



Managing Your Nonprofit's FACEBOOK, TWITTER, and LINKEDIN Presence: Avoiding the Legal Pitfalls

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Venable LLP, Washington, DC

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- **July 15, 2015** – [Mental Health Issues in the Nonprofit Workplace: Questions Raised by the Germanwings Air Disaster](#)
- **August 6, 2015** – Top Ten "Must Have" Provisions for Nonprofit Meeting Contracts (*details and registration available soon*)



Agenda

- Introductions
- What Can Social Media Do for Your Nonprofit?
- Intellectual Property Protection and Enforcement
- Use of Content Considerations
- Social Media Management Considerations
- Other Important Platform Terms
- Questions?



How Does Social Media Work for You?

- Promotion and advertising
- Cultivating a brand
- Community building
- Issue advocacy, grassroots lobbying
- Fundraising
- Recruitment
- Sales of products and services

The best returns may come from diversifying across networks rather than focusing solely on the latest “it” platform, but individual strategies will vary.



Intellectual Property: The Basics

- **Copyright**

- Protects creative expression fixed in any tangible or electronic medium, *e.g.*, words, designs, audio-visual content, music



- **Trademark**

- Trademarks protect against consumer confusion by protecting indicators of source, including organization name, any logos, brands, product names, trade dress



- **Patent**

- Protects inventive concepts



- **Trade Secret**

- Protects information that derives independent economic value from being not known to others





Obtaining Ownership of IP

- General rule: Organizations own IP created by their employees, but not their contractors or volunteers
 - BUT, employment status is not always clear and must be within the scope of employment
- Fix: All independent contractors and volunteers should sign a written work-made-for-hire agreement *and* copyright assignment (“belt-and-suspenders” approach)
- A “work-made-for-hire” is a work [that fits into one of nine enumerated categories and] . . . “if the parties expressly agree in . . . [writing] that the work shall be considered a work-made-for-hire”
- Assignment should cover all other subject matter, *e.g.*, webinar presentations, white papers, social media contact lists



CDM Media USA, Inc. v. Simms

- **Facts**

- LinkedIn page contained info on private executives interested in speaking at plaintiff's events
- Employee went to work for a competitor and refused transfer control of the LinkedIn group, or provide the membership list and messages, to plaintiff
- Plaintiff sued for breach of non-compete, violation of trade secret law, and misappropriation

- **Decision: Complaint Survived Motion to Dismiss**

- Control of LinkedIn Group may constitute "Confidential Information" within meaning of the non-compete
- Membership list might be trade secret; messages (generally) as a category are not trade secrets, but individual messages might be
- Court dismissed claims based on breach of obligations in employee handbook because the non-compete said no other terms would govern

- **Employment, Policies, Agreements, and Procedures**

- Employer owns all social media accounts, content, communications, and membership lists – always put these provisions in a signed writing
- Employee must transfer accounts upon termination



Posting Content: Understand the Implications

- Once you share it on social media (regardless of platform), it can be shared with users who view it without limit
- Think of social media content as permanent because from a PR perspective, it is:
 - Facebook – know “delete” versus “hide” (“hide” only hides content from your Timeline while shared copies live on)
 - When you delete a tweet, it is gone
- Photos and Names/Likenesses: [Almost] always (need to) get consent from any people appearing in the photos you post to social media



Case Study: Allowing the Unlimited Posting of Content

- Pinboard-style social media content posting
- The risk? Every time you pin (post content), the network operator copies that image to its server
- Network operators (*e.g.*, Pinterest) require through their terms of use that the entity posting content must own or have the right to post such content; the terms often include a license grant for others to re-post (among other things)
- What content can be posted or pinned?
- Pinning content from other websites also may violate a network operator's terms of use
- How can your organization post content responsibly?
 - Safest – Only post content you own/create
 - 2nd best – Only re-post content you have a right to use
 - 3rd best – Only post from sites that have the "Pin" button installed, *i.e.*, agreed to the content sharing

Protecting Your IP on Social Media

- Register, register, register (IP, search and account)
- May need a registration for effective copyright or trademark right enforcement
- Monitor use by others and enforce rights via policy statements, DMCA, demand letters, and legal proceedings
 - BUT, be mindful that on social media, cease and desists go VIRAL!



- Balance IP protection with reputation protection. Many times, it's an innocent infringer. Aggressive enforcement may backfire.
- Appropriate use of symbols – ©, ®, ™
- And, perhaps most importantly...Utilize network operator takedown policies and procedures



Platform Takedown Procedures

- **Copyright infringement**

- Generally follows Digital Millennium Copyright Act (DMCA) takedown procedures
- Submit DMCA takedown request via online link
- DMCA request must contain description of copyrighted work, location of infringing material, contact info, statement of good faith, and signature (e-signature)
- Platform notifies infringer
- If no counter-notice, content will be removed
- Repeat infringer policies

- **Trademark infringement**

- Submit complaint via online link
- Submit contact info, trademark, registration info, website, location of infringing content, description of infringement
- In some cases, complaints will result in removal of trademarked content



Trademark Policies: Differences

- **Facebook**

- Will provide name and contact information to the original poster
- Will encourage original poster to reach out in the event of a dispute as to the alleged infringement
- Otherwise, if the dispute results from an alleged infringement under U.S. law, Facebook will make ultimate determination
- Ads have reporting feature built in ("X")

- **Twitter**

- Will suspend accounts if there is a clear intent to infringe
- In unclear cases, Twitter will contact owner in an attempt to "clear up any potential confusion"
- If the infringement is a username, Twitter may release that username to trademark owner

Limit Apparent Authority and Protect Corporate Identity

- Limit individuals who have authority to communicate (speak) on entity's behalf and then prohibit all others from claiming or implying authorization to (communicate) speak on entity's behalf
 - Create process for gaining authorization to speak on entity's behalf
- Prohibit unauthorized individuals from using entity's intellectual property, logos, trademarks, and copyrights in any way or manner
- Prohibit employees and members from using entity's name in any online identity (*e.g.*, username, screen name)





Name Reservation Policies

- **Facebook – Pages**

- Only “authorized representatives” can create a page on behalf of a brand, place, or organization
- Users may create a page to express support for an brand or organization as long as it does not mislead or represent that it is official (disclaimer required)

- **Twitter – Handles (no pages equivalent)**

- First come, first served basis – 15 characters maximum
- Cannot contain the words “Twitter” or “Admin”
- Twitter has stated that they are working to adopt automatic release of handles following infringement claims

- **LinkedIn – Company Pages**

- Creator requirements
 - LinkedIn profile at least seven days old, with a profile strength of “Intermediate” or “All Star”
 - Current employee with position listed in profile
 - A company email address with a unique domain (*e.g.*, no organizational Gmail account)



Employees' Use and Employer Rights

- Employees: Do you care what they post online?
 - Can be subpoenaed and used as evidence in a lawsuit or regulatory action
- ***Tread carefully.*** Terminating someone wrongfully as a result of what you they post on social media can carry stiff fines and other penalties (*e.g.*, comments disparaging employer have been found to be protected by the NLRA)
- Do not request that your employees provide you with access to their social media pages
 - Since 2012, 20 states have enacted laws prohibiting employers from requesting such access



Questions?

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