

Legal Risks in Nonprofit Social Media Use

Social media has become an invaluable tool for advancing nonprofit causes. But most nonprofits are unaware of the many potential legal traps in the online world. Below are some tips on avoiding legal troubles in social media use.

1. Direct your employees not to post anything they would not want to see on the front page of the *New York Times*. Even if you use a pseudonym online, there are ways that the public, including reporters, can discover who you are. In December 2011, three Congressional aides unwisely “Tweeted” about their daily on-the-job drinking. Although they did so under anonymous Twitter names, a news blogger discovered their identities and exposed their adventures to the world.

Generally, information posted in social media can also be used as evidence in a court of law. And even what you *delete* from social networks can get you into trouble. In 2011, a Virginia lawyer told his client to remove photos from his Facebook account for fear they would prejudice his wrongful death case. A judge ordered them to pay \$700,000 for treating social media data differently from other forms of evidence, which litigants are prohibited from deleting once litigation is imminent.

2. Actions taken by an organization’s employees can be held against the organization. Under the doctrine of *respondeat superior*, employers can be held liable for the activities of employees. If an employee posts an offending statement against another organization on Facebook or other social network, the statement potentially could be attributed to the employer, even if the employee posted on his own personal account. The risk is higher if the employee’s profile clearly states his organization, his title as a senior staff, and includes the logo of the organization.

Organizations can help minimize such risk by requiring personal postings and blogs of employees that relate to the employer’s field be carefully distinguished from the employer, such as by including a disclaimer stating that the views and opinions expressed do not represent those of their employer.

3. If you’re not allowed to do it in the “real world,” you’re probably not allowed to do it in a virtual world. Although social media might often feel like a separate world, it is still subject to the laws of the real world. Below are some legal issues implicated by social media use.

Intellectual Property (IP). Organizations need to prevent their employees from misusing intellectual property (e.g., copyrighted works and trademarks) in two ways. One, an employee can misuse her employer’s IP by, for instance, using the organization’s trademarks without authorization to misrepresent the organization’s position on issues, to provide false information, or to make defamatory remarks. Second, an employee can violate *others’* IP by, for instance, copying and using others’ trademarks or copyrighted works on social media without a proper license.

Harassment and Discrimination. While most employers know they have a duty to maintain a workplace free of illegal harassment, they often do not realize that they may face liability when employees use social media to make discriminatory statements, racial slurs, or sexual innuendos toward co-workers. Recently, a California jury awarded \$1.6 million to a juvenile corrections officer with a deformed hand after co-workers referred to him as "rat claw" and "one handed commander" in an unofficial blog.

Political campaign activity. 501(c)(3)s are prohibited from engaging in political campaigning on behalf of candidates for public office. Organizations can unwittingly violate this prohibition if their employees speak out in favor of, or in opposition to, political candidates through social media and their statements are attributed to the organization.

Charitable solicitations. Thirty-nine states require some type of registration for charities soliciting funds within their jurisdiction. Use of social media to raise funds can trigger the requirement, especially if the fundraising is directed toward people known to reside in a particular state.

Confidential Information. Organizations must take care to prevent disclosure of confidential or proprietary information through social media. For instance, if an employee blogs about a donor or a constituent your organization has served, he should take care not to reveal personally identifiable information without authorization.

4. Implement a social media policy to govern use of social media by employees. One key step in protecting your organization is to have a written policy that provides guidance on what employees can and cannot do in social media -- both in their official role as employees *and* in their personal use. Employees' use of personal social media accounts for official organizational business can not only cause confusion between employees' professional and personal identities, it can also create problems when employees leave the organization. For instance, the organization can lose valuable history, content, and contacts if it can no longer access accounts used by a former employee. Also, disputes can arise about ownership of accounts and data. To minimize these concerns, require employees to conduct official business only through the organization's social media accounts, not through personal ones. Conversely, the organization's accounts should not be used for personal affairs.

Whether your organization is just beginning to leverage the power of social media or has already mastered its potential, be sure to consider the legal risks and take adequate steps to minimize them.

© 2012 Gammon & Grange, P.C. For more information, contact Gammon & Grange, P.C. (GGAlert@gg-law.com; 703-761-5000), a law firm serving nonprofit organizations and businesses throughout the United States and abroad. Readers may freely copy and distribute this Alert **in full without modification**.

Disclaimer: This memo is provided for general information purposes only and is not a substitute for legal advice. The transmission of this memo does not create an attorney/client relationship. No recipients of this memo should act or refrain from acting on the basis of this memo without seeking professional legal counsel. Gammon & Grange, P.C. expressly disclaims all liability relating to actions taken or not taken based on the content of this memo.