

FINANCIAL GOVERNANCE

**a journal devoted to financial governance
and reputation best practices**

2014

Vol 3

IFRS and neglected governance

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creating, maintaining and protecting the corporate reputation online

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The Internet has fast become the premier source of news, opinions, reviews and commentary regarding corporations and businesses, both public and private. More pervasive than any form of media before it, the immediate and global publishing capabilities available makes it a powerful platform for the proliferation of its users' messages. Literally anyone with an Internet connection is now a potential publisher with a global audience, and that audience is paying attention.



Indeed, a recent study indicated that online reviews are the second-most trusted form of advertising, with 70% of study participants indicating that they trust online consumer reviews.¹

The geographical scope, audience size, level of audience confidence and instantaneous publishing speed available to Internet users mean that not only is anyone with Internet access a potential publisher, they are also a potential tastemaker and opinion shaper. From a corporate perspective, this means that both corporations and individual participants, including shareholders and customers, will likely shape the corporation's online reputation through user-generated content, including comments to public forums and user-created blogs.

Viewed in a more sinister light, it means that anyone with something nasty to say about a corp-

oration, no matter how illegitimate, has the opportunity to influence public opinion about the corporation. Unlike traditional media, this influence may be exerted from behind an anonymizing pseudonym, meaning that the online critic may publish with some comfort that he or she may never be personally called upon to answer for his or her electronic missives.

Just as information published online is published virtually instantaneously, it can also be reproduced instantaneously. The copy-paste functionality of computer-based media means that a comment posted on an online stock forum may be reposted in other forums, blogs or sent via e-mail without a trace. Once information has been published online, there is no sure way to track its replication. This makes the task of ensuring that accurate information is provided to those who have read the problematic message effectively impossible. As the Ontario Court

¹ <http://www.nielsen.com/us/en/press-room/2012/nielsen-global-consumers-trust-in-earned-advertising-grows.html>, accessed November 3, 2013.

of Appeal has noted, online, "the truth rarely catches up with the lie."²

From a corporate reputation management perspective, the question posed by the popularity and accessibility of the Internet is clear: how is a corporation to protect its online reputation in the face of potential online attacks? The relevance of this question is clearly illustrated by the fact that online reputation management has fast become a \$5 billion industry, composed of companies that promise to monitor, repay, improve and police both individual and corporate reputations online.³

the best defence is a good offence: creating and managing a corporate reputation online

The aim of online reputation management is not to completely scrub the internet of any negative or misleading references to the subject. Due to the ever-changing nature of the online landscape, such whitewashing efforts, could they be completed, would only last for a short period of time. Instead, the aim of online reputation management is to create and sustain an online presence that, simply put, directs more Internet traffic to accurate and positive information about the subject than to negative, inaccurate or downright defamatory statements about the subject. By ensuring that the most accessible information about a subject is accurate and positive information, online reputation management strategies assist in ensuring that the most accessed information about the subject is accurate, thereby combating the negative effects of the occasional negative or even defamatory comment. As discussed below, further steps may be required if a corporation finds itself the target of a persistent online defamatory campaign.

There are a number of online reputation management strategies that may be deployed to protect a corporation's online reputation.

The first step in online reputation management is to ensure, to the extent possible, that the corporation controls its online identity. This can include purchasing domain names that approximate the corporation's name (for example, "Corporation A" would purchase CorporationA.com, along with CorpA.com, ACorp.com, etc.), to ensure that critics or detractors do not create a website that could be mistaken for the subject corporation or otherwise be picked up in an Internet search for the corporation. Corporations should also consider creating social media accounts on every major platform (including LinkedIn, Facebook, Twitter, and Instagram) and blog accounts on major blog hosting platforms (such as Wordpress, Blogger, LiveJournal, and Tumblr). Even if the corporation does not intend to use these accounts, it is better to have accounts that would easily be mistaken for the corporation's own accounts, dormant and under the corporation's control, and unavailable to potential problematic home publishers.

The next step in creating and maintaining an effective online corporate identity is to effectively use the corporation's online presence to capture the power of online search engines.

Search Engine Optimization ("SEO") is the process of using the "organic" (unpaid) aspects of online search engines to obtain high rankings in search engine results, thereby pushing desirable content to the top of the engine's search results page.

As a general rule, higher ranking webpages appear at the top of results delivered by a search engine, and the upper-most search engine results enjoy the most Internet traffic. Effective SEO strategies include, amongst other things, an understanding both of the keywords employed by users searching for information related to the corporation and of the workings of search engines themselves.

A number of different methods can be utilized to improve a webpage's rankings in search engine results. For example, webpage content can be edited to include frequently searched keywords and phrases. When done effectively, this makes

² Barrick Gold Corporation v. Lopehandia, 71 O.R. (3d) 416.

³ <http://www.forbes.com/sites/cherylsnappconner/2013/10/30/online-reputation-new-methods-emerge-for-quashing-fake-defamatory-reviews/>, accessed November 3, 2013.

the webpage relevant to a broader number of keyword searches, which should increase the traffic to the webpage. Webpages with more traffic tend to enjoy higher rankings. Another method involves including links to the most important aspects of a website on other pages within the site, thereby directing visitors to the various pages to the desired page. Frequently updating the content of the website can also help increase its search engine rankings. While a detailed discussion of effective SEO strategies is beyond the scope of this article, effective SEO can go a long way in shaping a corporation's online identity and protecting its online reputation.

responding to an online defamation campaign

While the above-noted practices can help to create and maintain an accurate corporate identity online, they may not be enough to protect the corporation's reputation when it becomes the subject of a concerted defamatory attack by online authors.

Individuals who wish to publish defamatory statements about a corporation can choose from a number of available avenues.

They can post comments to pre-existing websites, such as message boards devoted to discussions about public stocks, or they can create their own webpages or weblogs to disseminate their message. Independently authored campaigns against corporations can also involve concerted efforts using both general platforms, such as the stock message boards, and specific platforms, such as a blog devoted to the topic, utilizing linking to join the two.

Any response to online defamation requires that the corporation balance the likelihood of the success of its efforts to remove the defamatory content against the possibility that a direct response from the corporation may serve to both fuel further defamatory remarks from the author or authors, and to draw further attention to the defamatory comments themselves. Colloquially referred to as the "Streisand Effect," efforts to remove or hide undesirable content from the

Internet can often have the unintended consequence of increasing the attention focused on the undesirable information.

In light of the dangers of the Streisand Effect, corporations are wise to use a stepwise approach to combating online defamation, beginning with the least aggressive methods aimed at redirecting traffic away from the defamatory statements. Just as the SEO touched on above can be used to drive a webpage up in the search return results generally, they can also be used to drive webpage rankings up relative to webpages that contain damaging or defamatory content.

Maintaining a consistently higher ranking relative to the pages that contain the defamatory content will direct traffic towards the corporation's own pages.

Should simple search engine optimization strategies prove to be ineffective, a letter to the author of the defamatory statements, including a clearly stated and accurate version of the facts in question, can be considered. To the extent that the defamatory statements were published based on an honest misunderstanding on the part of the author, this strategy can prove to be very effective, especially where it is carried out in a manner that is respectful of the author. An alternate option to consider is to post commentary politely rebutting the defamatory allegations and providing a link to a page or pages on the corporation's website. Corporations should note, however, that the authors of blogs often maintain editorial control over the comments posted to their blogs and, as such, rebuttal commentary from the corporation may be selectively excluded from the commentary section of the blog.

The online platform used by the author of the defamatory messages, and the platform's provider, may be of assistance in addressing defamatory comments. To that end, corporations may wish to copy the service provider on any correspondence to the author of the defamatory statements. Additionally, message boards and blog hosting services alike often have detailed terms and conditions. If the defamatory statements are in contravention of those terms and

conditions, the webmaster may respond to a takedown request that the defamatory statements be removed. It should be noted, however, that the webmaster will often alert the author to the fact that a complaint has been received, the identity of the complainant, the content of the complaint, and the fact that the content will be removed. As such, corporations should be mindful that a takedown request may spawn further defamatory commentary.

A cease and desist letter threatening litigation should the author refuse to remove the defamatory content and/or continue to publish defamatory statements about the corporation is a more aggressive approach to addressing defamatory comments and should only be considered after less aggressive steps have failed.

While a cease and desist letter may be more likely to achieve the desired outcome, namely, the removal of the defamatory statements, than the simple and respectful takedown letter contemplated above, it is also more likely to spur a determined defamer to increase their defamatory efforts.

Should a cease and desist letter prove to be ineffective, the final and most aggressive step that a corporation can take to combat an online defamation campaign is to commence litigation. Litigation may include preliminary steps, including identifying the appropriate jurisdiction within which to proceed, identifying or confirming the identity of the author of the defamation, and an early motion

for an interim order to prevent the author from publishing further defamatory statements pending the trial of the issue. It should be noted that the courts apply a strict test with a very high threshold to motions for interim orders restricting allegedly defamatory speech where the defendant author raises the defences of justification (i.e., that the statements are true), fair comment, privilege or responsible communication in the public interest. Effectively, in those circumstances, an interim order will only be issued where the court is convinced that the defences raised by the defamatory author are bound to fail.

While litigation has proved to be a very effective strategy in instances where pervasive defamatory campaigns were wreaking real havoc with a corporation's reputation, litigation should only be pursued in consultation with litigation counsel along with management and public relations specialists. The road to a civil court judgment can be very long and the corporation's reputation must be guarded and advanced throughout that process.

In the Internet age, corporations will need to be proactive and vigilant in order to protect their reputations online. While the challenges presented by the ever-changing landscape of the Internet are many and varied, a comprehensive and creative approach to online reputation management should prove to be an effective guard against the dangers of anonymous online defamation.

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