

Triumph for `citizen journalists`

Following California's Court of Appeal's decision that staff at web magazines qualify for journalistic protection, Lucy Trevelyan speaks to Aidan Eardley, about what has been hailed as a victory for bloggers.

Aidan Eardley, a barrister at One Brick Court, says the decision is a wholehearted endorsement of freedom of expression on the Internet. "The court refused to restrict the Californian Reporter's Shield law to cases of 'legitimate journalism' – whatever that may be. In particular it acknowledged that internet journalism may proceed differently from traditional print or broadcast journalism because of the opportunity the internet affords of presenting a great deal of unedited source material." Apple Computer took several news website operators to court to force them to reveal the source of a product leak. Apple Mac news site PowerPage and others claimed that they were protected by the shield law, which stops journalists being made to reveal sources. The state appeal court overturned the lower court's ruling that the sources must be revealed. Eardley says: "The court could have taken a chauvinistic attitude to these internet publishers and given them less protection than the mainstream media, but instead it has given a clear indication that so long as your activity is essentially journalistic in nature, it makes no difference that you choose to pursue it online rather than in print. Nor does it seem to matter whether you are a member of 'the press' or simply an independent site collecting and disseminating information on a single issue." He says Apple had undoubtedly been the victim of a breach of confidence by one of its employees and understandably wished to find out who was responsible. "Its mistake, in the court's view, was to launch proceedings against those who had publicised the confidential information online before exhausting all other options. But even if it had done that, it would have lost against these petitioners because the 'online magazines' it chose to pursue were held to have the benefit of a complete defence under Californian law." He says the major point of distinction between Californian and English law is that the Californian Reporter's Shield appears to provide a complete defence to those who fall within its terms, whereas in England a journalist's prima facie right to keep his sources secret can be displaced if there is an overriding requirement in the public interest that they should be disclosed: the English approach, therefore, bears more resemblance to the position under the US Constitution, rather than the specifically Californian position. He says: "Predicting the outcome of this case under English law is difficult, because the English court would probably have looked into matters not dealt with in the Californian judgment (eg so far as it could ascertain it, the purpose for which the source had leaked the material, and the risk of further leaks). However, I think the English court would share the US court's view that the content of the articles, while no doubt confidential, was not of the highest order of secrecy or sensitivity, and also that there were alternative routes by which Apple might still be able to discover the source of the leak. It is likely therefore, though not certain, that the English court too would have refused to require disclosure." He says that whether the English court will, like the California court, effectively ignore any distinctions between bloggers and the traditional press remains to be seen. "So far, the Strasbourg and English case law which has developed the high protection for journalist's sources, has tended to talk about 'the press' as a coherent body with recognised social functions and responsibilities. How the law will adapt to much more fragmented world of "citizen journalists" is not clear. Arguably the more closely a blogger's activities resemble the conduct of a 'responsible' traditional journalist, the more protection he is likely to enjoy."

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