Loyola of Los Angeles
Entertainment Law Review

Volume 41 | Number 1 Article 1

1-2-2021

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Cover Page Footnote

J.D. Candidate, 2021, Georgetown University Law Center. The author would like to thank Professor Erin Carroll for her support and insightful feedback. She is also grateful to the editors of Loyola of Los Angeles Entertainment Law Review for their comments and assistance.

TWITTER, PARODY, AND THE FIRST AMENDMENT: A CONTEXTUAL APPROACH TO TWITTER PARODY DEFAMATION

Emma Lux[*]

Twitter parody defamation cases raise novel questions about how to translate defamation law to Twitter's interactive platform. What constitutes a "reasonable" reader on Twitter? What content is relevant to interpreting the meaning of a tweet from a parody account? The answers to these questions will have far-reaching effects for online speech. Parody authors are already vulnerable to defamation liability, particularly on Twitter where their statements often appear with very little context. Twitter parody accounts, which produce important political and social commentary, risk defamation lawsuits, as well as, in some states, criminal liability for online impersonation. This Note proposes a methodology for interpreting the defamatory meaning of a tweet that the author intended as parody. It argues for a contextual approach that aligns with First Amendment principles and seeks to ensure that core political speech continues to flourish on Twitter parody accounts.

[*] J.D. Candidate, 2021, Georgetown University Law Center. The author would like to thank Professor Erin Carroll for her support and insightful feedback. She is also grateful to the editors of *Loyola of Los Angeles Entertainment Law Review* for their comments and assistance.

I. INTRODUCTION

"[C]elebrating a week-long anniversary with Twitter and no #lawsuits for #defamation, #slander, #libel, or #tortiousinterference!"[1]

In 2014, a college student created a Twitter account named Todd Levitt 2.0 to parody his professor, Todd Levitt.[2] The parody account's handle[3] was "@levittlawyer"[4] and its biography section ("bio")[5] stated that it was a "badass parody on our favorite lawyer."[6] The student made the account to mock the professor's own personal account, in which Todd Levitt represented himself as a "badass lawyer," and tweeted statements like how he "'tore it up'" in his university days and how he once served alcohol to his current students.[7]

The parody account lampooned Levitt by making references to partying and drinking, calling into question his competency as a lawyer.[8] One tweet stated, "'Buying me a drink at Cabin Karaoke will get you extra [credit], but it's not like that matters because you are guaranteed an A in

1. @levittlawyer, TWITTER (Apr. 22, 2014, 10:56 PM), https://twitter.com/levittlawyer/status/458801512182214656 [https://archive.is/ofQnc] (tweeting from the Levitt 2.0 parody account).

2. Levitt v. Felton, No. 326362, 2016 WL 2944824, at *2 (Mich. Ct. App. May 19, 2016); *see* @levittlawyer, *supra* note 1.

3. Leslie Walker, *Twitter Language: Twitter Slang and Key Terms Explained*, LIFEWIRE (Nov. 14, 2019), https://www.lifewire.com/twitter-slang-and-key-terms-explained-2655399, [https://perma.cc/5HGZ-VLK6]. (describing how Twitter handles are short phrases selected by users to describe their accounts).

4. @levittlawyer, *supra* note 1.

5. Amanda MacArthur, *What Does the Bio Mean on Twitter?*, LIFEWIRE (Dec. 2, 2019), https://www.lifewire.com/twitter-bio-definition-3289021, [https://perma.cc/3LHA-MG8T] (Twitter users typically use the bio to "give others a short intro about who [they] are…"); @levittlawyer, *supra* note 1.

6. @levittlawyer, *supra* note 1.

7. *Levitt*, 2016 WL 2944824, at *1.

8. *Id.*

[the] syllabus.'"[9] Another said, "What's the difference between the internet and my tweeted legal advice? A: none. They're both 100% accurate!"[10]

When Todd Levitt found the parody account, he sued the student in Michigan state court for defamation.[11] The court in *Levitt v. Felton* ("*Levitt*") held that the parody account tweets were nondefamatory parody protected by the First Amendment.[12] Because the tweets demeaned the legal and academic professions and employed "rhetorical hyperbole," the court concluded that they could not reasonably be understood as coming from a college professor.[13] Additionally, "[w]hen read in context" of the account's name and disclaimer tweets from the same account, the court found that the tweets were nondefamatory.[14] The account's name, "Levitt 2.0," weighed toward parody, the court reasoned, since it "hints at the notion that [the account] is a spoof."[15] And the account's periodic posting of "disclaimer" tweets heavily favored the conclusion that the tweets were not defamatory.[16]

Other state and federal courts have considered similar factors as the *Levitt* court when analyzing whether tweets, or other similar social media posts,[17] are defamatory. For example, courts have considered whether the

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at *3.

13. *Id.* Defamation is the intentional publication of a statement of fact which is false, unprivileged, and which causes special damage or has a natural tendency to injure reputation. RODNEY A. SMOLLA, LAW OF DEFAMATION § 1.8 (2d ed. 2020).

14. *Levitt*, 2016 WL 2944824, at *3.

15. *Id.*

16. *Id.* ("[T]he idea that the tweets were a parody is soundly reinforced by [the account's] several disclaimers . . . including one that says, 'This is a parody account. You can find the real [Todd Levitt] @levittlaw.'").

17. Because there have been so few Twitter defamation cases that specifically involve parody and have resulted in published opinions, *see, e.g.*, *id.* at *1. This Note refers to some cases involving different social media websites when the relevant features are analogizable to features on Twitter. It also addresses cases involving Twitter and defamation, but not parody specifically.

name of an account that allegedly posted a defamatory statement hints at parody[18] or not,[19] as was the case in *Levitt*.[20] Courts have also considered context such as the posting account's bio,[21] profile picture,[22] use of Twitter as a medium,[23] and the informal nature of internet speech[24] as part of the determination of whether tweets are defamatory. Some courts have looked to extrinsic, actual events surrounding the allegedly defamatory tweet to interpret the statement in context,[25] while other courts consider only the language of the tweet itself.[26]

But what exactly is the appropriate context in which to analyze an allegedly defamatory tweet, and when does that context translate as parody to a reasonable reader? Answering these questions has proven difficult even in traditional media, as courts struggle to articulate the average reader's interpretative capabilities.[27] The choice of Twitter as a medium raises addi-

18. O'Donnell v. Knott, 283 F. Supp. 3d 286, 301 (E.D. Pa. 2017) (holding that a post on the social media website Disqus from a parody account named Knotty the Tramp was not defamatory since the account's name indicated the account was parody to the reasonable reader).

19. White v. Ortiz, No. 13–cv–251–SM, 2015 WL 5331279, at *5 (D.N.H. Sept. 14, 2015) (finding a tweet from a fake Twitter account called "The Real June White" defamatory since the account's name did not indicate that the account was intended as parody).

20. *Levitt*, 2016 WL 2944824, at *3.

21. *See*, *e.g.*, TRG Motorsports, LLC v. Media Barons, LLC, No. B244937, 2013 WL 5428769, at *7 (Cal. Ct. App. 2013) (finding statements from a website and associated Twitter parody account non-defamatory when the website included biographical information, similar to a Twitter bio, describing the parodied individual as a "little person" named "Devin Fuckler").

22. *See*, *e.g.*, *O'Donnell*, 283 F. Supp. 3d at 301–02 (finding a post from a Disqus account nondefamatory when its profile picture featured an unflattering image of the subject of the parody account drinking from a bottle of alcohol).

23. *See*, *e.g.*, Jacobus v. Trump, 51 N.Y.S.3d 330, 342 (N.Y. App. Div. 2017) (describing how speech on Twitter is "rife with vague and simplistic insults").

24. *See*, *e.g.*, Feld v. Conway, 16 F. Supp. 3d 1, 4 (D. Mass. 2014).

25. *See*, *e.g.*, *Jacobus*, 51 N.Y.S.3d at 342 ("[T]he . . . context of defendants' [allegedly defamatory tweet] is the familiar back and forth between a political commentator and the subject of her criticism[] and . . . the Republican presidential primary").

26. *See*, *e.g.*, Winter v. Pinkins, No. 14–cv–8817, 2017 WL 5496278, at *2 (S.D.N.Y. Feb. 17, 2017) (finding that a tweet is defamatory based solely on the language of the tweet alone).

27. *See infra,* Part II.

tional questions regarding how to determine whether a tweet, when read in context, is protected parody or not.[28]

Furthermore, criminal and civil liabilities that threaten to chill core First Amendment speech[29] hang in the balance of this discussion. A new wave of laws criminalizing online impersonation, or "e-personation"[30] prohibit "credibly" impersonating a person to cause "harm."[31] While the laws are aimed at penalizing actions such as cyberbullying and catfishing,[32] critics argue that these laws may impermissibly sweep up protected parody accounts in their enforcement.[33] Parody authors often imitate their subject to criticize the individual,[34] which could be interpreted as intent to cause "harm."[35] Additionally, Twitter parody authors that critique politicians[36] or

28. *See* Patrick H. Hunt, *Tortious Tweets: A Practical Guide to Applying Traditional Defamation Law to Twibel Claims*, 73 LA. L. REV. 559, 562 (2013) (describing how to apply existing defamation law to Twitter defamation cases).

29. *See*, *e.g.*, Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 54–56 (1988) (describing parody as core First Amendment speech).

30. E-personation is the act of "impersonat[ing] someone online in order to 'harm' that person." *See* Corynne McSherry, *"E-Personification" Bill Could Be Used to Punish Online Critics, Undermine First Amendment Protections for Parody*, ELEC. FRONTIER FOUND. (Aug. 22, 2010), https://www.eff.org/deeplinks/2010/08/e-personation-bill-could-be-used-punish-online [https://perma.cc/73NY-YCZ8]; *see*, *e.g.*, CAL. PENAL CODE § 528.5 (West 2020).

31. PENAL § 528.5.

32. *See*, *e.g.*, Antonella Santi, *"Catfishing": A Comparative Analysis of U.S. v. Canadian Catfishing Laws and Their Limitations,* 44 S. ILL. UNIV. L.J. 73, 78 (2019) (describing how "Catfishing takes two primary forms: (1) obtaining another individual[']s information without consent to gain access to their online profile or impersonating them by creating a fake profile; or (2) creating an entirely fictitious profile").

33. McSherry, *supra* note 30 (arguing that California's online impersonation statute may squelch online "political activism").

34. *See*, *e.g.*, *Hustler Magazine*, 485 U.S. at 54 (describing how famous American cartoonist Thomas Nast portrayed William "Boss" Tweed in satirical cartoons that constituted a "sustained attack" on the politician).

35. *See* McSherry, *supra* note 30 (describing how impersonating a person online to "embarrass" them may be interpreted as causing "harm" under the e-personation state laws).

36. *See*, *e.g.*, Nunes v. Twitter, Inc., No. 19-1715, 2020 Va. Cir. LEXIS 89 at *1–2 (Va. Cir. June 24, 2020).

other public figures[37] currently face civil liability that threatens to chill speech regarding matters of public interest.

As a result, it is critical to develop an administrable methodology to determine whether allegedly defamatory tweets are protected parody. This Note anticipates a path forward. It first describes the approaches courts use in traditional media when determining whether a parody statement is defamatory.[38] Then, this Note shifts to the Twitter context, describing how courts have analyzed allegedly defamatory parody tweets.[39] Finally, this Note proposes a method for determining whether parody tweets are defamatory by drawing from the traditional media analysis.[40] By interpreting tweets reasonably and in the appropriate context, courts can maintain proper First Amendment protections[41] for Twitter parody accounts.

II. DEFAMATORY MEANING AND PARODY IN TRADITIONAL MEDIA

Defamation is the intentional publication of a statement of fact which is false, unprivileged, and which causes special damage or has a natural tendency to injure reputation.[42] A statement has a natural tendency to diminish reputation when it lowers the esteem in which a person is held, such as a statement which implies that a college wrestling coach committed per-

37. *See*, *e.g.*, Appellant's Opening Brief, Block v. Schulte, No. EC067254, 2019 WL 4477437, at *8, *appeal docketed*, No. B297198 (Cal. Ct. App., April 29, 2019) (discussing a defamation lawsuit against a Twitter parody account that criticized a well-known Los Angeles eviction attorney for harming impoverished tenants).

38. *See infra* Part II.

39. *See infra* Part III.

40. *See infra* Part IV.

41. *See* Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 54 (1988) (explaining how parody has played a "prominent" role in American political debate and represents core First Amendment speech).

42. SMOLLA, *supra* note 13, § 1.8. A false statement of fact, for example, could occur if an author "attribute[d] an untrue factual assertion to the speaker." *See*, *e.g.*, Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 511 (1991) (describing how "[a]n example [of a false statement] would be a fabricated quotation of a public official admitting he had been convicted of a serious crime when in fact he had not"). This article focuses on defamation where there are no special damages, and the plaintiff must prove that a statement is reasonably susceptible to a defamatory meaning in order to recover.

jury.[43] Because defamation requires a statement of fact, a statement cannot be defamatory if it cannot be "reasonably . . . understood as describing actual facts . . . or . . . events . . . ."[44] In other words, a statement cannot be defamatory when a reasonable reader would understand that the statement, when read in its ordinary context, is parody, not factual information.[45] For example, the Supreme Court has found that a parody advertisement portraying a well-known minister and his mother as "drunk and immoral," was clearly parody in light of a parody disclaimer stating, "ad parody—not to be taken seriously."[46] As a result, the statement could not support the award of damages "consistently with the First Amendment."[47]

This proposition—that statements must be understood as allegations of facts in order to be defamatory—could at first glance seem to exclude statements like parody from liability. Parodies, when understood as satirical by their intended audiences, convey the message that they are not false statements of fact.[48] However, the defamatory meaning analysis does not hinge on the meaning intended by the author.[49] Rather, the relevant question is whether "*a reasonable factfinder* could conclude that the statement[] . . . impl[ies] an assertion [of fact]."[50] As a result, it is possible for an author to intend to create a parody and nonetheless produce a statement with

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43. *See* Milkovich v. Lorain Journal Co., 497 U.S. 1, 7 (1990) (describing a defamation lawsuit in which a wrestling coach alleged injury to "his lifetime occupation of coach and teacher" as a result of statements that accused him of the crime of perjury).

44. *See Hustler Magazine*, 485 U.S. at 49.

45. *See id.* at 57 (holding that a defendant may not recover from a parody that could not be understood as alleging false statements of fact).

46. *Id.* at 48 (*Hustler Magazine* was a case flowing from the Supreme Court's defamation line of First Amendment cases); *see generally* LEE LEVINE & STEPHEN WERMIEL, THE PROGENY: JUSTICE WILLIAM J. BRENNAN'S FIGHT TO PRESERVE THE LEGACY OF *NEW YORK TIMES V. SULLIVAN* (2014). Though the case concerned an intentional infliction of emotional distress tort claim, the First Amendment rule, that parody is protected, is analogous to the defamation context. *See Hustler Magazine*, 485 U.S. at 52–53 (analogizing respondent's emotional distress claim to a defamation claim, both of which require the "breathing space" provided by the First Amendment).

47. *Hustler Magazine*, 485 U.S. at 57.

48. *See, e.g.*, *id.* at 48–49.

49. David McCraw, *How Do Readers Read? Social Science and the Law of Libel*, 41 CATH. U. L. REV. 81, 99–100 (1991).

50. Milkovich v. Lorain Journal Co., 497 U.S. 1, 21 (1990) (emphasis added).

defamatory meaning if the reasonable reader could mistake it for a truthful statement when viewed in its normal context.[51]

Thus, to determine whether a statement that the author intended as parody is susceptible to defamatory meaning, courts must step into the shoes of the reasonable reader,[52] interpret the statement in its ordinary context,[53] and determine whether the reader could rationally understand it as alleging actual facts.[54] While such an inquiry may appear relatively straightforward, the analysis raises a number of difficult questions regarding how readers understand meaning and construe statements, even for traditional media. For example, who is the reasonable reader? What does he or she understand as parody? What is the appropriate context in which to view a statement? The following two sections describe how courts have defined the reasonable reader and the relevant context of an allegedly defamatory statement in the realm of traditional media.

A. The Reasonable Reader

Because defamatory meaning hinges on a hypothetical reader's understanding of the statement at issue,[55] how courts define the reasonable reader's interpretive abilities can influence the analysis.[56] Courts consider both actual facts about reader habits, as well as First Amendment theories about the rationality of market actors, when determining the reasonable reader's traits.[57]

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51. *See, e.g.*, Embrey v. Holly, 442 A.2d 966, 968, 972–73 (Md. 1982) (holding that a radio host's statement that the host intended as parody, but that "certain . . . listeners [reasonably] did not recognize the 'humor' in the radio host's words" could be the basis for defamation damages).

52. McCraw, *supra* note 49, at 99.

53. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d (AM. LAW INST. 1977).

54. *Id.*

55. *Id.*; *see also* McCraw, *supra* note 49, at 99–100 (describing how the court determines defamatory meaning).

56. *See* McCraw, *supra* note 49, at 103 (describing different interpretations of the reasonable reader in defamation law).

57. Lyrissa Barnett Lidsky, *Nobody's Fools: The Rational Audience as First Amendment Ideal*, 2010 U. ILL. L. REV. 799, 808 (2010) (describing how the Supreme Court relied on actual reader reactions to a particular statement, as well as the principle that readers are inherently reasonable, when construing the language at issue in *Cohen v. California*).

The reasonable reader is an objective, hypothetical figure whose interpretation of a statement need not conform with actual peoples' interpretations.[58] Instead, a statement's meaning is a question of law, and the court may decide that the reasonable reader's interpretation of a statement is distinct from the meaning "intended by the writer or actually received by readers."[59] Accordingly, a plaintiff cannot sustain a defamation claim by simply proving that the alleged statement would have "wound[ed] the feelings" of a sensitive person.[60]

Nonetheless, courts often rely on evidence about how readers actually intake information in their determination of how a reasonable reader would behave in certain circumstances.[61] Facts and assumptions about reading habits, such as how readers may not read small print, are relevant to the defamatory meaning analysis.[62] For instance, in *Stanton v. Metro Corp.*, the First Circuit took into account how readers may not see a disclaimer when it is printed in small font between two other lines of large, bolded print, when interpreting whether a magazine article was defamatory.[63] In *Embrey v. Holly*, the Maryland Court of Appeals relied on the fact that people had actually mistaken a statement on a radio show to be true when determining how the reasonable reader would understand the statement.[64] In *Embrey*, the court found that the listener could reasonably take the radio host's on-air statement, that the plaintiff "[p]robably [hurt his knee while] carrying [a] TV during [a] blizzard [that occurred the week prior]," as alleging actual facts.[65] In *Cohen v. California*, the United States Supreme Court ("Su-

58. San Francisco Bay Guardian, Inc. v. Superior Court, 21 Cal. Rptr. 2d 464, 467 (Ct. App. 1993); *see also* RODNEY A. SMOLLA, LAW OF DEFAMATION § 4:17 (2d ed. 2020) (describing how the reasonable reader is hypothetical, rather than the lowest common denominator).

59. *See* McCraw, *supra* note 49, at 100.

60. MADELEINE SCHACHTER, LAW OF THE INTERNET 243 (2001).

61. *See*, *e.g.*, McCraw, *supra* note 49, at 103–04 (arguing that the *Milkovich* majority and dissent's different interpretations of the statement at issue have to do with different interpretations of how readers comprehend language).

62. Stanton v. Metro Corp., 438 F.3d 119, 126 (1st Cir. 2006).

63. *Id.*

64. Embrey v. Holly, 442 A.2d 966, 968 (Md. 1982).

65. *Id.*

preme Court") also implicitly relied on how people actually reacted to particular language in its determination of defamatory meaning.[66]

In addition to contemplating facts or assumptions about actual reader habits when interpreting the reasonable reader's comprehension abilities, courts have also relied on First Amendment theories about the rationality of marketplace actors.[67] Since the birth of the modern First Amendment, the Supreme Court has conceived readers as inherently rational beings[68] aware of widely-known political and cultural events and figures.[69] In *Cohen*, for example, the Court concluded that a reasonable reader of the message on the appellant's jacket, which stated "Fuck the Draft," would understand that the jacket was not intended as a personal insult.[70] Though the Court acknowledged that the same language used on the appellant's jacket was often used for personal attacks,[71] it favored an interpretation of the reasonable reader that was attuned to context and nuance.[72] The Court held that the reasonable reader would be aware of the national draft opposition context and would understand the statement as political.[73]

As a result, when interpreting the reasonable reader's characteristics, courts look both to actual reader traits *and* to principles of rationality un-

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66. *See*, *e.g.*, McCraw, *supra* note 49, at 103–04; *see also* Cohen v. California, 403 U.S. 15, 20 (1971) (describing how nobody actually reacted violently to allegedly inciteful speech when interpreting whether the reasonable reader would react violently to the language).

67. Lidsky, *supra* note 57, at 808.

68. Abrams v. United States, 250 U.S. 616, 628–29 (1919) (Holmes, J., dissenting) (describing how no rational person would react violently to the pamphlets); McCraw, *supra* note 49, at 100–01.

69. *See*, *e.g.*, *Cohen*, 403 U.S. at 17 (implicitly assuming that reasonable readers of appellant's jacket would understand it as a reference to the national context of opposition to the draft).

70. *Id.* at 20.

71. *Id.*

72. *Id.* ("No individual actually or likely to be present could *reasonably* have regarded the words on appellant's jacket as a direct personal insult.") (emphasis added).

73. *Id.*; *see also* Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 46 (1988) (considering how the parodied individual was a nationally known minister when interpreting a statement). Although the Supreme Court did not interpret whether the statement was defamatory in *Hustler*, commentators have used the case when interpreting which context is relevant to the defamatory meaning analysis. McCraw, *supra* note 49, at 100.

dergirding the First Amendment.[74] However, those two factors can conflict, such as when an author reasonably expects that readers will understand a statement as parody, but readers nonetheless mistake the statement to be true.[75] In those circumstances, courts often interpret in favor of the First Amendment principles of rationality, invoking the objective, hypothetical reader to reject the interpretation of actual readers.[76] In *New Times, Inc. v. Isaacks*, for instance, the Texas Supreme Court found that an article in the *Dallas Observer* intended as parody, which had been reportedly misunderstood by many readers to allege actual facts about the plaintiff, was not defamatory since the reasonable reader would understand the allegedly defamatory article as a joke.[77] The author of the article intended to use parody to mock a local school which had recently taken extreme action to penalize a menial student transgression.[78] In doing so, the author wrote a fake parody article entitled "Stop the Madness," describing how the school handcuffed a "diminutive six-year old" for suspicion of making "terroristic threats."[79] While the parody article appeared under the heading, "News," and thus confused several actual readers who took the statement as true,[80] the court reasoned that the absurdity of the claims in the article made clear to the *reasonable* reader that they were parody.[81] While the article had a "superficial degree of plausibility," the court noted that "such is the hallmark of satire."[82]

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74. McCraw, *supra* note 49, at 100; Abrams v. United States, 250 U.S. 616, 628–29 (1919) (Holmes, J., dissenting).

75. *See*, *e.g.*, San Francisco Bay Guardian, Inc. v. Superior Court, 21 Cal. Rptr. 2d 464, 465 (Ct. App. 1993) (describing how a plaintiff understood a newspaper article which the author intended as parody to allege actual facts).

76. *Id.* at 467 (holding that "the April Fool's section of the paper was obviously and unambiguously a parody").

77. New Times, Inc. v. Isaacks, 146 S.W.3d 144, 161 (Tex. 2004); RODNEY A. SMOLLA, LAW OF DEFAMATION § 4:15 (2d ed. 2020).

78. *New Times, Inc.*, 146 S.W.3d at 148 (describing how a local school called police officers to retrieve a boy who had written a violent story from his class).

79. *Id.* at 147–48.

80. *Id.* at 159.

81. *Id.* at 161; SMOLLA, *supra* note 77, § 4:15.

82. *New Times, Inc.*, 146 S.W.3d at 161.

B. The Relevant Context

To determine whether a statement an author intended as parody is susceptible to defamatory meaning, courts must not only define the reasonable reader's characteristics and step into their shoes to interpret the statement[83] as described above. Courts must also interpret the statement in its context to determine whether the reader could rationally understand the statement as alleging actual facts.[84] The way in which courts define the context relevant to the defamatory meaning analysis is often determinative in defamation cases, particularly those involving parody. This section describes how courts apply the Restatement Second of Torts ("Restatement") approach to statements authors intended as parody in traditional media.

1. Divergent Approaches to Extrinsic Content

The Restatement is contradictory on the matter of defining the context relevant to the defamatory meaning analysis, which has led to divergent approaches regarding content extrinsic to what readers ordinarily read or hear with an allegedly defamatory statement.[85] The Restatement defines an allegedly defamatory statement's relevant context as "all parts of the communication that are ordinarily heard or read with it."[86] For instance, "the entire contents of a personal letter are considered as the context of any part of it because a recipient of the letter ordinarily reads the entire communication at one time."[87] Courts generally attempt to follow this approach.[88] These courts have required that allegedly defamatory statements contained in magazine or newspaper articles be read in the context of the article as a

83. *See* RESTATEMENT (SECOND) OF TORTS, § 563 cmt. c (AM. LAW INST. 1977).

84. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

85. *See*, *e.g.*, Joseph H. King, Jr., *Defining the Internal Context for Communications Containing Allegedly Defamatory Headline Language*, 71 U. CIN. L. REV. 863, 888–89 (2003) (describing the Restatement's "facially contradictory language" and the different approaches courts have taken as a result).

86. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

87. *Id.*

88. *See*, *e.g.*, Norse v. Henry Holt & Co., 991 F.2d 563, 567 (9th Cir. 1993); Polygram Records. v. Superior Court, 170 Cal. App. 3d 543, 554 (Ct. App. 1985).

whole, declining to dissect articles line by line.[89] A documentary film clip could not be analyzed alone, explained one court, but must be analyzed within the context of the film as a whole.[90]

However, a mechanical application of the Restatement approach[91] seems to conflict with First Amendment principles in certain settings.[92] For example, courts are split on whether allegedly defamatory front-page headlines should be interpreted in the context of the internal article, which may qualify the defamatory imputation contained in the headline.[93] The note to the defamation section of the Restatement takes the approach that the "text of a newspaper article is ordinarily not the context of the headline" when "circumstances" indicate that the public would not "ordinarily" read them together.[94] Thus, the Restatement rule points to the conclusion that courts should read front-page headlines alone, without the context of the internal article.[95] Unlike a headline that appears directly above the article it describes, such that readers would "ordinarily" read both the headline and the article together,[96] "circumstances" indicate that readers frequently

89. *See* Cianci v. New Times Pub. Co., 639 F.2d 54, 60 (2d Cir. 1980) (considering the statements in context of the article as a whole, including the article's internal organization); *see also* Toney v. WCCO Television, Midwest Cable & Satellite, Inc., 85 F.3d 383, 396 (8th Cir. 1996) ("The question is not whether that article can be divided into two parts, and each of those parts so analyzed separately from each other that each would appear to be free from defamatory meaning. The article must be construed as a whole.").

90. Smith v. Cuban Am. Nat'l Found., 731 So.2d 702, 705–06 (Fla. Dist. Ct. App. 1999) (holding that the trial court erred in showing an allegedly defamatory statement from a documentary film to the jury because a "publication must be considered in its totality") (citing *Byrd v. Hustler Magazine*, 433 So.2d 593, 595 (Fla. Dist. Ct. App. 1983)).

91. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

92. Leonard M. Niehoff, *Opinions, Implications, and Confusions*, 28 COMMC'NS LAWYER 19, 21 (Nov. 2011) (describing how the Restatement approach would dictate a "form of a heckler's veto" in the context of front-page headlines).

93. *See*, *e.g.*, King, *supra* note 85, at 878.

94. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

95. *See id.* (noting that the text of a newspaper article "may explain or qualify a defamatory imputation conveyed when the headline alone is read").

96. *Id.*

only read the front-page headlines of publications without taking the time to flip to the internal article, or even to purchase the publication.[97]

On the other hand, modern First Amendment law says that the reasonable reader should be rational and attuned to contextual clues.[98] This fact weighs in favor of determining that the hypothetical *reasonable* reader, as conceived by the Supreme Court, would take the time to flip to the internal article when reading a front-page headline, such that the headline and the internal article should be considered together.[99] As one commentator noted, the "law . . . indulges in a fiction [to avoid] a form of heckler's veto, where the predispositions and personalities of a less-than-ideal audience [that do not read articles] determine the rights of the speaker."[100]

Because of the First Amendment concerns, the majority approach is to read a potentially defamatory front-page headline in the context of the internal article as a whole when determining whether it is capable of sustaining a defamatory meaning.[101] For example, the Mississippi Supreme Court found a front-page headline non-defamatory when read in the context of the internal article it referenced.[102] The headline said, "'[Plaintiff was] found in default on grain storage contract[,]' . . . 'Fraud trial opens . . .'"[103] Though the second clause of the headline alone reasonably implied

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97. *See*, *e.g.*, Kaelin v. Globe Commc'ns Corp., 162 F.3d 1036, 1041 (9th Cir. 1998) (describing how readers often skim magazine headlines on the grocery store checkout line).

98. *See supra* Part II.A. *See also* Abrams v. United States, 250 U.S. 616, 628–29 (1919) (Holmes, J., dissenting); *see also* Lidsky, *supra* note 57, at 815 (describing how, while "Justice Holmes and Brandeis provided the building blocks . . . any number of First Amendment doctrines rely on a model of the audience as rational, skeptical, and capable of sorting through masses of information to find truth"); for a modern example, *see*, *e.g.*, Baker v. L.A. Herald Exam'r, 42 Cal.3d 254, 262 (1986) (describing how a defamatory statement "is to be measured…by its . . . natural and probable effect upon the mind of the average reader" and what that reader "could have reasonably understood").

99. Additionally, in Milkovich v. Lorain Journal Co., 497 U.S. 1, 4 (1990), the Supreme Court read a headline stating, "Maple beat the law with the 'big lie,'" together with a column that accused the coach of lying and setting a bad example for children. Determining that "[t]he clear impact'" of the headline and column "'is that [the plaintiff] lied at the hearing after . . . having given his solemn oath to tell the truth,'" the Court held that the statement was defamatory.

100. Niehoff, *supra* note 92, at 21.

101. *Id.*

102. Blake v. Gannett Co., 529 So.2d 595, 605 (Miss. 1988).

103. *Id.*

the plaintiff was on trial for fraud, the court reasoned that the internal article clarified that an individual other than the plaintiff was actually on trial, such that the headline was not defamatory.[104]

Only a minority of courts track the Restatement rule regarding front-page headlines, considering the front-page headline separately from the internal article under certain "circumstances."[105] When determining whether the article and headline should be read together, these courts consider factors such as the accessibility of the internal article from the headline[106] and whether the front cover points readers to the relevant internal content.[107] For example, one court held that the question of whether an article printed seventeen pages from an allegedly defamatory headline was relevant context to consider belonged to the jury.[108] By contrast, since there is so little content that readers "ordinarily"[109] read when viewing an allegedly defamatory statement contained in a front-page headline, the majority approach "indulges in a fiction" to avoid chilling speech and reads the statement in the context of the internal article.[110]

2. Parody and Extrinsic Content

The question of whether courts should consider content outside what readers "ordinarily"[111] read arises in circumstances other than just newspaper headlines. Cases involving parody, for instance, often raise extrinsic content questions.[112] Parody authors rely on many contextual clues to

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104. *Id.*

105. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d; King Jr., *supra* note 85, at 884.

106. *See* Kaelin v. Globe Commc'ns Corp., 162 F.3d 1036, 1041 (9th Cir. 1998).

107. Stanton v. Metro Corp., 438 F.3d 119, 126 (1st Cir. 2006).

108. *Kaelin*, 162 F.3d at 1041.

109. RESTATEMENT (SECOND) OF TORTS, § 563, cmt. d.

110. Niehoff, *supra*, note 92, at 21; *see also* King, Jr., *supra*, note 85, at 867 (proposing a rule for how to interpret allegedly defamatory headlines).

111. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

112. *See*, *e.g.*, McCraw, *supra* note 49, at 94–95 (describing how "[t]he problem [with parody] is that statements of opinion, as well as parody and hyperbole, may be read to imply the existence of facts" absent contextual clues).

communicate their intended meaning to their readers.[113] For instance, parody authors often use disclaimers to describe that the relevant text was not intended to allege actual facts about the subject of the parody.[114] Parody authors also frequently rely on hyperbolic rhetoric, imaginative expression, and many other situational cues to indicate to readers that a particular publication or statement is parody.[115] One newspaper printed a parody section of the newspaper upside-down to signal the satirical nature of the section to readers, for instance.[116] Additionally, because the Supreme Court has described parody as core First Amendment speech,[117] courts are often keen to protect the genre and consider content outside of what readers "ordinarily" might see.[118]

As a result, courts often consider extrinsic content when determining whether a statement intended as parody is defamatory.[119] In *San Francisco Bay Guardian v. Superior Court*, for instance, a landlord sued a newspaper for defamation, alleging that a statement in a parody letter-to-the-editor was defamatory.[120] The letter stated, purportedly in the voice of the plaintiff, "I don't understand why [a public figure] is so upset about electroshock ther-

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113. *See*, *e.g.*, Amy Johnson, *Decrowning Doubles: Indexicality and Aspect in a Bahraini Twitter Parody Account*, 48 AL-'ARABIYYA 61, 65, 67 (2015) (describing how Twitter parody accounts rely on linguistic, social, and political clues to create meaning).

114. *See*, *e.g.*, Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 48 (1988) (describing how the meaning of a parody statement was informed by a disclaimer in the bottom right corner of the advertisement in which the allegedly defamatory statement appeared).

115. *See*, *e.g.*, Greenbelt Coop. Publ'g Assn. Inc. v. Bresler, 398 U.S. 6, 14 (1970) (interpreting a parody statement in light of its imaginative expression).

116. San Francisco Bay Guardian, Inc. v. Superior Court, 21 Cal. Rptr. 2d 464, 466 (Ct. App. 1993).

117. *See*, *e.g.*, *Hustler Magazine*, 485 U.S. at 54 ("Satirical cartoons have played a prominent role in public and political debate.").

118. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d; *cf. San Francisco Bay Guardian*, 21 Cal. Rptr. 2d at 466 (considering an allegedly defamatory parody article in the context of a parody disclaimer in the front of the newspaper, which readers might not have seen when reading the article).

119. *See*, *e.g.*, New Times, Inc. v. Isaacks, 146 S.W.3d 144, 159 (Tex. 2004) (considering whether a newspaper had printed parody articles in past issues when determining whether a parody article in the current issue was defamatory).

120. *San Francisco Bay Guardian*, 21 Cal. Rptr. 2d at 465.

apy. I find that my tenants who have undergone this treatment are much more cooperative."[121] The court reasoned that the statement could plausibly be mistaken as true in the context of the letter alone, as the statement appeared in the same type-face as the normal paper and contained a subtle brand of parody.[122]

Nonetheless, the *San Francisco Bay Guardian* court held that the statement could not reasonably be understood as defamatory.[123] Notably, most of the court's reasoning drew from extrinsic content that an actual reader may not have "ordinarily" seen in one sitting under the Restatement approach.[124] Relying on earlier articles in the parody section of the paper that were more obvious parody, "recognizable as jokes at first glance,"[125] the court concluded that the reasonable reader would have taken the comedic nature of the adjacent articles into account when interpreting the allegedly defamatory statement in the parody letter-to-the-editor.[126] In light of the additional articles, the court held the statement in the parody letter-to-the-editor was not defamatory since it could not be understood as alleging actual facts about the plaintiff.[127]

III. CURRENT APPROACHES TO DEFAMATORY MEANING AND PARODY IN TWEETS

While the defamatory meaning analysis already raises difficult questions in traditional media,[128] courts today also address additional questions regarding how the characteristics of Twitter[129] and Twitter parody ac-

121. *Id.* at 464–65.

122. *Id.* at 466 (describing how "[o]n the page containing the letters to the editor, some of the material is not [as] obvious" as parody material on other pages).

123. *Id.* at 467.

124. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. c.

125. *San Francisco Bay Guardian*, 21 Cal. Rptr. 2d at 466.

126. *Id.* (describing how some of the jokes in the newspaper's other sections were "recognizable as jokes at first glance," compared to the more subtle parody statement at issue there).

127. *Id.*

128. *See* discussion *supra* Part II.

129. *See*, *e.g.*, Jacobus v. Trump, 51 N.Y.S.3d 330, 343 (Sup. Ct. 2017) (analyzing an allegedly defamatory tweet); Feld v. Conway, 16 F. Supp. 3d 1, 4 (D. Mass. 2014)

counts[130] affect the analysis. The following section summarizes divergent approaches courts have taken when interpreting what the reasonable reader of a tweet understands as parody, as well as what content extrinsic to the tweet, if any, is relevant to the defamatory meaning analysis. Because there have been so few cases specifically involving Twitter parody,[131] this section also incorporates relevant analysis from courts considering Twitter defamation not concerning parody,[132] and other social media website parody defamation cases.[133]

A. Divergent Approaches to the "Reasonable Reader" of Tweets

Courts have contemplated whether the hypothetical reader of an allegedly defamatory tweet is as competent at interpreting contextual clues as the hypothetical reader of traditional media,[134] or whether readers on Twitter almost always understand all tweets on the website to be too "loose" and "hyperbolic" to allege actual facts.[135]

The question arises from research demonstrating actual problems with disinformation on Twitter.[136] Courts have diverged on the question of whether evidence about how readers often struggle to discern truth from falsity online should change how courts think about the hypothetical reasonable reader of online speech. In traditional media, courts have favored

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130. *See*, *e.g.*, Levitt v. Felton, No. 326362, 2016 WL 2944824, at *3–4 (Mich. Ct. App. May 19, 2016) (analyzing an allegedly defamatory tweet from a parody account).

131. *See*, *e.g.*, *id.* at *1. Several Twitter parody defamation cases are currently pending. *See*, *e.g.*, Nunes v. Twitter, Inc., No. 19-1715, 2020 Va. Cir. LEXIS 89 (Va. Cir. June 24, 2020).

132. *Jacobus*, 51 N.Y.S.3d at 342 (analyzing an allegedly defamatory tweet that was not intended as parody).

133. O'Donnell v. Knott, 283 F. Supp. 3d 286, 301 (E.D. Pa. 2017) (analyzing an allegedly defamatory Disqus post intended as parody).

134. *See Jacobus*, 51 N.Y.S.3d at 343 (considering how "[t]he informal nature of conversation on Twitter tends to encourage people to talk more freely about others, including the spreading of rumors and potential falsehoods.").

135. *Id.* at 342.

136. *See, e.g.*, *id.* at 343 (analyzing an allegedly defamatory tweet in light of the "general lack of coherence" of online speech); *see also* Shelly Banjo, *Facebook, Twitter and the Digital Disinformation Mess*, WASH. POST (Oct. 2, 2019, 12:25 AM), https://www.washingtonpost.com/business/facebook-twitter-and-the-digital-disinformation-mess/2019/10/01/53334c08-e4b4-11e9-b0a6-3d03721b85ef_story.html [https://perma.cc/E8F9-6QCK].

an interpretation of readers as rational and attuned to social[137] and cultural context,[138] even when the real audience is "less-than-ideal" at interpreting nuances.[139] Otherwise, courts and commentators have reasoned, the actual habits of the "less-than-ideal audience determine the rights of the speaker."[140]

However, some courts have reasoned that the reasonable reader standard should be different for online readers from the reasonable reader standard in traditional media.[141] These courts reason that the hypothetical reasonable reader of tweets should be considered less willing and able to interpret contextual clues due to evidence of actual reader problems distinguishing truth from falsity online.[142] *Jacobus v. Trump* exemplifies this line of thinking.[143] The case arose when a political strategist, Cheryl Jacobus, rejected a position from Donald Trump's presidential campaign and then made critical comments about then-candidate Trump on cable news.[144] Following Jacobus's comments on television, Trump tweeted "@cherijacobus begged us for a job. We said no and she went hostile . . . ."[145]

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137. *See supra* Part II.A.; *see also* New Times, Inc. v. Isaacks, 146 S.W.3d 144, 157 (Tex. 2004) (holding that an article was nondefamatory despite the fact that the article was labeled "News" and some readers misunderstood it as alleging actual facts).

138. *See* Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 47–48 (1988) (implicitly reasoning that the reasonable readers of a parody statement knew that the parody subject was a minister, since this information was "nationally known").

139. Niehoff, *supra* note 92, at 21.

140. *Id.*; *see also* Nelson v. Superior Court, No. B283743, 2018 WL 1061575, at *5 (Cal. Ct. App. Feb. 27, 2018), *as modified on denial of reh'g*, Mar. 27, 2018 (unpublished) (interpreting an allegedly defamatory parody YouTube video) ("While courts have recognized that online posters often 'play fast and loose with facts,' this should not be taken to mean online commentators are immune from defamation liability.").

141. *See*, *e.g.*, *Jacobus*, 51 N.Y.S.3d at 343.

142. *Id.* (reasoning that readers simply presume statements are false or opinion amid the "general lack of coherence" on the internet and Twitter specifically); *see also* RODNEY A. SMOLLA, LAW OF DEFAMATION § 6:70.50 (2d ed. 2020) (criticizing the *Jacobus* court's approach).

143. *Jacobus*, 51 N.Y.S.3d at 339.

144. *Id.* at 334.

145. *Id.*

Jacobus sued Trump in New York state court for defamation, arguing that the tweet implied provably false facts.[146] The court found that the statements were not defamatory since no reasonable reader would interpret the statements as true in the context of Twitter and Trump's account.[147] The court characterized speech online and on Twitter specifically as generally rife with "slang, grammatical mistakes, spelling errors . . . ."[148] As a result, the court reasoned that the readers of tweets, lost in what the court called the "lack of coherence" of online speech,[149] almost always understand tweets as statements of "vigorous expressions of personal opinion."[150] Thus, Trump's tweet that Jacobus "'begged'" for a job, the court explained, "is reasonably viewed as a loose, figurative, and hyperbolic reference to [the] plaintiff's state of mind" and is "not susceptible of objective verification."[151]

By contrast, the *Levitt* court,[152] for example, did not begin the analysis with a presumption that all tweets are too vague and simplistic to be defamatory. Instead, the court likened reasonable Twitter readers to readers of traditional media[153] who "evaluat[e] allegedly defamatory statements . . . in context . . . ."[154] Then, the *Levitt* court looked to the tweet's context to

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146. *Id.* at 335; *see also* SMOLLA, *supra* note 142, § 6:70.50 (describing how Jacobus argued that she could prove that the Trump campaign had in fact approached her for a job, not the other way around, as the tweet implied).

147. *Jacobus*, 51 N.Y.S.3d at 343.

148. *Id.* (quoting *Technovate v. Fanelli*, No. 003713 WL 5554547, at *4 (N.Y. Civ. Ct. Sep. 10, 2015)).

149. *Id.*; *cf.* Katy Waldman, *Is the Internet Making Writing Better?*, NEW YORKER (July 26, 2019), https://www.newyorker.com/books/page-turner/is-the-internet-making-writing-better?verso=true [https://perma.cc/UC8E-X6LZ] (describing a book that argues that "new rules of English" have displaced old rules of language, implying that readers are able to comprehend speech on the internet).

150. *Jacobus*, 51 N.Y.S.3d at 339 (quoting *Brian v. Richardson*, 660 N.E.2d 1126, 1130 (N.Y. Ct. App. 1995)).

151. *Id.* at 342.

152. Levitt v. Felton, No. 326362, 2016 WL 2944824, at *3 (Mich. Ct. App. May 19, 2016).

153. *Id.* (defining the reasonable reader by analogizing from traditional media cases).

determine whether the tweet was parody, rather than assuming that the speech is false or opinion simply because it appears on Twitter.[155]

B. Defining the Relevant Context of a Tweet

Courts have also taken different approaches to defining the context of an allegedly defamatory tweet.[156] In particular, the lack of context surrounding tweets[157] and the interactive nature of Twitter[158] has raised difficult questions regarding the relevance of content extrinsic to the tweet as it appears on the timeline.[159]

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154. *Id.* at *4; *cf. Jacobus*, 51 N.Y.S. 3d at 342. *See also* SMOLLA, *supra* note 142, § 6:70.50 (arguing that the *Jacobus* court's reasoning was incorrect; "[t]hat some actors in society may be losing a grip on truth . . . does not mean that courts of law should [because] defamation law assumes juries are competent to distinguish true facts from false ones").

155. *Levitt*, 2016 WL 2944824, at *4; *cf. Jacobus*, 51 N.Y.S. 3d at 342 (reasoning that because "truth itself has been lost in the cacophony of online and Twitter verbiage . . . [the statement] is reasonably viewed as a loose, figurative, and hyperbolic reference to a plaintiff's state of mind). *See also* SMOLLA, *supra* note 142, § 6:70.50.

156. *Compare* Winter v. Pinkins, No. 14–cv–8817, 2017 WL 5496278, at *2 (S.D.N.Y. Feb. 17, 2017) (considering only the text of the tweet alone) *with Levitt*, 2016 WL 2944824, at *3 (considering the plaintiff's profession as an attorney and a professor when determining that such a person would not say such inappropriate things as those said by the parody account).

157. *See* Hunt, *supra* note 28, at 593 (arguing that, because of the character limitation on Twitter, tweets should be considered in the context of information beyond just the timeline). Note that, at the time of Hunt's article, tweets were limited to a maximum of 140 characters, but now may be as long as 280 characters, though that does not weigh heavily in the analysis. *See* Sarah Perez, *Twitter's Doubling of Character Count From 140 to 280 Had Little Impact on Length of Tweets*, TECHCRUNCH (Oct. 30, 2018, 6:51 AM), https://techcrunch.com/2018/10/30/twitters-doubling-of-character-count-from-140-to-280-had-little-impact-on-length-of-tweets/ [https://perma.cc/J7DR-2REY].

158. *See* Lyrissa Barnett Lidsky & RonNell Andersen Jones, *Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World*, 23 VA. J. SOC. POL'Y & L. 155, 165 (2016) (discussing how the interactive nature of hashtags applies to the defamation analysis on Twitter).

159. *See, e.g.*, Hunt, *supra* note 28, at 593 (proposing that courts read tweets in light of the account's contemporaneously posted tweets when determining whether the tweet is defamatory). On Twitter, "Home timelines display a stream of Tweets from Twitter accounts that have been followed or selected by the account creator." Johnson, *supra* note 113, at 65, 81 n.12 (describing how Twitter parody accounts rely on linguistic, social, and political clues to create meaning).

Some courts consider only the language of the tweet itself.[160] Other courts consider only the content immediately surrounding the tweet, as it appears on the timeline, when determining whether the tweet is defamatory.[161] For example, the *Levitt* court considered the defendant's Twitter account name, which appears above the tweet on the timeline,[162] when determining whether the parody account was defamatory.[163] In the context of another social media website, Disqus, which is "very similar to Twitter," in how disparate user posts also appear on a home timeline,[164] a court found that the account name "Knotty is a Tramp" above the post indicated the post was parody.[165] In *O'Donnell v. Knott*, the statement was nondefamatory because, the court reasoned, "a reasonable reader would *not* believe that Kathryn Knott [the plaintiff] actually created this profile [to] comment on articles about herself."[166] The court reasoned that the account's unflattering profile picture, featuring the subject of the parody drinking a bottle of alcohol, also indicated that the account was parody.[167]

Finally, some courts take a broad view of extrinsic content in Twitter defamation, considering content beyond just the Twitter timeline.[168] While the name, handle, and profile picture of the tweeting account are available

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160. *See*, *e.g.*, *Winter*, 2017 WL 5496278, at *2 (considering only the language of the tweet itself); AvePoint, Inc. v. Power Tools, Inc., 981 F. Supp. 2d 496, 509 (W.D. Va. 2013).

161. *See*, *e.g.*, *Levitt*, 2016 WL 2944824, at *3 (reading an allegedly defamatory tweet in the context of the name of the tweeting account).

162. *Id.*; *see, e.g.*, *Johnson*, *supra* note 113, at 62 (showing an image of a tweet on the timeline with the account name above the text of the tweet).

163. *See also* O'Donnell v. Knott, 283 F. Supp. 3d 286, 301 (E.D. Pa. 2017) (finding that a post was non-defamatory parody when the account that made the post was called "Knotty the Tramp"). The *O'Donnell* case is not from Twitter, but rather from Disqus, a social media website that is similar to Twitter.

164. *Id.* at 292.

165. *Id.*

166. *Id.* at 301.

167. *Id.*

168. *See*, *e.g.*, Jacobus v. Trump, 51 N.Y.S.3d 330, 344 (Sup. Ct. 2017) (considering additional tweets from the defendant's account, which a Twitter user only could have seen by navigating to the user's account from the timeline and scrolling through hundreds of tweets from the account, when determining whether a different tweet from the account was defamatory).

immediately surrounding the tweet on the home timeline,[169] there is additional information that may furnish tweets with context. Other tweets from the same account that posted the allegedly defamatory tweet can be relevant, some courts have held.[170] This is akin to considering an internal article when interpreting the meaning of a front-page headline because additional tweets from the same account are not available on the timeline with the statement at issue; the additional tweets instead appear a click and a scroll away.[171] For example, the *Jacobus* court read the defendant's allegedly defamatory tweet that the plaintiff "begged" for a job in light of the general tone of the defendant's tweets, which were "rife with vague and simplistic insults."[172] Those tweets were weighed heavily by the court, though the reader would not necessarily have seen them without clicking and scrolling.[173] The court reasoned that this fact made it less likely that the reasonable reader would take the tweet at issue as alleging actual facts about a person.[174] In another case, *Feld v. Conway*, the court similarly considered content external to the Twitter timeline to be relevant to a tweet's meaning.[175] There, the court reasoned that the tweet should be construed within the context of a contemporaneous "heated internet debate" that preceded the post.[176] As a result, the casual and interactive nature of Twitter has complicated the defamatory meaning analysis even further. Part IV

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169. *See* Johnson, *supra* note 113, at 62 (showing the image of a tweet on a Twitter timeline).

170. *See*, *e.g., Jacobus*, 51 N.Y.S.3d at 344 (reading an allegedly defamatory tweet in context of the general tone of defendant's account); Levitt v. Felton, No. 326362, 2016 WL 2944824, at *3 (Mich. Ct. App. May 19, 2016) (reading an allegedly defamatory tweet in the context of disclaimer tweets that the same account had previously posted).

171. Johnson, *supra* note 113, at 77–78 (describing the various ways in which users can interact with content on Twitter).

172. *Jacobus*, 51 N.Y.S.3d at 342.

173. Johnson, *supra* note 113, at 77 (distinguishing between the profile information on Twitter, available on the timeline, and the additional "exchanges . . . visible via the profile page . . . [that] displays the [t]weets from *that* participant").

174. *Jacobus*, 51 N.Y.S. 3d at 343.

175. Feld v. Conway, 16 F. Supp. 3d 1, 4 (D. Mass. 2014) (describing how "the tweet was made as part of a heated Internet debate about plaintiff's responsibility for the disappearance of [a] horse.").

176. *Id.*

proposes a methodology for interpreting how the reasonable reader would understand parody tweets.

IV. METHOD TO DETERMINE WHETHER PARODY TWEETS ARE DEFAMATORY

At 280 characters or less,[177] tweets are extremely short, so they raise similar questions as front-page headlines regarding whether extrinsic content is relevant to interpreting a statement.[178] Additionally, parody accounts are ubiquitous on Twitter,[179] providing additional reasons to consider how readers interpret contextual clues on such platform.[180] Twitter is unique among social media websites in that it actually explicitly permits users to create parody accounts and has detailed policies regarding how parody accounts must signal their satirical nature to Twitter users.[181] As a result, parody accounts have become extremely common and notable aspects of Twitter.[182] Because parody authors often require context to communicate meaning,[183] there are many reasons for courts to characterize Twitter users as rational and adept at interpreting extrinsic content in order to preserve the viability of parody Twitter accounts, which often produce important social commentary.[184]

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177. *See* Perez, *supra* note 157.

178. Lidsky & Jones, *supra* note 158, at 161.

179. *See* Ashley Parker, *Fake Twitter Accounts Get Real Laughs*, N.Y. TIMES (Feb. 9, 2011), https://www.nytimes.com/2011/02/10/us/politics/10fake-twitter.html [https://perma.cc/9H7M-4DE7].

180. Johnson, *supra* note 113, at 65, 67 (describing how Twitter parody accounts rely on linguistic, social, and political clues to create meaning).

181. Johnson, *supra* note 113, at 65 (explaining that Twitter is "[u]nusual among social media and tech companies, [because it] has long supported parody through official policy"); *Parody, Newsfeed, Commentary, and Fan Account Policy (The "Policy")*, TWITTER, https://help.twitter.com/en/rules-and-policies/parody-account-policy [https://perma.cc/BK4T-UDLE].

182. *See* Parker, *supra* note 179.

183. Johnson, *supra* note 113, at 65, 67 (describing how Twitter parody accounts rely on linguistic, social, and political context).

184. *See*, *e.g.*, @DennisPBlock, TWITTER, *https://twitter.com/dennispblock?lang=en* [https://perma.cc/9NFR-X42M] (using parody to critique the harsh practices of a well-known Los Angeles eviction attorney). *See also*, Jessica Garrison, *He Shows Renters the Door*, N.Y. TIMES (Mar, 14, 2007, 12:00 AM), https://www.latimes.com/archives/la-xpm-2007-mar-14-me-

Additionally, like other social media websites, Twitter is interactive,[185] which raises additional questions about the context analysis. Unlike a static print publication, Twitter allows users to "click[]" and "open" tweets to "expand its conversations" and see other users' replies to the tweet.[186] Users can also click away from the Twitter timeline, where "[t]weets are usually encountered in streams of [other tweets]," to another user's profile page.[187] The Restatement approach to context, however, describes stable print publications, like newspapers and letters.[188] The Restatement is able to generalize from what readers "ordinarily" see when reading a letter, namely the text of the letter from beginning to end.[189] But what do readers actually see when reading tweets?[190] Should courts find the hypothetical reader of a tweet to have simply read the tweet as it appears on the timeline, or to have clicked on the tweet to see extrinsic content? Developing a methodology for interpreting the reasonable reader of tweets and how they interact with contextual clues on Twitter, first and foremost, is helpful to clarify the path forward for courts as they increasingly see more cases involving tweets intended as parody.

However, giving courts a clear sense of how rational users interact with Twitter and parody accounts is extremely important in other contexts as well. Several state legislatures have passed laws criminalizing online impersonation to cause harm, aimed at punishing actions like cyberbullying and catfishing.[191] For example, California has a statute prohibiting "know-

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evictlawyer14-story.html [https://perma.cc/MBA6-GDV4] (explaining that the attorney "describes himself [as] '[a] man who evicted more tenants than any other human being on the planet Earth.'").

185. *See* Hunt, *supra* note 28, at 579–80 (describing the various actions that users on Twitter can take, such as retweeting, commenting, and replying on tweets).

186. Johnson, *supra* note 113, at 77–78.

187. *Id.* at 67.

188. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d (using both newspaper headlines and letters to describe the proper approach to context).

189. *Id.*

190. *See* Johnson, *supra* note 113, at 67, 77–78 (describing how "[o]n Twitter, users interact with tweets in a variety of ways, including scrolling past them on the timeline and clicking on the tweet to read replies.").

191. McSherry, *supra* note 30.

ingly and without consent credibly impersonat[ing] [a person online] . . . for purposes of harming" them.[192] But commentators have noted that this law, and other similar ones, threaten to sweep up Twitter parody authors in their enforcement.[193] Since Twitter parody accounts often purport to speak in the voice of the parody's subject,[194] they may be accused of impersonation.[195] This is especially problematic as Twitter parody cases often implicate core First Amendment speech on issues in the public interest.[196]

Thus, it is particularly important to clarify how the reasonable Twitter user interprets meaning on the platform, not only in the defamation context, but also in the context of e-personation statutes. This section first argues that courts should interpret reasonable Twitter users as discerning, like the reasonable reader in traditional media.[197] Then, this section analogizes from the contextual analysis in traditional media to propose the context in which to analyze the meaning of an allegedly defamatory parody tweet.

A. Characterize Hypothetical Readers on Twitter as Rational and Discerning

When hypothesizing the traits of the reasonable Twitter reader, courts should not characterize the hypothetical Twitter reader as less rational and discerning than the hypothetical reader of traditional media,[198] as the *Jacobus* court did. Because it is often more difficult to discern truth from

192. CAL. PENAL CODE § 528.5(a) (West 2020).

193. McSherry, *supra* note 30.

194. Johnson, *supra* note 113, at 68 ("Parody constitutes, reproduces, and alters an original.").

195. McSherry, *supra* note 30. Additionally, because parodies are often critical of the parodied individual, commentators fear that the intent element will be satisfied.

196. *See*, *e.g.*, Nunes v. Twitter, Inc., No. 19-1715, 2020 Va. Cir. LEXIS 89 (Va. Cir. June 24, 2020) (illustrating a case against a Twitter parody account that criticizes a U.S. Congressmen for his political actions); Appellant's Opening Brief, *supra* note 37, at *8 (describing a defamation lawsuit against a Twitter parody account that criticized a well-known Los Angeles eviction attorney for causing harm in the community).

197. *See* discussion *supra* Part II.A.

198. Jacobus v. Trump, 51 N.Y.S.3d 330, 337 (Sup. Ct. 2017) (describing the reasonable reader).

falsity online than in traditional media,[199] and on Twitter specifically, some courts have reasoned that hypothetical Twitter readers should not be deemed as adept at navigating context as their traditional-media-reader counterparts.[200] This approach is rooted in the rule from traditional media that courts sometimes look to actual factors to interpret the reasonable reader and how they would understand an allegedly defamatory tweet.[201] In particular, the *Jacobus* court's citation to the "incoherence" of internet speech[202] seems to arise implicitly from social commentaries noting the problems with disinformation online and on Twitter specifically, and the inability of many readers to determine fact from fiction on Twitter.[203]

However, while real circumstances of reader behavior can inform the hypothetical reader's traits, they are not necessarily dispositive.[204] Thus, the fact that there *actually* is disinformation online that sometimes confuses Twitter readers[205] does not necessarily mean that the hypothetical Twitter reader is unable to navigate context on Twitter as a general rule.[206] In fact, in traditional media, courts have typically favored an interpretation of the reader as rational and able to decode context,[207] even when actual readers

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199. *Id.* at 339 (quoting Brian v. Richardson, 660 N.E.2d 1126, 1130 (N.Y. Ct. App. 1995)).

200. *See*, *e.g.*, *id.*

201. *See* discussion *supra* Part II.A. *See, e.g.*, Embrey v. Holly, 442 A.2d 966, 968 (Md. Ct. Spec. App. 1982) (considering how some listeners mistook a radio host's statement as true when determining whether it was defamatory).

202. *Jacobus*, 51 N.Y.S.3d at 339.

203. Banjo, *supra* note 136.

204. *See*, *e.g.*, New Times, Inc. v. Isaacks, 146 S.W.3d 144, 144–45 (Tex. 2004) (holding that a newspaper was parody despite the fact that some readers mistook it as true).

205. Banjo, *supra* note 136.

206. *See* SMOLLA, supra note 142, § 6:70.50; *see also* Nelson v. Superior Court, No. B283743, 2018 WL 1061575, at *5 (Cal. Ct. App. Feb. 27, 2018) *as modified on denial of reh'g*, Mar. 27, 2018 (unpublished) (interpreting an allegedly defamatory parody YouTube video). "While courts have recognized that online posters often 'play fast and loose with facts,' this should not be taken to mean online commentators are immune from defamation liability."

207. *See*, *e.g.*, New Times, Inc., 146 S.W.3d at 158–59; *see also* Cohen v. California, 403 U.S. 15, 20 (1971) (characterizing the hypothetical reader as rational and able to understand political context).

in particular circumstances have proven to be less adept at interpreting an author's intended meaning.[208] In *New Times, Inc. v. Isaacks*, for instance, though some readers of a fake parody newspaper article mistook the statement as true,[209] the court found that the reasonable reader would understand the article as parody.[210] There, the context of the "then-existing [public] controversy" regarding the school board's punishment of a student indicated to the reasonable reader that the traditional media statement did not allege actual facts.[211] The *Levitt* court correctly tracked this reasoning in the Twitter realm,[212] determining what the reasonable reader would understand from the context rather than presuming that the parody tweet was too "vague and simplistic"[213] to be defamatory simply because it appeared on Twitter. Thus, courts should still find that Twitter readers are adept at interpreting context,[214] as problems with disinformation online are not dispositive in the reasonable reader analysis.

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208. *See, e.g.*, San Francisco Bay Guardian, Inc. v. Superior Court, 21 Cal. Rptr. 2d 464, 467 (Ct. App. 1993) (finding a newspaper article nondefamatory parody despite the fact that the plaintiff mistook the article as true). Additionally, the Supreme Court's recent decision in *Packingham v. North Carolina* implicitly lends support to the view that courts should find the hypothetical reader of tweets to be as attuned to contextual clues as the hypothetical reader in traditional contexts. Packingham v. North Carolina, 137 S. Ct. 1730, 1735 (2017) (referring to social media as the new "democratic forum," which implies that the same theories about the need for rational actors in the marketplace of ideas should also apply on social media).

209. The confusion resulted from the fact that the parody article was featured in the "News" section of the paper. *New Times, Inc.*, 146 S.W.3d at 159.

210. *Id.* at 161.

211. *Id.*; *see also Cohen*, 403 U.S. at 20 (implicitly assuming that reasonable readers of appellant's jacket would understand it as a reference to the national context of opposition to the draft).

212. Levitt v. Felton, No. 326362, 2016 WL 2944824, at *3 (Mich. Ct. App. May 19, 2016) (considering a statement in its relevant context to determine its meaning); *see also* SMOLLA, *supra* note 142, § 6:70.50 (criticizing the *Jacobus* court's approach to presuming the nondefamatory nature of tweets rather than examining them in context as a reasonable reader would).

213. Jacobus v. Trump, 51 N.Y.S.3d 330, 342 (Sup. Ct. 2017).

214. SMOLLA, *supra* note 142, § 6:70.50 (describing how the reasonable reader is hypothetical, rather than the lowest common denominator).

B. Read Tweets in Context

In addition to characterizing Twitter readers as able and willing to interpret contextual clues,[215] courts should analogize from the Restatement approach[216] to determine which context is relevant when interpreting a tweet. Under that approach, courts should consider the information contained in the tweet as it appears on the Twitter timeline, including the tweeting account's name, handle, and profile picture. Additionally, courts should consider content extrinsic to the Twitter timeline, including the tweeting account's bio and other tweets in the same thread, in order to protect the First Amendment rights of Twitter parody authors.

1. Relevant Content on the Timeline

When considering whether a tweet intended as parody has defamatory meaning, courts should first look to the tweet as it appears on the timeline. This immediate context includes the name, handle, and profile picture of the account that posted the tweet. Twitter users interact with content in a variety of ways,[217] but the primary place where they encounter tweets is through the timeline, a homepage containing a stream of tweets from various accounts,[218] including accounts that the user follows and accounts that Twitter has promoted.[219] From the timeline, users can take different actions. For example, they can click on links contained within tweets in the timeline stream, thus navigating to external websites.[220] Additionally, by clicking on a tweet, users can navigate from the timeline to the account that

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215. *See* Johnson, *supra* note 113, at 65–67 (describing how Twitter parody accounts communicate meaning to readers through the use of linguistic, social, and political context).

216. RESTATEMENT (SECOND) OF TORTS, § 563.

217. Hunt, *supra* note 28, at 579–80 (describing the various actions that users on Twitter can take, such as retweeting, commenting, and replying on tweets).

218. *See* Johnson, *supra* note 113, at 67. Accounts on the feed include accounts that the user follows, as well as accounts that Twitter promotes on the user's feed. *About Your Twitter Timeline*, TWITTER, https://help.twitter.com/en/using-twitter/twitter-timeline [https://perma.cc/FG97-7KKJ].

219. Hunt, *supra* note 28, at 587.

220. *See*, *e.g.*, Johnson, *supra* note 113, at 66 (discussing a parody author's use of hyperlinks on their account to direct readers to different webpages); *see also* Lidsky & Jones, *supra* note 158, at 164-65 (describing the role of hyperlinks on social media).

posted the tweet, in order to see more content regarding the account's past tweets.[221]

Despite the interactive nature of Twitter and the many ways in which users can interact with the platform, courts can still analogize from the Restatement's approach to defining relevant context.[222] Recall that the Restatement defines an allegedly defamatory statement's relevant context as "all parts of the communication that are ordinarily heard or read with it."[223] For example, the relevant context to interpret an allegedly defamatory statement contained within a letter is "the entire contents of a personal letter" since readers "ordinarily" read the whole letter at once.[224]

Though Twitter is less stable than a letter, and different reasonable users may interact with the same tweet in different ways,[225] courts should look to the tweet as it appears on the timeline when determining whether a reader would view the statement as defamatory. The timeline is where users interact with most tweets, and thus it is the most stable medium in which to view a tweet as the reader "ordinarily" sees it.[226] On the timeline, the tweet contains several identifying features of the account that posted the tweet.[227] Directly above the text of the tweet itself, the tweet includes the name of the account that posted the tweet in white print,[228] as well as the

221. *See*, *e.g.*, Johnson, *supra* note 113, at 77 (showing the image of a Twitter parody profile picture).

222. *See generally*, Johnson, *supra* note 113; RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

223. *Id.*

224. *Id.*

225. *See* Johnson, *supra* note 113, at 67 (describing how communication on Twitter emerges from "the interaction of platform structure, interface design, and numerous account creators").

226. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d; *see also* Johnson, *supra* note 113, at 67 (discussing how "[t]weets are not usually encountered in isolation," but on the timeline).

227. Johnson, *supra* note 113, at 67 (showing an image of a series of tweets on the Twitter timeline, each with identifying features such as a name and profile picture).

228. *Id.*

account's handle in gray print,[229] and a small, thumbnail version of the account's profile picture.[230]

This identifying information should be relevant when interpreting whether reasonable readers would understand a tweet as nondefamatory parody. Just as courts have found that allegedly defamatory statements contained in an article cannot be parsed line by line but must be interpreted within the meaning of the article as a whole,[231] courts should also not read tweets outside the context of at least the tweeting account's name, handle, and profile picture, which readers "ordinarily read[] . . . at [the same] time" as the tweet itself.[232]

Notably, for some parody accounts, this information on the timeline alone may be sufficient to demonstrate to readers that the tweet does not allege actual facts about the parodied individual and thus cannot be defamatory. For example, in *Levitt*, one allegedly defamatory tweet stated, "Buying me a drink at Cabin Karaoke will get you extra [credit] . . . ."[233] The text alone is slightly odd and may signal to readers that the statement is parody,[234] but considered in the context of the Levitt 2.0 account's name, handle, and profile picture, reasonable readers[235] would almost certainly understand the statement as parody. The name of the account, "Levitt 2.0,"[236] like the Disqus account, "Knotty the Tramp,"[237] had a name slight-

229. *Id.*; *see* Walker, *supra* note 3.

230. Johnson, *supra* note 113, at 67; *see also id*. at 77 (showing the full-size image of a Twitter parody profile picture, beyond the timeline).

231. *See* Cianci v. New Times Pub. Co., 639 F.2d 54, 60 (2d Cir. 1980) (considering the statements in context of the article as a whole).

232. *See* RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d.

233. Levitt v. Felton, No. 326362, 2016 WL 2944824, at *2 (Mich. Ct. App. May 19, 2016).

234. *See*, *e.g.*, San Francisco Bay Guardian, Inc. v. Superior Court, 21 Cal. Rptr. 2d 464, 466 (Ct. App. 1993) (describing the parody statement, "I find that my tenants who have undergone [electroshock therapy] are much more cooperative" as subtle parody, since it is slightly on its face but does not include rhetorical language or obvious parody).

235. *Id.*

236. *Levitt*, 2016 WL 2944824, at *3.

237. *See* Jacobus v. Trump, 51 N.Y.S.3d 330, 343 (Sup. Ct. 2017); Feld v. Conway, 16 F. Supp. 3d 1, 4 (D. Mass. 2014); O'Donnell v. Knott, 283 F.Supp.3d 286, 301 (E.D. Pa. 2017)

ly altering the parody subject's name, indicating that the account and its tweets may be jokes.[238] And though the *Levitt* court did not consider the account's profile picture or handle,[239] the Levitt 2.0 handle, "@levittlawyer,"[240] weighs against a finding of parody, since the statement on its face does not appear odd or indicate a joke.[241] But the account's profile picture, a kitschy posed photograph of a man in a fedora,[242] would indicate to the reasonable reader that the tweet is parody.[243]

Thus, courts should consider the name, handle, and profile picture of an account when interpreting whether reasonable readers would understand a tweet as defamatory, since readers would ordinarily see that context when reading the tweet on the timeline.

2. Relevant Content Beyond the Timeline

In addition to interpreting tweets in the context of the identifying features that appear on the timeline, courts should also look to several aspects of the account that tweeted the allegedly defamatory tweet, beyond content that appears directly on the Twitter timeline. In particular, the following section argues that courts should look to the tweeting account's bio[244] and

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(finding that a post was non-defamatory parody when the account that made the Disqus post was called "Knotty the Tramp").

238. *O'Donnell*, 283 F.Supp.3d at 301.

239. Levitt, 2016 WL 2944824, at *4 (considering only the name of the account, the language of the tweet, and similarities to the parodied account when interpreting the allegedly defamatory tweet).

240. @levittlawyer, *supra* note 1.

241. *Cf.* San Francisco Bay Guardian, Inc. v. Superior Court, 21 Cal. Rptr. 2d 464, 467 (Ct. App. 1993) (describing how the parody letter-to-the-editor's language was sufficiently odd to make the reasonable reader notice it might not be intended as factual).

242. @levittlawyer, *supra* note 1.

243. *See*, *e.g., O'Donnell*, 283 F.Supp.3d at 292 (finding a post from a Disqus account nondefamatory when its profile picture featured an unflattering image of the subject of the parody account drinking from a bottle of alcohol); *see also* Johnson, *supra* note 113, at 75 (depicting the profile picture of a parody Twitter account, featuring a Bahraini political figure's smiling face with sunglasses on and a slightly theatrical pose).

244. Walker, *supra* note 3 (describing what a Twitter bio is).

other tweets in the same thread[245] when determining whether the account is defamatory.

As described above, tweets appear on the timeline with relatively little context, when compared to traditional media.[246] A maximum of 280 characters,[247] in addition to several identifying features of the relevant account, are all that readers "ordinarily" view on the timeline.[248] By comparison, courts have found that readers in traditional media "ordinarily" see information within the context of an entire newspaper article.[249]

This lack of context makes Twitter parody authors particularly vulnerable to defamation liability. Parodies often rely on all sorts of contextual information, including cultural and political information, to create meaning.[250] But because tweets are so short,[251] parody authors must squeeze the relevant contextual information into a very short tweet in order to escape liability.[252]

In similar contexts in which readers may actually read statements with very little context, the majority of courts have nonetheless held that First Amendment principles required greater context.[253] For example, though many newspaper readers often skim only headlines, the majority of courts

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245. *How to Create A Thread on Twitter*, TWITTER, https://help.twitter.com/en/using-twitter/create-a-thread [https://perma.cc/24CQ-BHR9] ("A thread on Twitter is a series of connected Tweets from one person.").

246. *Id.*

247. Perez, *supra* note 157.

248. *See* Johnson, *supra* note 113, at 67 (explaining the content that Twitter users see on the timeline).

249. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d; *see, e.g.*, New Times, Inc. v. Isaacks, 146 S.W.3d 144, 149 (Tex. 2004) (reading an allegedly defamatory statement contained in a newspaper article within the whole article).

250. *See* Johnson, *supra* note 113, at 67 (describing how Twitter parody accounts rely on complex contextual clues).

251. Perez, *supra* note 157 (noting that tweets are limited to a maximum of 280 characters but are often shorter than that).

252. *See* Hunt, *supra* note 28, at 593 (arguing that courts should consider content extrinsic to the tweet when analyzing whether it is defamatory since tweets are so short).

253. King, Jr., *supra* note 85, at 884.

depart from the Restatement approach for allegedly defamatory headlines and include the article in the context analysis.[254] Free speech advocates support this approach as less burdensome on speech.[255]

It would be appropriate to apply this front-page headline majority approach to tweets,[256] which, like headlines, are brief and exist in very little context on the Twitter timeline, with "streams of [other] [t]weets."[257] As a result, courts should look beyond just the relevant content on the timeline when analyzing tweets intended as parody. Namely, context of the tweeting account's bio, as well as any contemporaneous tweets included in the same thread as the allegedly defamatory tweet.

First, the context for interpreting a tweet's defamatory meaning should include the Twitter bio. The Twitter official parody policy requires Twitter parody accounts to indicate their parodic nature in the bio, such as by writing: "This is a parody."[258] Additionally, unlike some other sources of extrinsic information,[259] the bio is easily accessible from the timeline.[260] Users can see the bio by hovering the mouse over the tweet on the timeline or clicking on the tweet itself to navigate to the account page, meaning that even under the minority approach to headlines, courts may find that the bio is relevant.[261] Thus, given the need for extrinsic content to interpret parody

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254. *Id.*

255. *Id.* at 908.

256. *See* Hunt, *supra* note 28, at 562; King, Jr., *supra* note 85, at 908 (describing how the majority approach to headline can and should be applied to the internet).

257. Johnson, *supra* note 113, at 67 (describing the Twitter timeline).

258. *Parody, Newsfeed, Commentary, and Fan Account Policy*, *supra* note 181; *see, e.g.*, Johnson, *supra* note 113, at 65 (describing how Twitter parody authors use differences between the bio, name, and profile picture features to communicate meaning).

259. Johnson, *supra* note 113, at 66. Additional tweets from the account that posted the allegedly defamatory tweet, for example, would require the user to navigate away from the timeline to the allegedly defamatory tweet.

260. *Id.* (displaying an image of a Twitter timeline). *Cf.* Kaelin v. Globe Commc'ns Corp., 162 F.3d 1036, 1041 (9th Cir. 1998) (considering how accessible content is from the allegedly defamatory statement when determining whether it is relevant to the defamatory analysis).

261. RESTATEMENT (SECOND) OF TORTS, § 563 cmt. d; *see*, *e.g.*, *Kaelin*, 162 F.3d at 1041 (taking the minority approach to allegedly defamatory front-page headlines, reading them in the context of the internal article only when circumstances indicate that readers ordinarily would see the article).

tweet[262] and the extra protection that courts seek to give parody which is often crucial to political speech,[263] courts should consider the bio when interpreting whether a tweet intended as parody is defamatory.

The *Levitt* court did not consider the Levitt 2.0 bio, which states that the account is "[a] badass parody on our favorite lawyer,"[264] when determining whether the tweets at issue were defamatory. However, it considered similar content, namely an old tweet that Levitt 2.0 had posted which stated, "This is a parody account. You can find the real Todd(ler) @levittlaw."[265] Since the content of such disclaimer tweets is so similar to the content typically found in the Twitter bio, a more principled approach would be to consider the bio that the parody author likely hoped would furnish their statements with meaning.[266]

Furthermore, the same reasons for examining the bio as context for an allegedly defamatory tweet also support looking to other tweets in a thread. A thread is "a series of connected [t]weets from one person" that the author intends to be read together.[267] When an allegedly defamatory statement is included in a tweet that is part of a thread, both courts and commentators have considered the additional content in the thread as relevant to interpreting the statement at issue.[268] In *Levitt*, because the tweets at issue did not involve a thread, the court should have only examined the bio under this Note's approach.[269] But in *Feld v. Conway*, a court considered the alleged-

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262. *See* Hunt, *supra* note 28, at 593 (arguing that courts should consider content extrinsic to the tweet when analyzing whether it is defamatory since tweets are so short).

263. *See*, *e.g.*, Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 54 (1988) (describing how satirical cartoons of "Boss" Tweed ushered in the end of Gilded Age corruption).

264. @levittlawyer, *supra* note 1.

265. Levitt v. Felton, No. 326362, 2016 WL 2944824, at *2 (Mich. Ct. App. May 19, 2016).

266. *See* Johnson, *supra* note 113, at 66 (describing how Twitter parody authors utilize the bio as a tool to create meaning).

267. *How to Create a Thread on Twitter*, *supra* note 245.

268. *See*, *e.g.*, Feld v. Conway, 16 F. Supp. 3d 1, 4 (D. Mass. 2014) (considering tweets in the same thread when interpreting an allegedly defamatory statement); *see also* Hunt, *supra* note 28, at 588–89 (advocating for courts to consider "contemporaneously" posted tweets when interpreting an allegedly defamatory statement).

269. *Levitt*, 2016 WL 2944824, at *1.

ly defamatory statement contained within a Twitter thread in light of the thread as a whole, which made clear that the statement was merely "heated" rhetoric amid a debate.[270] Because Twitter parody authors perform important political functions[271] and are highly vulnerable to defamation liability,[272] courts should also consider allegedly defamatory tweets in the context of the tweeting account's bio and tweets in the same thread.

V. CONCLUSION

Defamatory meaning analysis has always been a challenge, even when conveyed in traditional media. Parody complicates the inquiry even more because it is so nuanced and dependent on context for its meaning. Add to the mix the new context of Twitter and the advent of online e-personation criminal laws, and the stakes only increase. As a result, courts must understand Twitter parody accounts, their relevant characteristics, and how reasonable Twitter users interpret context.

As with front-page headlines, short tweets should be interpreted in the context of the extrinsic content relevant to its meaning.[273] But courts need not get involved in overly time-consuming analyses of various tweets that are irrelevant. Rather, courts should look at several identifying features of accounts that help real Twitter users understand meaning on the website and are either visible or easily accessible from the timeline. In the context of e-personation, these same characteristics—the name of the account, the account handle, its bio, and profile picture—can also help to determine whether a fake account is sufficiently credible to constitute online impersonation. This Note also provides a springboard to analyze liability for allegedly defamatory speech on other interactive online platforms.[274] Most

270. *Feld*, 16 F. Supp. 3d at 4.

271. *See*, *e.g.*, Johnson, *supra* note 113, at 61–62 (describing how parody Twitter accounts are often created in the wake of political and social uprisings to rebel against systems of power).

272. *See* Hunt, *supra* note 28, at 588–89; *see also* McCraw, *supra* note 49, at 94–95 (describing how "[t]he problem [with parody] is that statements of opinion, as well as parody and hyperbole, may be read to imply the existence of facts" absent contextual clues).

273. *See supra* Part II.B.1.

274. *See*, *e.g.*, Adelson v. Harris, 973 F. Supp. 2d 467, 483–484 (S.D.N.Y. 2013) (holding that the fair report privilege applied to a webpage because the "average reader" would click on a hyperlink to the news source, even though "one can verify a hyperlinked source's content only through 'external navigation'").

of all, however, the proposed methodology seeks to facilitate the important political and social commentary that flows from Twitter parody accounts and reduce the chilling effects of crushing defamation liability.