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Cyber-slammed? Do you have any recourse?

Ask a Lawyer

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This week, Lawrence H. Kolin, a partner at Alvarez, Sambol, Winthrop & Madson, P.A. gives advice about comments posted on the Internet.

Has your neighbor used a blog to call you a slob? Has someone called your pastor a racist? Is your startup business being trashed on a Web site?

What can you do about blog or discussion board postings that simply aren't true or are offensive?

A growing number of folks are hiring attorneys to sue for defamation, but court battles over Internet content are still new, so there's no telling how these cases eventually will work out.

People who post to blogs or discussion boards are supposed to follow rules set by the blog or board host. Normally, that means not writing things that are harmful, harassing, abusive, threatening, vulgar or obscene, among other prohibitions. Most times, you can find the policies written in the "Terms of Service" found at the bottom of a Web page.

Break the rules, and the comments may be deleted automatically by the blog host or erased following complaints of abuse. But that might not do the trick. The problem is that once posted, defamatory comments often permanently appear in the search-engine results for a person or entity. This can even occur after providers remove the original offending comment.

Discussion boards usually do not allow authors to remove or update messages already posted. Let's face it; there is no such thing as a formal retraction in the blogosphere.

And that's not where the bad news ends. You might feel tempted to respond to the posting, but in doing so, you may make matters worse.

Think of what might appear when you type your name into the Google search box. Adding to an already damaging string might just cause an additional reference to that harmful content. Search engines reward quantity.

So with all of that in mind, additional damage may have happened to you. What can you do?

Because authors are anonymous, you have to sue and use the powers of the court to figure out who the offender is. That's a big hassle. States have different rules for how lawsuits proceed and how subpoenas are served. You might live in one state while the blog is based in another. Not only does this complicate matters, but it could cost you more money because you might have to

hire a second lawyer in another state.

And you're probably starting with a big strike against you. Federal law has eliminated most claims against the hosts -- the registered content providers themselves. Sections of the Communications Decency Act actually immunize Internet Service Providers from being held liable for what their users post.

However, this legal shield is getting chinks in the armor. A case involving FriendFinder Network was recently allowed to proceed after someone posted a nude photograph of a woman and created a fake profile purporting to be her. The person who made the post used a public college computer terminal, so tracking the identity was difficult. A state right of publicity claim and a false designation of origin claim, legally speaking, remain pending under the latest ruling.

Still, not many blog cases have been decided by high courts, so little precedent exists. Some people have sued in state courts for libel and other theories. If you bring a libel case, for example, be aware that truth is an absolute defense.

You'll have to show the elements of your claim: that a false and defamatory statement was made and published to a third party via the Internet and that damages resulted. Damages are the harm caused by the post that must be quantified. For example, damage to your reputation might result in losing a job or clients, for example.

A defamation claim against a private person requires negligence -- failure to exercise reasonable care in making comments -- as opposed to a public figure which requires publication with actual malice, a willful disregard of the truth.

You'll also have to come up with documentation as proof of publication, so don't forget to print out the pages before any comments are removed.

If a court finds the speech is libelous, it could force the company to remove the comments.

Decide if litigation is for you or whether the insult is just that and hasn't caused any real damage.

In any event, post at your own peril!

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