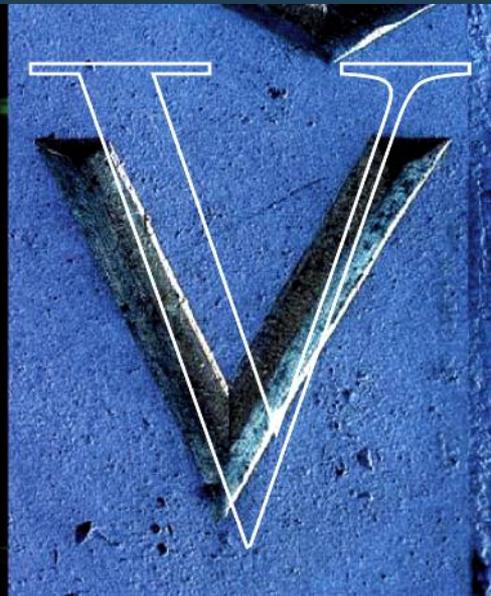
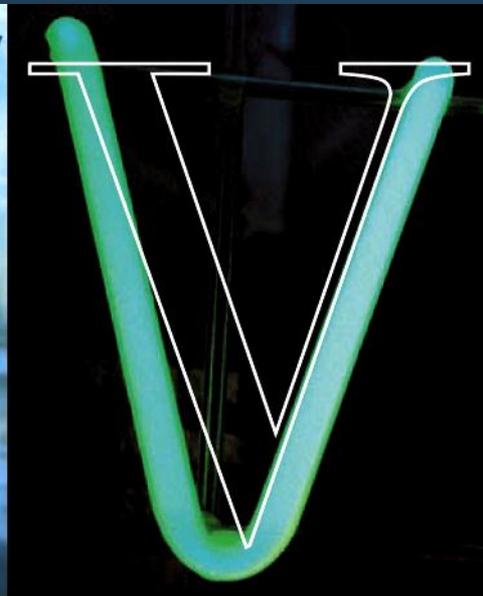
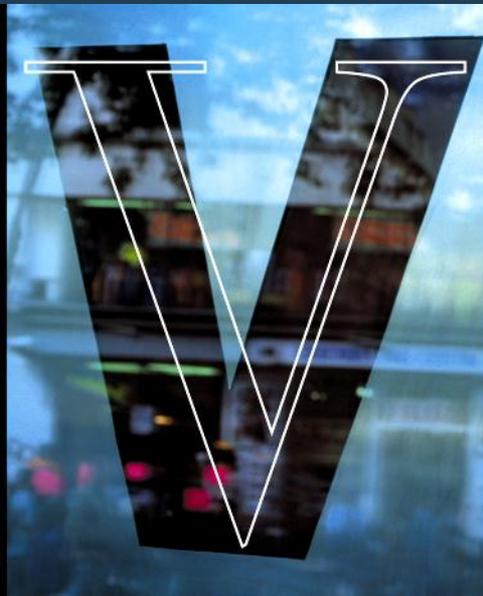
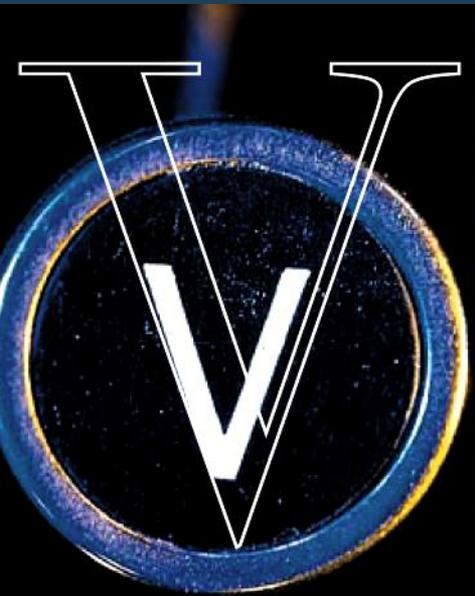


VENABLE[®] LLP

Legal Issues in Technology Innovation: E-commerce, Internet, and Social Media

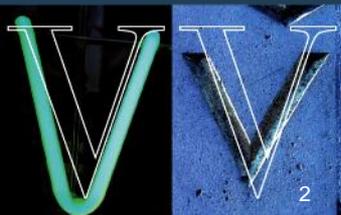
Caryn G. Pass

October 21, 2012



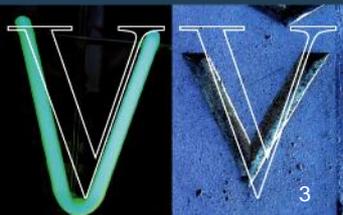
Overview

- Increased use and application of technology and internet by all school constituents
 - Identify constituents and determine needs and usage
- Schools face the challenge of harnessing the power of technology while avoiding potential legal exposure
 - Identify legal exposure
 - Develop strategies and policies to reduce risk
 - Impossible to eliminate exposure
- Special focus on social media, privacy, and e-commerce
- New day with increase in community of digital natives
- Culture is essential consideration in all decisions



Independent School Constituents

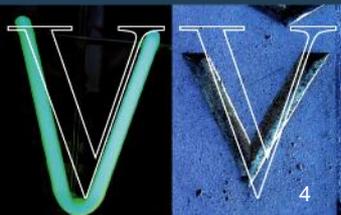
- who are we trying to reach?
 - students, parents, employees, alumni, development, admissions, applicants, grandparents, donors
- who is trying to reach us?
 - making the school accessible to prospective students, parents, donors and alumni
 - keeping out predators and preventing ID theft
- methods of communication
 - Website
 - What should/should not be made public?
 - Pictures of students? Names?
 - Pictures of employees? Email address? Pedigree
 - School-hosted platform
 - For students, parents, alumni
 - Password protected (not too generic)
 - Monitored and secure
 - Social Media
 - Facebook, twitter, blogs



Factors creating potential legal exposure

- Use of social media
 - boundaries issues
 - privacy and confidentiality
 - protection of brand and reputation
 - safety of employees and students
 - breach of state laws
 - 24/7 vs. during school activities and expectations of conduct
 - detrimental reliance and false advertising
- contract enforcement
- identity theft

*Wise In The
School World*



The "Social Media Bandwagon"



Wise In The
School World



Why Use Social Media & Technology? **

- communication method for current generations
 - accepted form of interaction
 - e.g. access and use of cell phones
 - increased engagement
 - new world of possible interactions and experiences
- second nature for next generation of leadership
 - cutting edge now is old hat to new leadership
 - utilize tools of generations
 - Email vs. texting
 - collaboration
 - business school model
 - Google docs
- business tool(s)
- constituent expectations
 - global connections

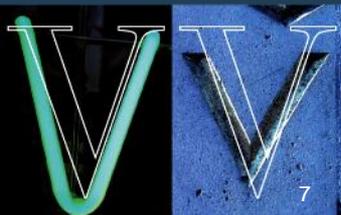


**See heather's presentation for focus on social media

Social Media* Usage Risks

- Admissions
 - on line applications
 - enrollment agreement
- Advancement
 - Facebook, twitter
 - Email communication and solicitation
- Faculty
 - Person blogs, Facebook
 - Boundaries issues
- Finance & Administration
 - Collection of tuition
- Human Resources
 - Applications for employment
 - Employment agreements
- Students
 - Bullying, boundaries, inappropriate conduct

*Wise In The
School World*

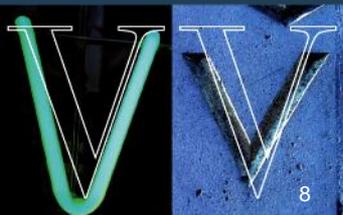


*Including web-based technologies

Boundaries

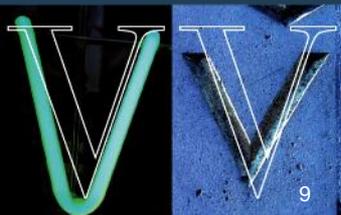
- Ensuring proper boundaries between constituencies
- Avoid inappropriate behavior or appearance of inappropriate behavior
 - Appearance worse than reality
- Facebook friends*: Teacher with students
 - “friending” current or former students on personal account
 - student exposed personal information
 - inappropriate contact and solicitation
 - employees vulnerable to allegations
 - current student access through shared contacts
 - teacher has access to student page and implied obligation to act on information obtained
- Facebook friends: Teachers with parents
- Facebook friends: Employees with donors or board members
- Teacher’s use as tool in classroom

*other tools: Skype, twitter,



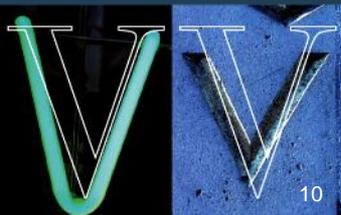
Privacy and safety

- has school established expectation of privacy
 - policies describing rights and appropriate expectations
 - liability to school for demanding waiver of privacy rights
 - Use of photo, names, email address, bona fides
 - student abducted after access to picture on website
 - Teacher killed by stalker
- obtaining permission for use
 - Inclusion in enrollment or employment agreement, student or teacher handbook
 - Ability to “opt out” or mandatory
- was privacy expectation reasonable?
 - school posts student grades on website
- did school have valid cause to invade privacy
 - claims teacher was visiting child pornography sites during school day
- breach of privacy exposed constituent to danger



Breach of state laws or common law

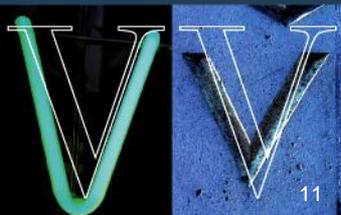
- Advancement
 - Failure to register with states where solicitation (including emails) occurs
- E-commerce
 - Failure to comply with state's laws addressing on line contracting
- Charging or collection of funds
 - Failure to comply with state obligations associated with online billing or use of credit cards
- Identity theft
 - Failure to implement appropriate procedures resulted in theft of identity
 - Failure to establish red flag policy



Commerce and Protection of Brand

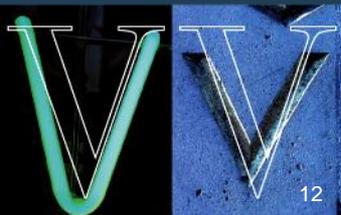
- Charging or collection of funds
 - 3rd party use
 - Ensure system for responding to breach (red flag)
 - Agreement for repeated use
 - Ability to review entire purchase
- Trademark and copyright protection
 - Protect logo, tag line or “name of school”
 - Challenge violations by vendors and others attempting to use protected branding
 - place “marking” on all use locations (webpage)
 - Caution when entering into relationships with companies offering free or reduced uniforms etc. in exchange for use of protected branding
 - Limit and protect use by students, parents and other groups

*Wise In The
School World*



Advancement and Admissions

- Advancement
 - Facebook page
 - Who can post, Review prior to post
 - Permission for photos and names
 - Website
 - Ensure honest and realistic
- Admissions
 - Application for admissions
 - Ensure all questions are legal
 - Special needs issues
 - Who is completing questionnaire, if minor get signature of parent
 - Ask for history of school
 - Get dates
 - Get recommendation from administrator not just teachers



E-commerce and Electronic Contracts

overview

- Benefits
 - Tracking of documents
 - Easier for school to maintain the forms
 - Convenience of all parties
 - More likely parents will return timely
 - Sustainability
- Applies to all contracts, agreement or other documents completed by electronic means
 - Enrollment agreement, employment agreement, application for admissions
- Legal compliance
 - To be enforceable must comply with State, federal, and common law
- Objective
 - Enforceability of agreement
 - If challenged the school must be able to confirm the authenticity of the agreement



E-contracting Details

Elements to consider

- Elements
 - Identity confirmation
 - Process for access to system
 - Consent to electronic contract
 - Confirmation of agreement to use e-contract
 - Ability to review and modify
 - Can party review submission of information and modify information
 - Confirmation of school's receipt and acceptance
 - Return email confirming receipt and acceptance of contract
 - School's inability to modify agreement
 - Confirmation that school can't modify agreement
 - Vendor, policy and process issues

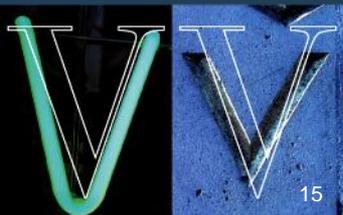
*Wise In The
School World*



Verification of Identity

Party entering into agreement

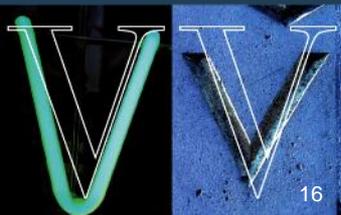
- Identity confirmation
 - Can the school provide reasonable assurance that access to the system is secure.
 - Parent can challenge by denying they were the party that completed the agreement
- Questions to consider
 - Important to ensure the protection of access to the system?
 - How is the family given ID and password?
 - Is there a method that is confidential and ensures a level of security?
 - Are IDs and passwords changed from year to year?
 - How are new parents given ID and password?
 - How are parents notified of the ID and password?
 - Is there a method for changing the password?
 - What is the system for obtaining a new password if forgotten?



Consent to Electronic Contract

Agreement to enter into contract

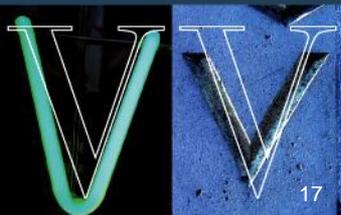
- Notice to party they are entering into contractual process
 - Binding legal document
 - Provide ability to exit process
 - Describe the process in brief
 - Provide acknowledgment with confirmation to move to next step
- First window of process
- Appears on printed agreement
- If paper option available describe method for obtaining document
- Provide contact information if questions exist
- Foreign Language
 - Provide notification in multiple languages that document is legally binding
 - Suggest obtaining assistance with translation



Confirmation of Selections and Links

Method for confirming selections

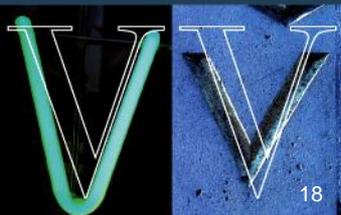
- Ensure method for confirming selections
 - Yes/no buttons
 - Accept buttons
- Once selection made appears as part of document
- Links to other vendors
 - Notification of transfer to vendor site
 - Ability to recapture information in main document
 - Notification when return to school's site
 - References to:
 - Tuition Refund Plan; Tuition payment vendors; Financial Aid
 - Payments of deposits or first installments
 - Banks or credit card companies for payment of deposit
 - Confirm Process at linked sites



Ability to Review and Modify

Modification prior to submission

- Provide party ability to review document prior to final submission
 - Like amazon purchase
 - Provide a completed document with all information including ability to review linked sites
 - Provide ability to modify any and all information provided by parent
 - Include language informing parent that this is a binding agreement
- Identify areas not completed
 - All sections must be completed prior to final submission
- Avoid ability to modify or change fixed terms
 - Name of student, tuition, grade student will enter, school year



Acceptance of Agreement

Execution of document

- Include language confirming:
 - Parties consent to enter into a binding legal document
 - Confirmation that all information provided is true and accurate
 - Agreement to comply with all terms and conditions of contract
 - Parent agrees to enter agreement by electronic means
 - Execution format is the equivalent of an official signature
- Who executes?
 - Does school require signatures of both parents
 - Separate log in
 - Consent by executing party that they have authority to sign in behalf of spouse

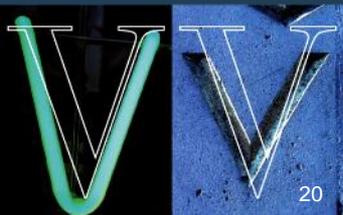


Fully Executed Agreement

Ability to print out copy of full document

- Encourage parent to print out copy of fully executed agreement for records
- Notify parent of forthcoming email confirmation
 - Instruct to contact school if email not received
- Extra step
 - Attach PDF of contract to email
- Agreement sent to School only in PDF
 - School without ability to modify agreement created by parent
 - Avoid parent's argument that school changed the agreement
 - PDF maintained by school

*Wise In The
School World*



Confirmation of Receipt and Acceptance

Email response from school

- Confirm receipt of contract
 - Limits the parent from asserting failure of school to execute agreement
- Email response to party completing agreement
 - Confirm receipt of document
 - Notify parent of school's receipt of agreement;
 - Confirm acceptance of agreement
 - Contract only binding if agreed to by both the school and the parents
- Either School or vendor sends email confirmation
- Maintenance of email as proof of confirmation of agreement
 - Confirm delivery and receipt of email response notice

*Wise In The
School World*



Other Issues

considerations

- Policy
 - Determine the process for executing the e-contract
 - Draft a policy outlining the process
 - Used in court to establish authenticity of document
- Vendors who process contracts
 - Many vendors assist in process
 - Confirm process with legal counsel
 - Vendors will follow your direction
 - Care taken to confirm legal compliance
- Other vendors
 - Make certain other vendors e-contracting procedures are enforceable

*Wise In The
School World*



contact information

Venable Independent School Lawyers

Caryn G. Pass, partner

cpass@venable.com

t 202.344.8039

f 202.344.8300

Heather J. Broadwater, associate

hbroadwater@venable.com

t 202.344.8042

f 202.344.8300

Meredith C. Ruggles, associate

mruggles@venable.com

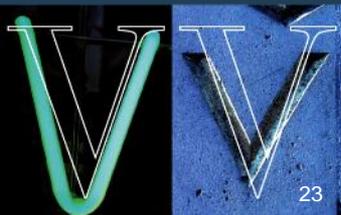
t 202.344.4561

f 202.344.8300

wise in the school world

www.venable.com

*Wise In The
School World*





*Wise In The
School World*

