



BEST PRACTICES

MITIGATING THE BUSINESS RISKS OF SOCIAL MEDIA

by Paul Rubell, Esq.



Social media is rapidly emerging as an effective means for businesses to engage their customers. Through the use of social media, customers can be made to feel and behave like part of a company's brand and culture. The benefits of this viral marketing may directly impact a company's bottom line. However, there are potential pitfalls that may arise out of the use of corporate social media. A prudent company should understand them.

This article takes a cautionary look at the downside risks posed by the challenges of social media, and recommends best practices by which companies can mitigate them.

1. Monitoring and Editing Customers' Content.

It can become a double-edged sword to encourage one's customers to share their experiences online. Customers will seize the opportunity to tweet and post comments, but one cannot control what those customers may write on social media sites. For this reason, a business ought to monitor and manage its online social media conversations.

Unfavorable business content has to be reviewed, and so does improper content and improper online conduct. Personal information has to be redacted. Vulgar material ought to be edited. Criminal conduct (for example, child pornography) needs to be dealt with swiftly. Disclosure of trade secrets and non-public information has to be identified and removed.

It is important, though, for a business to apply the same degree of editorial control over its social media sites to every unique user. Transparent rules, applied uniformly, should be established and adhered to.

2. Securing the Business Social Media Site

Today, any web presence is a ripe target for hackers and criminals. A business site is also fodder for corporate espionage and unscrupulous marketers. A wealth of information is available on any business's social media site. Some is readily visible, such as customer and company postings. Other information, invisible to the naked eye, also lurks on the site.

The email addresses of customers and users, their personally identifiable information, metadata, geolocation data and more are residing within their social media posts. All of this data is openly accessible to the hacking industry.

Best practices as well as smart business sense call for the creation of protocols governing the storage and retention of data, and ensuring its security and integrity.

Account passwords for the site's administrators should be strong ones that are changed frequently. Cybersecurity measures should be deployed across the business enterprise's social media sites.

Management must not shirk responsibility by delegating cybersecurity to the IT staff. The message and the means of implementing technological as well as business security should come from the corner office.

3. Ownership of the Corporate Social Media Site and Content.

It is imperative to confirm that the business enterprise owns and has control over its social media sites, their content, and its user base. Unlike in the past, in today's world the litmus test for legal ownership and control of social media has become murky. It was far easier to determine who owned a website during the 20th and early 21st centuries; the owner was the company that purchased and registered a web domain and paid the salaries of employees who administered the business' site.

There is less clarity today about the identity of site ownership because of the myriad ways by which businesses and their employees use social media. Our fast-paced world has blurred the traditional distinction between company time and personal time. Mobile communications has obscured the line of demarcation further.

Today, some employees are tasked with the responsibility to manage social media to promote their employer by posting corporate commentary. Those same employees and others might also post personal comments on the business' sites. They may also tweet company information on their personal sites. It is important to evaluate whether staff's postings are taking place while at work or during off time, because the manner by which they use the social site will factor into a determination of the site's ownership. It is equally important to consider whether a business's customers are being confused or misled by onsite and offsite social postings.

For these and other reasons, it is essential for management to oversee the employees' access to corporate social media accounts. Careful thought should be given to the selection of those key employees who will operate and administer the sites. No matter who assumes this important role, internal controls should be established to monitor and assess business-side usage of the accounts. Outside consultants (such as marketing and IT professionals) who have site administration authority over the business' social media sites ought to be subject to the same system of checks and balances that apply to employees.

4. A Written Social Media Policy

Best practices call for written social media policy statements to be developed and implemented. An internal company policy statement should apply to employees, and an external policy should apply to public users of the sites. Through the deployment of a sound policy, legal liability can be mitigated and unwanted behavior can be addressed. A well-written policy statement will clearly state the ground rules of a business's social media sites. This provides uniformity; every employee and every public user will know that she will be treated in the same manner as every other employee and outside user: no better, no worse. A written policy statement also creates transparency, so that the ground rules are spelled out with clarity and are easy to understand. Transparency has the added benefit of enabling management to enforce the "rules of the game" with respect to employee and outsider misconduct, alike.

A social media policy provides accountability. Each employee and each public user is made to understand that her online behavior is regulated; that she has responsibility for her behavior; and that violating the policy has consequences. Once protocols have been established, they can be enforced with impunity, provided that the rules are applied in an even-handed and non-discriminatory way.

A social media policy, if it is to have any value, needs to be implemented. Otherwise, the policy can amount to a meaningless set of words. Management should deploy the policy and enforce it. In the absence of uniform enforcement, a policy statement may neither establish legal rights nor limit liability to the desired extent.

No single prototype policy can fit every company's unique situation. A well-written policy can only evolve through a dialog between management and counsel, taking into account the ways in which the corporate social media sites are intended to be used, both within the company and by customers, "friends", and "followers."

CONCLUSION

Social media can help a company to reach more people, and to do so inexpensively. Best practices should be established and used to mitigate risk while at the same time reaping the economic benefits of customer engagement.



About the Author

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