

Protect Yourself: Social Media and Legal Liability

By: [Mikal Belicove](#) | March 5, 2010 7:01 AM

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Business blogging and other forms of business-related social media seem to be innocent enough, but the content you post could get you into serious legal trouble. Chicago attorney and media law expert [Damon Dunn](#), of Funkhouser Vegosen Liebman & Dunn Ltd., cautions any company that publishes content on the internet to vet that content, particularly any photographs, as carefully as any media company should do.

"Whether you post it on a billboard, company website, or tweet, liability is triggered by false or deceptive statements of fact. In the commercial speech arena, courts are more willing to impose liability for speech that creates a misleading impression even if the words were literally true." ~ *Damon Dunn, Attorney and Media Law Expert*

To protect yourself and your business from legal liability related to the content posted on your website, blog or via other online social media outlets, Dunn recommends the following:

- **Watch for unfair juxtapositions**, especially photos and text, or omission of explanatory facts.
- **Beware of misusing your competitor's copyrights** and trademarks.
- **Don't be impulsive.** Media companies engage in fact checking and pre-publication review and so should you.
- **Be particularly careful to avoid disclosing confidential information.** Preventing the spread of confidential information is very difficult once it reaches the web and social media, particularly if it goes viral due to public interest. In addition, disclosure of confidential information on social media sites could give rise to a possible waiver of attorney-client and work product privileges.
- **Establish clear media policy guidelines and distribute them to all managers, employees, contractors, and agents.** Employers are generally responsible for independent actions taken by employees if these actions are deemed to be within the scope of employment, particularly when those actions are intended to benefit the employer. This rule can extend to independent contractors and agents as well.

- **Apprise managers of the risks to themselves and to employees** and provide support so they know when and where to turn within the company for guidance.
- **Carefully avoid disclosing any information that could be used against you** or your business in a court of law. Information posted on social media sites has been used to impeach witnesses during litigation and attack their character.
- **Establish compliance with the new Federal Trade Commission rules** and regulations governing business-related content on the web. (For more information, see my previous post, "[Tough New FTC Regs for Bloggers](#).") Be particularly careful of bogus endorsements and ratings. Failing to disclose material connections with bloggers or reviewers (even providing free samples), could land you on the wrong side of the FTC rules. You should also monitor product reviews made by bloggers for truthfulness.
- **Get liability insurance to protect your business** against any adverse claims or rip-off reports. Coverage may be provided under Errors and Omissions, Commercial General Liability, property damage or business interruption clauses, or cyber-liability, data privacy and security liability clauses. The key is to be aware of the unique threats posed by social media and make sure the terms of the policy provide sufficient coverage for all threats--carefully investigate any exclusions.
- **Carefully monitor your social media venues.** Whether you have a company or business blog, a Facebook fan page, or a discussion forum, you may be responsible for content posted by others. Federal "safe harbor" protection is designed to immunize Internet Service Providers from legal liability related to comments posted by third parties. However, even if you qualify as an ISP (which isn't likely), laws governing defamation, privacy, consumer deception, unfair competition, copyrights and trademarks all apply to posts attributable to you.

As laws governing social media evolve, the web is becoming less and less like the Wild West. There's a new sheriff in town (the FTC that is) with a whole new set of laws. To keep yourself and your business out of the courtroom, brush up on the news rules and regulations, remain vigilant and act responsibly.