What To Do About
Social Media Risks

By Darin McMullen

Social media platforms such as Facebook, Twitter and LinkedIn have become integral parts of business, particularly within the competitive hospitality industry, which uses social media to reach potential and existing customers. The instantaneously interactive characteristics that make social media useful business utilities can also trigger a number of novel risks (actually, they are more like age-old risks now exposed through novel channels). Savvy businesses will implement policies to pre-emptively mitigate these risks, as well as vigorously pursue insurance recovery through every available insurance coverage when a loss does occur.

Risk Recognition

Broad reach and real-time interactive capabilities make social media a powerful tool for marketing and advertising. These benefits are not without a cost, however, as the breadth and speed of social media can amplify and accelerate risks. Perhaps the most dangerous side effect of social media for businesses in the hospitality sector is reputational risk. Social media has dramatically altered the way in which damage is inflicted on a company's brand 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, 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 that tarnishes your services in the eyes of the public.

Equally problematic 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' use of social media for marketing, networking, or personal use can also give rise to claims against the corporation. For example, if your employee anonymously disparages a competitor on the competitor's Facebook page or through Twitter, your organization may ultimately face liability for defamation or commercial disparagement if the employee's identity is discovered.

Finally, 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.

Mitigating And Recovering For 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 related risks.

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. At the outset of this process, a team of individuals responsible for the development and execution of the policy should be assembled. Members of your human resources, legal, marketing and information technology groups are the most likely to have relevant experience and insight into your social media activities and exposures. Once a policy is tailored to your company's needs, your employees should be trained on the policy and how it is to function. 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 2013.

When liabilities or losses arising out of social media occur, your company should 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 arising out of social media activities. An Employment Practices Liability Insurance policy may cover claims of discrimination, harassment or violations of employment laws resulting from your social media activities or those of your employees.

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 to 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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