

You are protected from defamatory web posts

Terms of use should address these issues

Several member newspapers have called the hotline recently wanting to talk about handling comments to their stories on websites. The biggest concern was how to handle the risk that a person posting a comment will make a defamatory statement and whether to require those posting to use their real names.

It's an issue that is of concern to publishers large and small all across the country as newspapers attempt to engage their readers in discussion of important issues that are covered by their reporters. Many smaller publishers have seen this feature on larger newspaper websites and are working to bring it to their communities.

The format being used for such sections varies, depending on how the paper sets up this feature. The issues that most publishers want to talk about are defamatory comments being put up on the website without the newspaper's knowledge, and abusive language that ends up being posted by people who hide behind anonymity.

As we've talked about many times, it is a general rule that you as a publisher are responsible for the content of everything in your newspaper and on your website, whether you create it or not. However, the Communications Decency Act of 1996 provides you with a defense for **online** comments posted by third parties. (It is important to note that this provision applies only to your online comment section and not to any other statements in a print publication.)

This is because your online comment sections put you into the category of an "interactive service provider," and Sec-

tion 230 of the act protects those in this category from the liability created by comments made by third parties.

However, there are a number of issues that still trouble publishers. Primary among them is the fact that if you have those interacting with you through such comments register in order to participate in the online discussion, you are the holder of information about them through this registration process.

You may be requiring them to register with their actual names in order to encourage them to take responsibility for their comments.

But some posters will feel constrained about what they say in order to protect their jobs, their positions in

the community or other attributes that would be harmed if their identities were known. Union members at times have commented that they cannot freely speak about union activities that are troubling if they cannot speak anonymously, as have employees at companies who wish to speak about improper activities where they work. Government employees who wish to disclose illegal actions by elected officials are hindered if they cannot speak behind a pseudonym.

And, of course, the arguments for this position hark back to "The Federalist Papers," many of which were written under false names by our nation's forefathers.

However, even if you allow posting under a pseudonym, many computer systems collect the IP address of the poster. If your system does that, then you will at some time possibly receive a subpoena demanding that you release the poster's real name or his IP informa-

tion so he can be held accountable for his comments.

Your terms of use should address all of these issues, especially the ones regarding what your responsibilities are to the user if you receive such a subpoena. Will you notify them before releasing the information? Will you simply release it or will you litigate the issue on their behalf until a court orders you to release it? Are you willing to go to jail rather than release that information?

And while, under Section 230, you may have no liability for the comments, do you want to create a way for readers of the comments to notify you if a comment is abusive? Many newspapers have such mechanisms in place, so they can actually take down any comments they feel are improper. This mechanism encourages your readers to assist you in monitoring comments.

Other papers encourage their staff members to read the comments and interact with posters on stories they have written in an effort to keep the dialogue civil and to add to the stories they have produced.

Some papers have a system to eliminate commenting totally on certain stories that are deemed to be high risk for abusive comments.

I do have available several "Terms of Use" examples that I will be happy to share with you if you are re-evaluating your system or if you are creating one for the first time. And there's a wonderful discussion of this issue on the podcasts that Missouri Press Association has available to you online and on iTunes (<http://www.mopress.com/Podcasts.php>).

Whether or not you deem such a feature to be important to your paper is an editorial function that's in your hands. But from a legal standpoint, know that you do have protections in place that should limit your liability for this feature of your website.



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