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More fake news, more problems: Legal ramifications of posting without fact-checking



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Gossip and tabloids have been around for centuries. According to [Merriam Webster](#), the term “tabloid” was first known to be used in 1906. But there is a huge difference between reading a tabloid and having a healthy amount of skepticism versus believing everything in print or online regardless of its credibility. Enter the “fake news” era, in which even the president-elect is shutting down credible news sources (i.e., CNN) during press conferences in retaliation for other blog sites (i.e., BuzzFeed).

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Is there really “fake news” on the web? Of course. Novice bloggers may repeat rumors from other publications that have not verified the information. Fake news blogs may purposely write incorrect content because it’s profitable. Meanwhile readers aren’t quite clear on what they should believe. And rightfully so. While [journalists debate](#) whether BuzzFeed was justified in releasing a 35-page dossier, there are other sites that aren’t even attempting to report. It’s all profit. Politicops.com is so blatant about their misleading news that they have actual buttons for “Show Facts” and “Hide Facts.” Clicking “Show Facts” will highlight a minimal amount of content that is more than likely true, and the rest of the post is fictionalized. Politicalo, Religionlo and Newslo are just as unapologetic about following the same clickbait methodology.

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Some of the victims of fake news are fighting back. Another Trump is one of the most popular examples: Melania Trump. According to a [Washington Post](#) story, a blogger accused her of being a “high-end escort at a gentleman’s club in Italy” and she is now suing him. WAPO reports that the writer’s rationale for doing so was because “he’d just repeated a rumor that had appeared on the Internet.”

Recommended Reading: [“How the Trump Tower became the lion’s den for homeowner privacy rights”](#)

Not only can repeating this kind of gossip without any proof be detrimental to the subject of the rumors, but with the ability to prove libel or defamation, it can be quite expensive if the writer loses the case. Gossip magazines are just as guilty. [CelebChatter](#) ran down a list of celebrities who sued gossip publications and won.

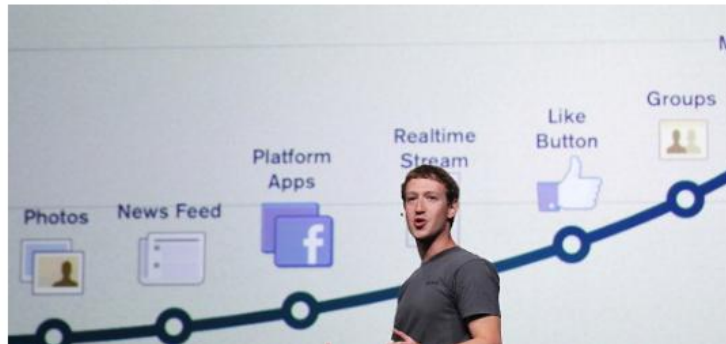
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Even companies that may not have had the intention of being involved in gossip or victimization can get caught up — [Google](#) was threatened with a lawsuit when hackers exposed nude photos of countless celebrities, mainly women, in September 2014. Google confirmed that they “removed tens of thousands of pictures” and “closed hundreds of accounts” when requests were made. Social media sites such as Twitter also had to go on the hunt to remove anyone who shared these images before they were scrapped from search engines.

After this year’s presidential election, Facebook is also taking the initiative to get a handle on fake news by using the two-decade old website [Snopes](#), which is known for fact-checking urban myths. Speaking of fact-checking, Google Chrome and Washington Post teamed up to create a [digital app](#) to clarify many of the president-elect’s tweets, which oddly include fake news and/or links to fake news websites.

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But with all of the lawsuits, photo removals, digital apps and fact-checking involved in fake news, there's a still a bigger conundrum within the legal industry. How difficult will it be to prove that the blogger purposely intended to be libelous or defame the focus of the post? This may be more difficult than one might think.

What is defamation?

Defamation is a civil wrong, where a person makes a statement that hurts someone's reputation. The person who has suffered a defamatory statement can bring a lawsuit in civil court. A defamatory statement that is made in writing and published to a third party is called libel. Slander is a defamatory statement that is spoken to a third party.

Defamation laws vary from state to state. Generally speaking, to initiate a lawsuit for defamation, the injured party must show:

1. That a false statement was spoken about them or made in writing.
2. The false statement was published to a third party.
3. The publication of the false statement caused harm to the reputation of the injured party.

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4. If the injured party is a public figure, he or she had to show the false statement was made with actual malice.

Defenses against defamation

There are several defenses to defamation, but here are a few that content creators should be mindful of.

Truth: The truth is an affirmative defense to all defamation claims. Generally, courts require that the statement be substantially true for the truth defense to apply. This means the gist or the core of the communication has to be true even though the subtext of the communication may contain some false facts.

In the case of the blogger being sued by Melania Trump, he would have a stronger defense if he can show his statements are truthful.

As a public figure, Melania Trump needs to show the blogger's post were intended with actual malice. Actual malice means that a statement was made with knowledge that it was false or with reckless disregard of whether or not it was false. The blogger is alleging that he had no knowledge that the statement was false and was merely repeating something he saw online.

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Opinion: Simply adding “I believe” or “In my opinion” before a statement does not automatically transform it into an opinion. For example, saying something like “In my opinion, she is a thief and a liar” can still be considered defamatory – especially if the injured party can show they have never stolen anything and there was no basis for this opinion.

Things to do before you post

Educate yourself: Defamation laws vary on a federal and state level. Research the defamation laws in your state so that you can avoid creating or sharing content that can be construed as defamatory (in addition to losing credibility from your readers).

Fact-check: Conduct due diligence on content that could be viewed as liable before reposting, retweeting or sharing it on your social media sites. The law does not care that you did not create the content. The simple act of publishing or sharing defamatory content can make you the subject of a lawsuit.

Get insurance: Defending against a defamation lawsuit can be very expensive. Bloggers, digital magazines and content creators should consider getting an umbrella insurance policy that insures against potential libel or slander lawsuits. Usually, insurance companies will hire an attorney to defend the insured against a defamation of character lawsuit.

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Have more questions about defamation? Contact [J. Paye & Associates](#) today.

Shamontiel L. Vaughn contributed to this blog. Find out more about her at [Shamontiel.com](#).

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