



LexUpdate

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GLOBAL TAKE-DOWN OF DEFAMATORY CONTENT BY ONLINE PLATFORMS

If you have questions or would like additional information on the material covered herein, please contact:

Ms. Seema Jhingan, Partner
(sjhingan@lexcounsel.in)

Mr. Dhruv Manchanda, Principal Associate
(dmanchanda@lexcounsel.in)

Ms. Khyati Bhatia, Associate
(khatia@lexcounsel.in)

LexCounsel, Law Offices C-10, Gulmohar Park New Delhi 110 049, INDIA.
Tel.:+91.11.4166.2861
Fax:+91.11.4166.2862

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An intense international debate is on relating to merits of global blocking of offensive and defamatory content including any URLs/web links/videos uploaded from global domains by online platforms such as Facebook Inc., Google Inc., YouTube LLC, Google Plus, Twitter etc. (the “**Online Platforms**”). This interesting issue was recently considered in detail by the Hon’ble Delhi High Court in the matter of **Swami Ramdev and Anr. vs. Facebook, Inc. and Ors. [CS(OS) 27/2019]**.

Facts of the Case: The petitioner Swami Ramdev approached the Delhi High Court to *inter alia* seek a permanent and mandatory injunction against the Online Platforms for disseminating various defamatory remarks and information including videos, based on a book titled “*Godman to Tycoon – The Untold Story of Baba Ramdev*”. Though an interim order was granted by the Delhi High Court on January 24, 2019, directing removal of the offending URL and weblinks for the Indian domain, the question whether the said content was to be blocked globally was deferred for determination. The Court thereafter separately considered “what would constitute removal or disabling access within the meaning of section 79 of the Information Technology Act, 2000 (“**IT Act**”)”? And can removal or disabling access be geographically limited or should it be global?”.

Objections of the Online Platforms: Pursuant to the Hon’ble High Court’s directions, the Online Platforms removed the content in question from their respective Indian domains and used geo-blocking (a method to block any content from a particular jurisdiction) to block access. The Online Platforms however resisted the global take down of the said content *inter alia* on the grounds that:

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- an order for global injunction would run contrary to the principles of state sovereignty in international law and the principle of international comity, since the laws relating to free speech and defamation are not co-extensive and differ from country to country;
- any order for a global takedown or global blocking would interfere with the rights of the people over whom the Hon'ble Delhi High Court has no jurisdiction;
- the local laws of every country cannot apply to the internet globally and the national courts thus have to restrict their orders only to geo-blocking of the content, i.e., blocking of the content only in the country where the content is in breach of local law, since what is illegal in one country need not be illegal in another.

Decision of the Court: After hearing the arguments present by the counsel for the petitioners and the defendants and perusal of the judgments as were cited during the arguments, the Delhi High Court opined that “*any injunction order passed by the Court has to be effective. The removal and disablement has to be complete in respect of the cause over which this Court has jurisdiction. It cannot be limited or partial in nature, so as to render the order of this Court completely toothless. If geo-blocking alone is permitted in respect of the entire content, there cannot be any dispute that the offending information would still reside in the global platforms of the Defendants (i.e., the Online Platforms), and would be accessible from India, not only through VPN and other mechanisms, but also by accessing the international websites of these platforms. It is not unknown that the Canadian, European and American websites of Google, Facebook, YouTube and Twitter can be accessed in India through various technological means. This would thus result in partial disabling and partial removal.*”

During the arguments, the Court also noted that all Online Platforms maintain a global network of computer systems which transmit the content, information and data on an almost instantaneous basis. Thus, any content uploaded from India, would be available, within a matter of seconds, across the globe and would be accessible to users or viewers across the globe. The same would only be disabled or blocked upon a Court's order being received, subject to local laws of that particular jurisdiction.

The Court also assessed the interpretation of Section 79 of IT Act (after referring to the Hon'ble Supreme Court of India's judgement in the matter of Shreya Singhal vs. Union of India [AIR (2015) SC 1523]), and came to a conclusion that the disabling and blocking of access has to be from the computer resource, and such resource includes a computer network, i.e., the whole network and not a mere (geographically) limited network. The Court was of the view that when the disabling is done by the Online Platforms on their own, in terms of their policies, the same is global. So, there is no reason as to why the Court's orders ought not to be global. All offending material which has therefore, been uploaded from within India on to the Online Platforms' computer resource or computer network would have to be disabled and blocked on a global basis.

Thus, the Delhi High Court directed:

- the Online Platforms to take down, remove, block, restrict, disable access, on a global basis, to all such videos/weblinks/URLs identified by the petitioners, which content have been uploaded from the IP addresses within India.
- As regards the URLs/links identified by the petitioners which were uploaded from outside India are concerned, the Online Platforms have been directed to block access and disable the URLs/links from being viewed in the Indian domain and ensure that users in India are unable to access the same.

Conclusion:

The impact of the above judgement is far reaching and makes the Online Platforms liable to comply with Court's orders to disable access to offensive content on a global basis. The Court has placed the right of privacy, the right of reputation of a citizen, national security, national integrity, threats to sovereignty, etc. at an equal footing with the right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India. Needless, to say, the issue is raising a lot of global discussions with conflicting views on the principles of state sovereignty in international law and international comity versus individual protection of privacy and reputation. Interestingly, the debate has been escalated and reportedly, the aforesaid judgment has already been appealed by Facebook Inc., before the division bench of the Delhi High Court, *inter alia* on the ground that the Delhi High Court's order on global takedown was against national sovereignty and international comity.

Feedback

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