

Social Networking is Serious Business



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ComplianceBuilding.com

Serious

Since I am the lawyer and the compliance professional on the panel, I'm going to talk about the serious part.

Social media tools are great tools. That make it easier to publish information. But that also means that people that are not trained in journalism or publishing are in fact acting as journalists and publishers.

That includes me.

GOODWIN PROCTER



I'll spend a minute on me.

I was a practicing lawyer at Goodwin Procter, one of the big law firms in Boston. I got roped into being part of the knowledge management movement at the firm.

One part of my knowledge management role was responsibility for the firm's intranet. For the third generation of the intranet, we went with the concept of a portal.

At that time, Microsoft had just come out with a new product called SharePoint that had a lot of tools that seemed to work well with what we wanted from the intranet. We ran that happily for several years.

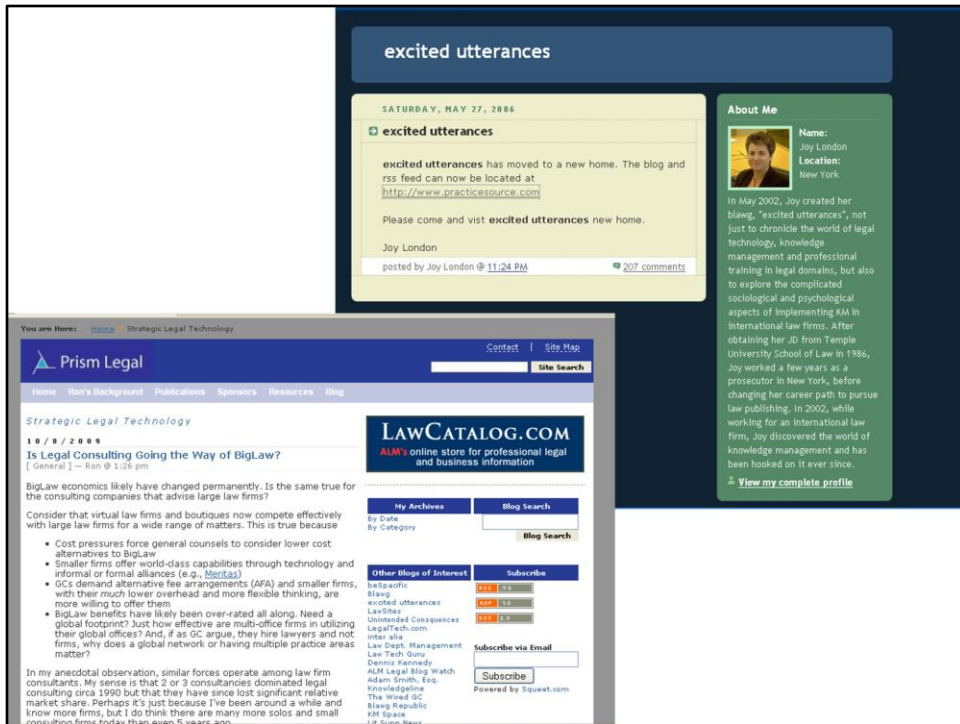


Then along came SharePoint 2007. This version included these things called blogs, and wikis and RSS feeds. Things that at the time sounded more like a Dr. Seuss book than tools for a law firm or knowledge management.

But I did some research and they sounded interesting and promising for knowledge management.

But I would have to wait a year plus for the team to implement this latest version of SharePoint to start using these tools.

Or would I?

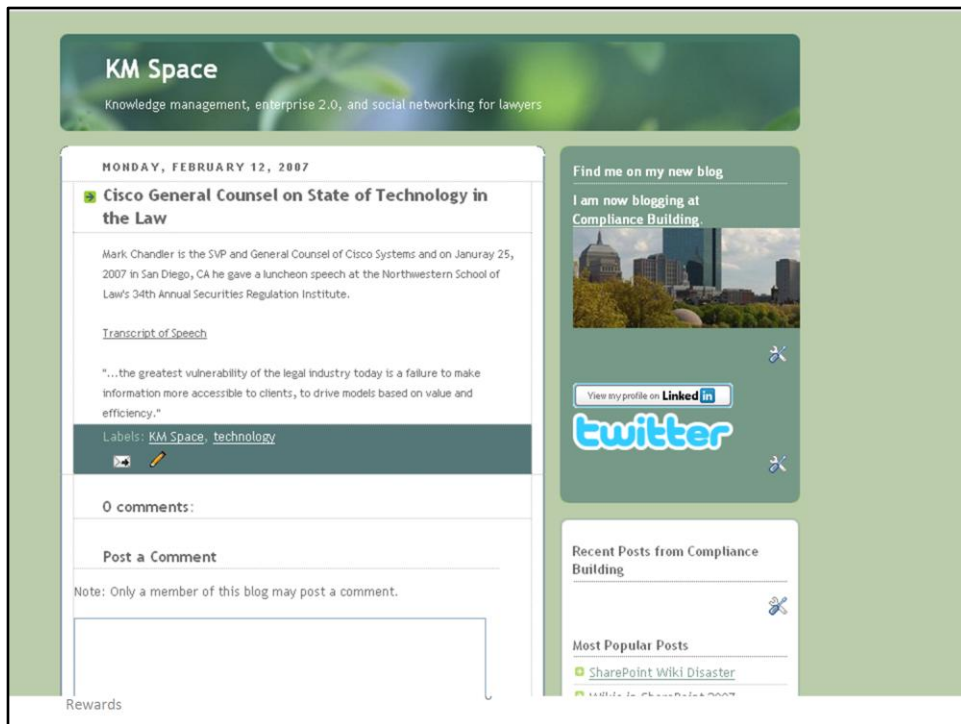


It turns out that two of my colleagues in the legal knowledge management community were publishing blogs on the internet. (I thought they were just websites.)

They collected all this great information and made it available. They were doing externally what I wanted to do internally.

So I decided to try it out and set up my own blog. I set aside an ENTIRE afternoon for the Herculean task.

Of course it took only minutes and I had the rest of the afternoon to figure out what to do with it.



That was the start of KM Space.

This is my first blog post I ever made.

I focused on knowledge management for lawyers.



That blog was to the gateway drug into web 2.0 or social media or social networking or whatever you want to call it.

Now we are at a time where the innovation in information technology and communication is happening outside the enterprise in the consumer space. Communication inside a company is lagging by several years. This is a big change. Email and information tools used come first inside the businesses with the money and manpower to run them.

It's challenge that information on the internet is much easier to find than information inside your organization.

In 2008, I left Goodwin and knowledge management and went into the world of compliance

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 Doug Cornelius on compliance and business ethics

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Custody of Funds or Securities of Clients by Investment Advisers

January 5, 2010



The SEC released the final version of its new custody rule (.pdf). The Commissioners had announced their approval of the rule on December 17 and then released the final text on December 30. The rule goes into effect 60 days after publication in the Federal Register. The amendments are designed to provide additional safeguards under...

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Whales and Compliance

January 4, 2010



I was surprised to be thinking about compliance while I was reading about whales. Sure, I eat, drink and sleep compliance. But there are some lessons that compliance professionals can learn from the study of whales. This came up while I was reading *Watching Giants...*

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Darth Vader and the New York Stock Exchange

January 2, 2010

Is this going to improve the image of the stock market? Darth Vader ringing the opening bell at the NYSE?! Lucasfilm Ltd. Brings the Force to the New York Stock Exchange This Holiday Season – press release After more than 30 years, Star Wars maintains its...

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SEARCH FOR STUFF

HIGHLIGHTS

In-House Counsel Sanctioned for Failing to Monitor the Preservation of Electronic Evidence

In the *Swofford v. Eslinger* case, the court sanctioned in-house counsel (but not outside counsel) for failure to preserve evidence. The

I became the chief compliance officer for a real estate private equity firm.

And to no surprise for anyone who knows me, I started a new blog called Compliance Building.

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Top search queries

Information about user search queries that have returned pages from your site.

Show:

Impressions : Your site appeared in these searches				Clickthrough : Users clicked on your site in these searches			
#	%	Query	Position	#	%	Query	Position
1	41%	finra	6	1	18%	credit suisse ofac	1
2	8%	martindale hubble	9	2	9%	compliance services scam	1
3	4%	finra rules	5	3	9%	extended cobra	1
4	3%	cobra benefits extended	6	4	9%	cobra extended	2
5	2%	martindale	17	5	6%	cobra subsidiary	1
6	2%	quaterback	9	6	6%	fcpa compliance policy	2
7	2%	cobra extended	2	7	6%	massachusetts data privacy law	3
8	1%	fmla poster	8	8	6%	president's working group on financial markets	4
9	1%	social media today	8	9	4%	finra social media	1
10	1%	ramesh chakrapani	6	10	4%	ch richard ellis code of conduct	2
11	1%	f360	9	11	4%	finra rule 2210	2
12	1%	william jefferson	12	12	4%	massachusetts lobbying law	3
13	1%	poke	11	13	4%	mass data privacy law	4
14	1%	make with	9				
15	1%	extended cobra benefits	6				

Web 2.0 has some “Serious” tools for publishing.

My blog is a solo operation, just me. But I can see where Compliance Building comes up in the top ten of Google search results. The Holy Grail of online publishing.

I’m a fan of Web 2.0 and see lots of benefits, but there is a dark side. And that’s what I’m going to focus on: Problems, Disclosure and Regulations.

Federal Trade Commission



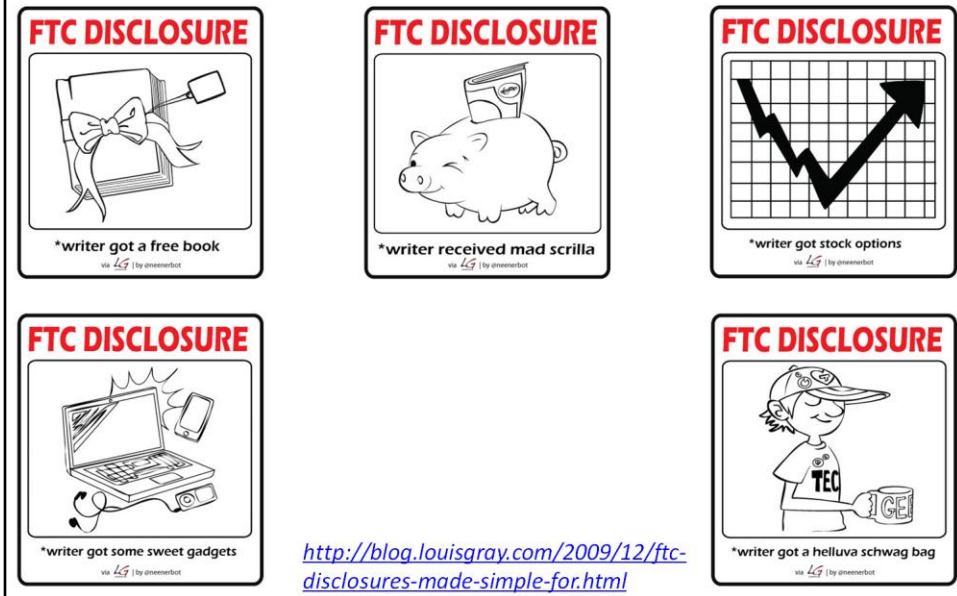
The current hot topic is the federal trade commission so I'm going to start with the them.

The FTC issued some new guidelines on endorsements and testimonial in advertising. One reason for these new guidelines was because of social media. There were these new ways of talking about products.

The biggest offenders turned out to be mommy bloggers. Some were shaking down companies for schwag and promoting companies that sent them freebies or paid them for posting without disclosing the relationship.

Several weeks ago the FTC issue the guidelines. They are mere 81 pages long. Not nearly as easy to digest as one of John's delicious burritos.

Federal Trade Commission



The guidelines are fairly long, but there is a lot of common sense in them.

Be transparent. Disclose your relationship with the product. Don't be deceptive.

Section 5 of the FTC Act “prohibits unfair or deceptive acts or practices in commerce”

Example, its perfectly fine for John to be writing all he does about Boloco. He discloses that he is an employee of the company.

I could tweet and blog all day long about how I love Summer burritos at Boloco.

If John offers to give me a free burrito every time I write a blog post about Boloco, I need to disclose that relationship.

The FTC has said they are as willing to go after John for a failure to disclose as they are to go after me.

Disclosure Failure?



Lets show an FTC disclosure fail.

Kim Kardashian, famous largely for being famous, is willing publish twitter updates for cash.

Here she is pimping Carls Jr. with no disclosure that she is paid spokesperson for Carls Jr.

How does this fall under the FTC guidelines?

If Kim really is hungry for Carls Jr, then that would be okay. You can always talk about your honest opinions.

According to the guidelines *"Where there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (that is, where the connection is not reasonably expected by the audience), such connection must be fully disclosed."*

But in a example the FTC says its okay for a film star to make a paid endorsement regarding *"points of taste and individual preference"* with no disclosure because such *"payments are ordinarily expected by viewers."*

Honestly, I don't know how you draw the line to figure out if the viewers would expect that you would get paid for what you are saying.

I picked Ms. Kardashian because a news story came out that she is willing to advertise

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What can you do?

Its even possible to tuck a disclosure in Twitter. This service Cmply came on line when the guidelines came out.

I came across this service which allows you to tuck a disclosure into twitter update. Blog posts obviously give you plenty of room to disclose.

SEC



If you are a public company, your public statements affect stock prices. What you say can easily violate the SEC rules on disclosure.

In 2008 the SEC released a ruling that said you could use blogs and social media as a disclosure tool. In a mild display of bipolar behavior, the SEC urged companies to embrace new technologies to disseminate and broaden the availability of information to investors, while at the same time sternly reminding companies of their complete liability for any statements and their need for ongoing compliance. Needless to say the statement did not make many people feel very comfortable with using the tools as part of investor relations.

But there is a growing Investor Relations 2.0 movement, with companies trying to use blogs, twitter and other 2.0 tools as part of their investor relations toolkit.

Ebay has really take some great steps. The have an Ebay Ink blog and twitter account as part of their investor relations toolkit.

For private companies that raise capital privately, we don't use social media it is not a meaningful way to connect with business opportunities. It may violate the SEC's that prohibit us from the general advertisement of securities in our investment partnerships.

Foot in Mouth



keyinfluencer True confession but I'm in one of those towns where I scratch my head and say "I would die if I had to live here!" *about 19 hours ago from twhirl*



A consultant posted on twitter about his apparent distaste for city he was in.

“I would die if I had to live here.”

That city happened to be Memphis, the headquarters of Federal Express. And he was there on a consultant assignment for Federal Express. A social media gig for FedEx.

Some people at FedEx happened to be following him on Twitter and got quite offended by what he said. It also spread to other social media consultants so his peer chastised him as well as his client chastising him.

Ability to Damage



74% of employees surveyed
say it's easy to damage
a company's reputation
on social media.

Deloitte.

Last year, Deloitte came out with a study on social media and how it was perceived by employees and management.

74% said its easy to damage a company's reputation on social media.

I am more concerned about the other 26% that think they can't cause damage.

Facebook with your Boss



Are your friends with your boss on Facebook.

Then don't complain about your job on Facebook.

There is lots of employee gossip in the workplace. But once it gets online it spreads faster, attribution is findable and its easier to get in trouble.

This girl could have told a co-worker that she thought her boss was a wanker and news of that could have reached the boss. Maybe he would have thought less of her, but he wouldn't have fired her for that.

The web has the ability to broadcast information and amplify, regardless of whether it is good or bad information.

Viruses



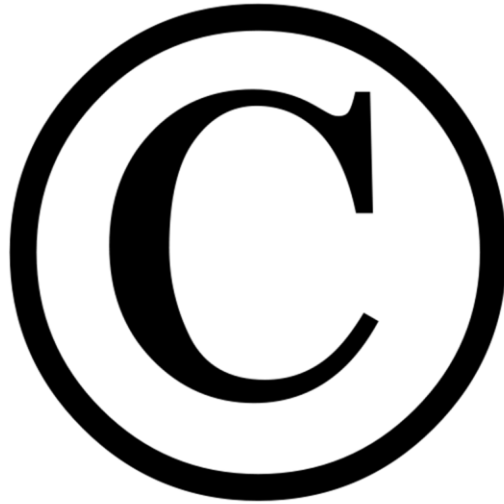
What happens if you get a message like this in Facebook from one of your friends.

You click on the link. Get a message says an update of Flash is needed before the video can be displayed. You're prompted to open a file called flash_player.exe.

Boom! you just got infected by Koobface.

The big difference with these social networking viruses is that they often look like they are coming from your friends, so you're more trusting and take steps you wouldn't take if it came through a stranger in email.

Copyright



<http://commons.wikimedia.org/wiki/File:Copyright-serif.svg>

Another big issue is violating copyright. The concept of fair use goes out the door when you are using social media as part of your business. What you can do with copyrighted material for personal use is much more permissive than what you can do with it for business.

By the way that image was released into the public domain.

Enforcement

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THE PUBLIC EDITOR
Times Standards, Staffers or Not
 By CLARK HOYT
 Published: January 2, 2010

Mary Tripas, an [associate professor](#) at the Harvard Business School, has been writing a monthly [column](#) in The Times called "Prototype," about corporate innovation, her academic specialty. Last Sunday, [she highlighted](#) the 3M Company's customer innovation center at its headquarters in St. Paul.



Today, an editor's note in the paper says that, had The Times known that 3M paid Tripas' expenses to Minnesota in November, the column would not have been published as it was written. Tripas violated a policy against accepting travel or anything else of value from the subjects of coverage. She will no

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Writing published

What do you do? You fire people who violate the rules.

The new York Times fired a reporter because she failed to disclose that the main subject of her story paid for her travel to their headquarters.

They fired a reporter who asked airline magazines for free tickets.

Maybe it this kind of editorial control is why the Federal Trade Commission treats newspapers different than it does blogs.

Policies for Web 2.0

- **Maintain Confidentiality**
- **Securities laws**
- **Financial Performance**
- **Identify yourself**
- **Disclaimers**
- **Be respectful**
- **Anonymous Contributions**
- **Use of logos or service marks**
- **Copyright**

Here are some guidelines when creating and/or publishing content online:

Maintain Confidentiality. Identities of our investments, investors and business partners must be held in confidence to the extent appropriate for that relationship.

Securities laws. It is very easy for these types of communication to violate securities laws.

Financial Performance. Do not make statements about the financial performance of the company.

Identify yourself. If you are commenting or publishing on topics related to your job, identify yourself as an employee of the firm.

Disclaimers. You should make it clear that you are expressing views that are your own and not those of the Company.

Be respectful of your colleagues, the Company, and our competitors. Rumors and gossip spread like wildfire on the Internet. Do not contribute anything that violates the Company's sexual harassment policy or similar human resources policies.

Copyright. Comply with copyright laws. "fair use" doctrine is rarely a useful defense in the commercial context

Use of logos or service marks. The company's logo or service mark cannot be used without the written permission of the General Counsel.

Anonymous Contributions. The same cautions and restrictions on communications apply to supposedly "anonymous" blogs, comments, or posts, since there almost nothing is truly anonymous on the internet.

Monitor Web 2.0

- **Employees must register blogs**
- **Employees must register twitter**
- **Subscribe to employee blogs**
- **Monitor your name and company**

Where to Find Doug

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