

Special Advertising Section

OUTSIDE PERSPECTIVES

Risk Management for Social Media

SOCIAL MEDIA PLATFORMS SUCH as Facebook, Twitter and LinkedIn have become integral parts of the corporate



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world. A 2011 survey conducted by the Society of Human Resource Management found that 68 percent of responding organizations are engaged in social media activities designed to reach

external audiences, including potential customers. Employees are using social media for company-wide purposes such as marketing, human resources and public relations. Employees also use social media networks for more individualized tasks such as networking and business development, as well as for purely personal reasons.

The instantaneously interactive characteristics that make social media useful business utilities can also trigger a number of novel as well as age-old exposures. The ever-evolving nature of social media requires steadfast and continually updated risk management. Appropriate social media policies are the first line of defense. Neither well tailored policies nor will good implementation necessarily pre-

vent lawsuits from being filed, however. An organization should therefore take concrete steps to maximize its insurance coverage for social media related claims and losses.

Risk Recognition

Broad reach and real-time interactive capabilities make social media a powerful tool for marketing and advertising, as well as for the measurement of public perception of a company's business or product. These benefits are not without a cost, however, as the reach and speed of social media can amplify and accelerate risks. Because these risks vary by industry, organization size and culture, each organization must identify the types of risks to which it is most likely exposed through its social media activities. Yet while the potential claims and losses will vary with each company, there are many common risks associated with social media.

Prominent among those shared risks are employment-based claims arising out of the use of social media to investigate and screen potential and existing employees, as well as allegations of discriminatory hiring practices based upon the results of social media-based searches. Your employees' conduct when using

social media can also give rise to claims against the corporation. For example, if your employee anonymously disparages a competitor on that company's Facebook page or through Twitter, your organization may face liability for defamation or commercial disparagement.

Moreover, companies may face intellectual property and copyright infringement claims arising out of the unauthorized use of protected content in their social media campaigns. Social media sites also increase the likelihood of security and data breaches: your company may face liability for failing to protect the privacy of the public using or following your social network pages. Additionally, the use of social media to gain consumer feedback on a product or to seek solutions may disclose competitive intelligence or trade secrets belonging to your company or one of your business partners.

Perhaps the most dangerous side effect of social media is reputational risk. Social media has dramatically altered the way in which reputational damage is inflicted on a corporation both in terms of speed and scope. In the pre-Facebook era, a post on an internet message board falsely accusing a national restaurant chain of serving tainted food generally remained static and might take weeks or months to reach

a limited number of readers. To encounter the post, readers had to actively browse the website in question and then happen upon the solitary accusatory posting. Today, once that same single false accusation of tainted food is tweeted or posted on Facebook, many of that person's followers will encounter the accusatory content, either by visiting the sites in question while the content is fresh or by checking out their friend's Facebook wall or Twitter feed. With each re-tweet or re-posting of the accusation, the audience may grow rapidly, and, at a certain point, exponentially: before long, hundreds of thousands of people may be questioning the restaurant's cleanliness and reputation. The viral spread of the accusation may ultimately reach news outlets and potentially show up as a twitter "trend," thus becoming the social media equivalent of a "water cooler" topic.

Mitigating Social Media Risks

While social media-related risks seem daunting, your company can effectively mitigate and minimize the risks by creating and enforcing a social media policy that is effective, yet flexible and responsive to ever-changing social media content and platforms. The first step is to comprehensively assess your company's social media activities and needs, identifying all risks and weighing the benefits of those activities against the risks.

At the outset of this process a team of individuals responsible for the development and execution of the policy should be assembled. While there is no blueprint for the successful composition of this group, members of your human resources, legal, marketing and information technology are the most likely to have experience and insight on your social media activities and exposures.

An effective social media policy is simple yet comprehensive, but crafting one is not a "one size fits all" endeavor. Organizations vary greatly in their policies toward social media. Once a policy is tailored to your company's needs, your employees should be trained on the policy and how it is to function. Once in place, consistent enforcement of the policy will instill adherence and understanding of the policy and its parameters. It is equally important to continually revisit your social media policy in order to respond to changing trends in social media and emerging social media platforms. The popular social media platform of 2014 may not even be in existence in 2012.

Recovering When Social Media Losses Occur

Lawsuits, claims and losses arising out of social media may occur even with the most stringent of social media policies in place. When liabilities or losses occur, your company should look to its insurance program for sources of defense and indemnification. When a loss occurs, consider all available and potentially applicable insurance for defense and indemnity.

For example, your company's Commercial General Liability (CGL) policy may provide coverage for slander, libel, copyright infringement and misappropriation claims under the standard coverage for "advertising injury." Likewise your CGL policy may cover any property damage or personal injury claims that may arise out of social media activities. A professional liability or "errors and omissions" policy may provide coverage for social media-based liabilities arising out your professional services or activities. Likewise, an Employment Practices Liability Insurance

policy may cover claims of discrimination, harassment or violations of employment laws that occur as a result of social media activities by you or your employees.

The emergence of ever-new technologies has stimulated a proliferation of cyber-related policies and endorsements available to policyholders. These policies and endorsements may provide another avenue of recovery for claims or losses involving social media. While the express language of such policies and endorsements may vary, they typically cover damage to third party systems and content, damage to electronically stored data, privacy claims and infringement claims. If your company has purchased cyber-insurance or a cyber-related loss endorsement, be certain to look to that coverage as a source of recovery, but do not limit your efforts to that policy alone. A comprehensive approach of seeking insurance coverage for social media related losses from all available insurance policies is the best way to maximize your recovery.

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