, TWITTER, *archived at* http://perma.cc/JUV4-GZDM (noting how hashtags popularize tweets).

[68] *See Using Hashtags on Twitter*, *supra* note 67.

[69] *Using Hashtags on Twitter*, *supra* note 67.

[70] *See Using Hashtags on Twitter*, *supra* note 67 (explaining how hashtags create trending topics on Twitter); *see also FAQs About Trends on Twitter*, TWITTER, *archived at* http://perma.cc./46YA-9928 (identifying how hashtags promote current topics).

capturing an even bigger attention outside Twitter on the Web or elsewhere.[71]

Another way that Twitter users may widely disseminate a piece of information is through the practice of retweeting.[72] When a user clicks on a retweet button on another user's tweet, that same tweet is in turn tweeted to all the followers of *that* retweeting user.[73] Thus the tweet is retweeted wholesale, reaching a whole new audience[74] simply at a touch of this button.[75] The practice can be repeated endlessly, potentially reaching thousands and millions of people in little time.[76] Twitter provides the built-in "retweet" button, making

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[71] *See* Karl Hodge, *10 News Stories That Broke on Twitter First*, TECHRADAR.COM (Sept. 27, 2010), *archived at* http://perma.cc/9KYH-456F (elucidating Twitter's role in exposing major world events) Among some news events that first broke out or gained traction on Twitter are Osama bin Laden's death in 2011, UK's Prince William and then-fiancée Kate Middleton's royal wedding announcement in 2011, Michael Jackson's death in 2009, and the US Airways Hudson River plane crash in 2009. *Id. See also Factbox: News That Broke on Twitter*, REUTERS, July 7, 2011, *archived at* http://perma.cc/YUK8-RQ2Y (highlighting the exposure of major news events via Twitter).
In an interesting twist, a news event can be relived the second time on Twitter: Recently, the "news" of astronaut Neil Armstrong's death was circulating on Twitter one year *after* his death (due to users' forgetfulness, carelessness, or both), and it prompted widespread mourning on Twitter before realization set in. Harry McCracken, *Déjà Vu All Over Again: Twitter Mourns Neil Armstrong's Passing*, TIME (Aug. 27, 2013), *archived at* http://perma.cc/BQ8N-WU5S (demonstrating Twitter's ability to promote misleading information).

[72] *See Retweeting Another Person's Tweet*, TWITTER [hereinafter *Retweeting*], *archived at* http://perma.cc/GVG2-LQYM (addressing the methods of retweeting); *see also* Trevino, *supra* note 60, at 58 (explaining simple operational steps of retweeting).

[73] *See* Ellyn Angelotti, *Twibel Law: What Defamation and Its Remedies Look Like in the Age of Twitter*, 13 J. HIGH TECH L. 433, 453–55 (2013) (emphasizing the large number of different followers who can be reached through retweeting); *see also Retweeting*, *supra* note 72 (setting forth the use of the retweet button).

[74] *Cf. Trevino*, *supra* note 60, at 60 (presuming that a retweet will reach the retweeter's followers). This assumes that at least some of the retweeter's followers are mutually exclusive from the original tweeter's followers.

[75] *See Retweeting*, *supra* note 72 (emphasizing the simple process of making one's tweet accessible to a different audience).

[76] *See* Trevino, *supra* note 60, at 58 (defining the vast reach of Twitter); Shea Bennett, *10 Simple Twitter Tips That Guarantee More Retweets*, ALL TWITTER (June 7, 2013), *archived at* http://perma.cc/35A-HVFA (stating "[r]etweets are the backbone of the Twitter network. Thanks to the ripple effect, a retweet allows any user's message to be seen by any and everybody—theoretically at least, your single tweet

retweeting an easy and convenient procedure—and indeed, even encouraged by Twitter itself.[77] The more users use the retweet button, the more people take to Twitter, and the more the social medium is used.[78]

Many users, desirous to boost the popularity of their tweets, even *actively solicit* for retweets.[79] It is not uncommon for these users to post a solicitation such as "please retweet" or "RT this" (RT being an abbreviation for retweet) as part of their tweets.[80] In turn, it is not uncommon for the solicitation to be successful: Followers do take up the solicitation by actually retweeting the tweet.[81]

Furthermore, even old tweets can be retweeted.[82] The number of older tweets (say, more than a week or a month) that is displayed on a user's Twitter profile timeline corresponds to the number of tweets he has penned—the timeline seems to display only the most recent 3,200 tweets in reverse chronological order.[83] Thus the more a user has tweeted, the fewer old tweets would be displayed on his

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could reach 140+ million people."); *see also FAQs About Retweets (RT)*, TWITTER, *archived at* http://perma.cc/L846-67ZJ ("There is no limit to the number of times a Tweet can be retweeted . . . .").

[77] *See Retweeting*, *supra* note **Error! Bookmark not defined.** (outlining the retweeting procedure); *see also Getting Started with Twitter*, *supra* note 60 ("Retweet messages you've found and love . . . . Tip: If you're a new user, others are more likely to find your messages if they are [r]etweets . . . .").

[78] *See* Bennett, *supra* note 76 ("Retweets are the backbone of the Twitter network.").

[79] *See, e.g.*, Jabez LeBret, *How To Master the Art of the Retweet*, *Inc.Well* (Feb. 2, 2012, 5:45 PM), NBC CHICAGO, *archived at* http://perma.cc/UR34-SGDX (suggesting that the most effective way "to get traction with social media . . . is to ask for it").

[80] *See* Zach Green, *Ask for Retweets Using "Please Retweet"*, 140ELECT (May 16, 2013), *archived at* http://perma.cc/ANW5-KDKB (offering statistics on different ways and effectiveness on retweeting); LeBret *supra* note 79 (asserting that users ask to be retweeted).

[81] *See* Green, *supra* note 80 (indicating via graph the success rate of using phrase "please retweet"); Dan Zarella, *New Data Proves 'Please ReTweet' Generates 4x More ReTweets [Data]*, HUBSPOT BLOG (May 31, 2011, 8:00 AM), *archived at* http://perma.cc/F7HW-6F6D (referencing data that shows with 99% confidence that people who use the phrase "Please Retweet" are more likely to be retweeted than those tweets that do not include the phrase).

[82] *See New User FAQs*, TWITTER, *archived at* http://perma.cc/A69N-RUBT (summarizing the method of retweeting old tweets).

[83] *See id.* (highlighting that a user may view up to 3,200 of their tweets).

timeline.[84] For users who may not tweet as frequently as their most productive counterparts, this long list of tweets can go back to years in the making.[85] But even if a tweet is no longer displayed on a user's timeline, be it by virtue of age or even by virtue of the tweet having been deleted by the user himself, tweets can be dug up and unearthed through the use of a dedicated online tool such as Topsy[86] or through a search on a search engine like Google.[87] Once the tweet is found, it can again be retweeted ad nauseam.[88]

Lastly, privacy settings make a difference as to the accessibility and ease of dissemination of a tweet.[89] A user who does not set his tweets to private (or "protected") will have the retweet button available for every one of his tweets, so that every one of his followers and even others on Twitter can retweet any tweet he has penned.[90] A user who does make her tweets private, however, will have her tweets "locked" and not be available for automatic retweeting by way of the click of the retweet button, although her followers can of course retweet her tweets manually.[91]

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[84] *See id.* (noting that although older messages could still be retrieved by downloading the archive, only the 3,200 most recent messages will show up on a user's profile timeline).

[85] *See* Meg Leta Ambrose, *It's About Time: Privacy, Information Life Cycles, and the Right To Be Forgotten*, 16 STAN. TECH. L. REV. 369, 380 (2013) (discussing how Facebook's Timeline provides "easier access to old information"). Twitter's analogous profile timeline page similarly displays a user's old(er) tweets, accessible to be read or retweeted.

[86] *See* Diane Karpman, *Web Offers Pearls of Wisdom, but Also Legal Tangles*, CAL. ST. B.J., Aug. 2013, *archived at* http://perma.cc/F4S-8BHV (referencing Topsy as "an online tool that searches content published on Twitter and the Web, sorted by relevance or date").

[87] *See* Hunt, *supra* note 60, at 587 (explaining how tweets are always accessible through Internet search engines).

[88] *See Retweeting*, *supra* note 72 (instructing Twitter users on how to retweet).

[89] *See New User FAQs*, *supra* note 82 (explaining how a user may adjust his or her settings to improve tweet security); *see also* Bernstein, *supra* note 27, at 1479 (stating how privacy settings likely limit potential harm).

[90] *See FAQs About Retweets*, *supra* note 76 (instructing users to "turn off" retweets if they desire greater privacy).

[91] *See Retweeting*, *supra* note **Error! Bookmark not defined.** (clarifying that another user can manually retweet an original tweet even when the retweet icon is available to use). A manual retweet, in turn, can be an exact copy of the original tweet, or else a "modified retweet" (often designated as "MT"), in which the retweeter may shorten, edit, or otherwise modify the tweet without changing its meaning. *See* Lauren Dugan, *Advanced Twitter Terminology To Get You Tweeting*

Retweeting is designed to disseminate information further and further.[92] It is precisely designed to reach previously unreached audiences—most targetedly those other followers on Twitter who may not have read the original tweet by the original tweeter,[93] although the tangential larger audience on the Internet may very well get to read it as well.[94] The more people retweet a tweet, the farther the tweet goes, and the more eyeballs read the tweet.[95]

B. Twibel

Libel on the medium of Twitter has been dubbed "Twibel."[96] Because tweets are written and not spoken, it is libel, as opposed to slander, that seems to be the appropriate designation for the type of defamation that takes place through a tweet.[97] The nature of infor-

Like a Pro, ALL TWITTER (June 29, 2011, 11:25 AM), *archived at* http://perma.cc/WS8R-PEKS (defining a modified tweet).

[92] *See Retweeting*, *supra* note 72 (defining a retweet).

[93] *See Retweeting*, *supra* note 72 (explaining that a retweet will allow users who do not follow the original sender to view the original tweet).

[94] *See, e.g.*, Stewart, *supra* note 34, at 5 (citing a case where a sports writer's original tweet reached his 2,000 followers, but was also retweeted at least 14 times); *About Public and Protected Tweets*, *supra* note 63 (describing the various types of tweets and the audiences they reach); *see also Protecting and Unprotecting Your Tweets*, *supra* note 63 (addressing the subject of protecting one's tweets).

[95] *See Retweeting*, *supra* note 72 (outlining a retweet's effect on expanding audience).

[96] *See* Levi, *supra* note 56, at 1574 (referring to Twitter libel litigation as "Twibel"); Stewart, *supra* note 34, at 4 (describing "Twibel" as libel lawsuits arising from tweets); *"Don't Twibel on Me": Tweets as Libel Lawsuits*, JUSTIA.COM (Apr. 1, 2011), *archived at* http://perma.cc/5GA8-3933 (addressing Twitter libel as "Twibel").

[97] *See* Hunt, *supra* note 60, at 587–88 (noting that tweets are more permanent than spoken words, making libel more appropriate than slander; however, a number of scholars have advocated slander as the appropriate form of defamation on Twitter due to the informal, spoken-like nature of tweets and due to the fact that newer tweets would take prominence over older tweets on a user's profile timeline); *see also* Glenn H. Reynolds, *Bloggership: How Blogs Are Transforming Legal Scholarship: Libel in the Blogosphere: Some Preliminary Thoughts*, 84 WASH. U. L. REV. 1157, 1165 (2006) (suggesting that statements on blogs "might be better analyzed under slander than defamation"); Steinmetz, *supra* note 61 (concluding that "[s]ocial media has taken the informal peer-to-peer interaction that might have been almost exclusively spoken and put it in written form"); Julie Hilden, *Should the Law Treat Defamatory Tweets the Same Way It Treats Printed Defamation?*,

mation on the Internet being more durable by virtue of having it "forever out there" on the wide world of the Web also contributes to the more libelous rather than slanderous nature of tweets.[98]

A few high-profile Twibel cases have arisen, although only one has reached trial in the United States so far.[99] Plaintiffs who may

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JUSTIA.COM (Oct. 3, 2011), *archived at* http://perma.cc/652B-T9JM (analogizing tweets to conversations in which "words disappear into the air"). But given the permanent and wide-reaching nature of tweets—they stay available and accessible on the Internet, even after attempts to delete them—libel is the more appropriate form of defamation on Twitter. *See* Jeffrey Rosen, *The Web Means the End of Forgetting*, N.Y. TIMES SUNDAY MAG. (July 21, 2010), *archived at* http://perma.cc/2H57-SGFD (noting that a Twitter post is available online forever).

[98] *See* Hunt, *supra* note 60, at 587–88 (concluding that defamatory tweets are more libelous than slanderous because they are widely circulated and permanent).

[99] *See* Gordon v. Love, No. BC462438, 2013 WL 6981363, at *1 (Cal. Super. Dec. 20, 2013) (noting the case brought against Courtney Love). Courtney Love was recently found not liable in a libel lawsuit based on a tweet against her former attorney. *See* Eriq Gardner, *Courtney Love Wins Twitter Defamation Trial*, THE HOLLYWOOD REPORTER (Jan. 24, 2014, 5:03 PM), *archived at* http://perma.cc/7PT8-GSSG (pointing to Love's Twitter defamation case as the first of its kind to be filed in the United States); Corina Knoll, *Singer-Actress Courtney Love Wins Landmark Twitter Libel Case*, L.A. TIMES (Jan. 24, 2014), *archived at* http://perma.cc/PV2N-CKR4 (noting Love's suit was the first Twitter libel case to proceed to trial). Previously, Love had settled another libel lawsuit brought by a fashion designer based on her tweet and MySpace content. *See* Bernstein, *supra* note 27, at 1461 (detailing the action brought against another celebrity for content published on Twitter and MySpace); Levi, *supra* note 56, at 1574 (highlighting the high-profile nature of the Courtney Love case); Charles D. Tobin, *OMG! "Twibel" Claims? R U 4 Real?*, 28 A.B.A. COMM. LAW. 2, 3, *archived at* http://perma.cc/D8GU-RLU6 (detailing the settlement figure arising out the Tweet lawsuit); Angelotti, *supra* note 73, at 470–79 (analyzing the Courtney Love Twibel case and its effect on other Twibel suits); Thomas R. Julin & Henry R. Kaufman, *Twibel Tweak Needed for Tweeters*, at 1–2, *archived at* http://perma.cc/5UGH-MFAK(outlining the Twibel suit against Courtney Love); *"Don't Twibel on Me": Tweets as Libel Lawsuits*, *supra* note 96 (detailing the offending Tweets).

A claim was brought against Kim Kardashian by a doctor over Kardashian's tweet about his Cookie Diet. *See* Bernstein, *supra* note 27, at 1461 (acknowledging a physician's claim against celebrity Kim Kardashian); Julin & Kaufman, *supra* note 99, at 2 (listing Kim Kardashian's involvement in a Cookie Diet product suit).

A few high-profile cases have been brought against public officials and public figures across the pond in the United Kingdom: against Lord Alistair McAlpine, Chris Cairns, and Colin Elsbury. *See id.* (describing the false tweeting case against Colin Elsbury); Andrew Keen, *Twitterers: Take Responsibility for Your Reckless Claims*, CNN WIRE, Nov. 27, 2012, *archived at* http://perma.cc/S5TK-HBBG (outlining the Twibel case against Lord Alistar McAlpine); Eric Pfanner, *Libel Case That Snared*

consider going after Twitter for their Twibel cases would be sorely disappointed. Twitter is immune from liability as an Internet service provider under the robust protection of the Communications Decency Act.[100] The statute strongly affirms the protection of free speech and free flow of information on the Internet.[101]

Additionally, Twitter's Terms of Service, the agreement between Twitter and each user, expressly relieves any liability on Twitter's part for the tweets (or retweets) that users post and expressly provides that tweets are the "sole responsibility of the person who originated" it.[102]

Plaintiffs may likewise consider suing those who retweet a tweet, especially when faced with the possibility of having a lawsuit against the original tweeter being time-barred under the often-short

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BBC Widens to Twitter, N.Y. TIMES, Nov. 25, 2012, *archived at* http://perma.cc/8TQR-AE5K (comparing the Twibel case against Lord McApline and the Twibel case against Chris Cairns); *Ex-Cricketer Chris Cairns Wins £90,000 Libel Damages*, BBC NEWS U.K., Mar. 26, 2012, *archived at* http://perma.cc/F7U4-RQ79 (analyzing the Twibel case of Mr. Cairns); John E. Dunn, *Twitter Libel Claim Bests U.K. Politician*, PCWORLD (Mar. 14, 2011, 9:55 AM), *archived at* http://perma.cc/KF2N-J43U (explaining the case against political candidate Colin Elsbury); *"Don't Twibel on Me": Tweets as Libel Lawsuits*, *supra* note 96 (alleging a Welsh politician admitted to twibeling).

[100] *See* 47 U.S.C. § 230(c)(1)(2006) ("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."); *see also* Bernstein, *supra* note 27, at 1481–82 (outlining the immunities granted by the Communications Decency Act); Conway-Jones, *supra* note 17, at 38–40 (expanding on how third party users do not have the requisite knowledge for a civil tort liability suit); Speech Deformation & Social Media: John L. Hines Jr., & Sang-Beom Seo, *Speech, Defamation & Social Media: Comparing the Law of Korea and the United States*, U.S.-KOR. L.J., July 2013, at 169 (2013); Levi, *supra* note 56, at 1573 (explaining how the Communications Decency Act offers immunity from liability for providers); Stewart, *supra* note 34, at 14 (referencing California federal district court noting that the Communications Decency Act may create an immunity against libel actions).

[101] *See* Batzel v. Smith, 333 F.3d 1018, 1027 (9th Cir. 2003) (addressing the importance Congress gave to free speech on the Internet); *see also* 47 U.S.C. § 230(b) (maintaining that free speech is tantamount to the information provided over computer services and other interactive media); Conway-Jones, *supra* note 17, at 39 (explaining the intrusive nature of government regulation on the communications of others); Julin & Kaufman, *supra* note 99, at 1 (summarizing the success rate of Twibel claims).

[102] *See Terms of Service*, *supra* note 63 (illuminating the contractual agreement that Twitter has with its users).

statute of limitations for defamation.[103] But the robust mantel of immunity of the Communications Decency Act[104] may very well also protect Twitter's retweeters as "users" under the Act.[105] The statute provides that "[n]o . . . user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[106] As retweeters simply tweet another's tweet, they are not the original "publisher or speaker" of the tweet and the content of their retweet was simply provided by a "content provider," who is in turn the original tweeter-publisher.[107] While there is not yet a case on point with regard to the applicability of the Communications Decency Act's "user" protection to retweeters,[108] they may well be immune from liability under the statute.[109]

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[103] *See Single Publication Rule Applies to Internet Publications Letter No. 315*, GUIDE TO COMPUTER L.2012 WL 9874550 (Jan. 18, 2008) (citing the Texas one-year statute of limitations for defamation cases).

[104] *See* 47 U.S.C. § 230(c)(1) ("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.").

[105] *See* Stewart, *supra* note 34, at 16 (adding that retweeters are protected under the Act, but if the tweets are altered, the Act may not apply); *see also Batzel*, 333 F.3d at 1027 (describing Congress' intent to encourage free speech on the Internet); Barrett v. Rosenthal, 146 P.3d 510, 529 (Cal. 2006) (emphasizing the importance of free speech and flow of information in Internet sources); Julin & Kaufman, *supra* note 99, at 2 (asserting that those who tweet should be protected from libel claims, like the company that provides the service to tweet).

[106] *See* 47 U.S.C. § 230(c)(1) (establishing that providers or users shall not be treated as a publisher or speaker of information).

[107] *Compare* Stewart, *supra* note 34, at 18 (explaining that a user or provider is not responsible for content he uses but does not create), *with* Julin & Kaufman, *supra* note 99, at 1 (stating that tweeters should not be held liable under tort clamis), *and* Dugan, *supra* note 91 (describing the process of how retweeting works). Stewart's assertion that a tweeter of a "hat tip," in which a tweet is "designated by HT followed by a username, [and] gives credit for pointing you in the direction of something interesting, a 'nod in acknowledgment that they provided you with the fodder (but not the content) for that tweet'" would be less likely to enjoy the Communications Decency Act protection under
§ 47 U.S.C. 230(c)(1) because the hat tip is "preceded by the Twitter user's own thoughts, comments, or assertions"—thereby possibly turning the user into a content provider. Stewart, *supra* note 34, at 33 (quoting Dugan, *supra* note 91).

[108] *See* 47 U.S.C. § 230(c)(1) (establishing that providers or users shall not be treated as a publisher or speaker of information).

[109] *See id.* (stipulating parties publishing information by another content provider will be protected by good Samaritan exception); Julin & Kaufman, *supra* note 99, at 1(acknowledging statements of opinion or hyperbole are not legally actionable

Being able to sue neither Twitter nor (likely) retweeters for Twibel as a result of the robust protection of the Communications Decency Act,[110] plaintiffs are left with the publisher of the original tweeter as the sole possible defendant.[111] For purposes of this Article, those original tweeters who actively solicited tweets are of particular interest.[112] While there has so far been no Twibel case arguing for the non-application of the single publication rule so as to restart the clock on the statute of limitations against a publisher based on his active solicitation for retweets, given the high volume of Twitter use and the proliferation of Twibel cases, the day may soon dawn upon us.[113]

III. Conflicting Defamation Laws as Likely Applied to Twibel Retweets

When Twibel cases against a publisher who actively solicited tweets do arise, there will be conflicting defamation laws that are likely applicable to Twibel.[114] Defamation law, with its ancient roots already "wrenched sadly out of shape by its historical development,"[115] is now facing the challenge of wise application to rapidly changing forms of communication and technology in the Internet age.[116] It is worth noting that even *Firth v. State*,[117] the seminal case

on an online setting); Bernstein, *supra* note 27, at 1481(considering immunity from defamation suits under federal law for Internet service providers). Some argue that the Communications Decency Act has worked "too well" due to its arguably over-expansive immunity. Julin & Kaufman, *supra* note 99, at 1; *see* Bernstein, *supra* note 27, at 1481.

[110] *See* 47 U.S.C. § 230(c)(1)(2006) (protecting third-party publishers from suit for content previously published by other content provider).

[111] *See id*. (delineating lack of liability for third-party content publishers).

[112] *See id*. (focusing on the role of the original tweeter to a Twibel suit).

[113] *See* Trevino, *supra* note 60, at 51 (reviewing current case law regarding Twibel cases and free speech protections).

[114] *See* Richard Raysman & Peter Brown, *Courts Conflict on Anonymous, Allegedly Defamatory Online Speech*, N.Y. L.J., Aug. 12, 2014, *archived at* http://perma.cc/7L4V-YW87 (addressing conflicting case law regarding defamation law in online setting).

[115] *See* VICTOR E. SCHWARTZ ET AL., PROSSER, WADE AND SCHWARTZ'S TORTS: CASES AND MATERIALS 864 (12th ed. 2010) (defining what defamation is in tort law).

[116] *See* Angelotti, *supra* 73, at 466 (addressing challenges presented to defamation law by advances in Internet technology).

from New York establishing that the single publication rule applies to publication on a website,[118] did not exactly address what republication was—leaving open the issue of, for example, what constitutes republication as applied to Twibel retweets.[119] The conflicting laws likely applicable to Twibel cases are as follow.

A.No Continuous Republication for Defamatory Content Remaining on a Website

As previously discussed in Part I.B, courts have held that a defamatory content that remains up on a website does not lead to a continuous republication,[120] lest it would lead to multiplicity of suits and harassment of defendants.[121] Thus when a defamatory content goes up on a website and remains on it for years to come, publication occurs only on the first day that the content was posted on the site.[122] Accordingly, the clock on the statute of limitations begins to run from that first day, and it is not restarted with each passing day that the

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[117] *See* 775 N.E. 2d. at 466-67 (concluding "as a matter of law that this modification of the State's Web site did not constitute a republication of the allegedly defamatory report as issue here"). The court in *Firth* did not address the issue of what constitutes republication as applied to Twibel re-tweets. *Id.*

[118] *See supra* Part I.B (discussing the single publication rule).

[119] *See* Stewart, *supra* note 34, at 6 (discussing which tweets are subject to liability); Harder, *supra* note 47, at 37 (stating that the statute of limitations on bringing libel suits dates back to the initial publication).

[120] *See Yeager*, 693 F.3d at 1082 (reiterating that statements are not republished online after the original publication unless it is substantially altered or added); Roberts v. McAfee, Inc., 660 F.3d 1156, 1166–69 (9th. Cir. 2011) (pointing to the California single publication rule governing the statute of limitations); *Firth*, 775 N.E.2d at 466–67 (suggesting harmful consequences of a multiple publication rule); *Stewart*, *supra* note 34, at 7–17 (stressing the issues surrounding the single publication rule).

[121] *See* RESTATEMENT (SECOND) OF TORTS § 577A cmt. b (1977) (stating that communication of the same publication to multiple parties should be treated as one publication to avoid repeated suits and excessive damages); *see also Keeton*, 465 U.S. at 777 (exposing the harm resulting from multiple suits to defendants).

[122] *See Yeager*, 693 F.3d at 1081–82 (commenting on how a single cause of action begins on the first publication); *see also The Single Publication Rule*, *supra* note 34, at 1319 (citing *Hamad*, 265 F. App'x at 417; *Nationwide Bi-Weekly Admin.*, 512 F.3d at 146; *In re* Davis, 347 B.R. at 611; *Traditional Cat Ass'n*, 13 Cal. Rptr. 3d at 355) (demonstrating that the one-year statute of limitations begins to run on the first day of publication).

content remains on the website.[123]

B.Dissemination by a Third Party Is Not Republication, Unless Reasonably Foreseeable

Furthermore, third-party dissemination of a publication online is not considered republication.[124] In a 2012 case of *Martin v. Daily News, L.P.*, a New York trial court ruled that a defendant newspaper could not be held to have republished a previously published material on its website when third parties utilized a "share" button on its website that would further disseminate the content on social media and networking sites such as Twitter and Facebook.[125] The court maintained that the defendant's act in providing the sharing function on its website "merely adds a technical enhancement providing website visitors additional ways to forward website content to others."[126] When third parties decide to take advantage of that technical enhancement to disseminate the website content, the defendant would not be held responsible for republication.[127]

However, courts have also ruled in cases involving traditional forms of media that when dissemination by a third party is *reasonably foreseeable*, there is republication.[128] How courts would draw the

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[123] *See Yeager*, 693 F.3d at 1081–82 (demonstrating that the statute of limitation begins to run from the date of the statement becomes available to the public, but a statement is not republished by remaining on the website); *cf. Ogden*, 177 F. Supp. at 502 (applying the American single publication rule, which starts the statute of limitations on the original date of publication, in contrast to the English multiple publication rule).

[124] *See* Martin v. Daily News, L.P., 951 N.Y.S.2d 87 (App. Div. 2012) (quoting that the "single publication rule applies to Internet publications and each viewing of defamatory material on the Internet is not deemed a new publication").

[125] *See id.* (holding that sharing content online through social media does not constitute republished material).

[126] *See id.* (comparing to former means of sharing content through e-mail or print).

[127] *See id.* (finding defendant not liable after concluding that the article was not republished).

[128] *See* STUCKEY ET AL., *supra* note 42 (acknowledging that additional lawsuits may arise if the republication was reasonably foreseeable); *see also Hickey*, 978 F. Supp. at 236–39 (articulating the significance of the complaint being reasonably foreseeable); *Shepard*, 581 A.2d at 845–46 (discussing that an original author may be liable for republication by a third party when it is "the natural and probable consequences of [the original author's] own
act . . .").

line as to what constitutes such reasonable foreseeability in the online realm remains to be seen.[129]

C.Providing Hyperlinks to a Publication Is Not Republication

Courts have similarly held that providing hyperlinks to a publication is not in itself republication.[130] One reason for this is that merely providing easy access to the already-published content is not sufficient to give rise to the level of republication, much like providing a "share" button for third parties to use is not considered republication.[131] Another reason is that although the link may "call . . . attention [to defamatory material], it does not *present* the defamatory material."[132] Lastly, there is the familiar concern that if each hyperlink were to be considered a republication, the statute of limitations would be "retriggered endlessly."[133]

D.Reaching a New Audience Is *Republication*

Notwithstanding these defamation laws as applied to online defamation, however, *there is republication* if a website containing

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[129] *See* STUCKEY ET AL., *supra* note 42 (stating that determining liability is a question for the trier of fact).

[130] *See In re Phila. Newspapers, L.L.C.*, 690 F.3d at 174 (summarizing the court's holding that hyperlinks to formerly published material is not republication); Churchill v. State, 876 A.2d 311, 315 (N.J. Super. Ct. App. Div. 2005) (reaffirming that "technical amendments to the website, which altered the means by which website visitors accessed the report, did not constitute republication"); Haefner v. N.Y. Media, L.L.C., 918 N.Y.S. 2d 103, 104 (App. Div. 2011) (stating that access to a web article via website links does not constitute republication). *But see* Wallace v. Perry (*In re* Perry), 423 B.R. 215, 269–70 (Bankr. S.D. Tex. 2010) (holding that e-mailing hyperlinks to a third-party's blog constituted publication).

[131] *See Salyer*, 701 F. Supp. 2d at 917 (defining a hyperlink as a new tool to access a referenced article); *Martin*, 951 N.Y.S.2d at 87 (contemplating the use of a "share" button as potentially exponential circulation for a single article).

[132] *See Salyer*, 701 F. Supp. 2d at 916 (describing a hyperlink as "nothing more than an attempt by the original publisher of an online statement to present that statement to a new audience").

[133] *See In re Phila. Newspapers, L.L.C.*, 690 F.3d at 175 (quoting *Salyer*, 701 F. Supp. 2d at 916–18 (expounding the court's analysis, holding that a shared link from an old article is not a republication, but "'simply a new means for accessing the referenced article'")).

the already-published material is newly modified to reach a different audience[134] or if the material is "substantively altered or added to,"[135] as previously discussed in Part I.B.[136] In this case, republication would allow the clock on the statute of limitations to be restarted.[137] Thus these laws come to a head when a publisher not only tweets a tweet, but also actively solicits third parties to retweet that tweet (and the tweet is thus retweeted)—so that the tweet would reach and be read by a new and different audience, those who would not otherwise read the tweet if the publisher were the solitary tweeter.[138] Is there republication in such a circumstance?

IV. How Courts Will Probably Rule: The Single Publication Rule Will Probably Be Applied in the Case of Actively Solicited Re-tweets

Since there is not yet a case on point, the issue of whether to apply the single publication rule for the benefit of a publisher on Twitter whose tweet was retweeted following his own active solicitation would be a case of first impression.

Following the trend of broad and robust protection for Internet users,[139] courts will probably elect to apply the single publication rule.[140] Courts may cite that since the original tweet is already pub-

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[134] *See Yeager*, 693 F.3d at 1082 (holding that when the republished statement is substantially altered or is directed to a new audience, it constitutes republication); *Firth*, 775 N.E.2d at 466 (clarifying that a delay of the original publication does not retrigger the statute of limitations as it must be intended as an entirely separate publication); *see also* Stewart, *supra* note 34, at 6 (indicating that libel is actionable if there is a separate aggregate publication that reaches an intended new audience).

[135] *See Yeager*, 693 F.3d at 1082 (holding a statement on a website is not republished unless the statement itself is added to or substantively altered).

[136] *See supra* Part I.B (discussing single publication rule).

[137] *See Yeager*, 693 F.3d. at 1082 (rejecting the plaintiff's argument that minor modifications of a website constituted republication regardless of whether the new content referenced the defaming material). The court held that republication required the publication to be "substantively altered or added to, or . . . directed to a new audience." *Id.*

[138] *Id.* (stating that a publication is republished when it is repeated or recirculated to reach a new audience).

[139] *See supra* Part II.B (discussing actions caused by libel on Twitter).

[140] *See Ogden*, 177 F. Supp. at 502 (stating that the aggregate of all copies of a publication amount to only one cause of action).

lished on Twitter, retweets, containing the same content as the original tweet but posted later on the same website, is no republication lest there would be continuous republication and multiplicity of suits due to more retweets being tweeted.[141]

Courts may also cite that since retweets are done by users other than the original tweeter, no republication would take place as dissemination by third parties do not constitute republication.[142] Insofar that the retweets were done by way of the retweet button on Twitter (as opposed to a manual or modified retweet),[143] courts may deem the retweet button as simply a "technical advancement" to forward the tweet, a feature provided by the service provider, Twitter, that remains undisabled[144] by the publisher—and not sufficient for republication.[145]

If courts were to employ the above reasoning, the single publication rule would probably be applied for the benefit of a publisher whose tweet was retweeted following his own active solicitation, and the clock on the statute of limitations would not be restarted with the very retweets he had sought.

V. How Courts Should Rule: The Single Publication Rule Should *Not* Be Applied in the Case of Actively Solicited Retweets

Courts, however, should strongly consider a more balanced application of the single publication rule to actively solicited Twibel retweets.[146] Given the potentially enormous injury to libel plaintiffs due to the vast and rapid defamation that retweets are capable of achieving, as compared to the publisher's low cost in *not* actively soliciting for retweets—while he himself is still free to tweet away, and

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[141] *See supra* Part III.A (summarizing law regarding continuous republication of content that remains on websites).
[142] *See supra* Part III.B (discussing standard required for republication to be found by third-party disseminators).
[143] *See Retweeting*, *supra* note 72 (emphasizing the accessibility of retweeting by simply clicking the retweet button).
[144] *See supra* Part II.A (analyzing the retweet button as a feature that is "unprotected," "unlocked," and available for automatic retweeting).
[145] *See supra* Part III.B (summarizing law regarding third-party disseminators republishing content on the Internet).
[146] *See infra* Part V.C–E (discussing Internet defamation laws).

while others are free to retweet on their own accord—a realignment of liability is called for.[147] Reasons for this are the following.

A.Retweeting Is Precisely Designed To Reach a New Audience

Retweeting embodies the uniqueness of social media as a new form of communication.[148] The very purpose of retweeting is precisely to disseminate information further; people who may not have read the original tweet could now read the retweet spread by different users on Twitter.[149] Stated differently, these different users, who are followers of the original tweeter, in turn reach *their* followers with the retweet, further spreading the word.[150] The scope of followers on Twitter equals the scope of injury,[151] so retweeting, by compounding followers and eyeballs, compounds a libel plaintiff's injury very effectively.[152] Tweets these days (and retweets, for that matter) have a far wider reach than the audiences reached by traditional forms of media.[153] Courts have taken into account, as well they should, the changing nature of new forms of media and the extent of their reach when weighing appropriate defamation liability.[154]

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[147] *See Retweeting*, *supra* note 72 (noting the easy nature of tweeting). Stated even more narrowly, a realignment of *a chance* at one's day in court, due to the restarting of the statute of limitations if the single publication rule is not applied, is called for.

[148] *See Retweeting*, *supra* note 72(describing the easy nature of retweeting as a form of communication).

[149] *See* Stewart, *supra* note 34, at 2 (analyzing through examples how retweeting reaches a large audience); *supra* Part II.A (explaining the automatic retweet feature provided by Twitter).

[150] *See* Stewart, *supra* note 34, at 2–3 (providing a hypothetical example of how a single tweet can be retweeted to reach a significantly broader audience).

[151] *Cf.* Keen, *supra* note 99 (highlighting that the significance of a tweet depends on the size of the audience).

[152] *See* Tobin, *supra* note 99, at 3 (suggesting that the scope of a libel injury on social media can be defined by a limited group of followers or friends).

[153] *See supra* Part II.A (discussing the reach of Twitter).

[154] *See, e.g.*, Shor v. Billingsley, 158 N.Y.S.2d 476, 479 (1956) (holding that an ad-libbed remark off a prepared script on a radio broadcast can be libelous, rather than slanderous, due to the wide-reaching nationwide telecast of the radio program—although the remark was of course spoken over the medium of radio, rather than written); *see also* Sorenson v. Wood, 243 N.W. 82, 85–86 (Neb. 1932) (holding that radio broadcast with a written script was libelous, as opposed to slanderous);

Retweeting also brings a tweet renewed impact, renewed prominence—much like the interplay between a morning edition with an afternoon edition of a newspaper, or a rebroadcast of a TV or a radio segment, or a second run of a movie at a theater.[155] In all these established cases, the new run of information is held to be a separate publication and gives rise to a new cause of action because the second publication is aimed at a new audience.[156]

If anything, more so than the afternoon edition of a newspaper or a rebroadcast of a TV broadcast or movie run, the retweet brings the libelous material "front and center" again, bringing renewed attention to it, as opposed to the alternative of its being buried in the vastness of the Internet.[157] These days, the issue of being in the spotlight, or "trending," as some would call it, matters even more than the heyday of newspaper and TV precisely *because* of the vast amount of

Hartmann v. Winchell, 73 N.E.2d 30, 31 (N.Y. 1947) (holding "broadcasting from a written script was held by the Supreme Court of Victoria to be a slander and not a libel" (citing Meldrum v. Austl. Broad. Co., 38 Vict. L.R. 425 (1932))).

[155] *See supra* Part I.B (analyzing the single publication rule and the role of republication in the context of traditional media such as radio, television, and newspaper).

[156] *See supra* Part I.B (summarizing cases that constitute republication after the original publication reaches a new audience, therefore creating a new cause of action).

[157] "Twitter activity includes about 140 million tweets per day, a 'volume that makes it increasingly impractical for users to identify the most relevant pieces of information.'" *See* Stewart, *supra* note 34, at 30–31 (quoting MEREDITH RINGEL MORRIS ET AL., *Tweeting Is Believing? Understanding Microblog Credibility Perceptions*, PROCEEDINGS OF COMPUTER SUPPORTED COOPERATIVE WORK 2 (2012), *archived at* http:// perma.cc/GX84-2C5Q); *see also* Ambrose, *supra* note 85, at 387 (articulating that online "forgetting" is precisely achieved through limited accessibility to the defamatory material); *id.* at 379 (highlighting the particular concern that the single publication rule is incompatible with the quality of oldness vs. newness of information—an "example of an unwillingness to reassess information over its life cycle"). Indeed, "the law has not developed a system for weighing the competing values at issue with old information." *Id.* at 378; *see also* Bernstein, *supra* note 27, at 1481 (articulating how the Internet "preserves much more than it erases"); Levi, *supra* note 56, at 1571 (suggesting that the high usage of social media can allow information to be widely accessed); Stewart, *supra* note 34, at 1–2 (stating "in the culture of Twitter, retweeting is a centrally important activity because it encourages Twitter users [to] communicate what they believe is important to their followers, to [help them] sort through the wave of tweets and to judge the credibility of them").

information competing for eyeballs out on the Web.[158] If most tweets' life span is one hour,[159] the retweet, by contrast, potentially allows the tweet to be resurrected ad infinitum.[160] After all, with the way retweets are set up, there is no way of knowing whether a retweet is one of a relatively new tweet or an older one.[161]

Relatedly, some retweets may gain even more prominence than the original tweet itself, in which case the issue only goes "trending" due to the retweets, not the original tweet.[162] In this way the retweet is quite different from the line of cases deciding that a website content is not republished because once it is up on the Internet, it is always up on the Internet.[163]

Thus the single publication rule should not be applied in the case of actively solicited retweets because the retweets are precisely intended to and do reach that new audience about which courts are concerned when excepting the application of the single publication rule in traditional forms of media.[164]

B.Retweeting Is Different from Hyperlinking

Retweeting is different from a hyperlink to a defamatory material because the retweet does not merely call attention to the defam-

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[158] *See* Ambrose, *supra* note 85, at 388–89 (discussing the competitiveness of the online industry).

[159] *See* Angelotti, *supra* note 73, at 482 (reporting that the lifespan of the average tweet is less than one hour); *see* Frederic Lardinois, *The Short Lifespan of a Tweet: Retweets Only Happen Within the First Hour*, READWRITE, Sept. 29, 2010, *archived at* http://perma.cc/4YVP-Q53C (clarifying that if a tweet is not "picked" within an hour it is unlikely to be retweeted at all).

[160] *See supra* Part II.A (discussing the potentially exponential reach of retweets). Meanwhile, even if the original publisher tweets a retraction of the defamatory tweet, there is no guarantee that the retraction would be retweeted by third parties. *See* Tobin, *supra* note 99, at 3 (inferring that tweets can become immortalized through lawsuits).

[161] And since this is the case, courts should be particularly wary of applying the single publication rule to the situation. *see supra* text accompanying note 157 (discussing how retweets can resurrect a topic from being buried in the Internet).

[162] *See supra* text accompanying note 157 (discussing how retweets can bring a topic "front and center" again, and in so doing bringing renewed attention to it).

[163] *See supra* Part III.A (addressing that there is no continuous republication for defamatory content on a website).

[164] *See supra* Part III.A (stating that publication occurs only on the first day the content was posted on the site).

atory material[165]—it *presents* the defamatory material in and of itself.[166] Furthermore, active solicitation of a retweet is different from merely providing easy access to a defamatory material, or merely providing a technical advancement such as a button to enable easy sharing or forwarding by a third party.[167] Here, the original publisher is no longer a passive enabler of republication[168] —he is much closer to participating in the republication himself by way of the retweet for which he actively sought precisely *because* he specifically asked for it.

C.Actively Soliciting Retweets Is More than Passive Observance of Dissemination by a Third Party— It Is the "Reasonably Foreseeable" Republication

Relatedly, actively soliciting retweets is more than passively observing a dissemination of one's tweet by a third party.[169] The retweet is that "reasonably foreseeable" publication by a third party[170] because the retweet is precisely the action that the publisher desires, strives for, and in fact, actively and expressly seeks. More than merely not limiting the accessibility of the retweet button by setting his tweets to private and thereby "locking" his tweets (so that no automatic retweeting by way of a click of a retweet button can occur),[171] an active solicitor of retweets goes a step further by expressly encouraging third parties to disseminate the tweet by way of retweets.

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[165] *Cf. supra* Part III.C (discussing that a rationale for why providing a hyperlink to a defamatory publication is not in itself republication is the link would only call attention to the defamatory material).

[166] *Cf. supra* Part III.C (highlighting the fact that the hyperlink not presenting the defamatory material outright was important to the rationale for why it is not republication).

[167] *Cf. supra* Part III.C (highlighting that providing easy access to or easy sharing of already-published content is not sufficient for republication).

[168] *See supra* Part III.D (suggesting the possibility of republication when someone actively solicits a tweet).

[169] *Cf. Martin*, 951 N.Y.S.2d at 87 (noting that sharing to third parties is a readily available technical enhancement, which allows third parties to forward the original publisher's content to others).

[170] *Cf. supra* Part III.B (citing that there is publication when dissemination by a third party is reasonably foreseeable).

[171] *See supra* Part II.A (providing an overview of the functionality of Twitter).

Thus when third parties do retweet the tweet, that retweet is of course reasonably foreseeable.[172]

Because a reasonably foreseeable republication by a third party gives rise to a separate cause of action and restarts the clock on the statute of limitations at common law,[173] an actively solicited retweet calls for some realignment of liability by not applying the single publication rule.[174]

D.Protection from All Other Defamation Laws Will Still Be in Place

Lest courts are concerned that not applying the single publication rule to actively solicited retweets would jeopardize free speech and the free flow of information on the Internet,[175] it is important to note that the protection from all other defamation laws will still be in place. Rules such as a high bar to recovery for public officials and public figures under constitutional defamation laws as well as the broad expanse of immunity under the Communications Decency Act[176] will ensure that free speech and the free flow of information online will continue to be zealously upheld in the United States.[177]

E.Internet Defamation Already Enjoys More Protection than Defamation in Traditional Media

Having said that, at this point in the development of defamation laws related to the cyberworld, Internet defamation indeed enjoys *more* protection than its counterpart in traditional media—all

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[172] While this Article focuses on retweets from the retweet button provided by Twitter, the logic extends to actively solicited retweets that come by way of manual retweets or modified retweets. *See supra* note 91.

[173] *See supra* Part III.B (discussing the standard of reasonable foreseeability with regard to republication).

[174] *Cf. supra* Part III.B (examining how a reasonably foreseeable dissemination constitutes republication).

[175] *See* 47 U.S.C. § 230(a) (discussing how Americans rely on the Internet and interactive services for educational, political, and entertainment purposes, as well as for a forum for diversity in debate and other activities).

[176] *See id.* at (c)(1) (providing that no user of an interactive computer service would be liable as a publisher when another provider supplied the information).

[177] *See id.* at (b)(2) (recognizing the beneficial use of the Internet to communicating diverse ideas, it is the policy of the United States to preserve a free market for Internet services uninhibited by Federal or State regulation).

while the Internet and social media like Twitter boast a grander scale of reach of people and a much greater dissemination.[178] Commentators have noted that while traditional defamation cases are hard to win, Internet defamation cases are even harder to win.[179] One reason for this is due to the sweeping breadth of immunity offered under the Communications Decency Act,[180] which protects not only Internet service providers like Twitter, but also, most likely, users of those providers, as previously discussed in Part II.B.[181]

As far as equity goes, this is not only strange, but also disproportionately lenient to defendants of Internet defamation—especially considering how much higher the stakes are with regard to the plaintiff's damages.[182] The Internet's powerful nature as a medium is pregnant with the potential of a colossal impact to the plaintiff's reputation compared to when defamation takes place in slower-paced, more-limited-reach traditional media.[183] When balancing the vast and rapid defamation that retweets are capable of achieving with the publisher's low cost in *not* actively soliciting for retweets, it is appropriate for the single publication rule *not* to be applied to realize some measure of realignment of liability.[184]

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[178] *See* Cioppettini, *supra* note 26, at 231 (stating that Congress mandated the Communications Decency Act to provide additional protection for speech on the Internet).

[179] *See* Pierce, *supra* note 47, at 1084; Kumar, *supra* note 34, at 657 (arguing that libel plaintiffs were under-protected under the single publication rule as applied to the Internet). *See also* Hines & Seo, *supra* note 100, at 167 (arguing that the United States should consider a more moderate approach in online defamation cases by offering more protection to plaintiffs, given the existing heavy bias of protection of defendants).

[180] *See* 47 U.S.C. § 230(c)(1) (2012) (stating that no provider or user of an interactive computer service would be treated as a publisher).

[181] *See* Stewart, *supra* note 34, at 18 (reiterating that the Communications Decency Act changed the paradigm between publishers and distributors, essentially giving both an equal level of protection under the law, and protects users from content created by an "information content provider").

[182] *See* Stewart, *supra* note 34, at 3 (indicating that the impact is more damaging because of how quickly the information can go viral); *see also id.* at 30 (commenting that it is strange that the same statement would qualify as defamation in traditional media, but not so when it takes place online).

[183] *See* Stewart, *supra* note 34, at 3 (discussing how rapidly information is disseminated on the Internet).

[184] *See supra*

VI. Conclusion

Given the state of laws of the single publication rule as applied to Internet defamation today, the single publication rule will probably be applied in cases involving an actively solicited retweet, which would deny many libel plaintiffs of even a day in court due to their claims being time-barred by the statute of limitations. However, it is time for courts to rethink the boundaries of the single publication rule and to realign liability that is disproportionately defendant-friendly in Internet defamation, particularly in light of the ready-made tools that encourage easy dissemination of material in social media, such as the practice of retweeting. The single publication rule should not be applied given the publisher's role in actively soliciting for the retweet such that the retweet is a reasonably foreseeable publication by a third party, the nature and purpose of the retweet in reaching a new group, and the defamatory content presented in the retweet itself. The actively solicited retweet should be considered a republication of the defamatory original tweet, restarting the clock on the statute of limitations for the defamation action against the publisher.

Introduction (asserting that the single publication rule should not apply); *see also* Stewart, *supra* note 34, at 3 (explaining the extensive spread of defamatory content on the Internet).