



# ELECTRONIC COMMERCE & LAW



VOL. 15, NO. 18

**REPORT**

APRIL 21, 2010

## **SOCIAL MEDIA IN THE WORKPLACE**

When corporations enter into the social networking realm, especially when they allow employee participation, they open themselves up to the many benefits of the space—but can also expose themselves to risks that may not be covered by a traditional internet use policy. Corporate use policies tailored specifically to social media can help companies maximize the effectiveness of the platform in a way that benefits everyone.

### **Crafting Corporate Social Media Policies: Striking the Right Balance Between Marketing Boon and Company Liability**



BY RICHARD E. PEIRCE

**C**ompanies have grown savvy over the last years to the possible threats of employee internet communications, and employee computer use policies governing e-mail, web browsing, and other activities are commonplace.

*Richard E. Peirce is a partner at Eckert Seamans Cherin & Mellott in Philadelphia, where he advises clients on a wide range of topics related to transacting business online. He can be reached at [rpeirce@eckertseamans.com](mailto:rpeirce@eckertseamans.com)*

Social media represents a slightly different challenge, however. Existing corporate use policies could, of course, be extended to include social networking interactions: On some level at least, the way social networks operate is no different from communications tools already in play. Users have long been able to send and receive messages and pictures, and post related content. There is little dispute that social media sites such as MySpace, Facebook and Twitter allow users to more efficiently and creatively complete those tasks, but the overall functions are nothing new.

Social media is different because of how it is relied on and used, and how its visibility outside of the company can hinder—or help—a corporation's image. Its use

more than its technology is what is concerning. As such, companies would be well advised to create separate social media use policies.

## Social Media as Traffic Generator

Due to the overall online traffic concentration social media now draws, companies, organizations and individuals expect social media to deliver for them in the same manner advertisers expect big results from advertising on popular television channels or during popular television events. In a sea of content that is the world wide web, social media is prime real estate: Users know where other users will be without having to exert much search effort. If you are looking for someone online, there is a good chance the person has a MySpace or Facebook presence. If you are looking to spread the word about a new product, there is a good chance that those who follow you on Twitter will read your message.

For companies, this means not only that fans and loyalists can “friend” a company online, but also that they will expect to have that chance. Companies can also expect customers and prospective customers to look to the internet for information and feedback.

Companies generally want to keep pace with the latest online marketing tools and therefore want good and reliable information about their products and services flowing through the most popular sites. A corporate presence on social networks can be a boon in this respect.

But when the company’s employees are themselves participating in social networks—especially when they identify their affiliation with the company—the company should pay attention.

Banning employee use of social networks outright might not be the best course, because employees can sometimes be some of the best users given their company knowledge. On the other hand, however, the substantive content and appearance of an employee post or profile made outside of the scope of his or her employment duties can raise a number of legal and other problematic issues.

## Importance of Dedicated Policy

To mitigate the threats while still maintaining the potential benefits of social networking employees, companies should seriously consider having an employee social media policy in place. Like other types of policies, it should be tailored to the specific business at issue.

Depending on the nature of the business, there could be a number of topics to explore in constructing a social media policy. Does a company want to set out rules relating to all employee social media behavior, or just to behavior that could have an affect on, or be attributed to, the company? The struggle is how best to protect the company’s interests without overly restricting an employee’s personal use of social media, and the proper approach will depend on nature of the company and its goals in the social networking space.

For example, a new startup company selling sandals may want a very liberal policy with only a few base suggestions in an effort to encourage its employees to chat more about the new “flops” in town. A publicly traded company that manufactures military hardware for the government might want a much stricter policy on what employees can say and do online.

The ten topics below highlight some of the top issues a company might want to address for employee social media behavior that could have an affect on, or otherwise be attributed to, the company.

### 1. Mandate Review Before Posting

Companies could encourage employees to seek review of certain social media behavior (postings and/or the content of any online profiles) by the company first for advice or even approval. While requiring every relevant post to be “pre-approved” could prove cumbersome, some type of common-sense language may help to encourage open dialog on “close” calls. In other words, when in doubt, employees should not post before checking with the company.

### 2. Make Responsibility Clear

Companies should make clear to employees that it is the employees who are solely and legally responsible and liable for posts made outside of the company’s request. If employees commonly use work-related computer systems and hardware for personal use, an additional clarification may be wise stating that employees are responsible for any online activity conducted with a company e-mail address, and/or done through the use of a company computer system and/or hardware.

### 3. Restrict Use of Intellectual Property

Social media behavior should not appear as if it is endorsed or approved by the company. Accordingly, companies should consider restrictions on how the company’s trademarks and other intellectual property are used, including not registering company names and marks as components of usernames or other login identifiers. If employees want to list their employment in profiles, they should limit the listings so the profiles do not appear as if they originate from official company representatives or spokespersons. In no way should employees propose or conduct any business on behalf of the company.

### 4. Mandate Professionalism

Companies should require that all content distributed through social networks is accurate, and should be fact checked as needed. Companies should also strive to ensure that social media interactions are conducted professionally. The behavior should not be critical of competitors or used to engage in online arguments. The behavior should not contain personal attacks. In this vein, companies should require that if an employee notices a negative or inaccurate post about the company, he or she should avoid responding to it and should alert company management.

### 5. Require Relationship Disclosure

Corporate policies must require that, if employees promote or endorse company products or services, their employee status must be clearly and conspicuously disclosed.

The Federal Trade Commission’s recently-updated guidelines on endorsements and testimonials in advertising, codified at 16 C.F.R. § 255, impose liability on endorsers and companies for failure to make required disclosures about “material connections,” such as payments or employment relationships, that exist between endorsers and the companies about whom they comment (14 ECLR 1445, 10/7/09). The guidelines specifi-

cally apply to endorsements made using “new media,” which includes social networking. FTC enforcement actions could be potentially brought against a company whose employees comment on company products or services without disclosing the employment relationship (15 ECLR 23, 1/6/10).

Any corporate policy should also require that any comments or representations about the company and/or its goods or services be honest and not deceptive or false. Employees should be prohibited from creating any fake identities, and should not be permitted to post anonymously.

## **6. Prohibit Illegal, Abusive Uses**

It almost goes without saying that social media behavior should not violate any laws or regulations, but companies would still be wise to include such language in their corporate policies. Companies could also include in this section prohibitions on behavior that infringes the intellectual property of other parties. Employees should not engage in spam or other problematic conduct such as hacking or uploading viruses, for instance. Employees should avoid any behavior that could create a hostile work environment. Employees should use good judgment, and should do their best to avoid any behavior that would reflect poorly on the company.

## **7. Set Privacy Expectations**

A corporate social networking policy should prohibit employees from posting the names, photos, or other personally identifiable information of other individuals, especially fellow employees, without proper permission.

## **8. Set Restrictions on Data, Information Sharing**

To protect assets and maintain image, corporations should specifically bar employees from using social networks to disclose, whether advertently or not, any sensitive financial or other confidential or trade secret information about the company or any other company, person or entity. This may include information about upcoming product/service releases, sales data, finances, employee statistics, company strategy, and any other information that has not been publicly released by the company. Employees should also not discuss securities

and related issues. This includes any behavior that could in any way misrepresent the financial status of the company.

## **9. Limit Endorsements by Employees**

One of the attractive features of social networking, at least from a personal perspective, is its ability to connect and introduce friends, colleagues, and acquaintances. Companies should be wary of employees using social networks to promote coworkers, however.

A strong social networking policy will prohibit employees from providing recommendations about colleagues or former colleagues without first seeking company approval. In the case of former colleagues, the recommendations may be inconsistent with the company's position.

Similarly, the corporate policy should restrict employees' online, networked responses to a journalist's request for an interview or comments on a specific issue.

## **10. Set Standards for Linking**

Finally, corporations should require that employees use good judgment when posting a link to a third-party site. Companies should be aware that the link will be visible to many users, and may be associated, however indirectly, with the company itself. The company should take measures to ensure that the linked site does not reflect poorly on the company.

### **Above All: When in Doubt, Ask**

The above topics provide a good starting point for crafting a social media policy. While some of the recommended inclusions may at first blush seem strict, the wrong type of employee behavior online can cause real headaches for companies, and is worth heading off at the outset.

Many of the most troubling issues can be easily resolved by the employee seeking guidance from the company prior to the behavior, however. A corporate policy should, whatever its approach, place a premium on communication to ensure that the social networking experience is a positive and beneficial one for all parties.

If there is any single statement that warrants repeating to employees as part of a social media policy, it is this: “When in doubt, ask the company first.”