PRism

Original Research

Online reviews and organizational reputation: U.S. legal issues in combating and removing negative online content

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Abstract: Online reputation management requires public relations practitioners to routinely address negative content. While research in online image management states that transparency is the best policy in maintaining relationships, it is well established that organizations attempt to remove negative content to maintain a particular online image. Attempts to remove negative reviews and comments generally take three forms: directly deleting reviews and comments from a site, requesting a crowd source review site to delete negative reviews, and suing individual speakers for money damages over negative content. Each of these ways of removing negative online content involves different laws, and each strategy of removal has different levels of success. This study examines the protection of online reviews under the Consumer Review Fairness Act, the limitations of redressing negative reviews on crowdsourced review sites, and the obstacles involving lawsuits targeting individuals who post negative online content. Implications for public relations practitioners are discussed.

Keywords: public relations law, consumer reviews, social media, reputation management

1. Introduction

Deleting social media content is a regular practice for many users. However, in public relations practice the deletion of content has particular significance. It is frequently used by organizations to reduce negative comments, and provide greater control over online reputation and identity. However, deletion is not without legal risks. Federal law protects customer reviews, and social media and review sites are largely immune from lawsuits to remove content. Because of this, public relations practitioners, now more than ever, need to use engagement with publics, reputation management tactics, and communication strategies to combat negative online content.

This paper examines the legal issues surrounding negative online reviews. Specifically, this study addresses the federal protection of consumer reviews and the ban on some non-disparagement clauses in customer contracts, the legal recourse organizations have against crowd source review websites that contain negative reviews, and the issues concerning lawsuits brought against individuals who post negative online content about organizations. The analysis of these laws shows that taking legal recourse against negative online content largely fails, and the best solution to online reputation management is a communication strategy. In examining these areas of law and communication, this study concludes with four suggestions for public relations practitioners facing reputation management issues in light of negative online reviews.

2. Literature review

Organizational reputation management has been a focus of academic research for decades. It is well established that reputation management is a mainstay of organizations' communication and public relations departments (Weiss, Anderson, & McInnis, 1999). In public relations reputation

management, an organization must take certain communication measures in order to maintain its reputation and relationship with publics. Academic literature on reputation management presents core tenets of public relations practice that inform both industry and academic research: engagement with publics is better than avoidance, authenticity of communication is highly valued and salient with publics, deception and dishonest communications cause residual harm to organizations, and proper reputation management is intrinsically tied to ethical decision making (Burns, 2008; Coombs & Schmidt, 2000; Fortunato, 2008; García, 2011; Nekmat, Gower, & Ye, 2014; Sisson & Bowen, 2017).

Research also suggests public relations leaders' view on social media management and crisis strategy embraces the power of the platform because of its ability to foster engagement. Sweetser and Kelleher (2011) found that managerial public relations practitioners encourage the use of social media to interact with publics, and other studies show that public relations leaders who have social media and other online presence frequently have greater levels of power (Diga & Kelleher, 2009; Porter, Trammel, Chung, & Kim 2007). The recognition of the importance of social media translates into how public relations leaders use social media during a crisis. Luo, Jiang, and Kulemeka (2015) found that public relations leaders in crisis frequently use social media to gain control over the crisis information by providing updates and engaging with publics affected by the crisis. This expertise in social media even has credibility for gaining C-suite access and greater control over social media decisions.

Reputation maintenance is frequently viewed as an executive function of an organization. This is largely because CEOs frequently are the public face of an organization, and some even rise to the level of a household name. Murray and White (2005) show that CEOs frequently look at reputation management as their responsibility, and sometimes view the reputation of an organization as being tied to the personal reputation of the CEO. Bowen (2002, 2008) argues that an organization's reputation is crafted by its ethical decisions, and that ethical decision making is part of the managerial style and organizational culture.

Even though reputation management is rooted in managerial functions and public relations communications, it is complicated by the interactive nature and speed of social media (Stacks & Bowen, 2013). Given the nature of social media as a platform and the importance organizational interaction (e.g. transparency, dialog) has on reputation, reputation management in an era of social media requires more nuanced strategies that go beyond crafting messages for public consumption. Ott and Theunissen (2015) found that denial and diminishing the crisis seem to work less than accommodative communications. Building on that research, Sisson and Bowen (2017) found that authenticity, as well as transparency of an organization, help to build a "insulated reputation" that can serve as a bulwark to negative public relations during a crisis (p. 296).

Case studies seem to support the notion that open communication and increased transparency in public relations work, and that deceptive online reputation management frequently backfires. For example, Burns (2008) showed that Edelman's 2006 fake blog for Walmart called "Walmarting Across America" received serious criticism for its deception. This blog was meant to appear as a legitimate blog of a couple using an RV to travel from Las Vegas to Georgia, and it detailed their positive experiences with Wal-Mart and its employees. Exposed as a public relations tactic for Wal-Mart to combat criticism of its anti-union stance, both Wal-Mart and Edelman received harsh criticism for its lack of transparency in producing the blog.

Studies in reputation management emphasize that engagement and communication provide solutions to communication problems (Burns, 2008; Coombs & Schmidt, 2000; Fortunato, 2008; García, 2011; Nekmat et al., 2014). An examination of French law, social media terms of use, and social media demand letters found that legal strategies to protect brand equity had major limitations compared with marketing strategies. The study found that in the context of French law and demand letters that legal recourse to combat issues of brand equity were largely ineffective (Manara & Roquilly, 2011). Similarly, Myers (2016) found that U.S. trademark law was similarly ineffective to combat parody accounts, and that communication strategies and engagement were more effective in diminishing reputational harm caused by these parody social media accounts.

Legal research has also recognized the importance of consumer reviews focusing on the issues surrounding fake reviews that are paid for by organizations (Short, 2013), and how franchisees have

used state and federal laws to combat fake online reviews (Gerhards, 2015). Recently there has been increased attention, especially with the growth of fake news, to combatting fake online reviews, and how they can affect the reputations of certain professional groups, such as lawyers (Barish, 2018; Robertson, 2016). Legal studies have also focused on the new online consumer protection laws that have emerged in the last few years, both in the United States and European Union (Calvert, 2016; Madalena, 2019). This is likely to increase given the new guidelines issued by the Federal Trade Commission (FTC) in November 2019 (Federal Trade Commission, 2019a).

Nowhere in academic public relations literature is it suggested that the best practice of reputation or crisis management is to use litigation to shut down criticism of an organization. However, organizations frequently use tactics including non-disparagement clauses, petitions for removal of online content, and lawsuits against individual speakers to eliminate criticism. These tactics, which are diametrically opposed to engagement, have some (perceived) benefits. First, they do require the organization to interact with the negative post. Second, they disallow other people from engaging in the post. Perhaps most appealing, legal tactics removing content seemingly allows the organization to craft the dialogue it wants the public to see, and by limiting access to negative or unflattering commentary the organization creates (the illusion) of total control. However, no study in public relations scholarship examines the success or limitations of these legal tactics. This study seeks to fill this gap in the academic and professional public relations literature by examining the limits of U.S. legal recourse to negative online content.

3. Methodology

This study seeks to answer the following research question: What are the legal strategies for removing negative online content? From this initial research question this study also seeks to answer four sub-questions:

- How does the Consumer Review Fairness Act limit an organization's ability to control customer reviews?
- What are the legal strategies for having a negative review removed from a third party crowd source review website?
- Can organizations or individuals successfully sue individual third-party posters who write negative online content or reviews?
- How do legal strategies coincide or conflict with public relations strategies of engagement with publics?

To answer these research questions this study used traditional legal research methodology to analyze federal statutes, FTC regulations, and federal and state case law involving negative consumer reviews found using Westlaw, a legal database that indexes U.S. legal decisions, case law, and statutes. Looking at this variety of laws is necessary to answer these research questions because a mixture of laws affect the legal response to online reviews. These cases ranged from trial courts to appellate decisions and were obtained using Westlaw searches and indexing of cases concerning online defamation, consumer reviews, section 230 of the Communications Decency Act of 1996 (CDA), and resources provided by the FTC on the CRFA. To answer these research questions, it was important to focus on the issues surrounding the text and application of the federal statutes, CFRA and CDA. Because online defamation and disparagement suits number in the thousands, this study uses representative cases to illustrate how the law is applied in federal and state courts. A case was determined to be representative because of the amount of analysis it gave on a particular issue and the amount of time it was cited by other courts on these specific issues. This study made use of Westlaw Headnotes and Citing References features to find representative cases. These tools are exclusive to Westlaw and are updated regularly with new cases as they are decided.

Each section of this study took a similar, yet distinct, approach to analyze the specific legal area. The CFRA section used the text of the CFRA obtained on Westlaw by searching for the law's title 15 U.S.C. §45. To keep current with the application of the CFRA this study used FTC statements that listed cases that applied the new law with the most recent update being filed in May 2019. The section on the Communications Decency Act section 230 used Westlaw to find the text of the statute codified

in 47 U.S.C. §230. Representatives cases were chosen through Westlaw Citing References that cited the CDA and that specifically addressed the CDA's application to third party review sites. The section on individual lawsuits for online defamation first examined Simorangkir v. Love (2009) and Simorangkir v. Cobain (2015), which are published on Westlaw, because they are two of the first well-known representative samples of lawsuits against individuals for online defamation on social media. Other online defamation cases were chosen as representative examples of U.S. defamation cases involving online postings by examining cases in Westlaw using West Headnotes Libel and Slander. The cases indexed in the West Headnotes and West Citing References contained all dates up to the present.

Legal analysis is a form of qualitative textual analysis of legal text. Representative cases were chosen because of their in-depth discussion of the CDA, specifically in context with online reviews. Because U.S. law operates in a common law tradition, legal analysis requires the researcher to look at prior decisions and orders to fully understand the nuances of courts' decisions. Because online content is frequently an issue that is decided by court orders, this study includes analysis trial court orders and other unreported court orders. Looking at these types of cases allows this study to examine issues with online reviews and comments at the most granular level in order to fully understand its issues, rationales, and implications for deletion.

4. The CFRA prohibits non-disparagement clauses

Organizations have tried to regulate negative or unflattering online content through non-disparagement clauses in contractual agreements with customers. These clauses have been banned by federal statute since 2016. In the U.S., organizations' use of non-disparagement clauses, sometimes termed "anti-review clauses," in contracts, companies essentially mandated that customers could not post any negative commentary online about their experience with an organization. This can take the form of written contracts or online contracts where users merely check the "I accept" button (FreeLife Intern., Inc. v. American Educational Music Publications, Inc., 2009). Created by the healthcare industry in the early 2000s, these contracts attempted to limit negative reviews since healthcare providers could not rebut online reviews after the implementation of Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law that regulates patient privacy (Goldman, 2017).

Litigation arising from non-disparagement suits received a hostile reception in some American courts. In Virginia the verdict in a non-disparagement trial was overturned by the Virginia Supreme Court because the justices believed there was not enough evidence to warrant a judgment. That case involved a retired park director who alleged that a County Board of Supervisors member defamed him during a television interview. Although the board member never identified the retired park director by name, the lawsuit was brought because the board implied the former park director was negligent in preparing for a flood. Part of the lawsuit stemmed from a non-disparagement clause the park director had in his severance agreement with the county. The trial court agreed with the park director, and a jury awarded the park director $45,000 in compensatory damages for the breach of contract claim, $50,000 in compensatory damages for the defamation claim, and $100,000 in punitive damages. The Virginia Supreme Court reversed the judgment stating that the park director could not legally prove any of his damages and therefore was not entitled to any judgment (Isle of Wight v. Nogiec, 2011).

In a Utah federal court, an online company sued two customers after they wrote a negative review of a desk ornament ordered online. The company sued the couple for $3,500 and issued a demand letter for the negative review to be removed. The lawsuit lasted for three years culminating with the Utah court awarding the couple $306,750 in damages plus attorney's fees (Order Awarding Damages Upon Default Judgment, 2014).

Nondisparagement suits gained the attention of California's legislature and later the U.S. Congress. In California, non-disparagement clauses are banned under the California Civil Code. Under the statute a company using non-disparagement clauses can be fined $2,500 for its first violation and $5,000 for its second and subsequent violations, as well as a civil penalty of up to $10,000

(Unlawful Contracts, 2014). Federal law has followed California's lead, protecting consumers from restrictive consumer review contacts in Consumer Review Fairness Act of 2016 (CFRA). The law covers:

> written, oral or pictorial review, performance assessment of, or other similar analysis of…the goods, services or conduct of a person by an individual who is a party to form contract with respect to which such person is also a party. (Consumer Review Fairness Act of 2016, 15 U.S.C. 45[b][a][2])

The federal law specifically bans any contractual obligation that an organization requires a customer to sign that "restricts" them from writing a review. The law also prohibits the levying of fines or other damages on a person who writes a review that is outside the scope of a non-disparagement contract, and also prohibits an organization from requiring users to transfer intellectual property rights found in a review, such as copyright, to the reviewed organization. In essence, what the CFRA does is disallow the types of non-disparagement contracts that restrict honest online reviews of organizations. Organizations cannot use the threat of a lawsuit over breach of contract to control users' online assessments. The FTC enforces the CFRA, and if a violation occurs the FTC has the power to investigate and, if warranted, the state Attorney General may file a federal lawsuit on behalf of the state's citizens against the offending organization. The penalty for a CFRA violation works the same way as a violation of any FTC regulation. Fines up to $40,000 can be imposed for violating cease and desist orders, and fines over $1 million for actions that are deemed to be market manipulation. (Consumer Review Fairness Act of 2016, 2016).

At first glance the CFRA may seem as if it bans the removal of negative commentary altogether. However, a deeper reading of the statute shows that the CFRA is only about banning future postings contractually. In fact, the law allows the contractual prohibition of some types of commentary, and expressly permits removal of some online content. However, the federal law does not go so far as to ban deletion of online content by organizations. The CFRA also does not apply to contracts between employers and employees or independent contractors. Some content is permissible to remove. The CFRA states that there is a "right to remove or refuse to display publicly" content that is personal, defamatory, harassment, obscenity, "vulgar," "sexually explicit," or "is inappropriate with respect to race gender, sexuality, ethnicity, or other intrinsic characteristic" (Consumer Review Fairness Act of 2016, 18 U.S.C. 45b(b)(2)(C)(i). Additionally, any reviews that are unrelated to the organization's "goods and services" or is "clearly false or misleading" are also not protected under the law (Consumer Review Fairness Act of 2016, 18 U.S.C. 45b [b][2][C][ii-iii]).

The CRFA also does not protect reviews that post trade secrets, financial information, medical information, or computer viruses (Consumer Review Fairness Act of 2016, 18 U.S.C. 45b [b][3][A-E]). It is important to note these categories such as "vulgar" or unrelated to "goods and services" are very broad (Consumer Review Fairness Act, 2016). In May 2019, the FTC announced its first three enforcements of the CFRA (Federal Trade Commission, 2019b). These three cases involved contracts with anti-disparagement clauses that prevented customers from posting negative reviews online. The organizations had to stop using contracts with these anti-disparagement clauses and notify previous customers who entered into the contract that the specific non-disparagement clause was null (Federal Trade Commission, 2019b). Organizations are also free to bring lawsuits based on reviews that are defamatory. Critics of the CRFA say the low threshold for removing content gives organizations a legal argument for removing or banning a large amount of content.

5. The CDA effectively barred organizations from suing companies

One of the most impactful forms of online content is reviews placed on crowdsourcing review websites. These websites use reviews to rate organizations and businesses. However, when an organization receives a negative review some organizations petition the website to remove it. Although, in many cases consumer reviews cannot be deleted because of the website's policies. For instance, Yelp's review policy does not provide a mechanism for direct deletion of negative reviews. Instead its policy states that an organization can request the removal of a negative review and Yelp will evaluate the claim with no guarantee the review will be removed. It suggests flagging negative

reviews in three circumstances: a review by interested parties (e.g. former employees, competitors), a review not based on an individual's own experience, and a review that contains "inappropriate material" such as "hate speech," which is a nebulously defined (Yelp, 2018). Sometimes this process is frustrated if the organization in question receives numerous negative reviews. This has increasingly become an issue when politics on the left and right lead to politically charged reviews of businesses that are designed to publically shame and decrease ratings (Breland, 2018).

There have been lawsuits against ratings sites for failure to remove negative reviews. However, under CDA, codified in the U.S. Code 47 U.S.C. §230, third party websites are not held legally liable for content posted by users. Specifically, under section 230(c)(1) "No 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" and under section 230(e)(3) "no cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." Practically speaking this means that websites like TripAdvisor or Yelp are not legally responsible for what reviewers post. For over twenty years, courts have construed this immunity broadly to apply to multiple types of online platforms including online bulletin boards and crowdsource review sites (Barnes v. Yahoo!, 2009; Hassell v. Bird, 2018; Zeran v. AOL, 1997).

Because review websites were not as robust when the CDA was created, there are those who argue review website do not fall under its exemption for interactive computer servicers. The scope of the CDA's protection of host website sometimes depends on courts' view of the host site. One New York plaintiff argued that the fact Yelp promoted certain reviews meant it was not a "interactive computer service," but was instead a publisher because of editorial selections Yelp made on its site. In that case, a New York a dentist sued Yelp after he claimed the company retained a negative review of his practice while removing positive reviews. The dentist argued this was a business model used to coerce businesses to purchase advertising on Yelp. Without deciding whether this business model was in fact true, the New York Supreme Court in New York County, a trial court, held that as an "interactive computer service" Yelp is immunized under the CDA from lawsuits arising from defamatory content placed on its site (Reit v. Yelp, Inc., 2010, p. 716). A lawsuit can ask for the author of negative review to remove it from a review site, but as a 2018 California Supreme Court decision shows the actual site itself is immune from any lawsuit involving user created content (Hassell v. Bird, 2018). New York's Court of Appeals held that the CDA protects host sites. In Shiamili v. Real Estate Group of New York (2011) the Court of Appeals held that immunity from suit cannot be removed simply because a website engaging in editing of prominent placement of third party content.

It is important to note that while the CDA immunizes social media sites from lawsuits due to content posted by third party users, the law does not totally insulate social media. Individuals could still sue social media sites for postings made by its own representatives, and could sue the site in an attempt to reveal the true identity of anonymous posters (Myers, 2015). Additionally, if the website agreed to remove certain content and then did not, then a user could also sue for a breach of contract.

6. Organizations' lawsuits against individuals have mixed results

Because online review sites are largely immune from lawsuits to take down negative reviews, the only legal option left is to sue the person who wrote the review. This process seems to be the most successful legal strategy for combatting negative reviews. Typically these cases involve a mix of commentary on review sites and on personal social media accounts. Online defamation suits involve both reviews on third party websites, individual social media accounts, and postings on websites. Sometimes referred to as Twibel, a portmanteau of Twitter and libel, these suits follow the standard approach in U.S. defamation suits. However, because this Twibel litigation involves online comments and reviews, it frequently raises the issue of whether the lawsuit violates anti-SLAPP laws. SLAPP stands for strategic law against public participation, and anti-SLAPP laws prohibit aggressive plaintiffs from bringing meritless cases meant to silence defendants' speech.

In 2009, one of the first well-known defamation suits based on an online review involving California's anti-SLAPP law gained media attention when actress and singer Courtney Love was

sued by fashion designer Dawn Simorangkir, who sold clothing online under the name Boudoir Queen (Simorangkir v. Love, 2009). In that suit, Love had repeatedly made negative comments about Simorangkir, including accusations of theft, prostitution, dealing cocaine, and losing custody of her child on various social media accounts, including Pinterest and Etsy where Simorangkir conducted online business (Simorangkir v. Cobain, 2015).

Simorangkir sued Love for defamation, false light, interference with economic advantage, intentional infliction of emotional distress, and two allegations of breach of contract. False light and defamation are similar, but unrelated claims. While defamation involves untrue statements made that damage a person's reputation, false light is a privacy claim that addresses statements that are implicitly false and cause emotional distress (Gill v. Curtis Publishing Co., 1952). Love's attorney moved to strike this complaint arguing that Love's comments on social media were protected under California an Anti-SLAPP statute. Specifically, the statute allows:

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (C.C.P. 425.16[b][1])

Love's attorney argued that under the California anti-SLAPP statute Love's speech was made in a public forum and was in the furtherance of a public interest issue. Specifically, she argued that because Simorangkir was selling clothes online she was engaged in an activity that was a public issue. Love also claimed social media comments were discussing serious issues that could affect online customers and related her personal experiences with Skimorangkir's business. Love also argued that the criminal allegations against Simorangkir made by Love were also protected under anti-SLAPP because they were not meant to be taken literally and did not constitute an actionable claim (Simorangkir v. Love, 2015). The motion was denied, and eventually Love settled out of court for $430,000 (Perpetua, 2011).

In 2013 on the Howard Stern radio show, Love made the same critical remarks about Simorangkir, prompting another lawsuit. During the interview Stern even warned Love about making vague critical claims against Simorangkir. Later Love accused Simorangkir of theft on Pinterest and Twitter ending one tweet that accused Simorangkir of theft with the word "Fact" (Simorangkir v. Cobain, 2015, p. *3).[1] Again, Love was sued and she claimed the lawsuit should be thrown out because she was speaking about a matter of public concern protected under the anti-SLAPP law. This claim was appealed to the California Court of Appeal Second District, Division 5 court, which held, in an unpublished decision, that this lawsuit was not a violation of the anti-SLAPP law because even though this incident involved celebrity parties the underlying issue was not a matter of public concern (Simorangkir v. Cobain, 2015). Love eventually paid an out of court settlement to Simorangkir of $350,000 (Gardner, 2015).

Other lawsuits concerning negative reviews show the limits in what is legally protected in online reviews and comments and the limits of anti-SLAPP protection. Frequently these cases involve efforts by social media users to target specific call-to-action to galvanize boycotts. These efforts, known as name and shame campaigns, can have disastrous results. For example, one case in Massachusetts involved a man's tweets that his sister was fired from a local Nissan dealership because she had brain cancer. This allegation was false, but the tweets were used in an effort to create a successful grassroots boycott of the Nissan dealership. The dealership ultimately sued the man and the Massachusetts Superior Court denied the defendant's motion to dismiss based on Massachusetts' Anti-SLAPP statute. The court reasoned that coordinating a protest over social media was not, in and of itself, actionable. Anti-SLAPP laws in Massachusetts are designed to protect speech that seeks to influence government. Here, the social media postings were orchestrated to influence a boycott of the dealership for economic purposes. Although boycotts are constitutionally protected, an online defamation suit will not be dismissed, at least in Massachusetts, because of Anti-SLAPP laws or

[1] This citation includes an asterisk, which is known as a star page. Star pagination corresponds to the page number given when a case is published online.

because the potential defamation is couched in constitutionally protected protest (Clay Corporation v. Colter, 2012).

Other state laws can protect online commentary that is political opinion. A lawsuit arose from a public relations "name and shame" campaign conducted by the United Against Nuclear Iran (UANI), an American based organization committed to stopping Iran from developing nuclear weapons (Restis v. UANI, 2014, p. 710). In a series of social media posts, UANI made allegations that Victor Restis, a Greek citizen and owner of a shipping conglomerate, was involved in exporting Iranian oil. In this campaign, UANI posted content to their website and Facebook page to publicly ridicule Restis. This Facebook post garnered 33 comments, some of which contained "insulting and threatening messages" (Restis v. UANI, 2014 p. 712). Other social media posts used graphics using Restis's image with an Iranian oil tanker and Ayatollah Khamenei. All of this was done at the same time UANI attempted to cure misperceptions of Restis by sending out press releases stating that he was not confirmed to be doing business with Iran.

However, these press releases were outnumbered by other press releases that claimed Restis was heavily involved with Iranian exports, violated sanctions, and tweets that Restis attempted to bribe UANI to stop their exposé. Restis sued UANI in federal court in the Southern District of New York. UNAI filed a motion stating that their postings were not defamatory because their comments were opinions, not facts. Under New York law opinions are fully protected under the state constitution, and therefore no defamation suit can be legally brought. The UANI also argued that a public relations campaign that constituted "calls to action" by the government is immune from defamation suits. The trial court disagreed on both accounts, and held that statements that have a mixture of truth and opinion are actionable under defamation law. Similarly, there is no law that prohibits "calls to action" campaigns from being subject to defamation suit under federal or state law (Restis v. UANI, 2014, p. 722). The court also noted that the words used on the press releases and social media posts did save the defendants from a defamation suit. Qualifiers or "contextual signals" will not absolve a defendant from a defamation claim even when the qualifier is "in my opinion" (Restis v. UANI, 2014, p. 723). However, it is important to note that these lawsuits still cost plaintiff's money and even if they prevail at trial they are not necessarily entitled to attorney's fees. Additionally, sometimes these lawsuits amplify the underlying issues, which may go away on their own. .

7. Implications for public relations practitioners

Analysis of legal issues related to negative online reviews and comments illustrate that legal recourse has mixed results at best. Ex ante provisions in contracts banning negative reviews are no longer allowed under federal law, and federal law under the CDA immunizes review sites from liability. While individual lawsuits against speakers do have a degree of success, they are expensive and potentially prolong the impact of negative comments. Because of this, public relations practitioners should recognize that their expertise and role in combatting negative online content is important and necessary. In reviewing these laws related to content removal public relations practitioners should know four things:

7.1. Stopping a negative review is difficult

In light of the CRFA, organizations can no longer protect themselves with non-disparagement clauses in contracts. Of course, the CRFA permits deletion in certain extreme cases, and PR practitioners and organizations should exercise their deletion rights in those instances. However, trying to prevent negative reviews before they start, known as ex ante non-disparagement or gag clauses, is something that not only is banned under the law, but it calls into question the ethics and communication approach of organizations. Even before the CRFA was passed, courts were skeptical of these contractual provisions, and PR practitioners, more than anyone, should know that engagement, not suppression, is the best way to combat this situation (Consumer Review Fairness Act of 2016, 2016; Isle of Wight v. Nogiec, 2011; Order Awarding Damages Upon Default Judgment, 2014).

7.2. Consumer ratings are difficult to remove

This is a fact that frustrates many organizations, particularly those organizations such as hospitality and restaurants, whose online reviews have major impact on their bottom line. In light of consumer review activism, it seems that these review websites will have to provide some level of protection for organizations facing false and fabricated reviews. However, there is a real question about what limitations can be placed on these reviews. Negative reviews about an organization's philosophy or business practices are a form of legitimate criticism, even if that criticism is not based on personal experience (Order Awarding Damages Upon Default Judgment, 2014). Similarly, it seems unlikely that review sites would be able to parse out fake from authentic reviews based on statements and user profiles alone. The process of removal also places a burden on the organization rather than the critical reviewer (Breland, 2018; Yelp, 2018). Organizations must petition the website to take down the content based on certain pre-set "legitimate" reasons listed by the website.

7.3. Lawsuits over negative online commentary can be successful but also costly

From a public relations perspective filing individual lawsuits against the authors of negative reviews may only amplify the negativity and impact of a review, such as in Simorangkir v. Love (2015). Civil lawsuits in the United States are expensive and frequently take years to resolve. Filing a lawsuit over a negative review may have the effect of extending the shelf-life of the review and increasing its importance and influence on publics. However, it is important to note that lawsuits are powerful tools that can make statements. If there is truly a negative review or comment that is unfounded, fake, or created from hostility, a lawsuit can send a powerful message that the organization denies that characterization. In fact, denial is a powerful strategy in public relations, and a lawsuit may be a vehicle to amplify that message. .

7.4. Do not automatically assume that negative content needs to be deleted

This piece of advice brings the conversation back to public relations reputation management. The literature suggests that reputation is inextricably linked to historical action and past behavior (Coombs & Schmidt, 2000; Fortunato, 2008; García, 2011). If transparency and engagement are hallmarks of good reputation, then it serves to reason that engagement, rather than deletion, should be the first option for social media management.

8. Conclusion

This analysis shows that using legal means to manage an organization's reputation and image has mixed results. Federal law provides some protection for consumer reviews (Consumer Review Fairness Act, 2016). Removal of negative reviews also presents issues for organizations because reviews on social media occur both on organizations' and third party review sites. As recent cases involving Yelp demonstrate, the removal of negative reviews on third party rating sites is difficult for two reasons (Breland, 2018; Yelp, 2018). First, the petition process for removal places the power to remove with the host website. Second, if the website does not remove the content, the site is largely immunized from suit because of the CDA. Because of those realities, organizations may be left with the sole option of suing the authors of individual reviews, which is an expensive process that has mixed results. Lawsuits against individual authors for negative reviews are more successful. However, these lawsuits also have the potential to create ancillary issues for organizations in that they can amplify a negative comment or review giving it influence that it would not normally receive.

All of this emphasizes that public relations practitioners should look toward communication solutions to combat negative online content. Given that negative opinions do not necessarily constitute defamation, the complexity of having websites removing negative content, and the insulation websites have under the CDA shows that legal recourse against bad reviews is extremely limited. This does not mean that negative content can never be removed, nor does it mean that negative content should not be removed. However, public relations practitioners should be aware of the limitations legal solutions provide. The introduction of the CRFA signals that the U.S.

government, specifically the FTC, is taking greater interest in preserving online content as evidenced by the May 2019 non-disparagement clause cases (Consumer Review Protection Act of 2016; Federal Trade Commission, 2019).

Reputation management literature privileges the notion that public relations practitioners should use targeted engagement with publics, and use communication skills and tools to manage reputation, image, and crises (Burns, 2008; Coombs & Schmidt, 2000; Fortunato, 2008; García, 2011; Nekmat et al., 2014). Nowhere in the public relations literature is it suggested that the best tactic is to use aggressive legal strategies to combat crises or bolster reputations. The issues surrounding the CRFA, the immunity of crowdsource review sties, and lawsuits against individual users suggests that legal recourse is, in fact, quite limited and has a lower chance of success. Organizations who turn to legal counsel to combat negative online content run the risk of not only losing their case, but amplifying the negative content by giving it unwanted attention. While it is out of the scope of this paper to say what the "best" public relations strategy is for online reputation and crisis management, it seems that compared with legal tactics public relations strategies provide a more impactful and nuanced solution to online content issues.

There are obvious areas that need further inquiry. Given that public relations is a global practice with many diverse publics, it is important to note that communications are subject to non-U.S. laws. Additionally, future research should focus on how crowdsource review sites will handle fake or politically charged reviews in light of their growing use as an activist tactic. As technology develops, so too will the ability to track users' comments, and perhaps in the future there will be a more artful way of redressing negative commentary. All of these areas have real importance for legal and public relations practice, as well as organizational reputation management.

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