

# Social Media – Legal Liability

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# Introduction

What is Social Media?

Why should you care?

# Today's Topics

- Some (very) Basics on Social Media
- An identification and discussion of the most significant legal issues associated with using social media
- Some ideas about limiting liability

# The Big Four



# Facebook

- Primarily “Social” Media
- Network of “Friends”
- Becoming More Important as an Advertising Medium

# The Big Four



# Linkedin

- Primarily a Professional Network

# The Big Four

The image shows the word "twitter" in a bold, lowercase, rounded sans-serif font. The letters are black with a thick white outline, giving it a sticker-like appearance. The logo is centered on the page.

# Twitter

- Blend of Social and Professional

# The Big Four



# YouTube

- Primarily a Vehicle for Copyright Infringement
- Important for Advertising and Dissemination of Advertisement

# Use of Social Media

- Managing Personal Relationships
- Managing Professional Relationships
- Advertising – Other Business Communications
- Commentary
- Posting Content – Pictures, Text, Video, Audio

# So, How Can I Be Liable???

- Copyright Infringement
- Defamation
- Invasion of Privacy
- Libel
- False Advertising

# So, How Can I Be Liable???

- Contributory Liability
- Vicarious Liability

# So, How Can I Be Liable???

- AND . . .

Numerous theories of liability that the next generation of social media savvy law school graduates will cook up.

# Copyright Protects

- Creative Expression (text)
- Pictures
- Movies
- Audio/Songs

# Copyright

- Is Distinct from the Underlying Work

# Copyright

- Protects creative expression of authors
- Does not protect facts or ideas
- Lasts for a Really Long Time (generally, term is life of author plus 70 years)

# Copyright Owner's Exclusive Rights

- Reproduction
- Distribution
- Modification
- Public Display/Performance

# Who Owns the Copyright

- The Author (the person who takes the picture or records the video or writes the text)
- Employer (when creative work is produced by an employee within the scope of employment)
- Someone Assigned Ownership (assignment must be in writing)

# So, What Does this Really Mean?

- If you have a (lawfully acquired) copy of something that is within the subject matter of copyright law (such as a book, song, picture, or video), you must have the permission of the copyright owner to exercise any of the copyright owner's exclusive rights.

# Exclusive Rights (one more time)

- Reproduction
- Distribution
- Modification
- Public Display/Performance



Copyright, Hollimon, P.A., 2011

# Shepard Fairey's Hope Poster

- Based on an AP Photograph
- AP owned the Copyright
- AP sued Fairey for Copyright Infringement (i.e., Fairey modified a copyrighted work without permission)

# Use of Copyrighted Materials

- If you post material that is subject to copyright protection on Facebook, Twitter, LinkedIn, YouTube, etc. you must either:
  - Own the Copyright
  - Have the permission of the Copyright Owner
- Otherwise you have infringed because actionable reproduction, distribution, public performance/display has occurred.

# Plagiarism v. Copyright

- Plagiarism – using someone else’s material without proper attribution
- Plagiarism – may or may not be copyright infringement, depending upon the underlying work
- However, attribution is not a shield against copyright infringement

# Defamation

- Publication to a Third Party of:
  - A false statement
  - That defames a person
  - Either negligently (should have known) or with knowledge (actual knowledge) of falsity

# Defamation

- Opinions are generally OK
- “In my opinion, Jane was arrested for burglary in 2008”
- “In my opinion, Jane looks like a thief”
- Truth is an absolute defense

# Invasion of Privacy

- Publication of
- Private facts
- That are Offensive
- And not of public concern

# Invasion of Privacy

- Must be “private” facts
  - SSN
  - DL No.
  - Other private, personal information

# Invasion of Privacy

- Information which is publicly available through proper means is generally not “private”

# False Advertising

- Misrepresentation of material fact
- That is known to be (or should have been known to be) misleading or untrue
- That is intended to induce reliance, and
- That is justifiably relied upon

# False Advertising

- False statement
- Intended to suggest a sponsorship, endorsement, or affiliation with another entity

# FTC Endorsement Guidelines

- Truth in Advertising requirements can be applicable to social media posts
- Endorsements:
  - (1) should not be misleading; and
  - (2) non-obvious connections between the endorser and the marketer should be disclosed if they would affect the consumer's perception of the endorsement

# Vicarious Liability

- Right and ability to supervise; and direct financial interest
- Respondeat Superior
  - Employer is responsible for the actions of its employees that are acting within the scope of employment
  - Which is why a social media policy is a good idea

# Contributory Liability

- A party induces others to infringe
- And provides the means to do so
- Sony Betamax Case
- Grokster/Shazam/Napster (original)

# FTC Endorsement Guidelines

- Employer should not be liable if:
  - (1) Employer has a social media policy concerning “social media participation;”
  - (2) “Rogue” employee acts; and
  - (3) the social media policy adequately covers the rogue employee’s conduct

# Managing Liability

- Have a social media policy that is consistent with employment law and intellectual property law requirements
- Inquire as to whether your CGL policy covers social media – if not consider a policy or rider that does so

# Managing Liability

- If your employees or members post to your social media sites, you should have a basic understanding of copyright law, so that you do not actively encourage copyright infringement.

# Managing Liability

- Issues to Consider/Plan For:
  - (1) How do you respond to competitor's disinformation?
  - (2) Do you respond to competitor's disinformation?
  - (3) How do you (or do you) respond to angry customer/client/member posting?

# The End

- You can obtain a copy of this presentation on my website:

—[www.hollimonpa.com](http://www.hollimonpa.com)