



Social Media, Blogs and Media Liability: Loss Prevention and Risk Management on the New Frontier

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The virtual avalanche of social media has provided journalists with significant new newsgathering and reporting tools. Social media platforms such as Twitter, Facebook, MySpace and YouTube promote lively and immediate discourse and allow journalists to directly interact with their viewers and readers. However, these new social media tools and their new opportunities for journalists have also created new legal risks for media companies, newsrooms and journalists. Given today's exploding popularity of social media and the literal worldwide reach of content posted on blogs, video sharing sites and other social media platforms, these new legal risks can be substantial. There is a growing concern that the use of social media sites is spreading faster than media companies can adopt policies to manage, minimize and control these risks.

This article will provide some practical loss prevention and risk management guidelines for newsrooms which are now embracing and aggressively utilizing social media platforms as important elements of their mainstream newsgathering and reporting activities. These practical tips and guidelines remind journalists that they should uphold the same professional and ethical standards of fairness, accuracy, truthfulness, transparency and independence when using social media as they do in their newsgathering and reporting efforts for their traditional publications, broadcasts and digital news platforms. Just as journalists must be sensitive to and vigilant in their traditional newsgathering and reporting efforts about potential legal claims for misrepresentation, trespass, defamation and invasion of privacy, so too must they be vigilant about these same potential legal pitfalls when utilizing social media platforms. The practical tips and guidelines set out below are intended to help minimize potential legal risks and prevent legal claims from arising.

Truth, Fairness & Accuracy

Newsrooms using social media sites should emphasize that all social media comments and postings meet the same standards of truthfulness, fairness, accuracy and attribution that are followed and adhered to by those newsrooms in their traditional media broadcast and print platforms.

An attractive feature to most social media sites is the relative ease for people to participate and become engaged. This easy means of participation, however, makes it even more important for journalists to think through all of the consequences before posting, responding or repeating content on social media sites. Think before you post. Journalists should be constantly reminded that they must not suspend their critical analysis and reasoning when using social media tools.

Newsrooms using social media should develop policies and procedures for copy editing and oversight of content posted on social media sites. While it may not always be practical for a "second pair of eyes" to review a journalist's social media content before posting, it may be prudent for the newsroom to have that "second pair of eyes" of a manager or senior editor retrospectively review all social media postings.

Newsrooms using social media should develop protocols and procedures for checking and confirming the truthfulness of information such as photographs and video that a journalist obtains from Facebook, YouTube or other photo-sharing sites.

Privacy, Newsgathering & Intellectual Property Claims

There is a common misconception in some newsrooms that if information, photographs or video is available on the internet and posted on social media sites then it is in the "public domain." Be careful. This information is likely protected by copyright. Newsrooms should have protocols and procedures in place for permission requests and fair use analysis when considering using information already posted on the internet.

Social media sites often provide a “privacy” setting where posters can choose not to have personal information, photographs and other content available to the public. Journalists should carefully consider potential invasion of privacy risks when obtaining such information from a social media site.

Newsrooms should also develop protocols for undercover investigations involving social media sites. Just as there are potential legal implications arising from traditional undercover newsgathering, newsrooms and journalists should consider the legal risks of going undercover digitally. Potential claims for fraud, misrepresentation and intrusion exist here as well.

Newsrooms which encourage and actively promote blogs by their journalists should be fully conversant with the legal “safe harbors” provided by the Communications Decency Act and the Digital Millennium Copyright Act. Newsrooms should have protocols in place for dealing with user-generated content and third party postings. Keep website terms and conditions up to date and prohibit offensive postings, trademark infringement and false advertising by third party posters. Remind the journalists in the newsroom who blog not to copy, cut and paste or post from other sites without permission.

Accountability & Transparency

Newsrooms strive to be accountable for and transparent in their traditional newsgathering and reporting. It is important, therefore, that they also strive to maintain these same standards of accountability and transparency when utilizing social media in their newsgathering and reporting activities.

A journalist should not post anonymously or utilize a user name that cloaks his/her real identity. When a journalist posts comments on a social media site, he/she should do so under the journalist’s real name.

A journalist should use caution when posting or blogging about a subject that the newsroom is covering. “Editorializing” on a social media site about a topic or subject being covered by the newsroom can reveal biased or personal feelings and beliefs.

As the newsroom traditionally maintains a clear separation between the media organization’s advertising and journalism divisions, journalists should not use social media sites to promote business or personal interests without disclosing those relationships to the public. Sponsored links should also be clearly labeled and disclosed.

Credibility, Image & Reputation

The reputation, credibility and brand of a newsroom and its journalists is of critical importance to the media organization. The use of social media does not change this critical importance.

A journalist using social media sites for both professional and private activity should consider using separate accounts. Since private and professional are increasingly becoming intertwined in the online world, it is recommended that journalists set up separate profiles for their professional and private social media activity. While there may be some personal content included in their professional social media postings, journalists should think carefully about what personal content would be appropriate. Specifically:

- A journalist should carefully consider the social media groups that he/she joins – it may be best not to join a group or to follow participants on just one side of a newsworthy debate or issue.
- A journalist should carefully consider whether it is best to leave his/her political affiliation out of the Facebook profile, for example.
- A journalist should avoid posting photos or any other content on a social media site that might embarrass the media organization, the newsroom, its journalists and/or undermine their journalistic credibility.
- A journalist should be aware that they may inadvertently and/or unintentionally reveal the identity of sources by using “friending” or “following” designations on social media sites like Facebook.

Good loss prevention and risk management protocol for media companies, newsrooms and journalists using social media tools is grounded in the very principles of sound journalism utilized in traditional newsgathering and reporting. Applying these same standards, precautions and policies in social media use will help minimize potential legal risks and prevent legal claims from arising.

