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**MAY 23-24, 2011**  
**CHICAGO**  
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# Social Media & The Employee

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# Establishing a Social Media Program

Karen Ruzic Klein, General Counsel

Kayak.com

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# Overview

- **Social media technologies provide organizations with opportunities to communicate with customers, enhance brand awareness and build employee morale**
- **The Legal Department's job is to mitigate risks. To build an effective social media program, you need to understand:**
  - **What social media is**
  - **How social media fits into your Company's strategy**
  - **The risks of using social media**

# What is Social Media

➤ **According to Wikipedia:**

**“Social media are media for social interaction, using highly accessible and scalable communication techniques. Social media is the use of web-based and mobile technologies to turn communication into interactive dialogue.**

**. . . social media is a blending of technology and social interaction for the co-creation of value.”**

# Types of Social Media

- **Social networking sites (Facebook, LinkedIn)**
- **Sharing sites (YouTube, Flickr)**
- **Blogs (including microblogging technology like Twitter)**
- **Collaborative publishing sites (internal wikis, Wikipedia)**

**\*types of social media can be internal or external**

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# Understanding Your Company's Social Media Strategy

- **Engage other departments (marketing, engineering/IT, HR)**
- **Identify the goals and opportunities for your organization**

# Key Considerations

- **Key considerations:**
  - **Company culture**
  - **Goals for social media**
    - **Promote company, engage customers, recruitment, collaboration and knowledge sharing**
  - **Who will be involved/authorized to speak**
  - **Approval process**
  - **Should you have a separate policy for social media?**
    - **Consider interaction with Code of Conduct, Employee Handbook, Privacy Policy, Appropriate Use Policy**

# Identify the Risks

- **Internal vs. external risk**
  - Internal use lends itself to more control over dissemination and ability to remove content; policies need to be reconciled with other policies, such as document retention, since social media postings may constitute a business record
  - External use decreases the ability to control content, creates the risk of employees inadvertently acting as a company representative, disclosing confidential information or intellectual property
- **Brand risk**
  - Trademarks, copyright and domain names
  - Disparaging remarks posted by third parties
- **Regulatory risk**
  - Privacy
  - Securities laws/insider trading

# Do's and Don'ts

- **Don't bury your head in the sand**
  - **Your employees ARE using social media**
- **Do**
  - **Be realistic about your company culture**
  - **Engage other departments**
  - **Develop a thorough understanding of your company's social media goals**
  - **Identify the risks**

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# Formulating Appropriate Social Media Policies

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# Policy Considerations

- Consider and draft to mitigate
  - HR/Employment risks
  - Privacy/confidentiality concerns
  - Advertising or Securities laws
  - Brand or corporate reputation
- Who has authority to speak on behalf of company?
- What approval must be obtained?
- Application to activities outside of the scope of employment
- Continuity with other policies
- Monitoring and enforcement

# Guidelines for Company Reps

- What sites/applications are approved?
- How are reps and accounts tracked, monitored and managed?
- Provide internal contacts to address issues/concerns:
  - Legal
  - Marketing
  - Compliance

# Do's and Don'ts for Company Reps

- Ensure accuracy in posts
- Follow advertising guidelines (truthful, non-misleading, substantiated, etc.)
- Disclose material terms and or relationships
- Avoid obscene and/or inflammatory language
- Respect IP of the company and others
- Prohibit disclosing private or confidential information
- Prohibit misrepresentation of the author's identity

# Do's and Don'ts for Employees Off the Clock

- Conspicuous notice regarding expression of personal views
- Respect company, employees, customers, partners, affiliates, etc.
- Prohibit disclosing private/confidential information, “work-related developments,” or inside information
- Reserve right to request “quiet period”

# Additional Considerations

- Avoid “chilling” concerted protected activities (NLRA/FLSA)
- Prohibit unauthorized access to accounts by company Reps/Managers (Stored Communications Act)
- Avoid use/reliance on social media for investigative purposes
- File DMCA Safe Harbor Form if site posts third-party content

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# Ensuring Compliance With Your Social Media Policy

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# Legal Should Get its Hands Dirty

- **the legal department should try out various social media services and be familiar with the settings and functionality**
- **this is particularly true for any service where the company has an “authorized” account**

# Monitoring vs. Education

- **it's unrealistic to review every piece of content or interaction prior to it being sent**
  - **it would also defeat the purpose**
- **education is likely to be more effective than “monitoring”**

# Actual Participation is Useful

- **actual participation from someone at a high level is useful**
- **letting an intern 'deal with it' could be a recipe for disaster**

# Privacy Issues – Employee Privacy

- **accessing an employee's personal social media account can create problems**
  - **Maremont v. Susan Fredman Design Group (denying motion to dismiss claims based on employer's alleged access of employee's personal twitter and Facebook account)**
  - **Pure Power Boot Camp v. Warrior Fitness Boot Camp (ex-employees awarded \$4,000 for email snooping by employer)**

# Whose Account is it?

- **it's worth being clear about whether a particular account is a "company account" or a personal account**

# Coordination with PR Department

- **the PR effect from a social media gaffe is likely to be as important as the legal effect**
- **legal and PR should coordinate with respect to response and decision-making**

# Trademark Issues

- **to the extent the company is using social media channels overtly and using the company's brands, someone should periodically check for compliance with trademark guidelines**

# Copyright Concerns

- **social networks have terms of service which affect copyright/licenses**
- **as with the internet in general, people should be instructed to not take images that are made available on social networks**
- Agence France-Presse v. Morel ([court rejects Agence France-Presse's attempt to claim license to Haiti earthquake photos through Twitter/Twitpic terms of service](#))

# Specific Compliance Issues

- **public companies or companies in the midst of going public have specific issues**
- **companies in regulated industries have specific issues (e.g., debt collectors have to abide by FTC rules; FDA rules regulate the online activities of drug companies)**

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**EXECUTING THE PLAN –  
TRAINING AND H.R.**

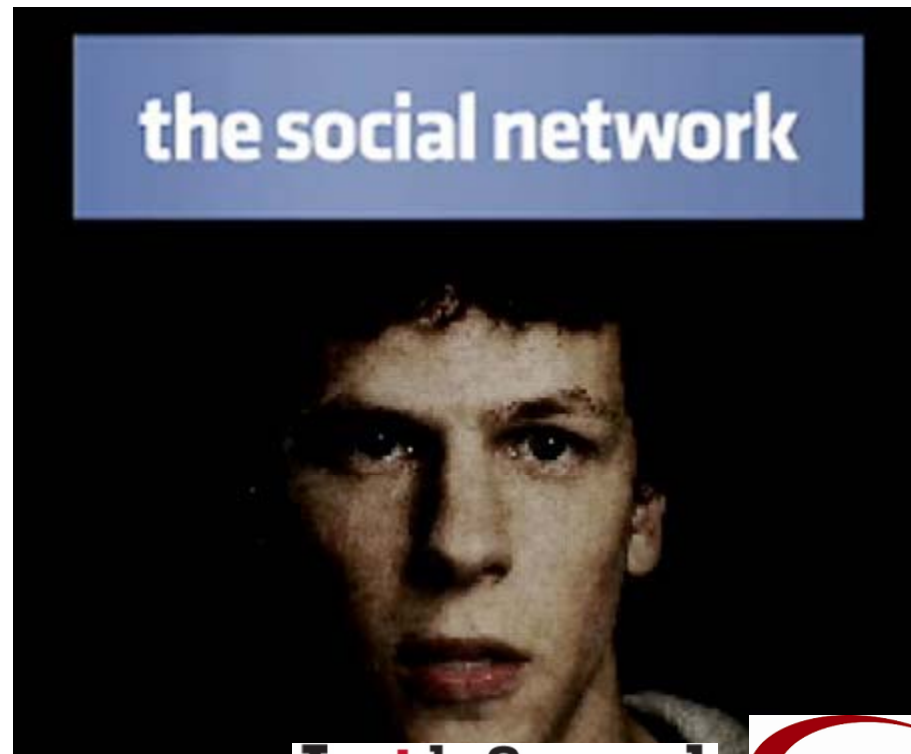
**Rich Meneghello  
Fisher & Phillips LLP**

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# Why is training necessary?

“We lived on farms, then we lived in cities ... now we're gonna live on the internet!”



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# Who should get training?

- Individualize training programs to meet specific needs and social media skill levels
  - All Managers: focus on hiring, disciplining
  - Recruiters: discrimination and invasion of privacy
  - Writers: FTC transparency, responding to comments, unfair business practices, trade secret concerns, accidental disclosures
  - Public Relations: branding, image, press

# What should training cover?

- Focus on the “**do’s**” over the “**don’ts**”
- How can workers drive their careers (and the company) forward?
- “WIIFM?” mentality will be present

# How should you train?

Just like your policies, your training must be adapted to your company culture

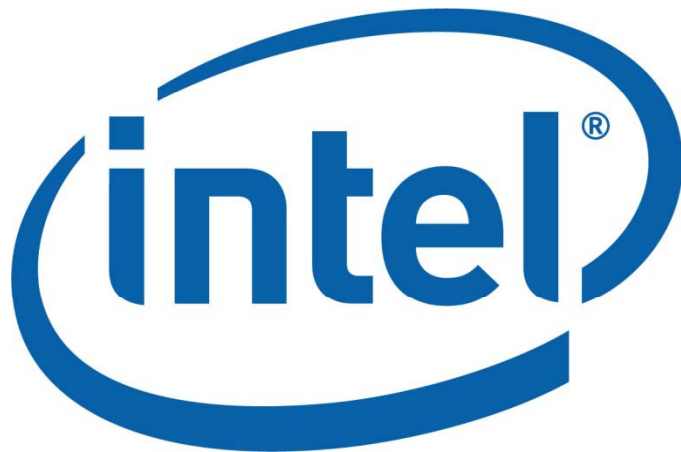


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# When should you train?

- One session is not enough
- Commit to ongoing process to extend the conversation and improve as necessary
- *Examples:* internal blogs, wiki pages, discussion groups, message boards



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