

Publications

Best Practices, Worst Practices for Responding to Internet Defamation

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There are a number of ways in which one can respond to internet defamation. There are also a number of ways **not** to respond. Below is an overview of some different response options that affected parties should and should not consider.

How not to respond to online defamation

We have said repeatedly on our blog that solutions are fact-dependent. But there are several potential responses that companies and professionals (and their attorneys) should generally avoid.

For example, alleged victims of internet defamation must neither attempt to sue websites (or their parent companies) for third party users' postings, nor threaten to file a lawsuit without an adequate legal basis.

Under section 230 of the Communications Decency Act of 1996 (CDA), most websites today are shielded from liability content published by third party users of the websites.

By way of illustration, **Ripoff Report has made the following statement** on its website: "Because the reports on Ripoff Report are authored by users of the site, we cannot be legally regarded as the 'publisher or speaker' of the reports contained here, and hence we are not liable for reports even if they contain false or inaccurate information."

Typically, a lawsuit brought against a website for another person's published statements will be quickly dismissed.

Glassdoor warns people of potentially greater consequences: "If someone chooses to ignore the clear application of CDA immunity to Glassdoor and attempts to sue us for the content provided by our users, that party could be required to pay attorneys' fees and be subject to sanctions for having filed a frivolous lawsuit."

All of this is to say that if a company or professional has been defamed online, it should go after the author of those statements—even if that person's **identity is unknown**.

In some instances, parties who have been written about negatively online will hire an attorney and have them send a letter to the author of the statements, threatening to file a defamation lawsuit.

However, this practice should be avoided, unless there are **adequate legal grounds for filing** a defamation lawsuit; to do otherwise can create a number of potential issues, including non-legal issues such as negative publicity.

How to respond to online defamation

To properly respond to internet defamation, an affected party (and its counsel or other advisors) should consider the various options at its disposal and the likelihood of success of each; the potential risks associated with the various options, including an evaluation of any that could worsen the situation and also whether the harmed party can afford not to do anything; the associated costs; and the actual damage.

Some of these options that are often effective include the following: contacting the author of the defamation and convincing them to remove the harmful content; filing a lawsuit against the author (when adequate legal grounds exist); seeking a court order to submit to a website or search engines for removal; or taking a non-legal approach, such as initiating a PR-type campaign.

As far as working with the author of defamatory statements to obtain removal of the harmful content from the internet, this typically involves knowing (or determining) the poster's identity. If the negative content is actually false and defamatory, the affected party likely will have a basis for sending a cease and desist letter (or similar message electronically) and trying to reach a resolution with the poster.

If a website requires a court order, or if the content can only be removed through its de-indexing from search results—rather than the person being able to manually delete the false statements—it might be necessary to negotiate a settlement and have the parties sign an agreed order to ultimately submit to the website or search engine.

When it comes to filing a lawsuit against the author there are a number of things to consider before pulling the trigger, such as: 1) best place to file; 2) whether damages can be proven; 3) whether there are easier ways to reach a resolution; and 4) potential **anti-SLAPP** considerations.

In the event that a company or professional has been the subject of false statements online, it might be able to bring additional claims, such as for tortious interference with a business relationship.

It is also possible that certain false statements can violate an employment agreement, but companies must be careful about restricting speech. Not only could this invoke National Labor Relations Act issues, but non-disparagement agreements are increasingly being scrutinized. In fact, **Maryland recently became the second state** to ban them in relation to consumer speech (such as online reviews).

Takeaways

In sum, companies and professionals alleging that they have been defamed online must recognize what they can and cannot do in terms of remedying their situations.

Given that each situation is unique, it is always helpful to weigh the various options and different risks and then decide what is most appropriate.

As a general rule, however, companies and professionals should not sue or threaten to sue a website that is merely hosting alleged defamatory statements, nor should they sue or threaten to sue the actual author of the statements if they have no basis for doing so.

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