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Armand J. (A.J.) Zottola

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### Online Social Media Legal Risks for Associations

Related Topic Area(s): Antitrust and Trade Regulation, Copyrights and Trademarks, Electronic Communications, Employment Law, Social Media

Incorporating the use of social media and online networking sites into an association's larger communication, membership, or marketing strategies raises a number of potential legal risks and liability issues for the association. The following is a non-exhaustive list of legal issues to consider in connection with using social networking sites to create, manage, and/or sponsor content.

- 1. It's more public than you think.** An association should always be careful about what it posts and assume that greater (not less) publication or disclosure is possible.
- 2. Avoid use of material obtained without permission and provide proper attribution for content taken from other sources.** Given the ease with which content and material can be obtained or posted online, even within social networking sites, avoiding copyright infringement will always remain a concern for associations.
- 3. Be careful with allowing others to post content.** When managing an online social network that enables the posting of content by a third party (e.g., a member), such content functionality can give rise to liability for copyright infringement, torts, or defamation. Avoid encouragement of unauthorized use or copying of third-party content, and where possible, seek the consent of the author, owner, or subject before reproduction or use.
- 4. Know your identity and role.** Monitor your interactions with other users and be sure you can verify your association's own posted material from messages or material from other sources.
- 5. Pattern behavior to take advantage of potential immunity.** The federal Digital Millennium Copyright Act of 1998 lays out certain safe harbors for "Internet service providers" that could provide protection from copyright infringement claims, and the federal Communications Decency Act of 1996 offers safe harbor protection for providers or users of interactive computer services from civil liability for defamation, invasion of privacy, negligence, and trespass claims.
- 6. Consider hyperlinks to third-party sites.** Although mere linking may not suffice to find copyright or trademark liability, an association should never frame, deep link to, or incorporate any third-party content without permission when it links to other sites or pages.
- 7. Don't misuse trademarks.** Third-party trademarks should be used by an association in its online social media with permission when possible and with extra caution when use is in a commercial context.
- 8. Be careful with sweepstakes.** An association should always seek legal counsel before implementing an online sweepstakes or contest through an online social network. There are numerous state laws and regulations that govern online contests, lotteries and sweepstakes.
- 9. Watch what you say when you market.** An association should be careful with any practice that is really advertising in disguise. There are federal and state rules and guidelines to be mindful of in this area.
- 10. Don't ignore the rights of privacy or publicity.** Privacy considerations, particularly with respect to children under the age of 13, still apply to social networking sites.
- 11. Be careful when sending unsolicited communications.** Even inside a social networking site, email and other forms of viral campaigns, particularly for commercial messages, can remain subject to laws governing unsolicited e-mail such as the federal CAN-SPAM Act of 2003.
- 12. Monitor blogs and other instant communication forums.** Govern with clear policies regarding

appropriate content and use such policies to help manage the association's responsibility and potential liability. A clear take-down policy also should exist.

**13. Protect your intellectual property and use proprietary notices.** Consider use of a ™, ® and/or © symbol in connection with more prominent placements of intellectual property and otherwise provide notices and conditions for any use of intellectual property by other users within an online social network.

**14. Guard against antitrust risks.** Social networking sites and related media can make it easy for members to let their guard down and share information that could lead to a violation of the antitrust laws. Remind members that they may not communicate via association-sponsored social networking to make an anti-competitive agreement or even to share competitively sensitive information.

**15. Don't ignore employer/employee considerations.** An association should define its role, as well as the expectations it has for its employees' behavior when they are using social networking sites for association business purposes.

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*A.J. Zottola ([ajzottola@Venable.com](mailto:ajzottola@Venable.com)) is a partner at Venable LLP in its Technology Transactions & Outsourcing Practice Group. He works frequently with the firm's nonprofit organization clients.*

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