

THREE STEPS TO PROTECTING YOUR ONLINE REPUTATION



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It's no secret that consumers routinely rely on the Internet to research their next big purchase. In fact, a recent PricewaterhouseCoopers study found that 80 percent of consumers look at online reviews before making major purchases, and a host of studies have documented the strong influence those reviews have on decisions people make. The wealth of information available to these well-informed consumers has expanded from products and now includes a number of sites dedicated to providing information about professional services.

As a result, consumers are increasingly turning to the Internet to research professionals, whether they seek to retain an attorney or select a health-care professional. The days of picking up a phone book and selecting a professional based on name alone are long gone. Instead, consumers now research professionals on the web, which gives them significant information about a professional's work experience and background as well as consumer reviews. Some of these websites collect information from users and rank professionals in their location and practice area.

We live and work in the digital information age and professionals must be proactive in protecting their reputations. You can protect your reputation as a professional by observing the following few simple steps: maintain and update your own website; monitor websites that provide information about you; and communicate with website content providers when appropriate.



Maintain and Update Your Own Website

As consumers are increasingly taking to the Internet to research professionals, taking ownership of your online presence is more essential than ever. First and foremost, having a professional website is a necessary part of doing business in today's information age. A website will most often be the first impression many clients receive of your practice.

Taking ownership of your online presence requires more than putting up a website. A LinkedIn profile that is updated frequently and often with links to relevant articles and blog posts highlights your experience and practice areas. By creating a wall of content, you are providing a more substantial share of the results that potential clients will discover about you in their online research of your services. Take control of the content available about you online and be the author of your own reputation.



Monitor Websites That Provide Information About You

Consumer reviews posted online have become a trusted source of marketing information. As consumers are increasingly relying on the information available online for the professionals they want to hire, it is essential that you take an active part not only in providing content but also in reviewing the feedback and information that is available about you. Play the role of the consumer—search for your business or name on Google and review the informa-

tion that is posted on consumer review websites such as Yelp. Frequently monitor the information posted on professional service websites such as Avvo and Healthgrades.

As the number of online reviews grows, accept that even the most qualified professional will receive a negative review one day. This may be the result of a client with unreasonable expectations, it may state inaccurate and false information, or it may be a phony review. Most websites require relatively little information in order for a reviewer to post, and imperfections to the consumer review platforms are inevitable. A recent survey published in the *Journal of the American Medical Association*¹ found that the public is using online physician ratings and reviews to make decisions about their health care, despite persistent questions about how trustworthy these rating sites are.

Often, the first instinct when facing a negative review or false statement made online is to threaten a defamation lawsuit against the website publishing the negative content. This course of action presents an uphill battle. As an initial barrier, even if the consumer review is harsh, if it is considered an opinion, it is constitutionally protected speech. If you believe the review contains statements that a reasonable person would construe as a fact, and this information is false, your only recourse is a suit against the person who wrote the review, not the website, which is immune from such suits. One of the reasons consumer review websites have succeeded in providing such robust access to reputational information is the passage of section 230(c) of the Communications Decency Act (CDA) of 1996, which protects online publishers from liability for third-party content.

Section 230(c) of CDA creates an exception to the traditional treatment of publishers and distributors by providing, in relevant part, that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”²

From the language of the statute, courts have broadly defined “interactive computer services” to include not only services that provide Internet access, such as America Online, but also websites and other Internet-related services.³ Under this interpretation, a consumer review website is

considered an interactive computer service subject to the protections of CDA, and is immune to claims brought against it based on content provided by a third party using the website.

Consequently, CDA allows websites to collect and organize individual consumer reviews without worrying about crippling legal liability for those reviews, because it is the individual posting the review that is considered the “information content provider,” and is liable for any defamatory statements, not the website. As a result, consumer review websites can motivate consumers to share their opinions and then publish those opinions widely. Based on the anonymity provided to reviewers on these consumer review websites, identifying the party responsible for the defamatory content (and the proper defendant for any defamation suit) will involve obtaining a court order to subpoena records from the website, and an inevitably lengthy legal process.

In addition to monitoring reviews, it is equally important to protect your online reputation by verifying that consumer websites have your accurate information posted—particularly your credentials, background, contact information, and work history. This type of information is generally provided by the website⁴ as opposed to a third-party individual. While CDA provides a broad immunity to websites in exercising a publisher’s traditional editorial functions, if the website generates the problematic content, it is unable to escape liability under CDA.⁵ Therefore, you are in a stronger position to demand the website correct any inaccuracies posted to your profile if this content was provided or developed by the website.



Communicate with Content Providers When Appropriate

Given the challenges you will face in attempting to remove a negative review from a website, manage your online reputation by taking a more proactive step. Many consumer review websites offer an opportunity to respond to comments and reviews. Don’t underestimate the opportunity

to provide a meaningful response that can demonstrate your attention to feedback, responsiveness, and ability to clarify a misunderstanding. Avoid your initial instinct to write a response that is defensive, petty, or that may compromise any duty of confidentiality or disclosure of protected health information that you owe to the client or patient posting the review.

If the false, inaccurate, or defamatory statements were generated by the website as opposed to a third-party user, contact the website immediately in the form of a cease and desist letter addressed to the website’s legal department. Frequently monitor the information posted about you on both consumer review and professional profile websites to correct any inaccurate information quickly. Address the reason the information concerning your professional reputation should be revised. Avoid taking an unreasonable position in this letter and focus on finding a way to address the issue without litigation, as in addition to the legal hurdles discussed above, you may also be responsible for paying the websites’ attorneys’ fees if you file a lawsuit.

Even if the website is not immune under CDA, any case brought against the website for content it has posted still faces the possibility of being thrown out after an anti-strategic lawsuit against public participation (anti-SLAPP) motion is filed under Code of Civil Procedure section 6425.1, which comes with an award of attorney fees and costs to the prevailing party.

In short, the expansive immunity provided to websites under CDA and the potential risk of facing attorney’s fees following an anti-SLAPP motion make legal action a last resort for managing your online reputation. Instead, take time to build a wall of content by generating your own online presence with a professional website, frequently updating your professional profiles, and actively requesting that clients and patients provide online feedback. Take time to monitor the content being distributed about you by third parties on consumer review websites and professional profile websites. And finally, take steps to communicate with these websites to ensure the information is accurate.

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Notes

1. David A. Hanauer, MD, MS; Kai Zheng, PhD; Dianne C. Singer, MPH; Achamyelah Gebremariam, MS; Matthew M. Davis, MD, MAPP; Public Awareness, Perception, and Use of Online Physician Rating Sites. *Journal of the American Medical Association*, February 19, 2014, Vol. 311, No. 7.

2. 47 U.S.C. § 230(c)(1); Public Awareness, Perception, and Use of Online Physician Rating Sites. *Journal of American Medical Association*, February 19, 2014, Vol. 311, No. 7.

3. See, for example, *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir. 2003) (concluding that website and listserv email newsletter sent by website's operator fall within definition of interactive computer service); in *Zeran v. America Online, Inc.*, supra, 129 F.3d at 330 n.2 (noting that America Online comes within the definition of interactive computer service); *Carafano v. Metro-*

splash.com, Inc., 207 F. Supp. 2d 1055, 1065–66 (C.D. Cal. 2002) (concluding that a matchmaking and dating website is an interactive computer service), aff'd on other grounds, 339 F.3d 1119 (9th Cir. 2003); *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703, 715 n.7 (Ct. App. 2002) (noting that online auction website, eBay, qualifies as an interactive computer service).

4. The website often pulls this information through algorithms that connect to database information pulled from the web, which again highlights the importance of having a professional website maintaining accurate contact information with any state agencies so the proper information is pulled by the websites.

5. See, for example, *Fair Housing Council v. Roommates.com*, 521 F.3d 1157, 1165–70 (9th Cir. 2008) (en banc) (addressing argument that use of information collected during mandatory registration process in construction of user profiles and searches constitutes development); *Anthony v. Yahoo! Inc.*, 421 F. Supp. 2d 1257, 1262–63 (N.D. Cal. 2006) (holding that creating and perpetuating false user profiles disqualifies website operator from claiming § 230(c) immunity).

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