

The remedies for defamation on Wikipedia

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Since the website was officially launched in 2001, Wikipedia has evolved into a ubiquitous cultural entity and a vast source of knowledge about a wide range of topics. As of September, the site included over 29 million usable articles, written by over 42 million registered users and numerous anonymous contributors.

The sheer volume of information on the site, and the fact that articles can be edited anonymously, creates a significant potential for inaccuracies. While some errors can be humorous or inadvertent, the fact that Wikipedia is one of the most voluminous (and easiest to find) sources of information on many subjects results in a potential for significant reputational harm.

Content policies

Wikipedia has three core content policies, which are that all articles: 1) should have a neutral point of view; 2) should be verifiable by a reliable source; and 3) should not contain original research that cannot be attributed. The burden of justifying an edit is on the person adding the content. The guidelines are even more stringent where the article is about a living person (or in some cases a group). In such cases, unsourced or poorly sourced, contentious material must be removed immediately.

The quickest and best solution when someone is posting unfair or inaccurate statements on Wikipedia will often be to alter or remove the infringing content. That being said, simple editing will not necessarily be effective where a determined user is re-posting defamatory content, or when the line between truth and fiction is hazy. Fortunately, Wikipedia has internal mechanisms that will often effectively resolve these sorts of issues.

Internal processes

Issues with particular articles can be reported publicly on "Talk" pages for each Wikipedia article,

or on a more general public "Noticeboard." They can also be reported privately to Wikipedia via e-mail.

In more rare circumstances, Wikipedia administrators will lock an article, require that additional revisions be flagged, or sanction (or temporarily ban) offending users.

Where a legitimate dispute between two editors arises, Wikipedia has its own comprehensive internal dispute-resolution process that includes mediation, arbitration and appeals. Although Wikipedia has no jurisdiction to award damages, it is undoubtedly a much cheaper forum than, say, the Ontario Superior Court of Justice.

Related litigation

Perhaps because of the internal processes discussed above, there has been relatively little litigation concerning defamation on Wikipedia. It was initially a defendant (the claim against it was eventually dismissed) in a B.C. case that became *Crookes v. Newton* [2011] 3 S.C.R. 269, where the Supreme Court held that creating a hyperlink, in and of itself, did not constitute defamation. The 2012 U.S. case of *Pitale v. Holestine* is one of the few decisions found by the authors to consider the merits of a Wikipedia defamation claim in some depth. There, the District Court dismissed some (but not all) of the plaintiff's claims, which arose out of several Wikipedia entries; others were allowed to proceed to trial.

In *Bacon v Automatic Inc. & Ors.*, a U.K. court ordered Wikipedia to reveal the names, addresses and IP addresses of alleged defamers of a hedge-fund billionaire. Wikipedia refused to co-operate, citing the SPEECH Act, U.S. legislation that makes foreign libel judgments unenforceable in U.S. courts, unless those judgments are compliant with the First Amendment. (In one illustrative case unrelated to Wikipedia, *Investorshub.com, Inc., et. al. v. Mina Mar Group, Inc.*, a Florida court refused to enforce an Ontario libel judgment against a U.S. defendant on the basis of the SPEECH Act.)

Impediments to legal action

In almost all cases it will be far cheaper, and almost certainly more effective, to remove damaging content directly, or to use Wikipedia's internal-dispute mechanisms, rather than pursuing legal action.

In cases involving Wikipedia (as with all online defamation), the costs of ascertaining who the proper defendants are may outweigh the benefits of finding them. If a poster masked their information or used a public computer or network, determining their identity may be impossible in any event. There is also, of course, no guarantee that the person has any assets to satisfy a judgment.

Further, Wikipedia's policies require litigants to attorn to the courts of San Francisco County, Calif., with the potential attendant requirement of hiring counsel there to obtain an order compelling

Wikipedia to reveal information about a user. Navigating the SPEECH Act may also add further difficulties.

There is also the "Streisand Effect" (see the Wikipedia article at bit.ly/13d27), in which an effort to hide, remove or censor a piece of information may have the unintended effect of publicizing it. Similarly, the consequences of a litigious response may amplify the damages suffered.

Although content on Wikipedia is supposed to be driven by consensus, many arguments on Wikipedia can be won by working through the procedures available on the site itself. Most of the time, the prudent course will be to "just edit it," rather than initiating (or threatening) legal action.

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