

Facebook, YouTube and WhateverIsNext.com

Are Social Media Sites Really the Internet's Wild West (Again)?

By David Weslow



The Internet and social media or Web 2.0 sites (including Web-based communities, social networking sites, virtual worlds, video sharing sites, wikis, blogs and mashup sites) are playing an ever-expanding role in the marketing of products and services, in companies' interactions with consumers and in the development of consumers' perceptions of products and services.¹ It has been reported that Facebook, perhaps the most well-known social media/Web 2.0 site, recently surpassed Google in U.S. Web traffic,² and YouTube is now reportedly the second largest search engine in the world with more than 100 million videos on the site.³

With so many people online sharing opinions, photos, audio, video, other media and combinations of all of the foregoing, it is not surprising that 25% of Internet search engine results for the world's top 20 largest brands are links to user-generated content.⁴ Because Web sites and all forms of electronic media are protected by copyright law and because brand and trade names are needed to attract and convert all those Internet users into paying customers, social media sites and individual social media accounts frequently raise trademark and copyright issues.

How is Web 2.0 different from the Wild West of Web 1.0?

The ease with which materials may be copied and brands may be tarnished online can present challenges for protecting a company's image, brands and content on social media sites. The Web 2.0 era has even been portrayed as a continuation of the Wild West mentality that was prevalent during the Web 1.0 or Dot-com era. For business managers and in-house counsel who recall combating speculative domain name registrations, widespread online trade libel and rampant unauthorized copying of Web sites and media during the Web 1.0 era (all more so than occurring today), the notion that social media sites represent a return to this environment is not pleasant.

The good news is that such hyperbole, for the most part, is not merited. In response to these abuses, businesses have more developed laws and precedent, proven strategies and tactics, and, in some cases, well-developed Web site usage policies that provide good options for addressing unauthorized use of brands and content on social media sites.

How can companies protect themselves?

For businesses that do not have the budget flexibility or in-house staff to support a service contract with an Internet security or brand protection firm, there are many cost-effective strategies and services that can be used to defensively protect brands and content.

Some Web sites have inexpensive subscription plans through which brand names may be simultaneously registered as user names at hundreds of popular and emerging social media sites. For example, Knowem.com offers user name registrations at more than 300 social media sites for \$599. These services provide an efficient means of defensively registering brand and company names as social media site account names to make sure that "brand-jacking" does not occur by an unaffiliated party's preemptive registration and use of an account name such as Facebook.com/CompanyName.

Free and inexpensive services also exist to facilitate monitoring of references to company names and brands on social media sites and Internet search engine listings. For \$20 a month, Tweetbeep.com will provide up to 200 notifications alerting the subscriber to references to brand or company names on Twitter (technically, notifications of "Tweets" that reference the name/brand). Free Google Alerts (www.google.com/alerts) may be used to receive notification of newly listed search engine results referencing targeted names or brands.

Furthermore, if a particular Web page is suspected as a source of objectionable content or activities, free services, such as those offered by ChangeDetection.com, may be used to obtain notification whenever the content of the page changes.

Will a site be responsive to an intellectual property complaint?

Responding to unauthorized reproductions of a company's copyright protected content (e.g., audio, visual or textual materials or software code), unauthorized reproductions of a company's proprietary information (e.g., trade secrets or internal

documents), or misleading or confusing references to a company's name or brands (e.g., counterfeit or knockoff products or libelous statements) on social media sites and accounts is becoming more routine. This is in part because such conduct may violate the site's terms and conditions of use as well as applicable federal and/or state laws. For example, Facebook, MySpace and Twitter rules/terms of use all prohibit use of accounts in a manner that infringes copyrights or trademarks.

Well-established sites may have a protocol for receiving and processing intellectual property complaints in order to avoid liability for certain types of copyright infringement claims. Facebook, Twitter, MySpace, Second Life, YouTube and other less well-known sites have been cooperative in obtaining removal of content from sites in question and/or the disabling of site accounts in response to correspondence providing the legal and factual bases for requested actions.



What if a company is forced to initiate litigation?

Of course, not all Web 2.0 sites and account holders are respectful of intellectual property rights, and it may become necessary to threaten or initiate litigation to protect consumers and a company's rights. Although methods and mechanisms for engaging in online infringement are constantly evolving, the case law addressing standards for direct and contributory copyright and trademark infringement claims in the Internet/new media context has developed a good deal since the Web 1.0 era. Therefore, companies that are forced to protect themselves through litigation against social media sites or account holders are less likely to be asserting truly novel claims in the Web 2.0 era. Claims can often be resolved relatively quickly through pursuit of early injunctive relief and/or post-filing settlement negotiations.

But the numbers seem so overwhelming...?

Given the potential for brand and content misuse online, the sheer numbers—statistics such as “over 200 million blogs in existence,”⁵ “over 580 million subscribers to virtual world applications,”⁶ and “over 400 million Facebook subscribers,”⁷—can seem daunting to anyone involved in protecting intellectual property assets online. However, the Web 2.0 era should bear only a little resemblance to the Wild West of Web 1.0 if sites and accounts of concern are prioritized based upon the scope of potential injury to consumers or the company, and strategies and tactics are used that have proved successful in combating online intellectual property abuses in the past.

Endnotes

1. Wikipedia: The Free Encyclopedia. “Social Media.” Last modified May 20, 2010. Available at http://en.wikipedia.org/wiki/Social_media.
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5. Appleyard, B. “A guide to the 100 best blogs – part I.” *Times Online* February 15, 2009. Available at http://technology.timesonline.co.uk/tol/news/tech_and_web/the_web/article5725644.ece.
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7. Facebook Press Room. February 2010. Available at www.facebook.com/press/info.php?timeline.

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