Social Media Compliance

By Eric Newman, Esq., CCEP[1]

People are changing faster than companies.[2]

Introduction

In 2008 (a long time ago for social media standards), Virgin Airlines fired 13 crew members for having public work-related discussions on Facebook.[3] The crew members discussed the number of times that certain airplane engines had been replaced, how the cabins were infested with cockroaches, and proceeded to badmouth the airline's passengers. This violated Virgin's policy prohibiting inappropriate behavior. Could this outcome have been avoided if Virgin had an effective social media policy? It's hard to tell.

The following factors may have influenced the employees' conduct:

- The employees' common sense
- The culture of the company
- Whether the employee has been educated on proper social media use.

Which factor is the most difficult to influence? **Common sense.** You simply cannot control the decisions made by employees on social media sites. You can influence them, but you can't control them.

So, what if your social media policy bans access to social media sites altogether? No more Facebook at work. Problem solved! That is, of course, if you also have an effective method of banning the use of Internet accessible mobile devices at the workplace. In the Virgin Airlines example, it would have solved nothing. Employees can insult customers and damage your company's reputation in the comfort of their own home. They are going to use social media regardless of where they are.

Therefore, your social media policy should accept the fact that some behaviors cannot be controlled. In some cases, you can punish the employees that lack the common sense to not publically bash their employer. However, you must also attempt to influence employees

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[2] Forbes Article: Social Power and the Coming Corporate Revolution
http://www.forbes.com/sites/techonomy/2011/09/07/social-power-and-the-coming-corporate-revolution.

[3] http://www.thetechherald.com/articles/Virgin-flight-crew-fired-for-insulting-passengers-via-Facebook/3032/

before that mistake happens. Social media policies help avoid these "lack of common sense" mistakes.

Tailor the policy to your company. Pick and choose what works best for your brand and company culture. Does your company already use social media for marketing purposes? If so, would it be practical to significantly limit your employees' ability to share your content and spread your messages?

An effective social media policy doesn't discourage employees from participating on social media for two reasons. 1) The policy would be unenforceable because employees will still find a way to access the sites. 2) You can mitigate risk by encouraging meaningful and targeted participation on social media sites.

Creating a Social Media Policy

An effective policy requires four steps:

- Determine Your Objectives for the Policy
- Draft the Policy
- Effectively Educate and Train Your Employees
- Moderate, Archive, and Enforce.

Step One: Determine Your Objectives

Before you draft the policy, you must understand the internal culture and your employees' current involvement with social media. Only then can you understand your organizational objectives and determine your goals of employee social media engagement.

Ask yourself the following questions before drafting the policy:

- What does the company hope to accomplish with the policy?
- What does the company want to accomplish through the use of social media presence?
- How do we ensure the policy is consistent with the other corporate policies and guidelines? Be sure to consider other policies in employee manuals and employee agreements. Also, determine whether you are in compliance with applicable government or industry regulations.
- Does your company use social media for its advertising and marketing?
- Are employees already using social media to assist in work-related tasks?
- How important is Internet access and mobile usage to your company?
- Regarding the employees' personal use of social media:
  - How many public pages do they have?

- On which sites do they have a profile?
- Are they actively using these sites?
- If so, what are they using the site for?

A universal objective for your social media policy is to avoid risk. Most social media risks stem from users not understanding how their own behavior could possibly impact the company. Users should be educated about how posting something could cause any of the following to happen:

- Disclosure breaches
- Spread of viruses and malware
- Copyright infringement
- Brand hijackings and lack of control over corporate content
- Defamation by employees
- Defamation by third parties posting negative comments about the business
- Noncompliance with record management regulations.

Companies that choose not to add a social media component to their corporate compliance and ethics program are putting themselves at risk. Agencies such as the Federal Trade Commission (FTC) and the National Labor Relations Board (NLRB) have all brought complaints against companies for employee social media-related actions. The NLRB's Acting General Counsel recently issued a report addressing the outcomes of recent NLRB cases involving employees' use of social media and the legality of employers' social media policies.[4] Here are some compliance-specific social media issues to consider:

- **Be aware of protected activities.** Your policy should not prohibit lawful protected activity such as complaining about work conditions or compensation/benefits, or whistle blowing. Also, remember to emphasize the available communication channels for reporting wrongdoing, such as your hotline.
- **Implement a training program.** Your employees should know how to appropriately use social media and should also be aware of company-specific concerns. These include not disclosing confidential information, protecting the company brand, protecting client privacy, antitrust compliance, and complying with regulatory social media guidelines; e.g., the Financial Industry Regulatory Authority (FINRA) or the U.S. Securities and Exchange Commission (SEC). Employees should also be aware of what constitutes a company trade secret so they don't mistakenly disclose them.
- **FTC Guidelines.** The FTC guidelines for online endorsements with employees prohibits employees from giving reviews for company or competitors' products

[4] National Labor Relations Board Office of the General Counsel, Division of Operations-Management, "Report of the Acting General Counsel Concerning Social Media Cases," January 24, 2012. http://bit.ly/nlrbsocialmedia.

without disclosing their conflicting relationship. The FTC guidelines for endorsements and testimonials in advertising say that if there is a connection between the endorser and the seller of the product or service, full disclosure is required.[5] For more on this issue, visit http://bit.ly/ftcsocial.

- **Document Retention Policy.** The policy should focus on capturing and storing the social media activities of your company, and should include employees that conduct business on mobile devices.
- **SOX considerations.** Financial information should not be released on social media sites unless it has already been published in a press release. Make sure the information is updated to reflect any material changes.
- **Hiring concerns.** Any employee who has the power to make hiring decisions should be trained to not use information from social media sites to discriminate against anyone based on legally protected factors.

Step Two: Draft the Policy

You should make creating the policy an organization-wide effort to adapt to the realities of today's social marketplace. Consider consulting your CIO, Legal, IT, and HR when creating the policy.

Your policy should cover the following areas:
- A statement on the purpose of social media use
- Guidelines for conduct on social media sites
- Notice regarding monitoring of social media activity
- Enforcement options/violations

Tips for creating your policy:
- The policy should not be full of legalese. Most employees don't speak that language.
- The policy should be easy to read, easy to understand, and easy to remember.
- Be clear on what the policy covers — You may want to consider breaking down the policy into categories, subgroups, or types of actions.
- Include which social media sites are covered, and update this list periodically (Facebook, LinkedIn, Twitter, YouTube, etc.).

Review some social media policy examples:
There is no perfect sample policy for you to find and implement. However, there's also no need to re-create everything from scratch. Search through sample policies to find a template that you can alter to accommodate the structure and needs of your company.

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[5] Federal Trade Commission, 16 CFR Part 255, Guides Concerning the Use of Endorsements and Testimonials in Advertising http://ftc.gov/os/2009/10/091005revisedendorsementguides.pdf

One sample policy can be found at the end of this article. In addition, Chris Boudreaux, author of *The Social Media Management Handbook*, has an excellent social media policy database you can search: http://socialmediagovernance.com/policies.php.

Some of the most common key messages in these social media policies are:
- Authenticity and transparency
- Using good judgment
- Respecting your audience
- Protecting confidential information
- Respecting copyrights
- Obeying terms of service on specific platforms.

Consider the following resources:
- **Ford's social media policy:** http://scr.bi/fordpolicy. This type of policy works for companies that truly understand their company culture and have developed great trust among employees. It focuses on common sense, being honest, and being aware of privacy issues.
- **Intel's Social Media Guidelines:** http://intel.ly/intelsm. This policy has a clear and detailed layout that illustrates Intel's Three Rules of Engagement: (1) Disclose (2) Protect (3) Use Common Sense.
- **IBM's social media policy:** http://ibm.co/ibmpolicy. This type of policy balances rules and guidelines with employee freedom to express themselves and be creative.
- **Social Media Policy tool:** http://socialmedia.policytool.net. PolicyTool generates a social media policy for you after you answer a series of Yes or No questions regarding your company structure and policy objectives. The company also has a "Privacy Policy" tool: http://privacy.policytool.net/.

Step Three: Effectively Educate and Train Your Employees
You must determine how you are going to educate employees on this policy.

Getting the word out:
- **Make sure to disseminate the policy company-wide.** Post the policy online in a place where employees can easily find and access it.
- **The format should be clear and easy to digest.** In addition to the text version of the policy, you may want to create a video or slide show for employees to reference.
- **Inform employees of any policy updates.** Social media is quickly evolving, which may require updates if you want to keep the policy relevant.
- **Share your policy with the world.** Your company values social media connections, and your customers should know about it. Post the policy on your company website and social media sites.

Instill the *Triple-A* principles in your employees:

- **Authenticity** – Be and honest about who you. Transparency is the key to a sustainable social media presence.
- **Accountability** – You will be held responsible for your actions online. Assume every thing you post is public to the world.
- **Awareness** – What you say is permanent. Be respectful and know what you are talking about.

Unless an employee is an official company spokesperson, he or she should add a disclaimer such as: "The opinions and positions expressed are my own and do not necessarily reflect those of [Company Name]."

Step Four: Moderate, Archive, and Enforce

"Every firm that intends to communicate, or permit its associated persons to communicate through social media sites must first ensure that it can retain records of those communications." – FINRA Regulatory Notice (January 2010)

Ways to Moderate and Archive Content:

- Pre-review: Moderate or pre-approve the content before external publication.
- Post-review: Take down inappropriate content.
- Use alerts to notify social media admins of inappropriate content.
- Capture any relevant social media content and securely store it.
- Retain the social media content based on SEC and FINRA rules, legal hold requests, and any additional retention policies.
- Monitor your content by utilizing search engines for relevant keyword.
- Monitor changes made to company social media pages to ensure compliance policies are being enforced.

Enforcing the Policy

Be sure to include an "Enforcement" section in your policy, which states that policy violations will be subject to disciplinary action, up to and including termination for cause.

In addition, create an agreement for your employees to sign. The agreement should state that the employee understands the Company's social media policy, as well as the ethics and governance rules. If your policy guidelines are clear, employees should be held accountable for using social media responsibly.

Conclusion

It's time to embrace social media. By August 2012, Facebook alone is going to have 1 billion users.[6] Determine how your company already uses social media and involve various departments in the creation and revision of social media policies to ensure they address the company needs. Empower your employees to act with awareness, authenticity, and accountability. Your effective guidance can help achieve social media compliance.

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[6] http://mashable.com/2012/01/12/facebook-1-billion-users

Sample Policy: Corporate Social Media Policy

(COMPANY) is strongly invested in engaging the public via social media. Our goal is to provide positive user experiences to our visitors and followers via social media platforms, and we strive to always do so in a manner which is respectful and responsible.

Policy Statement

Social platforms provide a way to collaborate and share information quickly and easily, with friends and family. We do not discourage our employees from using social media in their personal lives, and only believe that social media can be used to strengthen our overall brand. For all intents and purposes we consider Facebook, Twitter, LinkedIn, YouTube, Google+ and Blogging sites (such as WordPress, Blogger, Tumblr) social media outlets that we encourage our employees to use on an everyday basis.

Purpose & Procedures

As (EMPLOYEE TITLE – DEPARTMENT ROLE) you will be encouraged to participate and contribute to a variety of social networks. When participating in online conversations, our staff must always remember that they represent (COMPANY) and act accordingly, using the following basic guidelines.

- Post meaningful, respectful comments. No blatant spam or promotion of any type.
- Reply to comments quickly, when a response is appropriate. Remember, time is of the essence on the web.
- When disagreeing with others' comments, always keep a calm composure and do not feed their fire.
- Do not share confidential information about (COMPANY), our business partners, or fellow employees.

Helpful tips when using social media

- **Be transparent.** Your honesty, or dishonesty, will be quickly noticed in the social media environment. Always identify yourself.
- **Be judicious.** Make sure that you are not sharing confidential information concerning (COMPANY) or any of our business partners.
- **Write what you know.** Ensure that you write and post about your area of expertise. If you are unfamiliar with a subject matter, do the research before commenting.
- **Be a leader.** There is a fine line between healthy debate and incendiary reaction. Do not denigrate our competitors or other commenters. Be careful and considerate when dealing with others.
- **Take Responsibility.** If you make a mistake, admit it. Be upfront and be quick with your correction.
- **Press pause.** If you are about to publish something that makes you even the slightest bit uncomfortable, then don't. Take a break and come back to it later.

Sample Policy: Guidelines for Social Media Participation

These guidelines apply to (COMPANY) employees or contractors who create or contribute to blogs, wikis, social networks, virtual worlds, or any other kind of Social Media. Whether you log into Twitter, LinkedIn, YouTube or Facebook pages, or comment on online media stories — these guidelines are for you. While all (COMPANY) employees are welcome to participate in Social Media, we expect everyone who participates in online commentary to understand and to follow these simple but important guidelines. These rules might sound strict and contain a bit of legal-sounding jargon, but please keep in mind that our overall goal is simple: to participate online in a respectful, relevant way that protects our reputation and of course follows the letter and spirit of the law.

1. Be transparent and state that you work at (COMPANY). Your honesty will be noted in the Social Media environment. If you are writing about (COMPANY) or a competitor, use your real name, identify that you work for (COMPANY), and be clear about your role. If you have a vested interest in what you are discussing, be the first to say so.
2. Never represent yourself or (COMPANY) in a false or misleading way. All statements must be true and not misleading; all claims must be substantiated.
3. Post meaningful, respectful comments — in other words, please, no spam and no remarks that are off-topic or offensive.
4. Use common sense and common courtesy: for example, it's best to ask permission to publish or report on conversations that are meant to be private or internal to (COMPANY). Make sure your efforts to be transparent don't violate (COMPANY)'s privacy, confidentiality, and legal guidelines for external commercial speech.
5. Stick to your area of expertise and do feel free to provide unique, individual perspectives on non-confidential activities at (COMPANY).
6. When disagreeing with others' opinions, keep it appropriate and polite. If you find yourself in a situation online that looks as if it's becoming antagonistic, do not get overly defensive and do not disengage from the conversation abruptly: feel free to ask (INSERT TITLE) for advice and/or to disengage from the dialogue in a polite manner that reflects well on (COMPANY).
7. If you want to write about the competition, make sure you behave diplomatically, have the facts straight and that you have the appropriate permissions.
8. Please never comment on anything related to legal matters, litigation, or any parties (COMPANY) may be in litigation with.
9. Never participate in Social Media when the topic being discussed may be considered a crisis situation. Even anonymous comments may be traced back to your or (COMPANY)'s IP address. Refer all Social Media activity around crisis topics to PR and/or Legal Affairs Director.

10. Be smart about protecting yourself, your privacy, and (COMPANY)'s confidential information. What you publish is widely accessible and will be around for a long time, so consider the content carefully. Google has a long memory.