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How In-House Counsel Can Help Shape Their Companies' Reputations

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Company reputations today are largely dictated by what is posted on the internet, both about the companies themselves and their executives.

Gone are the days where reputation is based on building up and maintaining goodwill with consumers over time. As Jennifer Evans, Chief Risk Officer at ANZ, was quoted in a [Deloitte report](#), "reputations built up over decades can be challenged in an instant."

This, of course, is largely a result of today's internet and social media landscape, content submitted via a computer or smart phone can have significant consequences for a company.

Accordingly, a 2013 Deloitte survey of 300 executives revealed that reputation is the top strategic risk for large businesses, overall and in most individual sectors.

Dealing with internet defamation, other online reputation attacks

Unfortunately, most companies, at some point, will be forced to deal with attacks to their reputations online. These attacks come in many forms and from many sources, and each company is affected differently by them. Thus, companies cannot use the same tool to fix every problem.

Oftentimes, harmful content will rank high in search engines, meaning consumers are likely to come across the damaging content and can be influenced by it. When this happens, many companies turn to PR and marketing personnel to help influence their online reputations.

But in many instances, no amount of positive publicity used to bury the content down the list of search results will be enough. Instead, the best option is to try to remove the offending content from the search engines or internet altogether, which often requires legal analysis and skills. Thus, attorneys can and should have a substantial role in influencing the company's online reputation.

Tools and techniques in-house counsel should consider

When a company has been disparaged online, in-house attorneys have several removal techniques to consider, including the following:

- *Contacting the website hosting the damaging content and requesting removal based on terms of service violations:* On **Yelp**, for instance, it is a violation of the website's Terms of Service and Content Guidelines to write fake or defamatory reviews. Yelp encourages users to report these reviews and Yelp will consider investigating and taking the appropriate action. Wikipedia, meanwhile, has its own deletion procedures to address bad content, including pages solely intended to disparage their subjects. Related, when an article fails to meet Wikipedia's policies (such as an article about an executive failing to meet its "Biographies of living persons" standards) an attorney can submit a letter to Wikipedia editors detailing why the article should be removed.
- *Sending a cease and desist letter and/or draft complaint to the attacker, seeking removal of the content:* When the identity of the person who posted harmful information is known, in-house counsel can contact them by **letter**, requesting removal of the information and making them aware the company is prepared to file a lawsuit if they do not stop their attacks on the company.
- *Issuing subpoenas to identify anonymous attackers of companies and its executives:* In many cases, online attacks are made anonymously. Through a **subpoena** duces tecum to the third party websites hosting the damaging content, in-house counsel can obtain personally identifying information pertaining to the harmful content. These subpoenas often yield an internet protocol ("IP") address, which can be used to serve an additional subpoena on the relevant internet service provider for the customer's contact information. Once the identity of the attacker is known, the company and attorney can decide how they wish to proceed.
- *Obtaining court orders to get links to the harmful content de-indexed from Google and other search engines:* When disparaging content ranks high on search engines, and when dealing with websites such as Ripoff Report (which refuses to remove any posting, no matter how inaccurate or disparaging content may be), getting the link removed from Google can be extremely helpful. In short, this process involves filing a lawsuit against the author of the content, obtaining a court order (via judgment or agreements with the defendant(s)), and presenting the court order to the search engine. Although not legally required, Google typically honors such court orders and will de-index the relevant link.
- *Bringing lawsuits for defamation or invasion of privacy to obtain injunctions to get the information removed:* In many instances, especially when the harm from an attack is significant, a lawsuit may be the best solution. Again, many attacks are anonymous so lawsuits may be initiated as "John Doe" suits (and the same steps must be taken to identify the attackers and subsequently name them as defendants).

As noted, each reputation attack is unique. In the end, choosing the right approach or tool to use involves a balancing of factors: weighing the actual harm versus the costs of a particular response, the associated risks, and the likelihood of success.

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