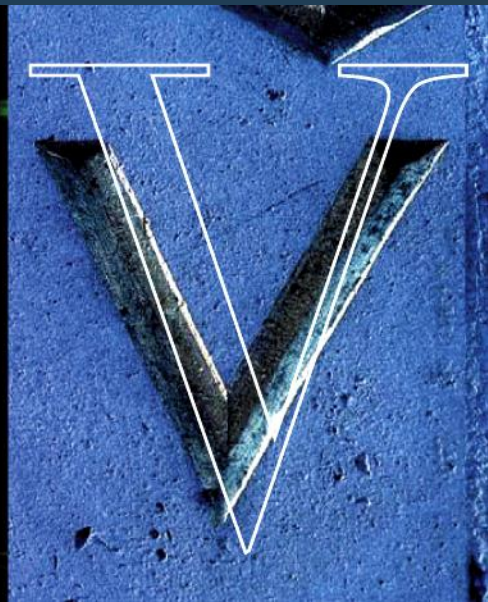
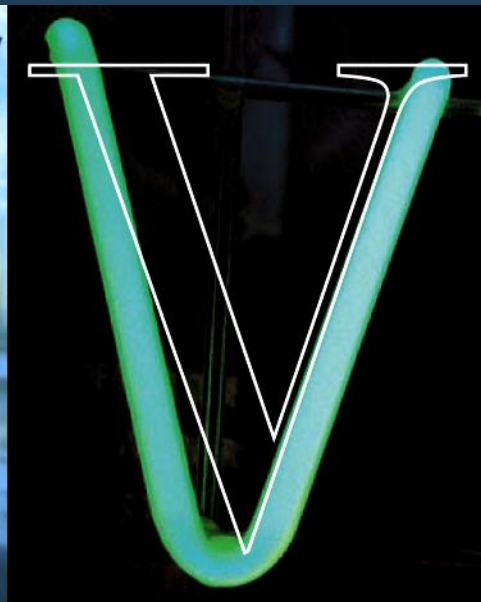
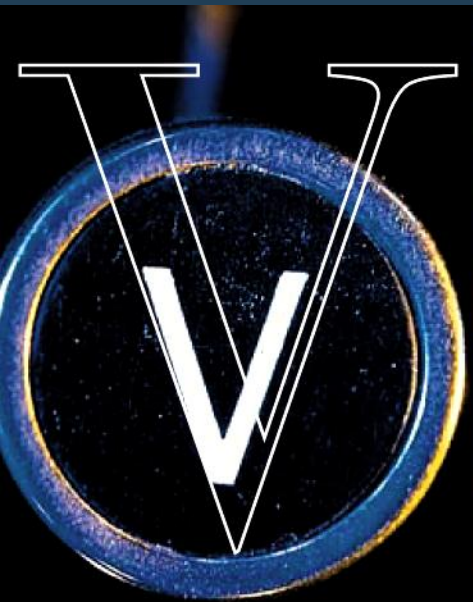


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# Legal Issues in Technology Innovation: E-commerce, Internet, and Social Media

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## 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

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# The “Social Media Bandwagon”



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# 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

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\*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

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## Commerce and Protection of Brand

- Charging or collection of funds
  - 3<sup>rd</sup> 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

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# 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



# 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

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# 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

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# 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

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## 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

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# contact information

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