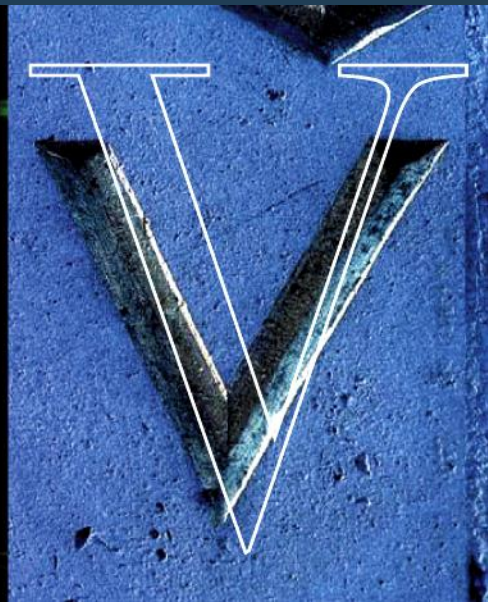
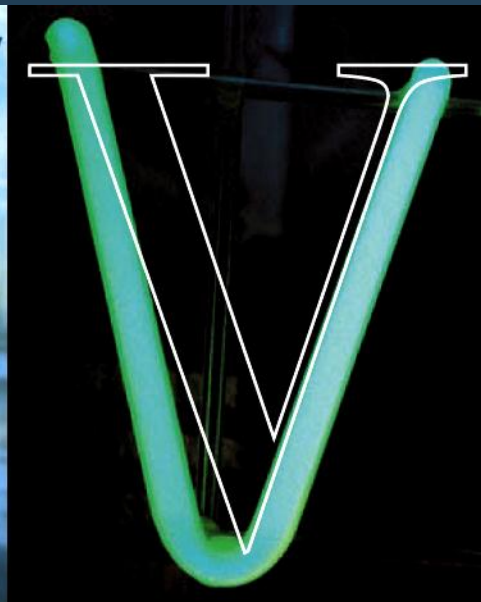
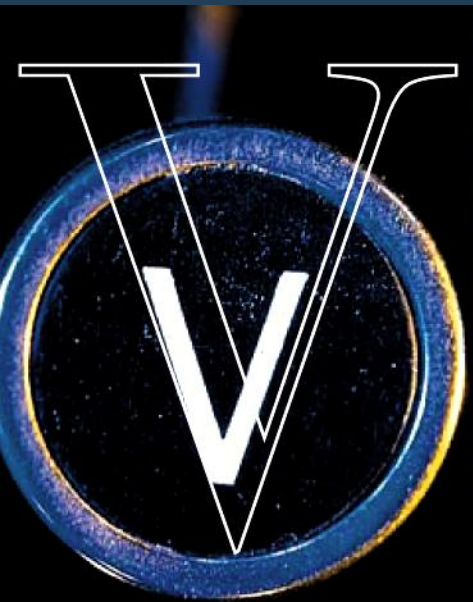


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Legal Issues in Technology Innovation: E-commerce, Internet, and Social Media

Caryn G. Pass

February 5, 2013



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

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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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Social Media in the Workplace



See ya later - I'm taking these social media accounts and I'm going home, bye!

Uh oh...



Former Employee



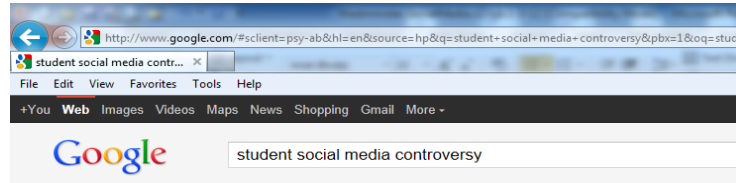
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Social Media in the School



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Scholarly articles for **student social media controversy**
[Biotechnology, 1996-2000: the years of controversy - Gask](#)
[of place: The impact of electronic media on social ... - M](#)
[Media influence and the Payne Fund controversy - Jar](#)

Student tweets causing controversy for universit
[www.usatodayeducate.com/.../student-tweets-causing-cont](#)
 Sep 18, 2011 – **Student tweets causing controversy** for un is a big issue and I think the power of **social media** is some

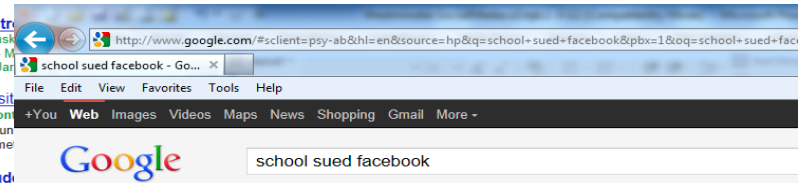
Social Media Controversy Arises Between Stud
[www.eastidahonews.com/.../social-media-controversy-aris](#)
 Aug 5, 2011 – "You'll have a lot of school districts that will be **media** communication with **students**," he said. "There could

Social media law draws controversy - Independ
[www.examiner.net/news/.../Social-media-law-draws-contro](#)
 Sep 6, 2011 – ... ability to communicate with **students** throu sites ... media portion of the bill that has been **controversial**

Social Networking Controversy in Missouri Sch
[wjlta.wordpress.com/.../social-networking-controversy-in-](#)
 Nov 6, 2011 – **Social Networking Controversy** in Missouri internet site which allows exclusive access with a current or

Sam Houston State social media policy sparks c
[www.splc.org/news/newsflash.asp?id=2286](#)
 Oct 19, 2011 – Sam Houston State **social media** policy spa ... a portal to department and **student** organization **social m**

[\[PDF\] Social Media Access in K-12 Schools: Intract](#)



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Republic Middle School Lawsuit News | Facebook
[www.facebook.com/pages/..._School-Lawsuit...267725249905017](#)
 Republic Middle **School Lawsuit** News - Injustice at Republic Middle **School** - Description: This FB page is intended to be used for information on the **Lawsuit** ...

NY school sued after teen suspended over rosary | Facebook
[www.facebook.com/note.php?note_id=399804902340](#)
 TweenTribune wrote a note titled **NY school sued** after teen suspended over rosary. Read the full text here.

Facebook song gets Miss. student suspended, school sued - SPLC ...
[www.splc.org/news/newsflash.asp?id=2194](#)
 Mar 1, 2011 – **Facebook** song gets Miss. student suspended, **school sued**.

School sued for punishing teens over MySpace pic
[www.physorg.com/news/176309192.html](#)
 Nov 1, 2009 – (AP) – Two sophomore girls have **sued** their **school** district after they were punished for posting sexually suggestive photos on **MySpace** during ...

Teen sues Facebook, classmates over cyberbullying | Technically ...
[news.cnet.com/8301-17852_3-10187531-71.html](#)
 Mar 3, 2009 – Ms. Finkel is not only **suing** those ex-classmates, but also **Facebook**, ... Altschul, told Newsday, "She had a very difficult time in high **school**. ...

American private school sued for rejecting HIV-positive boy
[digitaljournal.com/article/315397](#)
 Dec 2, 2011 – A Pennsylvania private boarding **school** is being hit with a **lawsuit** for ... Connect your Digital Journal account with **Facebook** to use this feature. ...

Punishment for sexy MySpace pics spark ACLU to file lawsuit ...
[www.wane.com/.../local_wane_churubusco_Sexy_pics...](#)

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Stats of Interest?

- 60 % of the world's population has a mobile phone
- 75% of 12-17 year olds in America own cell phones (up from 45% in 2004)
- Children under 12 are one of the fastest growing segments of users of mobile devices
- 50% of teens send 50 or more text messages a day, or 1,500 texts a month
- One in three teens send more than 100 texts a day or more than 3,000 texts a month
- 65% of cell owning teens at schools that ban phones bring their phone to school every day
- 58% of cell owning teens at schools that ban phones have sent a text during class

Pewresearch.org

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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

*Including web-based technologies

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Common Issues: Boundaries with Students

- Facebook friends
 - “friending” current or former students on personal account
 - student exposed to possibly inappropriate or personal information
 - inappropriate contact and solicitation
 - librarian soliciting recent alum through chatroom
 - employees vulnerable to allegations
 - current student access through shared contacts
 - teacher has access to student page and implied obligation to act on information obtained
 - e.g., teacher “official use” twitter account still exposed teacher to students’ personal “tweets”



Common Issues: Boundaries with Students

- cell phones / home numbers
 - when is use appropriate
 - calls vs. texting vs. e-mailing
 - local laws on use of communication devices while driving
 - assumptions / pressure created by how and when we communicate
- personal email (student or employee)
 - secrecy / monitoring / tracking
- nature of activities
 - e.g. “gaming” - teacher participation and encouragement of student allegedly resulted in addiction of student

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Common Issues: “Private” vs. “Public” Conduct

- actions of teacher inconsistent with educator standards
 - websites
 - creation of inappropriate website
 - nature of after school employment
 - activity in existing websites (promotion of violence)
 - Google search results
 - information reflecting poor decision making
- Facebook
 - posting by self or others
- YouTube postings
 - posted by employee or others
- employees making “official” representations on behalf of the school or representations that are attributed to the school



Common Issues: “Outside” Relationships

- can be more obvious and more of an issue because of social media
- teacher’s personal relationship with select parents resulted in preferential treatment of student
 - emailing parents from personal address
 - friending parents
 - providing cell phone number
 - posting pictures
- challenges
 - employees who also are parents of students
 - balancing expectation for accessibility and cooperation with need for boundaries



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? Balancing interests.
 - 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



Student Privacy

- actions resulted in dissemination of confidential information or access to “protected information”
- student information
 - school or individual employee’s use of photos, images and student work without permission resulted in dissemination of private protected information
 - school use
 - obtain written permission from parent
 - website, promotional materials, newspaper and other media, Facebook page
 - employee precluded from using such information for personal use
 - school monitoring resulted in breach of student privacy
 - webcam
 - installing webcam on student laptops without knowledge of family
 - student emails (school or personal)
 - school’s ability to investigate reports of abuse
 - search of lockers, cars, backpacks, personal laptops, cell phones?
 - demand for passwords or other access



Employee Privacy

- **website**
 - mandatory inclusion of pictures, phone numbers, educational history
 - potential claim of privacy or negligence
- **employer access to**
 - emails and websites visited
 - notify employee of privacy expectation
 - care to secure private financial and medical information of employee
 - social security number
 - salary
 - medical information

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Official Use

- actions of school resulted in dissemination of confidential information
 - general ‘rules’
 - photos and likeness on promotional materials, websites, Facebook should be authorized
 - giving and other contact information should be authorized
 - parent contact data should not be distributed or sold for solicitation purposes
- Facebook and twitter
 - GREAT CAUTION IN POSTING
 - official representation by school
- email
 - permission from email recipient
 - provide opt out language, assure removal
- website and promotional material clear and honest
 - i.e. students playing lacrosse when school lacks team
- register with state agencies if soliciting donations through email or other electronic communications



Policy Considerations

- acceptable / appropriate use of school property (including technology)
- acceptable / appropriate use of personal property (including technology) of employees and students
- acceptable / appropriate representation of or conduct on behalf of school
- general standards of behavior
 - professional
 - personal
 - “off duty”
 - “off campus”
 - “private” vs. “public” conduct

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Policy Considerations

- notification of behavioral expectations
 - what school expects from
 - students, teachers, parents, community
 - expectations of privacy
- boundaries
 - appropriate relationships
 - teacher/student/recent alum/parents
 - school's culture and philosophy



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Policy Considerations

- balancing risks and benefits in context of school culture and constituent expectations
 - consider experiences of all users
 - consider mission and culture of the school
 - consider risk tolerance and what is at stake

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Policy Considerations

- what is the right approach for our school?
 - general ban ('you can't use any social media')
 - specific ban ('you can't use these sites')
 - specific permission ('you can only use these sites')
 - general permission ('you can use any sites')
 - general guidelines with specific examples of permitted and prohibited conduct/sites; and
 - mechanism for approval; and/or
 - mechanism for monitoring



Implementing a Comprehensive Approach

- establish standards and create policies
 - is this something we can explain and stand behind?
 - do we explain and uphold this?
- employee handbook
 - code of conduct
 - use of student images
 - technology and proper use
 - discipline and termination provisions
- employment contracts
 - grounds for termination
 - standards of behavior

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Implementing a Comprehensive Approach

- enrollment contract
 - student code of conduct
 - grounds for discipline
 - impact of removal on tuition
 - notice to college and university of discipline
- IT
 - portal access policy
 - security policy
 - e-commerce policy
 - monitoring of emails/ web site usage

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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

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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



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



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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