SOCIAL MEDIA AND THE LAW

PRESENTED BY
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SOCIAL MEDIA AND THE LAW

COPYRIGHTS

U.S.C. : Title 17
“Copyright is not an absolute. Potato chips are absolute. If this is my potato chip, then it’s not yours. You can’t touch it, eat it or use it for any reason whatsoever, not without asking first.”

Seth Godin
RIGHTS

- Copyright is protected whether it’s trademarks, copyrighted information, copyrighted images, etc.

- The copyright is only as good as you are willing to enforce

- As soon as you put a blog post out, or publish a picture, you have the rights

- If copyright is infringed, Issue a request for removal. If that doesn’t work, send a cease and desist to the web service provider

- Finally, you can sue for any damages or revenue loss
LINKING VS. LIFTING

- **Linking** to somebody else’s content is one thing, **stealing** whole articles from them is an entirely different matter.

- If you use more than a few **words**, you want to quote and cite it.

- If you use a greater number of words, you want to use a **block quote and footnote**.
LICENSE

• Think about the license that you have when using copyrighted information.

• You can typically use creative commons licensing for free as long as you attribute the author to the material.

• Be aware of EXACTLY what the license entitles you to.
FAIR USE

• The purpose and character of the use, including whether such is of commercial nature or is for nonprofit educational purposes

• The nature of the copyrighted work

• The amount and substantiality of the portion used in relation to the copyrighted work as a whole

• The effect of the use upon the potential market for, or value of, the copyrighted work
ELEMENTS OF DEFAMATION

• Defendant’s publication to a third person

• Defamatory material - if public figure, prove ACTUAL MALICE

• Of and concerning plaintiff

• Statement was false

• Some fault on the part of the publisher

• Damages (the intensity/aggravation of these factors affects potential damages)
2009 PIZZA KITCHEN LAWSUIT

- Store owner of the pizza kitchen was in a contractual relationship with the marketing firm.
- One night the owner went onto Facebook and posted a message that essentially said that the marketing firm were a bunch of crooks. The publication went on Twitter as well.
- The next morning, he deleted the posts, but it was already too late.
- He was sued for $2M for defamation for libel.
- The process would be very different if he would have said “I think” they’re a bunch of crooks. That would have been a matter of opinion and not a matter of fact.
- Trying to prove that the statement was true would be a possible defense, but in this case it would be difficult and raise criminal issues, because it would have to be established that there was fraud involved.
SLANDER AND LIBEL

SLANDER

• Any **false or defamatory words** spoken about a person

LIBEL

• Defamation by **written or printed words** (or pictures)
VICARIOUS LIABILITY

“Employer being held liable for the actions of the employee carried out in the normal course of employment”
Disclosure of Information and Terms of Agreement

- Federal Trade Commission, Securities Exchange Commission, and the F.D.A have all come out with their own regulations about what must be disclosed within the use of social media.

- The F.T.C has revised their guidelines concerning the use of endorsements, testimonials, and advertising to include social media. Basically, any post or tweet that endorses a product where there’s payment in return must be disclosed to the general public, so that they have have an awareness that it’s a paid endorsement.
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Contests & “Like” Gates
• Every site that you have needs to have a privacy policy and terms of service that covers the way that you are going to use the information that you collect on the site, as well as the terms that need to be agreed upon.

• Good privacy policies should be simple and easy to understand. The big thing that people want to know, is that their information won’t be sold to a spam list by joining your email list.

• Terms of service: letting people know what you do or don’t “owe” them.

• If you haven’t protected yourself, you expose certain legal actions to your user base to file a class action lawsuit against you.
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A “Like” is Not Protected Speech
The basic idea is that there’s somebody that has no idea that someone is going to record them or transcribe them, etc.

Typically, the potential defendant intentionally and without authorization invades the privacy of somebody else.

Invasion: Must be offensive to a reasonable person.

The defendant must have intruded upon a person in a private setting.

The act must have caused emotional anguish or suffering to the plaintiff.

What were the damages?

Publishing information that people had no idea would be shared with the public is a huge problem in social media.

Expectation of privacy is decreasing, and our privacy zones are becoming very limited.
PARTIES TO LAWSUIT

• 33% of divorces involve Facebook in some way

• One of the most active bodies of law within social media is the discovery aspect around Facebook messages, and effective ways to deal with it.
PhoneDog v. Kravitz

- Kravitz set up and ran the PhoneDog Twitter account.
- The account had around 18,000 followers.
- Kravitz left the company and took all of the followers with him.
- PhoneDog sued Kravitz for $340,000 for taking the followers.
- What is the value of a “follower”?
TORTIOUS INTERFERENCE WITH A BUSINESS CONTRACT

• There’s a business contract between Salesman A’s company and Company C, and then the potential defendant (Salesman B) interacts with that contract and induces Company C to break it.

• Then, if the contract is breached, Salesman A’s company has a lawsuit against Salesman B’s company for whatever the remaining value of the contract was, plus treble damages (3x the value).

• This happens quite a bit in social media
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SEXUAL HARASSMENT IN THE WORKPLACE
Generally, the owner of the blog is **NOT LIABLE** for the comments posted on the blog **unless** the blog owner **alters the contents of the comment** in some way, which **“re-publishes”** the material.
EMPLOYMENT

• **Title VII**

• Using **social media** to essentially, **spy on potential applicants or recruits** is a **very dangerous** game to play.

• If a person **believes they were discriminated against**, **onus is on the employer** to prove otherwise.
The **N.L.R.B.** came out against many social media policies in December of 2012 and basically said, you **cannot in your policy prevent any conversations** between employees to:

- Congregate
- Unionize
- Voice frustrations about the employment environment
- Rally support to expose the potential dangers that an employer is putting on them
Employers may NOT prevent

- Coworkers from “friending” each other
- Employees speaking negatively about the company (although it’s not advisable)
- Use of trademarks, etc. (in some cases it can be considered fair use and not infringing)
- Employees speaking to the press, especially about labor disputes
- Employees from using social media on company time
CONTRIBUTE WITH CARE

KitchenAid
@KitchenAidUSA

Obamas gma even knew it was going 2 b bad! 'She died 3 days b4 he became president'. #nbcpolitics

(Twitter screen capture / October 4, 2012)
CONTRIBUTE WITH CARE

American Red Cross
@RedCross

Ryan found two more 4 bottle packs of Dogfish Head's Midas Touch beer.... when we drink we do it right #gettnslizzzerd

HootSuite • 2/15/11 11:24 PM
CONTRIBUTE WITH CARE

Flying Saucer Austin
@FlyingSaucerAus

Offer is still on the table! RT Show us you donated a pint @redcross today & we'll buy you a pint of @dogfishbeer #gettingslizzerd

12:42 PM - 17 Feb 11
“I find it ironic that Detroit is known as the #Motorcity and yet no one here knows how to f***ing drive,”

- on the Chrysler Twitter account
START WITH A POLICY

• The most critical aspect of the legal interaction of an organization within social media is to create a great policy.

• Don’t start from scratch
When assembling a social media policy, have stakeholders from all throughout the organization involved, to help give input and feedback towards how social media impacts them in their roles.
FOLLOW INDUSTRY REGULATIONS

Within each industry, make sure that you have a great understanding of what the regulations that govern that industry are.
TRADE SECRETS
GUIDELINE V. POLICY

**Guideline**: A few rules that are short and succinct. Provides an idea of how to behave.

**Policy**: Gives you the right of termination, and the right to correct some behavior and action.
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An Effective Policy Lifecycle Enables Social Media in Regulated Industries

- Uncommon but highly effective inclusions
- Effective Techniques and Best Practices

Define
- Social Media Policy

Enforce
- Code of Conduct
  - Laws & Regulations
  - Business Rules
  - Complaint Resolution
  - Analytics & Reporting
  - Audits

Promote
- IT Policy
  - Training
  - Goals & Incentives
  - Outreach
  - Leadership By Example

From http://zdnet.com/blog/hinchcliffe on ZDNet

MCLEZ.COM
GUIDELINES TEMPLATE

PLEASE SEE PDF FILE TITLED
“SOCIAL COMPUTING GUIDELINE TEMPLATE”
ELEMENTS

- Signed employee agreement
- Clear “who” may speak on behalf of the company
- Protect proprietary/confidential information
- Advise about copyright infringement
- Clearly defined “scope” of behavior
- Establish editorial process around publication
- Safeguards against multiple account management
- Clear engagement rules for recruiting