

## Online Oops

A host of legal issues can arise when using social media.

**I**t is a Facebook status you don't want: Being sued for using someone's photo on your website.

But local attorneys have seen businesses get into big trouble while using social media to promote themselves. The main problems stem from businesses grabbing photos from other websites for use on their own sites, blogs and Facebook pages. And then they receive letters from photo agencies, such as Getty Images, claiming they're owed upwards of \$5,000 because the proper licensing wasn't obtained for using the image.

For a small business, that can be devastating.

Firms using social media and viral marketing need to be aware of the legal issues related to copyright, defamation and hiring. Suzanne Boy, employment attorney with Henderson, Franklin, Starnes & Holt in Fort Myers, says multiple clients this year have approached her firm to draft social media policies.

"It's taken a while for people to realize the serious risks that are out there," she says.

### Copyright Copycats

The issue of copyright relates to who owns copy and photos posted online. A lot of times, business owners and employees simply don't understand they can't go on to someone's website and use a photo they like, says Jeanne Seewald, an intellectual property attorney and managing partner-Southwest Florida for Hahn Loeser & Parks LLP in Naples.

"People think, I see this image everywhere, it must be publicly available. It



SOCIAL MEDIA WELFARE: Protect your business by following online laws.

might not be," says Erica L. Loeffler, associate with The Livingston Firm, based in Naples.

Anytime you are publishing photos, videos, graphics, text or other content, you have to make sure you are complying with copyright laws.

"You have to be careful what you're posting," Loeffler says. "There's actually software now that these companies use. They can go out and scan the Web for use of these images. If you don't have a license for them, you will get sued."

Attorneys say they often are able to negotiate a settlement, but the companies still must pay legal fees.

Developing or updating a written policy regarding the company and employees' use of the Internet and social media can protect your company, Boy says. Require that all content be reviewed

before it is released and that it is screened for copyright issues, Loeffler says. The policy also needs to address confidentiality of business materials and client information, as well as when employees need to include a disclaimer on Twitter or other accounts that notes the posts are their own opinions and not those of the company.

### Don't Defame, Don't Overstate

What you and employees are writing online needs to be screened for copyright issues and accuracy. But you or your employees could be putting an organization at risk by posting defamatory content.

"Sometimes I think people get carried away and [think you] can say anything you want to because it's on the Internet," Seewald says.

Businesses also cannot make false and misleading statements about themselves. Boy adds that if an employee is going to promote the company on a social media site, a law requires them to disclose his or her relationship with the company.

Another area of the law that relates to online efforts is "use of likeness," or using someone's name or photo to promote your company, such as in a testimonial without permission or using a celebrity's photo to infer that they endorse your product.

#### Giving Others Permission

Look on a website and you should find the "terms of use," which are the rules and guidelines that you agree to if you use the site or have ownership of the information on that site, says Seewald, who often writes these statements for clients.

The terms of use often say that anything posted on that site is owned by that company, and this is particularly important in relation to what employees post via social media about your company. Once you put it on there, the owners can do anything they want with it.

"You want to be familiar with the terms of use for each one of these sites you are using," Loeffler says. "Be careful [you are] not disclosing sensitive or proprietary information from any of your clients or customers."

#### Unfair Marketing and Hiring

Federal Trade Commission laws about unfair and deceptive actions in marketing apply to viral marketing, too. If you are creating a buzz about a product in a deceptive way, you can be held liable, Seewald says.

The CAN-SPAM Act applies to commercial messages distributed by e-mail, requiring that you have an accurate subject line and include a functioning opt-out message.

If you or your human resources staff is using Facebook or online research during the hiring process, remember that no information you learn about the person related to race, age or marital status can be used to base your hiring decision.

"You don't want to get any information from Facebook, Twitter, any kind of online source that you wouldn't ask during an interview," Boy says. **gB**

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