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## 5 Steps to Mitigate Social Media Liability

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In less than a decade, social media have taken over the world. By the end of last year, Twitter's 500 million registered users sent more than 340 million tweets a day, Facebook's number of active users topped 1 billion and Tumblr hosted nearly 300 million monthly unique visitors. And newer platforms are gaining traction every day.

Some of the early business adopters of social media saw the potential to transform how they engaged with customers, employees and other stakeholders. They recognized that a brave new world where the personal, professional and commercial combine seamlessly—and in the blink of an eye—could bring significant business benefits.

As more companies adopt social media, the need to manage the risks of these channels, in addition to the opportunities, remains a priority. Doing so effectively should involve partnerships and collaboration with risk managers and insurance providers. A smart checklist to address social media risks should include an assessment of social media activities, identification of key personnel responsible for the strategy, a simple set of guidelines, clear presentation of the risks in social media participation and agreements for employees to sign annually.

### Big business benefits—and risks

Traditional media outlets broadcast information for public consumption, providing a one-way experience. In contrast, a two-way interactive experience is offered through social media. Consumers of social media, unlike consumers of traditional media, can interact instantly and directly with either the originators or the authors of the proffered information. Consumers can interact with each other as well. The interaction and cross-communication that social media enables are precisely what make social media so dynamic.

Social networking sites encourage businesses to change their traditional marketing strategies and focus on talking with—not at—prospects and clients, with the goal of developing and deepening the relationship between the company and customer. When prospects grow to know, like and trust a company by interacting with their representatives on social networking sites, they are more likely to do business with that company.

Indeed, social networking conversations create a level of immediacy and a kind of public intimacy that is impossible with traditional marketing.

But there is something else that social networking sites offer a business that no other form of public interface does: the ability to monitor public perception of its brand, products and services in real time. As a result, companies also have the opportunity as well as the responsibility to provide a quick and effective response if a negative perception goes viral through social media's worldwide interconnected platforms.

There are multiple strategies companies can use with social networking sites. Companies can employ a variety of social networking platforms in order to accomplish a handful of business-supporting aims. For example, one company may use Twitter as a medium to get news in front of reporters, LinkedIn to post scholarly articles to share with each other and their customers, and its Facebook page to focus on the company's social responsibility efforts. While this strategy may work for one organization, others may decide to focus on other social media sites or use the same sites for entirely different purposes.

For the most part, the business benefit of social media, like public relations, is indirect, although some companies can point to a measurable relationship between their social networking efforts and sales. If we look at corporate social networking strategies, the overall business benefit lies with customer "identification" with the company and its products. Identification is critical: from it grows online interaction, and ultimately, customer loyalty.

Social media open the door to a whole new world of privacy, security, intellectual property, employment practices and other legal risks. It is important to understand the considerable downside that co-exists with the remarkable upside of using social media for a variety of business aims. This downside often occurs in three major areas of risk: reputational, legal and operational.

The reputational risks can easily equal or exceed the reputational benefits for one simple reason. The vast reach of social media platforms—on which millions communicate every second of every day and night—offer not only a vast frontier of promotional opportunity, but a vast uncharted “sinkhole” of risk. General bad behavior by employees or the posting of embarrassing information can reflect poorly on the company. Employees can endanger their companies’ reputations via social media whether intentionally or not, by disparaging coworkers, management, clients, vendors or even the company itself. This is especially true when that behavior is exhibited in a branded social media location, such as on a company’s Facebook fan page.

Social media’s legal risks should be carefully considered prior to engaging in a social media strategy. The main risks include employment, privacy, security, intellectual property and media risks. Business managers who want to implement a social media legal strategy should consult with inside and outside counsel who understand information technology law. Risks may be present if an employer investigates potential new hires via social media or decides to fire employees based on his or her Facebook interactions with other employees. Social media sites pose potentially increased security risks and the organization may face liability exposures if a security breach arises from social media activities. Companies may have an obligation to protect the privacy of members of the public who join their social networking pages on third-party sites. While these legal risks can be significant, they can be managed with forethought and planning.

When employees access social media platforms at work—even those designated as social media spokespersons for the organization—they risk endangering the organization’s networked computers by unknowingly acquiring malware, viruses and spyware. Social networking sites, particularly Facebook and Twitter, are a favorite playground for those with bad intentions. Fraudsters coax unsuspecting users into downloading a free application that covertly delivers spyware, which then infiltrates the company’s entire system of computers. These and “social engineering” scams—in which fraudsters manipulate people into divulging information that either leads to more valuable information or provides access to a company’s computers for hacking purposes—are common on social networking sites.

#### **5-Step Checklist to Address Social Media Risks**

Companies that don’t actively participate in social media to promote their businesses and build brand awareness still need to address the reputational, legal and operational risks that social media can pose. Why? It’s extremely likely that their employees are using social media tools, either at home or during business hours at work, regardless of whether it’s employee- or company-owned equipment. In doing so, such employees may unwittingly put their employer at risk. Even non-participating companies need to be proactive in creating social media guidelines or policies for their employees. This can be done with a five-step checklist.

1. Conduct a broad assessment of general social media activities to look for potential risks. Beyond that general assessment, whenever a social media campaign is contemplated, the organization needs to assess the particular risks of that campaign. Not only should the organization’s contemplated campaign align with the culture of the organization and its marketing strategy, but the risks should be weighed against the benefits, with both being articulated as clearly as possible.
2. Identify the key players who will be responsible for developing, executing and monitoring its social media strategy. An active strategy will require a great deal of time and resources so it’s important to decide which departments will foot the bill for staffing, technology and other expenses. Also, companies should identify a senior executive or employee with the political wherewithal to make time-sensitive decisions as necessary.
3. Draft a simple but comprehensive social media policy or set of guidelines tuned to the company, its customers and its industry. This guideline is important even if a company decides to grant “official” social media access solely to designated spokespersons. Separate guidelines are still needed for employees using social media while not at work. This social media policy should be reviewed by the organization’s human resources, legal, information technology and communications departments. Also recommended is a review by an independent law firm.
4. Formally address the risks of social media participation with company employees. Because employees actually pose the biggest risk to a company—albeit, usually without meaning to do so—it is essential to provide regular educational training programs regarding the dangers of damaging the company by using social media on the job or on their own time.
5. Create a social media agreement that employees review and sign annually as a condition of continued employment and as part of their employment contract. Such an agreement should be updated annually, or as often as is warranted, to address changes in social media that may impact business in new ways.

The business benefits of social media participation can be substantial, while the cost of non-participation, or opting out, may mean anything from losing business to losing touch with valued customers and important industry trends. Of course, there is also much to lose by not responding proactively to the many risks posed by social media. To ensure

corporate social media safety, risk managers should analyze the company's unique social media safety needs, monitor the social media landscape for potentially worrisome content and secure adequate insurance coverage for the company's social activities. Taking these steps to mitigate the reputational, legal, and operational risks inherent in social media use, corporations will be well positioned to reap the enormous business benefits of social media participation.

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