

# Why your website should prominently post corrections

By Thomas R. Burke

Now that newspaper publishers in California are investing serious energy and money into their websites, publishers should also take seriously the ability to quickly and effectively limit potential exposure to libel claims by making corrections prominently available online.

For many years now, I have championed this practice, and I have watched as some publishers have come to appreciate how their websites can be used to correct serious factual errors (and reduce potential financial liability) while at the same time maintain credibility with their readers. Yet progress is slow, and unfortunately many publishers have yet to fully take advantage of the new technology, or seemingly to appreciate how it might be used against them in a serious libel situation.

As this audience knows well, California's retraction statute provides powerful protection against libel claims. Under Civil Code Section 48a, an individual who believes they have been libeled in a publication or by a broadcast must make a written demand to the publisher, specifying the "statements claimed to be libelous" within 21 days after they have notice of the offending publication. If the individual fails to make a timely demand or, if in response to a proper demand, a correction is published in "as substantially a conspicuous" of a place as the offending publication, the individual may only recover their "special damages" – the "out of pocket" damages they have allegedly suffered, if any – from the offending publication. In California and elsewhere, this procedure is highly effective – both for potential plaintiffs and publishers – to ensure that serious factual mistakes by publishers are corrected in a timely manner.

When it comes to publishing corrections on the Internet, California's correction statute, like most states' statutes, never anticipated Internet publications, though the statute has been successfully interpreted by courts to benefit people "engaged in the business of news dissemination," which accurately describes the activities of most newspaper websites. Indeed, only a couple of appellate decisions – and none in California – have even analyzed this particular issue. Yet publishers need not wait for the California Legislature to amend the law to enjoy

immediate and tangible benefits from publishing their corrections online. After all, experience shows that how a publisher responds to a retraction demand – by investigating the incident and publishing an explanatory letter to the editor or a follow-up article, or, if appropriate, a correction – substantially influences a potential plaintiff's decision to file a lawsuit. More often than not, if a correction is published, a libel action does not follow.

Even if the protections of the correction statute are not in play, a publisher who corrects a serious factual error may use the published correction to mitigate a plaintiff's claims for general and punitive damages. In certain circumstances, a correction may also prove an absence of "actual malice" by the publisher.

Bottom line, in any libel action where a serious factual error has been made, the publisher will be in a far better legal position before a judge or jury if it has thoughtfully corrected the mistake. And, by routinely publishing corrections on a newspaper's website, the publication's online audience begins to look for the corrections – as they have long done when only the newsprint version was available. Aside from the legal benefits that flow from publishing a correction, the process itself demonstrates to the publication's readership that it is serious about correcting the record and admitting when it has made a mistake.

But where and how should a correction appear online? More specifically, should the text of a correction appear full-text on the home page of the publication's website, or merely be hyperlinked to a separate "corrections" page of the website? For whatever reason, this is the fundamental question that I fear many publishers are not giving sufficient thought.

In very practical terms, if the text of a correction appears, full-text, on the "home page" of the website, which typically is the most visited page of a website, if litigation follows, the publication will be able to document – with specific statistics – just how many hundreds or thousands of people "visited" the home page and had an opportunity to read the correction.

However, if the text of the correction is only available to readers who happen to click a hyperlink that takes them to an internal page devoted to corrections, it's likely that the publication runs the risk of having a far smaller audience viewing its corrections.

Because technology now makes website readership statistics readily available, ironically, the publication's own internal reports may be the best evidence of just how few individuals actually viewed the correction. While the placement and wording of corrections should always be carefully handled and evaluated on a case-by-case basis, until the courts determine how "conspicuous" a correction must appear online, publishers should appreciate the practical effect of where and how they publish their corrections online.

Of those publishers who now regularly publish corrections online, there continue to be two different ways that publishers handle the original, potentially libelous text. Many publishers post a correction and, at the same time, eliminate entirely the original defamatory text. Others choose to post a correction, but they do not go back and revise or alter the originally published text.

Over time, a standard practice for the industry will ultimately emerge. It's likely that the practice will be heavily influenced by the speed with which information is communicated online. Early indications are that online publishers are far more comfortable with immediately correcting mistakes, although publishers have traditionally sought to preserve the "historical record" – including their mistakes.

Whatever approach is followed, to take full advantage of the legal protections available, a correction published online should forevermore be connected to the article that featured the defamatory statement. For a variety of reasons, care should also be taken to ensure that any search engine available on the website also captures any corrections that have been made to the particular article.

I will continue to periodically report back to this audience about the industry's adoption of online correction practices. Until then, particularly as newspapers increasingly move their businesses online – now offering blogs, podcasts and video – publishers should explore this opportunity to effectively limit their potential exposure to libel claims.

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