

How to maintain the ‘voice’ of a newspaper’s website while encouraging readers to interact

By Thomas R. Burke

Once upon a time – only a few years ago, actually – newspaper publishers exclusively controlled the “voice” of their publications. Like a lot of things, the Internet changed this. Readers now regularly contribute their thoughts on what they’ve read, offering information and personal experience. The comments of readers can provide wonderful insights, be woefully misinformed, polite and downright crude – and everything in between. Allowing readers the opportunity to provide commentary has created an exciting new way for readers to interact with each other. Yet, just as an uninvited guest can either spoil or energize a party, savvy online publishers must be seasoned online hosts. Armed with a little knowledge of the law and their options, publishers can still control the “voice” of their website and enjoy legal immunity for the defamatory remarks of others while encouraging readers to post comments.

It’s almost quaint – that time not so long ago when the only way a reader could directly interact with a newspaper and other readers was to send a letter to the editor. Then – as now – letters to the editor that are published in a newspaper’s traditional paper format must be carefully vetted for potentially libelous remarks or invasions of privacy. If a letter to the editor includes a libelous remark or violates an individual’s privacy rights,

both the writer and the newspaper can be sued. However, since 1996 when Congress enacted Section 230 of the Communications Decency Act, when the same content is posted by a reader to the newspaper’s website, the website owner is immune from libel and privacy claims. This legal anomaly is often difficult for publishers to grasp, but Congress specifically created this special protection for online publishers to encourage free speech on the Internet.

The immunity provided by Section 230 is the very reason that many website owners comfortably allow readers to routinely exchange caustic – and sometimes even libelous – remarks with little fear that they will be held legally responsible for publishing them. Under this immunity, even though a user’s libelous comments appear on the website, the website owner is not treated as the “publisher” of that third-party content, as it would otherwise be if the same remark was published in their traditional newspaper product. While the user who wrote the libelous remark may be sued and held personally liable (assuming they have any financial assets to collect), the website owner enjoys broad protection for providing the free speech forum.



Thomas Burke

[Readers of this column are aware that the Ninth Circuit Court of Appeals will soon issue a new decision in a closely watched Section 230 case – Fair Housing Council of San Fernando Valley v. Roommates.com. Last year, the court issued a decision that severely departed from how the vast majority of previous decisions by California courts and courts around the country had broadly interpreted Section 230. When the court’s decision was widely criticized, the court granted a rehearing en banc, vacated its earlier decision and late last year heard new argument in the case. Because the Roommates.com case involves user-generated content (e.g., commentary as well as mixed-content submitted by users in response to questions created by the website owner), the court’s analysis is expected to explain how Section 230 is to be applied when a website features a mix of content submitted by users with content prepared by the owner of a website. We will report here on the Ninth Circuit’s decision as soon as it becomes available; a ruling is expected soon.]

Although Section 230 has been available to website owners for over a decade, it is remarkable how few publishers understand the broad protection that this federal law provides to website owners. Relying on Section 230, websites may even remove portions of offensive or libelous third-party content – such as offensive or caustic commentary that is posted by a reader – and still retain the immunity against potential libel and

privacy claims. In fact, this was the express congressional intent behind the creation of Section 230, which immunizes website owners when they, in good faith, restrict access or availability of material they consider obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable, even if such material is otherwise constitutionally protected.

While Section 230 remains the most valuable legal protection for editing reader comments, publishers who remain weary of giving readers the reins to their website have additional tools available to them.

Most web sites include a “Terms and Conditions” that includes language about how readers should conduct themselves online. Although most publishers would revolt if the government imposed such restrictions on them, online, this contractual arrangement can help ensure that users behave themselves. Typical language that may be included in a website’s Terms and Conditions includes:

- You agree not to post or transmit through this website any material that violates or infringes in any way upon the rights of others, including any statements which may defame, abuse, harass, stalk or threaten others;
- You agree not to post or transmit through this website any material that is grossly offensive to the online community, including blatant expressions of bigotry, racism, abusiveness, vulgarity or profanity;
- You agree not to post or transmit through this website any material that contains or advocates pornography or pedophilia;
- You agree not to post or transmit through this website any statements that advocate or provide instruction on illegal activity or discuss illegal activities with the intent to commit them;
- You agree not to post or transmit through this website any material that infringes and/or violates any right of a third party or any law, engage in activity that would constitute a criminal offense or give rise to a civil liability.

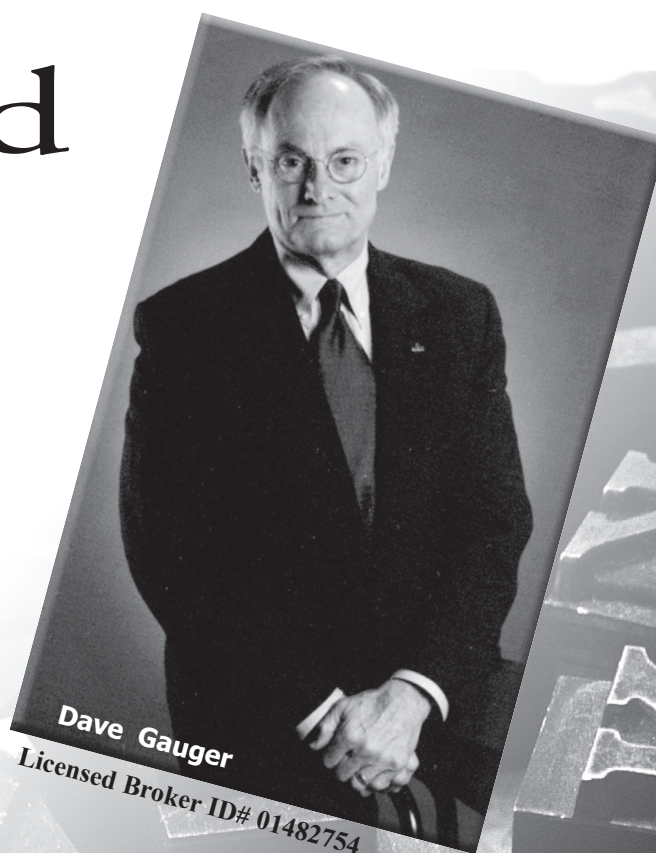
Another increasingly popular feature encourages readers to flag other readers’ posts if they find them to be offensive or harassing. Depending on how the internal settings for this feature are set (and the limitations can be customized by the website owner), multiple flags, from multiple readers, can cause a posting to be automatically deleted pending review by administrators at the website. This user-driven feature is often used to flag and immediately address users who are being overly aggressive or hostile toward other users of the site. Those who cannot effectively communicate without routinely offending others will obviously discourage readers from offering comments or even sticking around a website. Giving readers the ability to flag another’s posting can also create an intimacy with the website that, in turn, builds readership. Again, Section 230 should provide immunity for a website owner who uses such a “peer review” process, and no immunity should be lost if a post is edited, say, to remove offensive language.

Most websites also can use screening technology that searches for particular words that are filtered out before a reader’s posting appears online. Fortunately, most of these settings can also be customized (taking in the norms of a community and reflecting the perspective of the publisher) so that a website owner can calibrate the level of “censorship” it imposes on users who use the website as a place to vent.

Lastly, although users who post comments are typically required to go through a registration process of sorts before they post, everyone knows that a user’s true identity can be faked or intentionally kept anonymous. There are certainly situations in which protecting the anonymity of users is entirely appropriate. However, sometimes the mere fact that a user can remain anonymous can create a more aggressive

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explained later. And then we can shorten it further to “bus driver.”

- Does “at the time of the accident” do any work?

Recast to 35 words: The bus driver in a November crash that killed four on Interstate 40 near Forrest City was under the influence of amphetamines and is now charged with four counts of negligent homicide, authorities said Thursday.

Finally, there is the classic space- and time-waster masquerading as a way to make a story more readable, like this wire-service lead:

It’s the Holy Grail of rugged men in western dramas. It’s the glittery metal used in fancy jewelry. It’s the highest honor in the Olympics. And these days, gold’s appeal as a safe-haven investment has carried it to record prices.

Forty words produce just a fuzzy idea of what the story is about. But there is hard news here, in the next paragraph:

Gold futures surged above \$880 yesterday to the highest level ever, not accounting for inflation, propelled by rising oil prices and a weak U.S. dollar.

Making readers sort through several sentences of “What’s My Line?” wastes their

time without noticeably greater understanding. Get to the news using the second paragraph, slightly recast, as the lead:

Gold futures surged above \$880 yesterday to the highest level ever, not accounting for inflation, propelled by rising oil prices, a weak U.S. dollar and the metal’s appeal as a safe-haven investment.

In 33 words you have all that most people need to know. Want to make it more reader-friendly? Instead of a mushy lead, move higher the information 10 grafts down that, despite rising jewelry prices, dealers do not see a run of people seeking to sell gold. Your reader is more likely to identify with this than with the Old West or Olympic medals.

When our readers’ time is more valuable than ever, wasting it may be the bigger crime than to be a little bland in getting to the point. Let’s resolve to do better.

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and less respectful online environment. Realizing this, websites are making it possible for users to include photographs of themselves alongside their comments. This feature tends to personalize the readers’ comments, discourage abusive commentary and lead to more productive online discussions.

The Internet has made it possible for newspaper readers to interact in ways that were unimaginable only a few years ago. Although we’ve come a long way since read-

ers could only pen a letter to the editor to express their personal views, a website owner can still set the “voice” of its website while allowing users to interact with each other. Publishers can roll with this change while still controlling the environment they desire for their online readers.

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