

## PROVING ONLINE DEFAMATION: NO LONGER A BLACK BOX

Information that can be used to identify and measure the impact of online disparagement is more available than ever, and free tools such as those from Google can act as a litmus test to determine whether a defamation suit can hold water before significant resources are expended.

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Although online defamation is more common than ever, its impact on business performance can be tracked, measured and quantified. Today, disgruntled customers and business rivals have unprecedented reach when delivering caustic comments about a business on public review sites, leaving disparaging remarks on blogs, or releasing controversial op-eds that can go viral when picked up by a wider news network and distributed for all to see. However, businesses have access to a suite of tools to monitor and manage defamation as it happens and accurately calculate the harm when online defamation warrants litigation.

In the current atmosphere where consumers are primed to “cancel” a business or celebrity that is perceived as going against their values, spurious and inflammatory statements made online can lead to a serious and lasting impact on a brand’s bottom line. Yet, at the same time, internet tools are becoming more sophisticated in measuring the impact of these disparaging and defamatory state-

ments, paving the way for affected brands, business owners and celebrities to fight back against the assault on their reputation and brand value.

Burned brand owners may be quick to want to file a defamation suit, but success from a business point of view, hinges upon being able to prove that the defamatory statements caused economic harm to the individual or the company. In other words, but-for the defamatory statements, the company would have generated more revenue, profits, and cash flow. An effective online investigation is crucial to establishing a causal connection between the disparaging statements and financial harm, quantifying lost profits and ultimately proving damages in court.

Below we examine key questions to consider when conducting an online defamation investigation and explore some easily accessible tools in the Google suite that can provide meaningful data to support a causal link between disparaging online statements and economic harm.



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### Where is all this negative attention originating from?

When vitriolic comments start rolling in on a business’ website, the defamed party may be quick to point the finger at a suspected instigator, but that is rarely enough to pass muster in court. Fortunately, the free website tracking tool Google Analytics can help take the guesswork out of it by allowing the savvy investigator to trace the source of the negative activity and determine if website traffic is originating from disparaging article or review website.

Too, because it tracks the website's historical traffic trends, Google Analytics can also provide a way to measure whether the website traffic has been affected—and how much—by mapping any increases or decreases in site activity correlated to the release of the disparaging statements.

### **What kind of reach do these statements really have?**

While incendiary statements can certainly boil the blood, insults yelled into the void are a far cry from a bad faith smackdown in the court of public opinion resulting in actual financial harm. Google Advanced Search can be used to evaluate impact and discover whether a statement has gone “viral” by being picked up for wider distribution beyond the initial posting.

The custom fields offered at Google Advanced Search provide a more detailed method of finding current and historic information on Google. Google Advanced Search uses a variety of search operators that consist of special characters and commands that go beyond a typical Google search. By typing in all the possible defamatory phrases related to the posting at issue, one can determine if any of the search results include additional webpages stemming from the actual defamatory statements. This can assist with determining how viral the negative posts have spread across the internet.

### **Can actual economic harm be correlated to the disparaging statements?**

So maybe that flaming review did go viral... but is that really a bad thing? After all, they say there's no such thing as bad publicity, and brands that have been lambasted online can oftentimes experience benefits from the controversy as loyal fans rise to compensate for the naysayers. Impact doesn't always mean harm, but Google Trends can help evaluate whether observed declines in revenue or rescinded business opportunities can be linked to the online disparagement by comparing changes in search volume related to the defamatory statement to keywords associated with the affected brand.

Google Trends shows how frequently a particular term or phrase has been entered into Google's search engine relative to the site's total search volume over a given period. It allows the investigator to identify event-triggered spikes in keyword search volume by comparing the relative search volume of searches between two or more terms. Once the dates and magnitudes of these correlations have been identified, the results can then be linked to negative consequences such as canceled advertising or endorsement contracts, unrenewed speaking engagements, and other lost business development activities.

### **The Bottom Line**

Information that can be used to identify and measure the impact of online disparagement is more available than ever, and these free tools can act as a litmus test to determine whether a defamation suit



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can hold water before significant resources are expended.

Establishing connection between online statements and business losses can certainly buoy a case, but it is important to remember that correlation may not always equal direct causation. If an impact is observed, deeper analysis is often needed to identify and control for other variables, industry factors, and market dynamics that could also be playing a role in order to isolate and apportion for the effects of the defamatory statements.

Once the causal link is established, damages can be calculated by comparing actual performance of the company or person following defamatory statements to expected financial performance of the company or person “but-for” the defamatory statements. With today's analytic tools, proving and quantifying online defamation is more feasible than ever.

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