

## How to Remove Defamatory News Articles from the Internet

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Whitney C. Gibson

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Negative media coverage has always posed a challenge for businesses and professionals. Given the current internet landscape and the ability of articles to spread quickly through social media, businesses must be especially active in trying to deal with bad publicity.

Fortunately, businesses, professionals and other parties harmed by such negative media coverage are not without options for handling these matters. Whether contacting media outlets directly, taking legal action, seeking removal from other websites or search engines, or utilizing online reputation management (ORM) companies to “bury” bad content, there are ways for parties to potentially remove defamatory news articles. This article will discuss some of the legal approaches for facilitating the removal of defamatory news articles.

#### *Cease and desist letter*

A common approach to dealing with damaging news articles published online is to send the relevant website or media company a letter explaining why a particular defamatory article exposes them to potential liability and why it should be removed.

Many, if not most, websites or media companies may agree to remove a problematic story, such as a defamatory news article, to avoid litigation. Thus, the requesting party will want to detail the reasons for the request, and focus on the false or materially misleading aspects of the statements in the offending story.

If sending a cease and desist letter, the requesting party may wish to include a draft of a legal complaint that is ready for filing and that sets forth the basis for liability. How a media company responds will depend on the facts of the situation. Generally, they will take one of three approaches:

- Remove the story immediately, not wanting to incur the expense of litigation;
- Remove the story if provided with an explanation of circumstances that have changed (for example, if a news story reported an arrest

but the charges have since been dropped, that may persuade some news organizations to remove a past story); or

- Have their attorneys conduct a full analysis of their legal liability and determine whether to remove a story on that basis.

While the best case scenario for a party harmed by a defamatory news article is complete removal of the article from the internet, media companies may offer some other options.

For instance, if the harmed party can obtain a judgment that states a story is false and defamatory, some media companies may be willing to request that it be de-indexed from search engines (e.g. Google). Moreover, media outlets may offer to correct or update a story if the requesting party provides proof of an inaccuracy or a new development.

Finally, some website publishers may be open to removing a story (e.g. a defamatory news article) or taking other measures to lessen its continuing impact, in exchange for a payment from the affected party.

### *Lawsuits*

If a media outlet will not remove a defamatory news article in response to a letter, the business might consider filing a lawsuit. Whether suing is the best approach depends on a number of factors, including the facts and circumstances surrounding each case and the law that will apply, which varies by state.

In general, bringing a defamation lawsuit is likely a good solution when: a story is completely false; there is evidence a reporter knowingly printed false information; additional publicity about the original defamatory statement will not further harm the subject of the article; and the subject or party can prove damages.

Moreover, it is only possible to bring a defamation lawsuit within the time limit imposed by the statute of limitations of a state that has jurisdiction of a claim. In the majority of states, this is one or two years from the date of publication.

Even with all the factors listed above in favor of a lawsuit, a court order to take down a story may be difficult to obtain in some states. 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.

Not to be discounted, even if a defamation action is legally sound, bringing legal action can sometimes be a bad idea from a public relations perspective.

### *Defenses*

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.

As in any defamation matter, truth is a defense to a defamation claim. Moreover, 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 sum, contrary to the popular saying, there certainly is such a thing as bad publicity – especially if harmful content remains online, ranks highly on search engines and continues to cause harm to the subject(s) of the article. Accordingly, parties harmed by defamatory news articles should consider the legal remedies discussed above, as well as non-legal remedies such as ORM techniques, and consult with trusted advisers when forced to deal with bad press – whether warranted or not.

*For more information, contact Whitney Gibson at 855.542.9192 or [wcgibson@vorys.com](mailto:wcgibson@vorys.com). Read more about the practice at <http://www.defamationremovalattorneys.com> and follow @WhitneyCGibson on Twitter.*