How to Remove Defamatory News Articles from the Internet: Strategies to Repair a Company’s Online Reputation Following Negative Media Coverage

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Strategies for Stopping Unauthorized Internet Sales

The Online Reputation & Brand Protection Coalition’s mission is to help businesses protect their online reputations and brands online. The Coalition aims to fulfill its mission by educating businesses on how to protect and defend their reputations and brands online and advocating for increased protections and more effective remediation options for businesses.

Specifically, with respect to education, many businesses today are struggling because they do not understand how to best protect and defend themselves against online reputation and brand attacks, and there is presently a lack of quality educational materials and resources for businesses to turn to help understand and address these problems. To address the absence of these resources, the Coalition is committed to providing resources to businesses with the most up-to-date information designed to explain, prevent, and help businesses ultimately eradicate the problem of online reputation and brand attacks.

The Coalition provides its members with whitepapers created by the experts who regularly handle online reputation and brand attacks around the world addressing common reputation and brand problems which businesses are facing today.

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Our Non-Profit Provides Educational Resources to Help Businesses Protect Their Brands and Reputations Online

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ABOUT THE ONLINE REPUTATION & BRAND PROTECTION COALITION

The Online Reputation & Brand Protection Coalition is a non-profit organization dedicated to helping businesses protect their reputations and brands online. The Coalition is led by internet brand protection experts Whitney Gibson and Chris Anderson and includes a variety of multi-national advisors comprised of experts, business representatives, attorneys, educators, and other professionals.

To learn more about the Coalition, visit www.onlineprotectioncoalition.org
I. Introduction

Companies have always faced the hazard of adverse coverage and bad publicity in the news media. Negative media coverage can hurt a business’s reputation and cancel out advertising dollars and years spent to build a good image. Traditional strategies to handle these emergencies focus on appropriate press statements (or decisions not to comment) and waiting for the news cycle to move on.

Today, bad publicity about a company—or a person closely associated with it—can remain readily available online for years. If a negative article about your company is posted on a “strong” website, such as the website of a widely circulated news outlet, it can come up on the first page of Google and other search engines for a long time. Imagine a headline screaming “CEO of <Company> Arrested for Felony,” along with an embarrassing mug shot. Now imagine that it was a false arrest, a case of mistaken identity, and the charges are dropped. The original arrest story, carried on the websites of news sources that originally reported it, may nevertheless continue to come up as one of the first results, every time someone searches for the company on Google. Other sites republish or archive it, and more versions of the same story come up on the search engines. The story creates the impression that the business is run by a felon, and sales drop.

What remedies are potentially available to a company in such a situation? This whitepaper will discuss four options that a company has when it (or a professionals, such as a CEO) is the subject of negative media coverage: cease and desist letters and negotiating with media outlets (Part II); lawsuits to remove defamatory articles (Part III); the removal of articles from third party websites (Part IV); and search engine optimization, or SEO, strategies (Part V).
II. Cease and Desist Letter and Negotiation with Media Outlets

To avoid litigation, some media outlets may agree to removal of a problematic story or to other remedies. A request for removal on this basis requires, at a minimum, a well-documented written presentation of the reasons for the request, focusing on the false or misleading aspects of the statements in the offending story. A common approach to damaging news articles on the internet thus begins with sending the media company a letter explaining why the news article exposes it to liability (a “cease and desist” letter) and why the article needs to be removed. It is often helpful to include a draft of a legal complaint (the initial pleading in a lawsuit) that is ready for filing and that sets forth the basis for liability in detail.

Media outlets vary widely in their response to such a cease and desist letter accompanied by a draft complaint, and their decisions can be fact-dependent. They may immediately remove the article from the website, or contact your attorney or other representative, in writing or by telephone. If they call, it is important to listen carefully to understand their point of view and requirements regarding removal of the news story from the Internet. Encourage them to explain their policy. Start a dialogue to see if resolution can be reached.

Media outlets generally take one of three approaches:

» Many media outlets will remove immediately. They do not want the expense of litigation.

» Some media companies will remove a story if provided with an explanation of circumstances that have changed since the article was written. For example, if a news story reported an arrest, but since that time the charges have been dropped, that may persuade some news organizations to remove an old story. Thus, it is helpful to explain changes in circumstances, if any, and see if new developments are sufficient to convince them to remove the negative article.

» Other news organizations will have their attorneys conduct a full analysis of their legal liability, and determine whether to remove or not on that basis. For these outlets, your attorneys need to be prepared to present the facts and law, and explain why the article is defamatory, constitutes false light publicity, or otherwise gives rise to legal liability.

Moreover, sending a cease and desist letter and/or draft complaint enables the injured business to find out more about the media organization’s policy on removal requests, and can lead to an early resolution of the harmful effect of an negative story on the internet. While some media outlets may be open to removal, others may offer other measures to lessen the continuing impact of the news article. Options that may be negotiable include:

A. **Removal of the story:** The best result for a business that is harmed by a
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Media outlets may offer to correct or update a story, if the business presents proof of an inaccuracy or of further developments.

defamatory online story usually is to obtain its removal.

B. De-indexing or putting a robot exclusion device on the story: With a judgment that a story is false and defamatory in hand, search engines generally will de-index a story. Some websites that are unwilling to remove an article may be willing to request that it be de-indexed on the search engines, or to agree to a “robot exclusion device.” A robot exclusion device (also called a robots.txt) will signal search programs to skip over the article. Note that a robot exclusion device is not impenetrable, however—some types of background checks may actually seek out exclusion devices, and disregard them, to find material that someone has tried to hide.

C. Correction or updating of the story: Media outlets may offer to correct or update a story, if the business presents proof of an inaccuracy or of further developments. This may be helpful, but in some situations can worsen the appearance of a business’s online reputation. For instance, an update stating that the charges were dismissed or that the company fired the CEO will typically link to the original story, strengthen the search engine ranking of both because it is more recent, and may still leave an impression on the public that is far from the image the business wants to project. Furthermore, updates may sometimes be used to remove one detail that is especially damaging—such as a mug shot, or a reference to an incidental fact (like place of employment of an individual whose bad behavior is unrelated to his employer). Depending on the facts of your case, this kind of an update may offer a good solution.

D. Monetary Consideration: Some website publishers may also be open to removal of a story, or other measures to lessen its continuing impact, in exchange for a payment from the affected business.
III. Lawsuits to Remove Defamatory News Articles

If a media outlet will not remove a defamatory article in response to a cease and desist letter or draft complaint, the business should consider filing a lawsuit. The first step is to consult with an attorney who has experience in litigating internet defamation lawsuits to determine whether a lawsuit is a good option, given the facts of the particular case.

Whether suing is the best approach depends on a number of other factors, including the circumstances of the incident and the law that will apply, which varies from state to state. Because the decision to file a lawsuit depends on both the facts of each case and law that is different in different locales, the guidance in this article is general and advice from an attorney should be sought.

A. **Best case scenario for a defamation lawsuit:** Every case is different, depending on its facts. Generally, bringing a defamation lawsuit is likely to be a good solution if:

- the story is completely false;
- there is evidence that the reporter printed the false information knowingly;
- further publicity about the original defamatory statements will not hurt the business; and
- specific lost business can be tied to false statements, to prove damages.

B. **Time Limits:** It is only possible to bring a lawsuit if the business acts within the time limit imposed by the statute of limitations of a state that has jurisdiction of a claim. In most states, this is one year from the date of the publication.

C. **Choice of venue:** Even with all the factors listed above in favor of a lawsuit, in some states a court order to take down a story may be difficult to obtain. Differences in the legal precedents defining defamation and the relief available for it vary among different states. One forum may therefore be more favorable than another for a case, depending on the specific facts of that case. Some examples are listed below. An internet defamation removal attorney can evaluate your venue choices and the most recent legal precedents that govern in each of them.

- **Rules against injunctions (court orders):** In Florida, for example, a court order against defamatory statements is generally not available, with exceptions such as proof that the statements are part of a deliberate plan to destroy a business. See Murtagh v. Hurley, 40 So. 3d 62, 65 (Fla. Dist. Ct. App. 2d Dist. 2010). Damages are the only remedy, in the absence of proof of such a plot. With evidence of a bad motive for printing false information, knowing that it was false, a business might be able to fit within the criteria allowing a Florida court to order it taken off the Internet.
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In some cases, these well-intentioned laws can protect false and damaging published remarks.

Without that, it should investigate whether other venues are available to it, or if its goals can be achieved by means other than a lawsuit.

» Different rules on truth of the story depending on the intent of publishing it: In general, truth is a defense to a claim of defamation. In addition, in many venues the news media have a “fair report” privilege, excusing them from liability if they accurately reported a law enforcement action or report (even if law enforcement got it wrong). If there is evidence of bad motive, however, legal remedies may still be available. In Massachusetts, for instance, a statement published with malice (defined as “ill will” or “malevolent intent”) may form the basis of a defamation action even if it is true. Noonan v. Staples, 556 F.3d 20 (1st Cir. 2009); Schemann v. Hopkinton Basketball Ass’n, 2012 Mass. Super. Lexis 175, 30 Mass. L. Rep 89 (Mass. Super. July 18, 2012).

» A partially true story, portraying the subject in a false light: If published material creates a false impression that attributes characteristics and conduct to the subject that are not accurate or true, and that would be highly offensive to a reasonable person, many states allow a lawsuit for “false light publicity” or “false light invasion of privacy.” This kind of claim may or may not require proof that the facts presented are false. Pennsylvania, for example, imposes liability for false light publicity even if facts are true, when they are presented to create such a false impression. Krajewski v. Gusoff, et al. 2012 Pa. Super. 166, 53 A.2d 793 (Pa. Super. Ct. 2012). But a number of other states have specifically rejected this theory.

D. **Defenses available to news media:** Newspapers and other media companies are protected by the First Amendment guarantee of free speech, and various state constitutions, local laws and legal doctrines that have evolved over time to promote freedom of the press. In some cases, these well-intentioned laws can protect false and damaging published remarks. The defenses available to news media may also be a factor to consider in choosing among venues that are available to the injured company.

E. **Non-legal considerations:** Even if a defamation action is legally sound, it may be a bad idea from the perspective of good public relations and advertising strategy.
IV. Removing an Article From Third Party Websites.

Even if the source of the article takes it down from its own website as a result of negotiation or a lawsuit, it may still appear on third-party sites when it no longer appears at the URL of the original media source. Removal by the original author will automatically remove the original URL from search engines and from any other direct links, but not from other sites that have reprinted all or part of it. Some of those may be willing to remove on request when notified that the original article has been removed, while others may require a lawsuit, threat of a lawsuit, or a payment to remove it. Some may refuse to remove it at all.

If the news article has spread to a large number of websites, the affected business can retain a cyber investigation company to find all the websites where the article is located using specialized technology, and assemble contact information for all of the websites hosting it. Such a report is useful for a comprehensive attack on all sources posting the article.

All of the options for negotiation with or suit against the original publisher, as listed above, may also be applied to third party websites. In addition, removal under the Digital Millennium Copyright Act (DMCA) may be available if the original publisher of the problem article has entered a settlement agreement or is fully cooperating with the injured business. The original publisher is the owner of the copyright in the article. That publisher may agree to send notices under the DMCA, demanding that the copyrighted material be removed from third-party websites. Alternatively, the injured business can ask the media company that originally published the article to assign the copyright interest to the business, which enables the business itself to send DMCA take-down notices to the third-party websites, and be sure they are honored.

Third party web hosts may also remove copies of an article if notified that the original publisher has removed the article for legal reasons, with an explanation of reasons, such as defamatory or otherwise illegal content.
V. Search Engine Optimization (SEO) Services

If a damaging article cannot be removed from the internet or excluded from internet searches, the affected business can at least try to “bury” it as deeply as possible through use of search engine optimization techniques. These involve the release and publicity of positive news according to a strategy that will cause the negative article to be pushed back as far as possible in any internet searches that do find it.

More specifically, businesses will want to do the following three things:

A. Have an online audit done: This requires having a developer and SEO specialist reviewing a business’s web presence, website structure, and things of a similar nature. The goal is to determine the areas that the business can improve and strengthened.

B. Develop a content-publishing strategy: A business will want to develop a strategy for publishing on content on its website and blog and determine where else it might be able to publish content (e.g. high-ranking third party websites and blogs, regularly if possible). If done right, this will help reinforce the business’s SEO, via content and backlinks. This will also help them populate the search engines by leveraging the high-ranking websites of other credible sources.

C. Evaluate social media presence: Simply put, a business should analyze what high-ranking social profiles they do not already have and, if it makes sense to have a presence on those platforms, than to build profiles on them (About me, for example).

In sum, the point of these steps is to generate positive and neutral content on high-ranking platforms to populate the search engine rules pages.
VI. Conclusion

Negative media coverage has always posed a challenge for businesses, but given the current internet landscape and the ability of articles to spread quickly through social media, businesses must be active in trying to deal with bad publicity. Whether contacting media outlets directly, taking legal action, seeking removal from other websites, or engaging SEO companies to “bury” bad content, businesses are not without options for handling such negative media coverage. Many, if not most, companies would argue there is such a thing as bad publicity. Therefore, businesses should consider each of the remedies listed above and consult with trusted advisers when forced to deal with bad press – whether warranted or not (such as the false arrest example).