

# It's your website, so you manage civility

One of the most difficult — and increasingly common — situations faced by news websites is how to handle off-topic and, in some instances, obscenity-laced or hate speech commentary by users. Vile comments are often posted anonymously, and with the ease of technology they rapidly spread online. Good and bad, it is the anonymity of the Internet that allows people to express themselves in ways that would embarrass them in other social settings.

As any experienced website owner knows, intelligent and engaging user commentary can drive traffic to a website just as uninformed and belligerent commentary can scare readers away. What's a website owner to do?

For starters, the legal issues posed by these situations are fairly straightforward. As traditional publishers, most of this audience reading this column takes for granted that the decision of what content to publish resides solely with the publisher. See *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials — whether fair or unfair — constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time."). Yet some news website owners appear to forget that they enjoy this control online, let

alone that this control enjoys constitutional protection. Racist diatribes and obscenity-laced posts can severely hamper legitimate online discussions and quickly diminish a website's identity.

Just like the content of a quality newspaper, a well-run news website can and should evidence a degree of control. This is not to say that a news website cannot offer far more forums for give and take between the site and its readers (and between readers) and that commentary can be more extensive, personal and vocal, but experience has shown that some measure of control must be exercised to avoid a website becoming an un-moderated mess.

What is control? It may mean using software to automatically screen out offensive words and internal controls to remove users who routinely post offensive content. Websites can — and probably should — have trained staff to regularly monitor user comments. Many websites also give their users the ability to "flag" offensive remarks of users that can automatically trigger a notice to the website's staff once a pre-set level of objections is received. But even with users flagging objectionable posts, monitoring takes time, including responding to objections by readers against commentary that is merely being strident but expresses a contrary point of view.



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Armed with a clearly written online "terms and conditions" contract that sets out how users are to behave themselves in forums provided by the website, publishers can also contractually exercise control over users by insisting that commentary remain on-topic and not specifically target readers with obscene or libelous remarks. Violate the terms of use and a user can be suspended or banned from the website. Although a user can potentially return using a different identity and start offending anew, with persistent enforcement and the availability of thousands of other Internet forums, most repeat offenders will simply move on.

But what about potential civil liability? Can a website be successfully sued for libelous and/or offensive content posted by someone not employed by the website? Generally no. As this column has previously noted, owners of websites enjoy federal immunity for civil tort claims that arise from content that is created by users, including claims for libel and privacy. See Section 230 of the Communications Decency Act of 1996. Section 230 provides that "[n]o provider ... of an interactive computer service [read: your website] shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(7).

The "trick" about Section 230 — that few people fully appreciate — is that Section 230 was expressly enacted to encourage publishers to act like publishers and police and clean up offensive content on websites.

Section 230 provides immunity to publishers by making sure they are not legally held to be the publishers of third-party content when they vet, remove or edit offensive content authored by third parties. In practice, when an offensive or libelous remark is posted, many publishers will remove the entire post. Although Section 230 immunizes the act of taking the entire post down, it also provides immunity for the publisher who edits out the parts they deem libelous or vile while leaving the remainder. Bottom line, online publishers not only enjoy the constitutional right to control the content appearing on their websites, through software, active monitoring and the immunity provided by Section 230, they enjoy substantial practical and legal protections when they exercise such control.

One final point about anonymous online speech to note a trend that we are seeing. Increasingly individuals (and their lawyers) are demanding that news website owners identify the information they may have about who posted a particular comment. Such demands often follow posts that involve local political controversies where the content of the post reflects potential campaign insider knowledge. Other common situations involve libelous remarks that are posted by an anonymous user on an un-moderated website. Subpoenas for such information are very much on the rise. Every website owner should be prepared to handle such inquiries, since they are likely to increase as the popularity of online commentary grows. Watch this space next time for more specific guidance on this topic.

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