

Publications

Removing Internet Defamation From the Internet: Solutions are Fact-Dependent

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When it comes to handling internet defamation issues and other online reputation attacks—specifically in terms of removing the content from the internet—the solutions are, in one word: fact-dependent. There is no other way to describe it; there is no perfect solution that can be applied to every instance of online defamation.

There are various options and techniques that are typically most effective, but solutions should be applied on a case-by-case basis.

After all, there are generally consequences for trying to apply the wrong solution to a particular situation, such as sending a bullying demand letter or filing a frivolous lawsuit when there is simply not a legitimate claim for defamation or otherwise.

Thus, in approaching a case, it is important to consider an array of factors, such as the following:

Search Engine Strength, Rankings

It is one thing for a person or organization to have false content published about them online, it is another to have it ranking high in search – in particular on Google. *Where* defamatory content appears in search is something that must be considered at the outset in weighing one's options.

If the webpage ranks highly, it is most certainly worth pursuing and trying to get it removed. If it is on the fifth page of Google results for reasonable searches, it is probably something that can be left alone.

It is important to remember that the search engines rank their results based on algorithms, and those algorithms are tweaked from time-to-time, so the harmful results can fluctuate – for better and for worse.

Potential Damage

Damages are often difficult to quantify in internet defamation matters. Unless contracts are terminated as a result of the online content, or if there is a significant loss in business that can be clearly tied to the defamatory content, it can be difficult to prove damages.

Nevertheless, a business can still be harmed daily if it has false and defamatory content ranking highly on Google, such as a Ripoff Report posting among the top few results, which is highly visible to prospective customers and clients (and, thus, causing them to lose business and hurt other existing or prospective relationships).

Harmed parties must, therefore, determine how harmful (or potentially harmful) the content is and how much they are actually suffering (or could suffer); an objective evaluation, including looking at current search rankings is helpful. Moreover, they must consider their budget and risk tolerance, and ultimately they must ask themselves whether they can afford *not* to take action and not get the content removed.

Terms of Service / Removal Options

It is always beneficial to be familiar with a website's terms of service and policies.

For instance, some websites will explain that they are willing to remove content pursuant to a valid court order (or through **other means**); others will not, such as **Ripoff Report**; and some might have vague or ambiguous terms or might not address removal at all, in which case it might be helpful to craft an argument in requesting removal (especially if they explain certain behavior, i.e. defamation, is prohibited by its users) – even with an order.

Jurisdiction

Jurisdiction is obviously an important consideration, especially if contemplating filing a lawsuit. The identity of the defendant (and where he or she is located) is certainly a major factor in terms of where to potentially file. Also, the available legal claims is important.

Additionally, if a plaintiff is unable to serve a defendant through traditional means, service by publication might be necessary, but this is more difficult in certain states, such as Florida.

Statute of Limitations

If a lawsuit is even worth considering, the statute of limitations is crucial. Each state imposes a statute of limitations for bringing defamation claims, limiting the time in which a plaintiff can bring a libel or slander claim.

A short time period (noting most states have one or two year statutes of limitation) can be problematic if an allegedly defamed party does not take action quickly. For starters, removal of defamatory content often involves obtaining a court order, which requires filing a lawsuit.

If the defendant's identity is unknown, it might be necessary to issue subpoenas to third-party websites or entities. These non-party companies only maintain data and records for a certain period of time. Thus, even if a lawsuit is not time-barred, it can still be difficult to obtain important information.

Weighing of Factors

The above five factors are just some of what is necessary to **think about before filing a lawsuit** or taking other action in response to defamation online. Others include analyzing the characteristics of the attacker and, as alluded to above, considering costs.

When evaluating the different potential responses, it ultimately should come down to a balancing of different factors: on the one side there is the harm and one must balance that, on the other side, with the cost of a particular response, the risk(s) associated with that response and the likelihood of that response being successful.

Sometimes it can be beneficial to first think about the lower risk and lower cost responses and then move upwards and determine what you are most comfortable with and what makes the most sense in the particular situation.

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