

Internet Defamation—What Can You Do When You Are the Target?

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We've all seen them. Anonymous spewing hate-filled, defamatory statements on Facebook and Twitter, as well as in the comment pages of news stories on both local and national news. The commenters have a certain entertainment value, until you or your business are in their sights. So what do you do? The answer is not always so simple, especially when you don't even know who is speaking.

Internet freedom has allowed for an unprecedented expansion in opportunities for the Average Joe to speak, but that expansion has come with a price for those defamed on the internet. In order to foster a free and expansive internet, in 1996 Congress enacted Section 230 of the Communications Decency Act, 47 U.S.C. § 230. Section 230 grants interactive internet service providers (such as Facebook, Yelp, YouTube, and Twitter) immunity from civil defamation claims for user-created content.

There are very few exceptions to Section 230 immunity, with the only one recognized in case law being a case in which provider Roommates.com directed the posts to a certain extent using drop-down menus. See *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008). Providers have learned from Roommates.com's example and are careful to maintain their Section 230 immunity.

What this means in simple terms is that if you or your business is defamed on Facebook or Twitter, you can't sue Facebook or Twitter, and you can't force Facebook or Twitter to remove the defamatory postings. Section 230 forces you to attempt to track down the user who originally posted the speech—often a virtual impossibility in this day and age when the vast majority of defamatory postings on the internet are done anonymously.

So what can you do? First, don't give up on social media and its ability to deal with at least some of the problems. Interactive internet service providers are aware of the damage defamatory statements can do, and know that they risk losing their Section 230 immunity if they don't self-police to a certain extent. All interactive internet service providers have terms of service, and the majority ban defamatory and harassing speech. Most will delete the offending material upon a showing that the material is indeed defamatory (i.e., not protected opinion), and most providers include a function allowing you to report the post directly from the webpage, without the need to send a demand letter

from an attorney.

Furthermore, interactive internet service providers realize that though anonymity enjoys protections under the First Amendment, it also feeds a great deal of the ugliness seen on the internet today. Facebook, for instance, requires posters to use their real names, and if Facebook is informed that a person is using a pseudonym, Facebook will disable the account. Likewise, news sites are increasingly requiring commenters to link their comments to their Facebook accounts in order to provide a measure of accountability that anonymous posts lacked. YouTube also recently began asking posters to use real names, though that is not currently a requirement. Not all interactive internet service providers eschew anonymity – Twitter and Tumblr still tout the user's ability to post anonymously – but increasing numbers of providers are requiring that speakers stand behind their comments.

If you can't get posts removed through the interactive internet service provider, you still have legal options available. Of course, quite often the best action at this point is no action. Often defamation lawsuits are counterproductive in that they simply bring more attention to the posts than if the posts are simply ignored. While difficult to do, sometimes ignoring a simply nasty post is the best policy.

If the post can't be ignored but is not worth litigation, you can engage with the poster on the interactive site. If someone posts a negative review on Yelp, address the review and contest any factual misrepresentations. If someone posts on your Facebook wall or sends an angry or defamatory Tweet, address the poster's concerns. You have the right to speak too, and quite often thoughtful, careful engagement is the best remedy.

Some posts are simply so egregious and damaging that they must be addressed in a court of law. If action is warranted, and you are lucky enough to have the name of the poster, you can pursue traditional legal avenues available to victims of defamatory speech.

If you do not have the name, however, if you want to take action you will need to file a civil defamation lawsuit naming as defendant a John Doe. Unfortunately, even though many interactive internet service providers will remove defamatory posts upon request, none will give up the names, email addresses, or IP addresses of posters without a subpoena. Once litigation is filed, you and your legal counsel will have subpoena power to require the interactive internet service provider to give up the names, emails and IP addresses associated with the poster. Normally the providers will still put up a fight even in light of a subpoena, but this is the only way available to obtain the identity of an anonymous poster so that you can hold them responsible for their defamatory speech.

While we have the right to free speech in the United States, our laws require us to take responsibility for what we say when we are wrong and our speech causes damage. In the case of internet-based speech, it may be difficult to vindicate your rights and hold speakers responsible, but with persistence and a clear understanding of how interactive internet service providers work you can protect your good name on the internet.

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