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Corporate Social Media Law: An Attorney's Input on Things to Consider

By [Laurel Miltner](#) | Posted March 28, 2013 | [0 Comments](#) | Filed in: [Social Media](#), [Consulting](#), [Resources](#)

It's no surprise that social media has made its way to the business world. As organizations and professionals alike become increasingly active—blending personal and professional personas, time, and commentary—there are **many areas for corporate leaders to consider in regard to social media legalities**. Intellectual property, copyright and libel issues, HR considerations and ownership rights, just to name a few.

As a consultant who guides clients on their social media policies and procedures, the broad topic of social media law is of great interest, and I try my best to stay attuned to recent news and cases.

That said, **I'm no lawyer. So, to get some insider insight** I reached out to [Peter S. Nealis](#), partner, [Taft Stettinius & Hollister LLP](#).

Peter represents mainly early stage, venture capital backed technology companies. Because of the nature of his clients, many facets of corporate social media law are of interest, and find their way into consultations. **Common issues that Peter has consulted on include:**



- [Ownership of intellectual property and other intangibles](#)
- [Employee rights](#)
- [Libel](#)
- [Data privacy](#)
- [Business-specific regulations](#)

Following are details on each of these areas, per my conversation with Peter.

Ownership Rights

Who owns an employee's Twitter followers, LinkedIn connections, or Twitter account? What about intellectual property—developed during or after work hours—that is related to the company and its industry?



Peter's experience: Several clients have come to Peter with concerns about this issue, including:

- **Solicitation of the company's customers** via public LinkedIn connections, Twitter follower lists, etc. by competitors.
- Worries about **employees stealing technology and other intangibles**, particularly "soft" assets like code, client lists, and intellectual property.
- Legalities of suing former employees to obtain their **Twitter followers**.

How to protect your company: Address these issues in **non-compete agreements**, and well as through written **social media policies**. These documents are good for covering ownership of Twitter follower lists or other soft assets. Ideally, you will want to **explicitly cover any anticipated issues, so that there are no gray areas**. Regularly update these agreements as new situations arise.

- Ensure that employees have **confidentiality** and **non-solicitation** provisions built into their contracts, should they leave the company.
- Include an **inventions clause**. This clause governs ownership if an employee develops technology / software within the scope of his or her employment duties, or if the development occurs using company funds, information, information, technology, or other resources.
- Make sure to explicitly cover **Twitter account and follower ownership**, potentially with varying degrees based on the nature and name of the account (ex: @laurelmackenzie may have different ownership guidelines than @PR2020Laurel).

Employee Rights

How far can employees go in social media updates? When can legal action be taken against an employee who talks ill of the company?

Peter's experience: Clients have called in instances when an employee complained about his or her company or boss on social networks. They want to know what their recourse is. **Can I fire this employee?**

How to protect your company: Again, have a **social media policy** in place that addresses such online chatter, which you can point to for grounds if needed. However, before getting too deep into creating a policy based solely on what you want, familiarize yourself with any applicable legal or regulatory restraints.

For example, in interpreting the National Labor Relations Act (NLRA), the National Labor Relations Board (NLRB) has taken the position that certain broadly drafted social media policies may cover activities that are protected under the NLRA, regardless of whether or not the employer is unionized.

That said, there may be restrictions on how far an employer can go to regulate online activity. For example, **you generally cannot restrict employees from friending one another or complaining about work**. As mentioned above, be as specific as possible in your policy to manage expectations and avoid arguments.

Cool thing for HR folks and corporate social media geeks: Check out the NLRB's reports on lawfulness of social media policies.

Libel

When does negative online chatter cross the line to be deemed libel? When can legal action be taken to remove postings or request payment for damages?

Peter's experience: Certain clients have had to deal with **negative online comments and reviews** concerning a client or its business—either from customers or employees. How can one deal with such situations, particularly when comments are unfounded?

Peter notes that **commentary found online will typically not hold up in court as being libelous**. Many comments are protected as statements of **mere opinion**. Further, the host / webmaster of the offending website is often protected by various statutory and common law safe harbors. Most important, given the anonymity of the Internet, it is often difficult (as a practical matter) to even identify the offending commentator, let alone assert jurisdiction or reduce a defamation claim to judgment.

How to protect your company: When something is highly derogatory, in some cases it's worth contacting the website host, or even writing a "lawyer letter." However, these sorts of communications are often met with pushback from webmasters, who will point to First Amendment rights, or statutory or other legal safe harbors.

There sometimes may be a more **practical solution**. Some of Peter's clients have had success engaging **a firm that specializes in branding, social media and/or social business**, which can help you better manage your company's online presence and reputation.

Note from the social media consultant point of view: At PR 20/20, we often recommend to clients that if the site in question enables the company, or a company representative, to respond to the post, that they do so. This is, of course, depending upon the nature of the comment. But, often an apology, explanation and potentially an offer for a refund, discount or second chance can help change the negative Ned or Nancy's experience to the positive.

Data Privacy

What promises do you need to offer to your online community to keep their information safe?

Peter's experience: Any time you host a community, encourage people to log into your site, or store contact data, you need to consider their data security, and thus the security of your website and network. **If your customer data is hacked—particularly if you hold financial data or personally identifiable consumer information—you may be held liable for damages.**

How to protect your company: Specifically address data security standards in your website **privacy policy** and other **customer agreements**.

- **Website privacy policy:** Explain what your company will do with contact / customer data, how their data will be protected, how much data you collect from users, and what protections the company has in place to protect their data. In the case of a hack, this could be a source of recovery. Your policy needs to be flexible enough to change as your business changes, as well as to cover a potential sale, reorganization, or other strategic transaction.

- **Customer agreements:** Clearly state what customers can expect, and hold you accountable for. For example, if your business hosts customer data, software, websites or other business-critical assets, you need to account for details like uptime, availability, security levels, backups, and disaster relief / data recovery plans. Work with legal counsel to develop a fair agreement that **limits your company's liability** in case of a breach. Also, prep your sales team to understand where there is and is not wiggle room in these agreements, as they are often highly negotiated.

Business-Specific Regulations

How can organizations and professionals in regulated industries stay compliant on social sites?

Although virtually every business is online nowadays, not every business is the same. Depending on the nature of their business and its customer base, some may face a host of legal and regulatory issues.

As a web-based business becomes more specialized, the legal issues become more specialized as well. For example, sites targeting physicians or medical issues will need to be aware of Federal and state laws regulating the practicing of medicine. In addition, there are always going to be liability issues if there is faulty advice or other content found on the site.

How to protect your company: Though you may not be building a social network, it's still important to consider your liability for comments and chatter that takes place on your corporate web properties, and those your employees make on other networks.

For hosted properties, carefully consider your **website terms and conditions**, as well as **customer or community member agreements** if applicable. In some cases, you may need to have individuals explicitly sign participation agreements—typically through the use of a **clickwrap acceptance feature** on your website.

If you are running a specialized site, limit access. In the physician example, you can help mitigate risk by limiting access only to licensed physicians.

Regulations are also something important to address in your company's **social media policy**. Work with your HR and legal teams to determine any regulatory issues specific to your industry that should be addressed in regard to online behavior, to determine what policies should be put in place, and what types of **disclaimers may be needed** for online content, social accounts and employee commentary.

Is This Legal Advice?

While we're on the subject of industry regulations ...

There are many lawyers active in social media, as in other professions. Peter mentioned that a lot of his peers blog, write articles and the like, but there is an ever-present concern about writing legal advice, so you'll see lots of disclaimers. Like this one:

This blog post does not establish an attorney client relationship. Peter's participation is to provide observations, not legal advice.

That said, if your organization finds itself in a web-driven legal quandary, here are some things to keep in mind should you need **a lawyer with the modern / social business savvy**. Look for:

- Corporate lawyers that specialize in **computer and / or internet law** or that have a **background representing tech companies** (web-based companies in particular). These types of lawyers can add value by identifying and addressing technology issues that may not be apparent to the general practitioner.
- Also look for a lawyer has **helped clients through the entire company lifecycle**. As companies grow and become more successful, their business and legal needs are likely to change. An attorney that has been through this process will be able to anticipate issues before they even come up.
- Look for counsel with a **broad business background** as well as **securities expertise**. These individuals will be able to assist with capital raising and other matters commonly faced by growth-oriented businesses. The right lawyer will often have the capability to act as outside general counsel for web startups, ideally taking them through the entire life of their startup— from seed capital, to VC investment, to exit or IPO.

What Else Do You Want to Know?

What additional questions do you have about social media legalities? What situations has your organization faced? Let us know in the comments!

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