Lawsuit against blog could affect newspaper websites

When your newspaper posts a story online, you expect readers will find it and read it. Some of your readers come specifically to your paper's website first because they expect you to be a very important source of local news for them, which you are, of course.

But other readers find your articles because they are searching online for a special topic of interest to them. For those readers, it is critical to you that search engines point them to your story. What would happen if the only persons who could read stories on your website were those who typed in your URL?

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Well, let's hope you don't have to find out. There's one blogger who is in that situation, thanks to a Missouri circuit court judge. But let me backtrack and tell the story from the beginning – it's a complicated set of facts and not easy to summarize:

A number of property management companies brought a lawsuit with a series of claims against Jason Hartman, a nationally known real estate advisor, and several related companies in Jackson County Circuit Court, Kansas City. These claims were generally related to statements made by Hartman and his companies about the other companies' businesses and business practices, which those companies said were false statements of fact, which defamed their reputations and harmed their business relationships.

Hartman and Platinum Properties Investor Network, Inc., one of his companies, touts that Hartman's companies work to help people "achieve the American Dream of financial freedom by purchasing income property in prudent markets nationwide." The unhappy property management companies, some of which have Missouri connections, became the subject of blog entries and podcasts written and produced by Hartman, who claimed he had received numerous complaints about their operations and had found discrepancies in his investigation of their business practices.

So the property management companies sue, Hartman continues putting out negative publicity and the companies ask the circuit judge to enter an injunction against Hartman. But they did not ask the judge to stop Hartman from creating his content. Instead, they asked the judge to block Internet search engines from indexing his content. Prevent people from finding this content, they said. (This is a very simplified explanation, but you get the idea.)

Hartman was not happy, so he asked an appellate court to lift the injunction. That court refused. So last month he asked the Missouri Supreme Court to do the same thing. That's where you become part of this story. Missouri Press Association, along with the Missouri Broadcasters Association, asked the state Supreme Court to allow them to join in the request by Hartman's group for the Court to consider whether this injunction was permissible under the First Amendment.

The Court considered these briefs, and then asked the property management companies to prepare briefs arguing their position – that is often a good sign that the court might actually take this case for further consideration. But about mid-April, the Court issued its decision – it denied granting the request for hearing. In other words, the circuit court injunction would stand.

Why should that trouble you? Well, this is the first time, I believe, an order like this has been entered (and upheld) in Missouri. And if it can happen to them, it could happen to you. The MBA/MPA brief argued that this constituted "prior restraint," the prohibition of speech, which has always been the equivalent to censorship in courts in this Country. Courts have always said the remedy for defamation is an action for damages and not the limitation of speech. It does no good to have a right to speak your mind, but only in a closed-door room – not out in the public park.

The property management companies argued that this injunction was no different than allowing an author to write a book, but ordering the author not to stand in front of a bookstore demanding the book be placed in the front window.

We can only hope that, given an impartial media company covering a news story, one might be able to get a different ruling from the Court were this to happen in the future. (I suspect it didn't help Hartman that the property companies told the Court that, ignoring the injunction, Hartman had left his content available for indexing by search engines.)

But it does cause concern to think that a court in our state might believe it had the power to limit the public's access to your content. This decision certainly steps away from the traditional road of First Amendment freedoms.

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The underlying case is *Jason Hartman v Quentin Kearney*, Jackson County Circuit Court, Case No. 1516-CV01981.