



Flynn O'Driscoll Legal Update

Social Media- How to Protect Your Business

Introduction

Social media has permeated almost every aspect of our daily lives and sites such as Facebook, Twitter and LinkedIn can be used as powerful tools in building an organisation's profile. Many businesses are using social media whether it be for marketing, advertising or recruiting. However social media can create some huge challenges for business both within and outside their organisation, Claire McDermott and Barry Connolly of Flynn O'Driscoll look at some of the internal and external exposures which businesses have when it comes to social media

HAVE A POLICY

Employers are urged to implement a social media policy to protect their business and to prevent costly misunderstandings at a later date.

Employers should have a clear and straight forward policy setting out the conduct they expect from their employees when interacting on social media sites when it is clear that the employee is working for them.

There are several perspectives from which an employer must consider the risks surrounding social media and these should all be covered in your social media policy.

Protecting your Brand

How you manage access to company social media sites and the content to be included thereon should be monitored and controlled to ensure that the company reputation is protected at all times. Content to be uploaded on social media in the name of the company should be signed off by management before it is published. Passwords to access social media should also be strictly controlled, employment contracts should also provide for the return of all login details along with all company property upon termination of employment. Once it is published on social media it is instant and out there in the public domain for all to see.



Company Contacts and Clients

Your company needs to put in place some contractual provisions to ensure that your company's client lists and business contacts remain your property. The social media policy should clarify that either the employee is not entitled to add company contacts to their personal social media accounts or in the alternative it should be clear that client contacts are the property of the company and any social media accounts used by the employee for company business are the property of the company to be returned upon termination of employment. Companies should in the normal course consider appropriate contractual restrictions on employees post-termination, such as non-compete and non-solicitation provisions.

It is quite common for us to be consulted by an employer client seeking advice having heard, after a former sales employee has joined a competitor, that most of its client contacts have been contacted via LinkedIn or other sites suggesting meetings from the employee in their new role.

Productivity

Studies suggest that employees are spending upward of an hour a day on social media sites, whether through their own devices, such as smart phones or tablets or by accessing social media sites on their work computers. The company should, where appropriate, block access to social media sites on their own network. In relation to employee's own devices, the company's social media policy should make it clear that employees are

prohibited, during working hours, to access social media and/or use their mobile devices.

Disciplinary Issues

The possibility of disciplinary issues arising through inappropriate use of social media is far reaching and very serious.

Employers should ensure that their social media policy is linked to their disciplinary policy so that any breach of the social media policy which generally can damage the company reputation can be dealt with accordingly. If you do not have a social media policy, Irish employment tribunals have held that the employee cannot be dismissed or disciplined for misuse of social media.

Although it is important to ensure the proper use of social media inside a company, there are still several legal risks associated with social media from outside of the company. Unfortunately, in these cases, you are likely to have less direct control (if any) on the use of such social media. However there are several actions a company can take in order to ensure that it protects itself from such risks:

Social Media platforms will have their own Terms of Use and Privacy Policies

Just as the company will have its own Terms of Use, social media platforms will have its own set of terms. These policies will have rules that the company should be aware of. Some areas to consider include:

- (i) are there any restrictions on what can be published on the company's social media account?



- (ii) who will own any intellectual property on the social media account?
- (iii) (what terms apply to the processing of any personal data collected through a social media account?)

For example, Facebook have a separate set of guidelines where a company may use a Facebook Page to advertise or promote their brand. These include specific requirements on Page names, advertising on a Page, organising of promotions through a Page and an obligation to comply with data protection legislation where any personal data from users is collected through Facebook.

Beware of User-Generated Content – Prepare to Take-down if necessary

Whether you have a presence on a social media platform or facilitate user contributions on your own website, it is imperative that you are aware of the possible dangers associated with users posting content online. Possible risks can range from causing damage to a brand's reputation, breaching intellectual property rights or defaming a third party. Online forums hosted or otherwise arranged by the company should be moderated to ensure that content does not infringe another party's rights. Under Irish and European Law, such companies that essentially act as hosts for such content (intermediaries) may be equally liable for it, unless they act expeditiously to remove or disable access to it, once they are made aware that it is unlawful.

In these circumstances, it is essential that the company have in place a clear policy and procedure for removing such unlawful

content. In many cases, the third-party social media platform will have their own policy, however, where possible, the company should also act to remove any such content in order to avoid any damage being associated with the company.

There may also be circumstances where the company will want to have certain content removed where it infringes its own rights. In these circumstances, the first response is usually to follow the take-down procedure of the relevant social media platform. Unfortunately, these procedures are not always clear to follow, however, before making any formal complaint, it is usually more efficient to go through a social media platform's own take-down policy in advance. It can save costs in having to consult lawyers and can (sometimes) prove to be an effective way of tackling infringement of the company's rights online

Protect the Brand

It is undoubtable that for many business, social media can often be the most effective marketing tool available to them. Any type of online presence can reach out to customers to a greater and more incisive extent than ever before. However, this presence should be protected. Rights in a company's brand can become extremely valuable and social media should be seen as another avenue to enhance those rights.

Unfortunately, social media allows others to easily piggyback on a brands value on the online world. It is important that the company is therefore vigilant in ensuring its brand is



protected online. Where an online presence may be valuable to a company, it should always register on a number of the most popular social media platforms, in order to at least prevent others from taking the name or establishing a profile that may be confusing similar to that of the company's brand. Whereas certain social media platforms may have their own view on "reserving" such profiles, it is nevertheless essential to place some type of online placeholder in order to prevent others from passing off on the company's brand.

Companies should feel confident about embracing social media, throughout its business. It represent a powerful tool and can give a company more reach than it has ever had before. However, companies should look both inside the company and outside of it in order to ensure that is protected, when it comes to social media.

We will keep you updated as more of the sections are commenced.

Should you have any queries arising out of the foregoing please contact either of the undersigned who will be happy to assist.



Patrick G Flynn

*Managing and
Founding Partner*

E: patflynn@fod.ie
P: 01 6424250



James D Duggan

*Managing and
Founding Partner*

E: jamesduggan@fod.ie
P: 01 6424250

Dublin:

1 Grants Row, Lower Mount Street,
Dublin 2, Ireland

Phone: +353 1 6424220
Fax: +353 1 6618918

Galway:

Unit 23, Galway Technology Centre,
Mervue Business Park, Galway, Ireland

Phone: +353 91 396540
Fax: +353 91 792649