

Effectively Managing Social Media Risks

by Darin McMullen and Joshua Gold

Social media platforms such as Facebook, Twitter and LinkedIn have become integral parts of doing business. Whether your business aggressively uses these platforms to reach potential or existing customers, or simply maintains a minimal social media presence, social media can trigger a wide variety of risks to your organization. The risks are as varied as an unauthorized post, a social media account getting hacked or an authorized company post that ultimately proves ill-advised. A time-tested strategy of pre-emptive mitigation and comprehensive pursuit of insurance coverage post-loss provides the best protection against social-media related losses.

Recognizing the Risks

Although it is a relatively recent technological phenomenon, many common risks arising out of social media are not particularly novel but are merely age-old risks now exposed through novel channels. The broad reach and real-time interaction that makes social media a powerful tool for marketing and advertising can also amplify and accelerate risks.

Reputational risk provides the best example of the dangerous side effects of social media's vast reach. Social media has dramatically altered the way in which damage is inflicted on a company's brand both in terms of speed and scope. In the pre-Facebook era, a post on an internet message board falsely accusing a business of wrongdoing generally remained static and might take weeks or months to reach a limited number of readers. Today, with each re-tweet, re-posting or view of the accusation through a Facebook feed, the audience may grow rapidly and, at a certain point, exponentially. Before long, hundreds of thousands of people may question your company's reputation or ethics. The viral spread of the accusation may ultimately reach news outlets or show up as a Twitter "trend," thus becoming the social media equivalent of a water cooler topic that tarnishes your organization. The monetary costs, including lost business and impaired goodwill, can reach astronomical levels literally overnight.

Equally problematic are employment-based claims arising out of the use of social media to investigate potential and existing employees. Your employees' use

of social media for marketing, networking or personal use can also give rise to claims against the corporation. For example, if your employee anonymously disparages a competitor through social media, your organization may ultimately face liability for defamation or commercial disparagement if the employee's identity is discovered. Additionally, the false perception of anonymity that accompanies the use of social media makes it easier for an employee to harass, insult or make inflammatory comments about another employee.

Finally, social media sites increase the likelihood of security breaches: your company may face liability any time it creates a presence in the cyberworld. Hackers do not limit their efforts to theft. Some are more than happy to simply cause mischief by creating their own content on your account. Hacking can occur on an individual account level or more broadly across a social media platform affecting numerous accounts.

Mitigate and Then Look to Recover

While social media-related risks seem daunting, your company can mitigate such risks by creating and enforcing a social media policy that is effective, yet flexible and responsive to ever-changing social media content and platforms. Crafting an effective social media policy is not a "one size fits all" endeavor. Organizations vary greatly in their policies toward social media. A diverse team responsible for the development and execution of the policy should be assembled and should include members of your human resources, legal, marketing and information technology groups. Once a policy is tailored to your company's needs, your employees must be effectively trained on the policy so that they understand its parameters. It is critical to revisit your social media policy in response to changing trends in social media and emerging social media platforms. The popular social media platform of 2014 may not even be in existence in 2013.

When liabilities or losses arising out of social media occur, your company should consider all available and potentially applicable insurance for defense and indemnity. Although there are recent endorsements and policies available specifically tailored for covering social media

losses, coverage for such losses may be provided under your existing policies too. For example, business “package” insurance or your company’s commercial general liability (CGL) policy may provide coverage for slander, libel, copyright infringement and misappropriation claims under the standard coverage for “advertising injury.” Likewise your CGL policy may cover any property damage or personal injury claims arising out of social media activities. An employment practices liability insurance (EPLI) policy may cover claims of discrimination, harassment or violations of employment laws resulting from your social media activities or those of your employees.

In recent years, however, the insurance industry has added exclusions to avoid claims under many business insurance policies and pushed policyholders toward buying separate stand-alone cyberinsurance policies. This makes the purchasing insurance to cover cyberthreats more challenging. Policyholders are well advised to proceed carefully as they determine what coverage they already have under more standard business insurance policies and what coverage they need to purchase to fill in potential gaps thanks to new exclusions and new cyberthreats.

The good news is that the insurance market for policyholders shopping for specialty cyberpolicies is more

competitive than it has been, and this should mean more flexibility for coverage options overall. Despite this, insurance policies and terms remain unnecessarily complicated, and businesses would be well advised to carefully examine policy forms so that they are making the smartest choices to cover online risks including those implicated through use of social media.

A comprehensive approach to seeking insurance coverage for social media-related losses from all available insurance policies is the best way to maximize your recovery and off-set losses.

Darin J. McMullen is an attorney in the Philadelphia office of Anderson Kill. His policyholder-only practice spans many areas of insurance recovery and he has represented many corporate policyholders in litigation throughout the United States. He also has a broad commercial and employment litigation background as well as providing clients with employment advice

Joshua Gold is a shareholder in the New York office of Anderson Kill and regularly represents policyholders in insurance coverage matters and disputes concerning arbitration, time element insurance, electronic data and other property/casualty insurance coverage issues..

RISK MANAGEMENT