

## Article Information

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# Hyperlink is merely a tool: High Court finds Google is not a Publisher

**The High Court has overturned the Victorian Court of Appeal's decision which found Google liable for defaming Victorian criminal lawyer, George Defteros, as it was a publisher of defamatory material.**

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### The Litigation History

In 2004, Mr Defteros and one of his clients who became notorious during the Melbourne "gangland wars", faced various criminal charges. The charges against Mr Defteros were later withdrawn. Unsurprisingly, the controversy was widely reported. The dispute with Google began when Mr Defteros became aware that a search of his name produced a hyperlink to an article reported in *The Age* on the day of his arrest, titled "*Underworld loses valued friend at court*".

In 2016, Mr Defteros commenced proceedings in the Supreme Court of Victoria<sup>[1]</sup> seeking damages for defamation. The Trial Judge found in Mr Defteros favour awarding \$40,000 in general damages. The Court held the hyperlink to the article conveyed the "*defamatory imputation that [Mr Defteros] had crossed the line from being a professional lawyer for, to become a confidant and friend of, criminal elements*". Google unsuccessfully pleaded statutory defences of innocent dissemination and qualified privilege. In 2021, Google's application for leave to appeal to the Court of Appeal was dismissed.

### The High Court's Reasons

In a notable win for search engine operators, Google was granted leave to appeal to the High Court who set aside the orders of the Court of Appeal. According to Chief Justice Kiefel and Justice Gleeson, the question for the court was whether providing search results which, in response to an enquiry, direct the attention of a person to the webpage of another and assist them in accessing it amounts to an act of participation in the communication of defamatory matter.<sup>[2]</sup>

While it was clearly accepted that the principles regarding publication of defamatory material have been regarded as having a broad reach,<sup>[3]</sup> the High Court found that the hyperlink is merely a tool to assist users to move to another webpage. As such, the hyperlink is not a strong basis for liability.<sup>[4]</sup> Importantly, the contrary proposition has no support in existing authority in Australia or recent cases elsewhere.

As observed in a factually analogous case heard in the Supreme Court of Canada, *Crookes v Newton*,<sup>[5]</sup> a hyperlink is content neutral; a reference to something, somewhere else.<sup>[6]</sup> Applying the traditional rule to hyperlinks would have the effect of "*creating a presumption of liability for all hyperlinkers*."<sup>[7]</sup> The High Court in *Google* also had regard to the various public interest factors raised in *Crookes v Newton*, such as the benefits to be gained from the dissemination of information over the Internet.<sup>[8]</sup> Google argued that if the Court of Appeal's decision were to be upheld, the necessary censorship would stifle their purpose, being to make "*information universally accessible*."<sup>[9]</sup>

While the High Court's findings provide much needed clarification as to the obligations on tech giants in the evolving landscape of disseminating information online, the decision raises concerns for persons who are defamed in media due to the considerable power a search engine has to disseminate and entice readers to view such content

<sup>[1]</sup> *Defteros v Google LLC* [2020] VSC 219.

[\[2\]](#) *Google LLC v Defteros* [2022] HCA 27 (*Google*), [24].

[\[3\]](#) *Ibid*, [25]

[\[4\]](#) *Ibid*, [53]

[\[5\]](#) [2011] 3 SCR 269 (*Crookes v Newton*).

[\[6\]](#) *Ibid*, [30].

[\[7\]](#) *Ibid*, 270.

[\[8\]](#) *Ibid*, [41].

[\[9\]](#) *Defteros v Google LLC* [2020] VSC 219, [54], [184], [186].