

# **Drafting Effective Social Media Policies**

**Daniel Goldman**

**Legal counsel**

**Mayo Clinic**

# What is “social media”?

- “social” websites in which users interact with the site and each other
- interconnected networks of friends or followers

# Major social media sites

- **Facebook**
  - King of the hill: 500 million active users. 200 million logon each day
- **MySpace**
  - Started the revolution
  - Younger demographic
  - Shifted focus to music and entertainment
  - 200 million users

# Major social media sites

- **Twitter:**
  - 140 character messages to “followers”
  - Over 100 million registered users
- **YouTube**
  - Video sharing site
  - 300 million visitors per month
- **Ping**
  - Apple music social media site tied to iTunes.
  - 1 million registrations in 1<sup>st</sup> 48 hours
  - May hasten decline of MySpace

# The Power of Social Media

## The Social Media Revolution

# Corporate adoption of social media: Fortune 100

- **79% use at least one of the four top social media platforms:**
  - **65% have active accounts on Twitter**
  - **54% have a Facebook fan page**
  - **50% have a YouTube channel**
  - **33% have a corporate blog**

# Mayo Clinic

- **YouTube, Facebook, Twitter, blogs**
- **Mayo Clinic Center for Social Media**
  - **[socialmedia.mayoclinic.org](http://socialmedia.mayoclinic.org)**
  - **Create resources for use at Mayo Clinic that can be shared with organizations wanting to use social media in health and health care**
- **Social Media Health Network (Fall 2010)**
  - **Membership group for orgs wanting to use social media to improve healthcare**
  - **Sharing, learning, development of resources**

# Challenges of Social Media

- **Speed**
  - **Interconnected nature of social networks means information moves quickly**
  - **Less time to analyze and react than traditional media**

# Challenges of Social Media

- Reach
  - Social media gives individuals access to staggering numbers of people
    - Ashton Kucher: 4.9 million followers on Twitter
    - “United Breaks Guitars” video on YouTube: 9 million views

# Challenges of Social Media

- **Blurring of professional/personal lives**
  - Most social media sites encourage sharing of info about professional lives
  - Difficult to separate what happens at work from other events in your life
  - Difficult to not reveal where you work
  - Many challenges when lawful personal conduct is in tension with professional expectations
  - Particular challenge in professions such as healthcare/legal with high ethical expectations

# Challenges of Social Media

- **Generation of “lifecasters”**
  - **Expectation of sharing of all details of life**
  - **Including what happens at work**
  - **Not the same expectation of privacy as older generation**
  - **In tension with increasingly strict privacy laws**

# Challenges unique to specific industries

- **Privacy**

- HIPAA, GLBA and state privacy laws make information sharing a challenge in privacy-regulated industries such as healthcare, financial services, legal.
- Stakes are high if employees act inappropriately
  - Fines, lawsuits
  - PR and Brand risks
- Can limit your ability to respond to critics and unhappy customers

# Ethical issues: “friending” clients

- **Raises challenging issues regarding appropriate boundaries for professional relationships**
  - **Blurs what is and isn't part of the professional relationship**
  - **Particular issue with respect to lawyers friending judges and other litigants/clients, physicians friending patients**
  - **Professions are just beginning to sort out the ethical issues**

# Drafting effective social media policies: general thoughts

- No “one size fits all” approach.
  - Policy is as much a reflection of corporate culture as law
  - Must understand your company’s brand, tolerance for dissent and risk, relationship with workforce and balance that with what the law allows

# Social media is a dialogue, not a monologue

- **Traditional marketing/advertising**
  - billboard
  - Pro: Advertiser controls message
  - Con: People no longer trust, no ability to hear what customer wants
- **Social media**
  - Conversation
  - Pro: interactive, people trust, you can hear what's important to your customer
  - Con: much less control. "Community" expects you will respond to criticism, not "censor" it.

# **Social media is a dialogue, not a monologue**

- **Expectation is that people will talk back to you, *and that you will listen.***
- **Must have a thick skin to participate in social media**
- **You may have to tolerate some things you don't like**
- **However: may not be able to “opt out” of social media.**
  - **Even if you elect not to actively participate, doesn't mean others aren't talking about you.**

# Employee education and awareness are critical

- **Make sure policies are accessible: on your intranet/internet**
- **Make sure your employees receive training**
  - **Include examples, not always obvious what's a HIPAA violation or practice of medicine**
- **The best policies are useless if employees aren't aware of them, don't understand them**

## Expect and *plan for* crises

- Speed/Reach of social media mean crisis will happen with extraordinary speed
- Little time to react/difficult to reign in
  - Domino's pizza: disgruntled employees tainting food
  - 1 million views in 2 days
- Identify a crisis team and a crisis plan *before* a crisis happens

# Plagiarize!

- **Build off the work of others**
- **Many people thinking about this issue: many good approaches**
- **List of policies in written materials**

# **Drafting Social Media Policies Issues to address in your policy**

- **Use of social media during work time**
  - **Most companies will prohibit**
  - **Some will encourage**
  - **Can often be addressed by existing policies**
  - **Can you enforce an outright ban with mobile devices?**

# Stress importance of preserving customer privacy

- **Critically important, esp in privacy regulated industries (e.g. healthcare, financial services). Legal and brand/pr risk**
- **Lifecasting mentality+ speed + ease of posting =danger**
- **numerous instances of healthcare employees breaching privacy via social media (see written materials)**
  - **Not always intuitive how privacy applies online**
  - **Lack of name not always enough to de-identify, esp in smaller community**
  - **E.g. HIPAA applies to patients who are real-life friends**
  - **Incorporate examples into your education**

# Stress importance of professionalism towards customers

- **Appropriate professionalism may be as important as legal privacy restraints**
  - **Employees complaining about customers, even if de-identified can raise brand issues**

# Identify who can speak on behalf of the Company

- Let employees know who can officially speak on behalf of your Company
- Usually only designated PR employees
- Others must refrain from making it appear that they are
- Consider requiring disclaimers:
  - “These are my personal views”

# Address the “blurring” issue

- **Two choices for employees:**
  - **If engaging in behavior incompatible w brand/profession no identification with employer**
  - **If identify themselves as employees should not display inappropriate behavior**

# Address the “blurring” issue

- **Some cautions:**
  - **some states prohibit employers from regulating lawful off-duty conduct**
    - **MN Stat 181.938 subd 2 (no termination for consumption of lawful consumable products)**

# Address the “blurring” issue

- **Some cautions:**
  - **Review recent NLRB decisions**
    - **Can't prohibit employees from talking about terms and conditions of employment in a concerted matter (rule prohibiting false statements re employer)**
    - **Can't prohibit employees from talking to the media re ongoing labor disputes (rule prohibiting all employee contact with media)**

## **Stress the preservation of business confidentiality**

- **Employees should be reminded that they should not be discussing trade secrets and business confidential business information online**
- **Use examples: Even posting that you're attending a meeting with a party you're negotiating with can violate NDA**

# **Prohibit employees from speaking anonymously or pseudonymously**

- **Non-legal reason: considered dishonest and unethical in the social media community**
- **Legal reason: can violate the FTC endorsement/testimonial guidelines if recommending your products or services**

# Address the FTC endorsement/testimonial guidelines

- Recently updated to specifically address social media
- Endorsers must disclose “material connection” which includes:
  - Free product to review
  - Employment relationship
    - Enforcement action v Reverb Communications
    - Pr firm employees post positive reviews of clients’ apps on iTunes
    - Deceptive b/c no disclosure of relationship

# Address the FTC endorsement/testimonial guidelines

- Removes “results not typical” safe harbor. All claims must be substantiated

# Restrictions on lobbying/political activity

- For tax-exempts:
- IRS regs prohibit TE's from supporting candidates in campaigns and other types of political activity
- Make sure those participating in social media on behalf of your TE company understand what is and isn't permitted

# **Prohibit harassment of other employees**

- **Employees talk to and about each other on social media'**
- **Remind employees to follow applicable policies re mutual respect and non-discrimination and harassment online.**
- **Employer can be liable if aware of this harassing behavior occurring online and does not take action**

# Respect intellectual property of others

- **Make sure those using social media on your company's behalf understand the rules**
  - **Especially copyright and fair use**
  - **Misuse of materials of others can lead to infringement claims**

## **Explain the rules regarding false advertising**

- **Spell out what can and cannot be said about your own company's products, as well as your competitor's products**
- **This is another reason to be clear about who can and cannot speak on behalf of your company**

# A cautionary note

- How the marketing department sees us

# More info

**Twitter:**

**@danielg280**

**Blog:**

**<http://www.socialmediacounsel.blogspot.com/>**