



HIGH COURT OF AUSTRALIA

17 August 2022

GOOGLE LLC v DEFTEROS
[2022] HCA 27

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Victoria. The appeal primarily concerned whether, by operating an internet search engine which, in response to a user-designed search query, provided search results including a link to the webpage of another containing defamatory matter, the appellant had published the defamatory matter.

The appellant is a technology company that operated an internet search engine which allowed users to navigate information on the World Wide Web through user-designed search queries. In response to a search query, the search engine used computer programs and algorithms to return search results in the form of a list of links to webpages that were likely to be of interest to the user, ranked according to relevance. Each search result relevantly consisted of the title of a webpage, a snippet of the content found on that webpage and a hyperlink that, when clicked, would take the user to that webpage.

In early 2016, the respondent became aware that inputting his name as a search query in the appellant's search engine returned a search result ("the Search Result"), which hyperlinked to an article published by *The Age* newspaper in 2004 ("the Underworld article"). He alleged the Underworld article defamed him, although there was no suggestion that the Search Result itself was defamatory. The respondent requested the appellant to remove the Search Result, which the appellant did not do. The respondent commenced proceedings, claiming damages for defamation from the appellant as publisher of the Search Result and the Underworld article.

The trial judge held, in a finding that was unchallenged on appeal, that the Underworld article defamed the respondent. In the courts below, the appellant was found to have published the defamatory matter because the provision of the Search Result was instrumental to the communication of the content of the Underworld article to the user, in that it lent assistance to its publication. The courts below rejected, in part, the appellant's reliance on the statutory and common law defences of innocent dissemination and qualified privilege.

The High Court, by majority, found that the appellant was not a publisher of the defamatory matter. A majority of the Court held that the appellant did not lend assistance to *The Age* in communicating the defamatory matter contained in the Underworld article to the third party users. The provision of a hyperlink in the Search Result merely facilitated access to the Underworld article and was not an act of participation in the bilateral process of communicating the contents of that article to a third party. There was no other basis for finding publication because the appellant had not participated in the writing or disseminating of the defamatory matter. There being no publication, the majority found it unnecessary to consider the defences raised by the appellant.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*