



The Legal Implications of the Use of Social Networking Websites: Minimizing Risk to Companies and Employees

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Introduction

- Identify risks to companies and employees in the use of social networking sites
- Minimizing risk to companies for employee conduct
- Minimizing risk for personal liability

Agenda

- Reasonable expectation of privacy on the internet?
- Areas of potential company and personal liability
- Minimizing employer liability through employer use policies

Reasonable Expectation of Privacy on the Internet?

- “On the internet, nobody knows you’re a dog.”*
- Few rights to privacy with online content
 - Website may even own content
 - Don’t post things that you don’t want other people to see - ever
- “Private” profiles and websites don’t necessarily offer full protection
 - Content can be forwarded and saved
 - Content may not be able to be permanently deleted

*Peter Steiner, *On the Internet, Nobody Knows You’re a Dog*,
New Yorker Magazine, July 5, 1993, at 61

Posted Content Will Be Seen

- 45% of employers look at online social networking profiles when hiring
- Employers monitor social networking websites for employee conduct
- Investigators/divorce lawyers search networking profiles to gather evidence

Potential Liability

- Posters of content are “publishers” under state and federal law
 - Content = video, text, pictures, and audio
- Employers may be vicariously liable for employee conduct
- Workplace discrimination for suspension or termination for posting comments on a social networking site
- Employees may suffer their own personal liability

Common Grounds for Liability

- Copyright infringement
 - The unauthorized reproduction or use of copyrighted content
 - Fair use defense: use of parody, satire, and news reports may constitute fair use

Liability Continued

- Defamation
 - Writing or uttering a false statement of fact about a person that harms his/her reputation
 - The main defenses are truth, except a public disclosure of private facts that are not newsworthy and would be highly offensive to a reasonable person, or opinion, unless asserted as a fact

Liability Continued

- Interference with economic relations
 - Wrongful interference with a contractual relationship or prospective business relationship between two or more third parties
- Sexual harassment

Other Negative Consequences

- Adverse employment actions
 - Not hired, fired, or suspended
- School-related discipline
- Loss of business
- Damaged reputation

Protecting the Organization from Liability

- Goal is to minimize risk of organizational liability
- Avoid employer vicarious liability for employee action using company computers
- Ensure proper supervision of employees through employer use policies and enforcement of employer use policies

Employer Use Policies

- Should cover email, internet, and online social networking
- Can be in handbooks and employment agreements
- Employees should have no expectation of privacy in anything they create, store, send, or receive using company computers
- The company retains the right to monitor emails and internet sites visited by employees

Employer Use Policies Continued

- Prohibit sharing of proprietary information/trade secrets in social networking
 - Entrust employees with responsibility to protect company proprietary information/trade secrets
 - Clarify in use policies what is company proprietary information/trade secrets
 - Employees are prohibited from sending, transmitting, or otherwise distributing proprietary information/trade secrets

Avoiding Organizational Liability

- When in doubt, don't post content
- Obtain permission from partners and clients before posting content about partners and clients
- Obtain permission before using copyrighted content

Avoiding Personal Liability

- Know the terms of use of social networking sites for ownership of content
- Attach permission from copyright owners before posting photos, text, video, music
- Assume anything you post negatively about anyone will eventually reach that person and the result is a claim against you
- Don't put your organization at risk by posting defamatory content about anyone
- Assume your employer (and future employers) monitor your postings

Real-World Examples

- Cisco Systems/Albritton
 - Company lawyer blogs on integrity of lawyer suing his employer, gets him and his company in trouble
- Delta Airlines/Simonetti
 - Flight attendant who posts suggestive photos of her in flight uniform on her blog but does not identify Delta as employer gets fired for “inappropriate conduct”

Question and Answer

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