



**How the Internet is Destroying
Small Business Commerce and Legal Remedies
by Donald W. Hudspeth, Esq.**

The Internet is destroying the enforceability of [small business contracts](#).¹

Here are a few examples:

Case 1: Painting Company and the BBB.

A house painting company (“PaintCo”) bid on and signed a contract with a home owner to paint his house. The contract had a three day cancelation clause which was not invoked. Instead, the home owner was unable to allow the painting company to perform under the contract because the homeowners association (“HOA”) had to approve the paint type and color. To that end PaintCo provided three different samples of paint over a three month period. Finally, the HOA approved the paint and the homeowner called the painting company to paint the house. PaintCo responded that it would have its scheduler contact the homeowner early the next week to arrange a time and date. PaintCo did call the customer the next Monday to arrange the job to begin that Friday or the following

¹ More accurately, the lack of developed law allows parties to use the broadcast feature of the Internet for their own purposes. A purist might argue that the Internet does not cause the harm but a partial legal response would be that “but for” the Internet the harm explained here would not occur. Thus, the Internet is a causal factor. In any case the purpose of this article is not to attack the Internet but to start or contribute to a dialogue as to how the problem can be remedied.

Monday, to which the homeowner replied that he, had found another paint company and wanted his money (the deposit) back. PaintCo objected, saying, among other things, that that was not fair or legal because the company had a written contract and had performed under the contract in presenting the paint samples, called to schedule the job, was ready and willing to perform, etc. The homeowner filed a Better Business Bureau (“BBB”) complaint (the paint company was a member) saying basically that the customer wanted his money back because he had found a better price.

PaintCo dutifully responded, explaining that it had a signed contract and was ready to perform. The homeowner responded with a diatribe stating, basically, “Don’t do business with X painting company.” Under the BBB rules the customer’s version of the story, including the admonition not to do business with X would go live in one week. PaintCo could not afford the negative press, particularly as a major home show was pending.

Basically, there were and are no workable legal remedies for this kind of situation, which is now repeated everyday in small and medium size (“SMB”) business commerce. The painting company theoretically could sue the homeowner for breach of contract, and perhaps defamation and tortious interference with contract. But, as a practical matter could not do so because (1) the lawsuit would cost many times the lost contract price of about \$5,000 (2) the harm would be done Online regardless of the outcome of the suit, (3) the lawsuit would take a year while the harm would occur the next week, (4) if the painting company sued the BBB it would probably lose because it accepted BBB’s rules when it became a BBB member, and in any case (5) the BBB would “bury” the small business painting company in legal fees and costs.

So, PaintCo returned the deposit rather than have the customer’s BBB diatribe go live on the Internet. SMB’s face this kind of Internet facilitated extortion everyday, which destroy their right to due process, i.e. the right to be heard in a fair proceeding leading to a with a fair outcome based on reason not power.²

Case 2. Remodeling Company and Angie’s List.

² While I have problems with the immunity companies like BBB have in this situation and think the law should be modified to allow claims against them in extreme circumstances, my purpose is not to fault the BBB, but to show how the advantage of prompt and neutral, private dispute resolution has been corrupted by the existence of the Internet as a tool for extra-judicial remedies.

Workers for a home remodeling company (“RemodelCo”) arrived early one Friday to remodel a second floor condo. They used a ladder to the second floor balcony to unload equipment and tools. The homeowner, who arrived late, objected to the invasion of privacy (the patio entry door was locked) and kicked the workers off the job. The workers returned to the job the following Monday, but the homeowner objected, stating he expected them there on Sunday. Homeowner then terminated the contract and *kept about \$800 worth of drywall and supplies*, which were used on the job by the next contracting company.

RemodelCo was now out the benefit of its bargain under the contract. Moreover, it was out of pocket for the cost of labor, materials and supplies booked for the job. RemodelCo requested payment for same. In response, the condo owner filed a complaint with Angie’s List and left the wrong number for RemodelCo which prevented Angie’s List from advising RemodelCo about the complaint and providing RemodelCo an opportunity to respond.

RemodelCo did not learn of the complaint until a potential customer asked about the post. RemodelCo then contacted Angie’s List and asked for the complaint to be removed because it was untrue -- the Registrar of Contractor’s which has jurisdiction in such cases had dismissed the condo owner’s complaint as defamatory and vicious. According to RemodelCo, Angie’s List said, basically, the complaints do not have to be true, we have no legal responsibility re same and we are not going to take down the false report in spite of the legal ruling. Thus, RemodelCo has a false report on its public record with no way to cure.³ In this case even an official legal determination of falsity was not sufficient to prevent the extortion.

Case 3. The Engineer and the Internet.

An engineer worked long hours – about 60 hours a week – away from home on site at various nuclear power plants. The engineer was an exempt employee (i.e. exempt from over-time) except that certain company actions, e.g. not paying the salary for weeks not worked, created issues whether the engineer would be entitled to overtime pay. The company said that the engineer did not show up for work and was terminated under company policy; therefore, was not entitled to be paid. And, the company said that the engineer had entered post-

³ Of course there are also literally thousands of cases where a customer just FLAMES the business online and the damage is done without the business having the right of a fair hearing.

termination hours which were billed to the employer and its client which were false and arguably fraudulent.⁴



The case appears to be a typical, genuine dispute requiring legal resolution. But, regardless of the merits, Plaintiff dismissed the lawsuit before the employer filed its Answer. The reason: A nuclear plant employee must have security clearance. A finding and perhaps even just the allegation of dishonesty could destroy that security clearance and thus, make just the engineer unemployable in such well-paying jobs, affectingly ruining a career.

Worse, the engineer's suit when filed in federal court immediately showed as the third item on the first page of a Google search under the plaintiff engineer's name. This public ranking might have been acceptable when only the engineer's wage claim was posted, but had the employer responded with a defense and possible compulsory counter-claim (i.e. "use it or lose it") alleging false and fraudulent conduct, that allegation of dishonesty would have been public, internationally, and virtually forever. This result was a function of Google's search algorithm, not any action within the control of the parties.

Plaintiff had the right to bring suit and Defendant had a right to bring its defense and claims as well. Public policy favors the employee and in such cases

⁴ Whether and when the engineer was terminated and knew he was terminated were live issues in the case.

double damages may be recovered under federal law and triple damages under state law. Thus, a risk adverse defendant might have settled the case with a \$100,000+ payment to plaintiff, but here the engineer faced not a choice between winning or losing the case, but of losing a career, his reputation and way of life no matter the case outcomes. Because the downside risk was so great, the engineer decided to dismiss the case.

In an earlier time the counterclaim of false time entries – without the virtually infinite magnification by Google and the Internet – might not have been enough to cause the engineer to dismiss the claim. But the public posting for all to see was more risk than the Plaintiff could bear. In this case the Internet allowed interference with the *individual's* right to due process.

Case 4. A Federal Court Complaint as the Weapon of Choice.

A few years ago a firm client, which was a business among the leaders of new court reporting software, hired a manager who later sued my client in federal court alleging my client had stolen her intellectual property (the reverse appeared to be true) and *never served the complaint*. My client's reputation in the industry was seriously affected and, again the existing remedies were slow, not effectual and expensive. Most likely, the only way to demonstrate the falsity of the complaint would have been to litigate the matter in federal court the cost of which could have well exceeded \$100,000.⁵ (And, again, the client had not even been served with process with the Complaint so had no right or duty of filing an Answer without taking special and expensive steps to do so.)

In this case, one business was allowed to seriously and unfairly impact an apparently blameless competitor, which being a small business and having suffered the loss of business caused by the illicit action, could not afford the substantial costs of attempting to remove the complaint. So, the complaint, being in federal court, sat at the top of the Google search rankings under the client's name.

Another example of unfair Internet use is Website marketing models which destroy local business by “owning” an area, say, hypothetically, “Alabama locksmiths.” Overreaching models such as the one described are illegal in some states, e.g. under the false address statutes or local licensing statutes (the

⁵ Ultimately, the client, having no money to hire the firm, waited out the time to serve and the case was dismissed for lack of service of process on the client. But in the meantime the client suffered great and lasting harm to its reputation and sales as a result of the false complaint.

companies may not be “real”, local businesses thus have no local address or license). But the suits can be piecemeal while the offender’s profits can be substantial. And, even then, law firms like this one which practice Internet law (prepare Internet contracts and advise clients on Internet transactions and represent them in Internet litigation) can tweak the Internet business model to be legal within the boundaries of current law, and still be extremely effective.

Conclusion.

These few brief examples show the unforeseen use and unintended consequences of the Internet as an instrument of extra judicial process, with actions and outcomes contrary to the rule of law and fair business practice. There are many, many more examples of unfair and/or fraudulent schemes than those listed here. Such schemes based on “bad press” might not seriously harm a major corporation, which can afford the counter-response, but they can ruin a small business, e.g. restaurants which are now routinely scammed for free meals by parties threatening bad press.

Right now the Internet is like the Wild West. We need the rule of law and a Sheriff in town to stop the abuse.

The Law Offices of Donald W. Hudspeth, P.C.
Business Law & Commercial Litigation
www.AZBUSLAW.com – TheFirm@azbuslaw.com

Administrative Law - Alternative Dispute - Resolution - Antitrust & Trade Regulation -
Appellate Practice Banking Law - Bankruptcy - Business Law - Commercial Law -
Communications Law - Constitutional Law Construction Law - Contracts - Corporate Law -
Debtor & Creditor - Eminent Domain - Entertainment Law - Environmental Law - Finance -
Government - Government Contracts - Health Care - Insurance Intellectual Property -
International Law - International Trade - Internet Law - Investment Law - Labor & Employment
- Litigation - Media Law - Mergers & Acquisitions - Real Estate - Securities Law - Taxation
Technology & Science - Transportation - White Collar Crime

“The Business of Our Firm is Business”