People in animal welfare often feel an overwhelming desire to protect innocent animals from harm. And an e-mail like this can be hard to resist forwarding: What if it’s true? What if, right this minute, the evil John Jones is at the front counter of an animal shelter, trying to adopt an animal he may hurt? What if forwarding this e-mail could stop that?

I frequently receive e-mails like the one above from organizations and individuals posting DNAs—Do Not Adopt recommendations. They also turn up on shelter and rescue listservs. Almost always, the sender is forwarding an e-mail that originated with someone else. So, the question is, can you be liable for creating a message like this? What about for forwarding it?

Unfortunately, the answer is yes. Under some circumstances, the subject of the e-mail can sue. Defamation and libel are legal causes of action that are available to people if there have been publications of false statements about them. In fact—even if you think you’re simply just passing on the message, acting as an individual—your employer may be named in the lawsuit if you send the messages from your work computer.

This column is not intended to scare anyone, but to educate readers about the limits of free speech and provide advice on how to remain an advocate without becoming a defendant!

What are Defamation and Libel?
Defamation, libel, and slander are civil actions that allege harm to a person’s or entity’s reputation. Defamatory oral statements are slander; written ones are libel. Most state...
courts, like those of Kansas and New York, have defined the elements of a defamation and libel claim to include false and defamatory words regarding the plaintiff, communicated or published to a third person, which result in damage to the reputation of the person defamed. Damage to one’s reputation is the essence of an action for defamation.

Most states also consider certain types of false statements to be so serious that they are libelous or defamatory per se, which means damages are presumed and need not be proven separately. These categories include false statements that the plaintiff has committed a crime; statements that injure the plaintiff in his business, trade, or profession; statements that a plaintiff has a communicable disease; or that allege unchastity.

So is the content of the above e-mail defamatory?

Animal abuse is a crime in every state, so stating that someone is an animal abuser is accusing that person of committing a crime. Likewise, calling someone a “con man” or “con artist” suggests that he swindles people. And in Illinois, beating a puppy to death is a felony. So all of these statements—if they turned out to be false—would be defamatory.

The Limits on Free Speech

I am often asked, “But what about free speech?”

The term “free speech” is loosely tossed about and quite a bit misunderstood. “Free speech” means that a person has the right to express her views and sentiments publicly. It does not mean that a person can say anything, anywhere with no repercussions. When a person publishes statements that are illegal, offensive, or improper, he may be held accountable.

There are a number of areas of speech that are outside the protection of the Constitution—examples include obscenity, child pornography, perjury, blackmail, threats of violence, incitement to imminent lawless action, solicitation to commit a crime, and, most important to our discussion, defamation.

E-mail is Speech

“But it was just a little e-mail!” you might say.

Even if you didn’t print your accusation on the front page of The New York Times, even if you didn’t post it on the wall of your local grocery store, the defamation/libel requirement that the false statements be “published” to a third party is met when you send an e-mail.

Moreover, sending that e-mail from your work computer can subject you and your employer to litigation. In a 2009 case, an employee at the Indianapolis Metropolitan Police Department received an e-mail that made defamatory statements about a member of her church. The employee forwarded that e-mail to 89 other e-mail addresses. Because of that simple act, she and her employer became defendants in a lawsuit. An appeals court held that the plaintiff could proceed in her defamation case against the author of the e-mail, the employee who forwarded it, and the Indianapolis Metropolitan Police Department.

Are Anonymous Postings Really Anonymous?

It used to be that writers had to identify themselves in print publications. Newspapers rarely, if ever, ran a letter to the editor unless the author allowed the publication of her name.

The Internet changed all that. Now, anyone with a computer can make statements that can reach a worldwide audience and very often, they can do so completely anonymously.

Or at least they think they can. Anonymity can disappear quickly and unexpectedly.

If you have any question about whether anonymous postings will always remain anonymous, just ask Rosemary Port of New York. The fashion blogger, who anonymously posted statements about model Liskula Cohen on a website called “Skanks in NYC,” found her anonymity lifted when Cohen won a court decision forcing Google to identify the anonymous blogger. Cohen’s lawyers argued that, based on the statements that were defamatory per se, she would be a plaintiff in a defamation action if she could ascertain the identity of the blogger. Port learned the hard way that freedom of speech is not unlimited.

Potential Defenses

In such defamation cases, the two available defenses are: 1) arguing that the statements are true; and 2) arguing that they are opinion—neither can be proven “false.”

So, if a “Do Not Adopt” e-mail stated that “Mr. X is a dogfighter” and, in fact, it could be shown that Mr. X has been recently convicted of dogfighting, the statement is truthful and cannot be defamatory.

Likewise, if an e-mail stated, “I was uncomfortable with how Ms. Y handled the shelter dogs; I thought she was rough on them,” that could be defended. It was the belief of the writer, and the statement is not defamatory because it is her opinion.

But courts have declared that merely couching a statement as an opinion is not necessarily a defense if there is an underly-
ing fact that can be proven or disproven. The statement, “I think Mr. Z abuses his children” can cause as much harm to Mr. Z’s reputation as saying, “Mr. Z abuses his children.” In other words, you can make statements of opinion, but if you want to be protected from accusations of defamation or libel, those statements cannot imply or express inaccurate facts.

Best Strategies

Next time you receive one of these “Do Not Adopt” e-mails, give it some serious consideration. Are the claims it makes provable? Can you find reference to them in reliable sources, such as newspapers or court records? (Most blogs and listservs should not be considered reliable sources of facts.)

Do you trust the sender? Even if the sender is your dearest friend or trusted supervisor, do you believe the sender checked the facts in the e-mail personally and verified them before forwarding the message to you? If you think about these issues, and they set off your internal alarm bells, don’t forward the e-mail.

Still, these e-mails can be compelling. And some of them may be factual. How can you balance your organization’s need not to end up at the wrong end of a libel suit with its mission to protect animals?

First and most important, if you have knowledge that someone is harming animals, contact the appropriate police or humane law enforcement agency! Merely circulating e-mails, while well-intentioned, does not prohibit an offender from obtaining animals from “free to good home” ads in a newspaper, adopting them from organizations that aren’t as active on e-mail and listservs, or even stealing them from backyards.

If the police are dismissive or refuse to investigate, you may want to seek the help of an animal law attorney. The Animal Legal Defense Fund is a great resource for finding help—its website lists 19 state and 13 regional bar associations that have animal law committees (aldf.org/article.php?id=277), as well as 116 law schools that teach animal law; instructors at those institutions may be able to advise you.

Second, when making or passing along statements, make sure the “facts” are actually factual and that your opinion is stated as your opinion. Example:

- I saw the dogs tied up outside her house. (If you saw this, it is a statement of fact.)
- I thought they looked very thin. (This is a statement of opinion, one that describes your concern without accusing anyone of starving their animals.)

You can keep advocating for animals—just keep these points in mind before hitting the “send” key!

The information in this article does not constitute legal advice and should not be used as a substitute for the advice of competent legal counsel. If your organization is facing a legal issue, contact an attorney.

Have a question about how the law might apply to your agency’s policies and practices? Send it to us at asm@humanesociety.org.