



## Questions & Answers

### About the

## Uniform Correction or Clarification of Defamation Act (UCCDA)

6/15/99

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### What is the UCCDA?

It is a proposal by the National Conference of Commissioners on Uniform State Laws, (NCCUSL) which recommends statewide legislation that it believes would improve the law. UCCDA would encourage prompt corrections of false statements that tend to injure a person's reputation by changing the types of damages that could be awarded in lawsuits. It applies to written and broadcast information in print, electronic and Internet media, general business and even personal contexts. An injured person could recover damages for actual economic loss, but not for presumed loss of reputation or punitive damages, which usually account for the large judgments occasionally awarded in libel cases. The law addresses the main concern of plaintiffs: repairing injury to reputation.

### How does it work?

A person who believed an inaccurate and damaging statement had been made by a media organization or any other "publisher" of information, including the author of a business document, would contact the writer or publisher to show the statement was false. The writer or publisher has the right to stand by the original statement at all times, but if both sides agree a correction is needed, it must reach the same audience as the original statement in order to trigger UCCDA protection. If the correction is done properly, the person could still sue for damages if there was economic loss. A correction could be made even during a lawsuit, but then the writer or publisher would have to pay the person's fees and expenses. If no correction is made or a court decides the correction was not sufficient, the case proceeds as it would under existing law. All constitutional and common law privileges that otherwise exist in libel law would remain.

### Is it an act of Congress?

No. It must be passed by the state legislature to be effective in any state.

### Where is it presently the law?

North Dakota passed the law in 1995 with one technical revision to improve protection for confidential sources. It was introduced in 1999 in New Mexico, Texas, New York and Minnesota. Other states may consider it in coming months.

### Is it essential for every legislature to pass the law in order for uniformity to be achieved?

The judgment about introducing UCCDA must be made independently in each state. But as more states pass it, the patchwork of laws on corrections will be improved. The Uniform Law Commissioners generally believe uniform laws improve commerce by creating consistency. Traditionally, publishers have not worried much about consistency in libel law--but in this case, UCCDA brings improvements for virtually every state. Also, for anyone publishing on the Internet, uniform correction laws are becoming critical because lawsuits could spring up from any state. Uniform laws have another benefit: they discourage amendments that would destroy uniformity. While minor, technical amendments are possible, major changes generally result in having a bill removed from consideration. That is important in a sensitive area like libel, which touches upon constitutional concerns.



### **What is the benefit of UCCDA to the public?**

A restored reputation is the best remedy for the inevitable errors that occur in a society with free and robust communications. It removes the disincentive for the publisher of a false statement to correct an error by preventing use of the correction in a later lawsuit as an inflammatory device to increase loss of reputation or punitive damages. It also creates a clear and consistent procedure for seeking a correction.

### **How was this proposal created?**

The NCCUSL created it through a drafting committee that studied libel reform for several years. The committee invited representatives from all affected interests to participate and took into account the need for accuracy, freedom of expression and protection of reputation. Its final product, which was carved out of a larger proposal, was approved by the full NCCUSL in 1993 and the American Bar Association in 1994.

### **Who is in favor of this law?**

It has been endorsed by the American Bar Association, the Newspaper Association of America, the Associated Press Managing Editors and the American Society of Newspaper Editors. In addition, several law professors and scholars who have studied the deficiencies in existing libel law have spoken out in favor of UCCDA. A resource list is available from ASNE.

### **Who is against it?**

No national group is on record opposing it, but some groups generally speak out against tort reforms that favor alternatives to litigation and financial damages for injuries.

### **How does UCCDA affect states with existing retraction statutes?**

In most states, it would replace the existing statutes. Most existing statutes have weaknesses: lack of clarity about time limits, the nature of correction needed, the scope of communications covered (not Internet or business communications), the nature of damages affected or the use of corrections after lawsuits have already begun.

### **Does the law give the press an incentive to hold off on corrections until a suit has already been filed?**

No, because it would require attorneys' fees to be paid to plaintiffs if a correction is run after litigation has commenced. But it is important to leave the correction option open throughout a dispute, because pretrial discovery or trial testimony may uncover evidence of falsity that wasn't previously available. So a press organization that believed its story was accurate may discover it was wrong late in the process. A correction then would be encouraged--and the plaintiff would still be able to recover damages for economic loss.

### **Don't most defamation suits end in favor of the press?**

The overwhelming majority of defamation claims never go to trial because of strong First Amendment guarantees, but in all cases the defense costs are significant, often climbing into hundreds of thousands of dollars. And while some spectacular judgments have been entered against media organizations, most are reduced or reversed on appeal. The UCCDA wouldn't change the First Amendment. It would offer recourse to people who are concerned about false statements but are likely to lose a libel suit.



### **Even public figures?**

Even public figures.

### **How does the law affect non-media businesses involved in communications?**

It sets out the rules for correction in any letter, memorandum or publication where a false statement creates harm to reputation. The UCCDA would cover employers who must investigate sexual harassment claims, but face defamation claims when they do so, or who are challenged on employee references or evaluations. It would cover nonprofits and churches that publish newsletters. It would cover even private individuals who send email with unintentionally defamatory statements. In short, it protects non-media writers as well as the press--and it gives those mentioned by them a way to correct errors.

### **Should journalists be concerned that UCCDA will force publishers to back away from the truth?**

The editorial process is under tremendous pressure today because of multi-million dollar libel judgments. Responsible editors and reporters are managing to engage in discussions, despite today's laws. They either decide upon corrections or determine that the best possible information has been published and that the published story must be supported. The UCCDA will do nothing to diminish the weight of those discussions. If it encourages reader response that leads to improved accuracy, journalists will welcome it.

### **Should journalists be concerned that UCCDA may require disclosure of confidential sources.**

Protection of confidentiality is important in all communications--to journalists and to other professionals who engage in privileged conversations. UCCDA strives to protect injured persons who wish to understand the background of erroneous statements without invading confidentiality. In North Dakota, concern about striking the proper balance led to technical amendments of the UCCDA that did not change the essence of the bill.

*UCCDA may be considered by any state legislature whenever it is in session. Groups interested in promoting it through educational efforts are invited to contact ASNE through Tonda Rush, American PressWorks, Inc., PO Box 50301, Arlington VA 22205. Phone: 703 534-5750; Fax: 703 534-5751. Email: NewsBizLaw@aol.com.*