

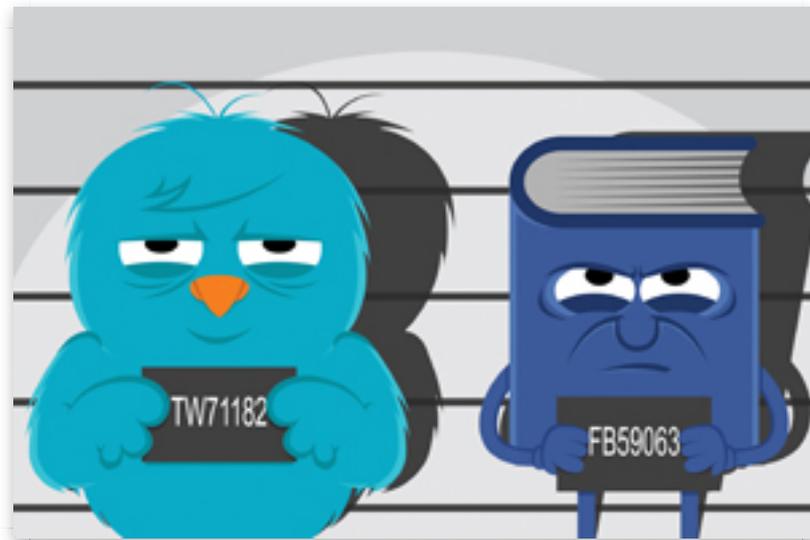
10 Issues To Address In Your Nonprofit's Social Media Policy

By Gene Takagi - July 2, 2014

The Internet remains the Wild Wild West of information. And even though it all seems available for the taking, you can run into a huge legal issue if you are not careful regarding grabbing and using the data. It can also cost you if people pirate information from your site or if an employee does something on social media that makes you look bad.

Here are 10 issues that you need to be thinking about when it comes to your social media policies.

1. Copyright and trademark infringement. Your organization could get sued for copyright infringement due to an article, photo, music, or video it posted on one of its sites without the permission of the copyright holder. Tip: Understand the fair use doctrine. Trap: Expecting attribution to offer protection against charges of infringement.
2. Fundraising and foreign state registration requirements. Your organization might need to register in any state in which it is engaged in charitable solicitations (36 states and the District of Columbia require registration). Tip: Check out The Unified Registration Statement (<http://www.multistatefiling.org>). Trap: Disregarding registration laws and their application to funds raised through the Internet or social media (see the Charleston Principles).
3. Events and foreign state qualifications to do business. Your organization might need to file with the secretary of state or other state business agency in each state in which it is doing business (see, for example, the California Secretary of State's explanation of the requirements under California law – <http://www.sos.ca.gov/business/be/faqs.htm#form-question7>). Tip: Think about whether you are responsible for an event organized through your social media channels and whether it triggers the need to qualify to do business in a foreign state. Trap: Organizing an event then claiming it's not your



responsibility.

4. Volunteers (and agents of the nonprofit) or independent supporters. Your organization could be responsible for the actions of its volunteers and agents, particularly if it didn't screen, train, or adequately supervise them. Tip: Recognize that the more you control individuals, the more likely they are your agents and the more likely you may be liable for any of their negligent actions. Trap: Directing individuals or committees to act in the nonprofit's name and not providing any rules or limits to their authority.

5. Supervision of agents of the nonprofit (authorized communications, confidentiality and privacy issues, harassment/discrimination, defamation, bullying). Your organization should make sure that its employees, volunteers and others do not use the organization's social media sites to misrepresent what it does, divulge confidential or private information, violate laws designed to protect employees, or defame others. Tip: Provide written rules and guidelines to make clear what is and is not acceptable in an agent's use of social media. Trap: Relying on an agent's common sense to avoid violating any laws.

6. Advocacy and rules regarding lobbying and political activities (for agents of the nonprofit and users of the nonprofit's social media and communication platforms). Your organization may be able to best advance its mission by dedicating resources to advocacy and, to the extent permissible, lobbying and political activities. Tip: If your organization is a public charity, check out the resources offered by the Alliance for Justice/Bolder Advocacy (<http://www.afj.org/our-work/issues/bolder-advocacy>) – you might be able to do much more in this area than you think. Trap: “liking” political candidates or publishing unsolicited comments with political messages on a moderated site, either of which may jeopardize a charitable organization's 501(c)(3) status for violating the prohibition against electioneering.

7. Collaborations with other organizations and partnership/joint venture issues. Your organization should take steps to ensure that it understands its legal commitments and potential exposures to liability when entering into any collaboration, whether formal or informal. Tip: Make sure you recognize whether you want your obligations to your collaborative partner(s) to be enforceable. Trap: Unintentionally creating a legal partnership in which each partner may be completely liable for harm created by the other partner.

8. Ownership of social media accounts. Your organization should understand whether or not it owns or has controlling rights over social media accounts it has instructed employees or volunteers to manage. Tip: Where appropriate, state in a writing acknowledged by your employees that your organization owns or has the controlling rights over specified social media accounts. Trap: Claiming ownership of a social media account in which the individual was given no rules or terms of use to freely publish anything of personal interest, which could result in the organization being deemed responsible for harm caused by something published.

9. Employee use of social media and protected activities. Your organization's employees have rights to engage in certain activities that are protected under law. It takes more than common sense to know these rights as an employer. Tip: Understand that complaints about management and the board on social media sites may be protected from retaliation — see [The NLRB and Social Media Policies](http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media) (<http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media>). Trap: Adopting overbroad policies that restrain employees from exercising their rights to engage in concerted activities for mutual aid or protection.

10. Violations of policies. Your organization's policies should include rules (not just guidelines), and these rules should be fairly and reasonably enforced. Tip: Develop internal and external response strategies for violations of policies. Trap: Failing to emphasize the importance of your social media policies and train your staff and volunteers accordingly. E

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