

[GLOBAL TECHNOLOGY'S
RISK ADVISOR SERIES]

Social Media and Your Business

Managing Liability in an Online World

HELPING COMPANIES MANAGE RISK

At Travelers, We Want to Help Companies Manage Their Risk

The use of social media is widespread and growing. What began as a way for people to keep in touch has morphed into a 24x7, unfiltered, online dialogue about anything and everything. Today, a company's employees, customers and even competitors are likely to use social media. While tools like Facebook, YouTube and Twitter can be used to strengthen a company's success, they also can open the door to unexpected liability for businesses.

I'm excited to have Kirstin Simonson author this article. She is an underwriting director with Global Technology and specializes in cyber liability risk issues.

The following brief:

- Summarizes the extent of social media use.
- Identifies the type of risk a company may be exposed to through social media use.
- Outlines a game plan to create an effective approach to manage these risks.
- Provides resources for further exploration of this important topic.

– *Mike Thoma, Chief Underwriting Officer of Global Technology at Travelers*

Reining in Social Media Liability

New ways of using the Internet to connect with other people are becoming increasingly popular. Facebook, YouTube, Twitter and other similar sites are reaching beyond their original teenage audiences and are being embraced by adults. The upside for businesses is that this so-called 'social media' is a new avenue for getting their message out and making their brand more visible.

The downside, however, is the potential liability when employees, customers and competitors use social media. Although legal standards are still evolving, companies need to be aware of the risks associated with social media and take steps to protect themselves. This includes guiding employees with consistent, proactive policies. It also requires monitoring what customers and competitors say, and responding when appropriate.

Usage Growing Rapidly

The statistics regarding social media are dramatic: Facebook announced more than 300 million people worldwide use its highly popular social networking site. Twitter puts its monthly visitor rate at 55 million. YouTube claims to have surpassed 10 billion views in a single month in August 2009.

Although search remains the most popular use of the Internet, a Nielsen report found that social networking has overtaken e-mail, engaging close to 67 percent of those who go online in the United States.

*To read the full content of the Nielsen report, go to:
<http://blog.nielsen.com/nielsenwire/global/social-networking-new-global-footprint>*

Who are these avid social network users?

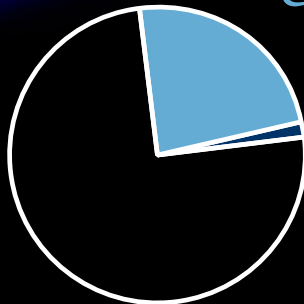
It's not just the generation born into the digital world. The Nielsen study found that the greatest growth recently for Facebook has been in the 35–49 age bracket, while the increase in 50–64 year olds on Facebook has been almost twice that of those under 18.

In a survey conducted on behalf of Travelers, close to half of the adult population indicated that they use social media.

To read the full content of the Travelers survey, go to www.travelers.com/technology



The Nielsen report noted that about one out of every 15 minutes spent online in this country involves social networking.



Uncontrolled Messaging From Three Directions

Today, many companies see social media as a valuable component of their marketing strategy. Some use it to spread the word about new products, keep in touch with existing customers and promote awareness of the company's brand.

Social media sites, however, are also an uncontrolled environment where a company's employees, customers and competitors can say just about anything they want. That may lead to liability, as these three examples illustrate:

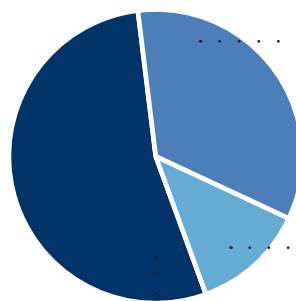
- An **employee** brags about his involvement with a new celebrity customer, inadvertently releasing information that jeopardizes the business relationship and the celebrity's publicity rights.
- A **customer** posts an angry outburst about a company's product. Someone from the company responds, and the comments are later cited in the product liability suit filed by the customer.
- A **competitor** tweets about the poor warranty service provided by the company. An employee responds in a manner which defames the competitor with derogatory language about "lying" and "cheating."

Companies Not Keeping Up

An effective strategy for managing risk from the online postings of customers and competitors focuses on monitoring and controlling the content of any response. When it comes to employees, however, companies have the opportunity to be more directive, establishing policies that restrict the use of social networking. Few companies have done so.

In the Travelers survey, about two-thirds of respondents said their companies do not have a policy regarding social media usage — or that they are not aware of one if it exists. This is a problem. The survey also indicated that one out of eight respondents post work-related information on social media websites, and 30 percent feel such postings are acceptable as long as they believe the information is true. In addition, 75 percent said they were "not at all" or "not very" concerned about online postings causing professional damage.

The Travelers survey finding about the lack of policies was corroborated in a survey released by the Society of Corporate Compliance and Ethics in September 2009:



Only one-third of companies said they have a general policy that addresses all online activity, both on and off the job.

About 10 percent said they have a policy specific to social networking.

More than half of the companies had no system in place to monitor employee use of social networking sites.

Areas of Risk

Why should companies be concerned about their employees' use of social network sites? Areas of potential liability include:

1. Exposure of the company to legal liability for defamation, harassment, privacy violations and other possible claims.
2. Leaking of proprietary information or trade secrets that may decrease a firm's ability to be competitive.
3. Damage to the company's reputation through false, disparaging or reckless communications.

Examples are becoming more common. In one case, a business had to defend itself against a claim of defamation because an employee used a company computer to post a negative opinion about a prior employer. In another, a medical clinic was sued when private material about a patient was posted online.

In addition to these three areas, other potential risks are still evolving. For example, in October 2009 the Federal Trade Commission issued guidelines that indicate employees may create unintended legal liability for their companies if a consumer claims a blog or Facebook posting by an employee influenced them to purchase a product that later proved defective or harmful. Other legal experts have warned that human resource departments using social media sites to uncover information about applicants may violate anti-discrimination laws when they reject hiring people for the wrong reasons.

The FTC is a great resource for information to learn how to manage online risks. Go to www.onguardonline.gov or www.ftc.gov/opa/2009/10/cybersecurity.shtm.

Crafting Your Game Plan >



By taking a strategic, well-planned approach to using, monitoring and responding to social networking, companies can manage risk and reduce their exposure to liability.

Managing Liability in an Online World: Crafting Your Game Plan

To effectively manage the potential risks involved with social networks, companies should take six steps:



Monitor online presence

Businesses need to understand how they are being depicted online, whether it is through their own efforts or the postings of employees, customers and competitors.



Define risk tolerance

What is the company willing to live with? If data breaches, leaks of proprietary information or defamation are involved, a company may decide it needs to have strong policies for controlling social media use and responses to others' postings. If the company's reputation is involved, the company may decide to be more selective about its approach, responding only when postings reach a certain level or pass a pre-established threshold.



Create a plan

Companies should have written policies that cover all forms of electronic communication, including social networks. Employees should be prohibited from making communications that are contrary to the company's interest, are illegal or violate anti-discrimination policies. The strategy for and responsibility of responding to external postings should be outlined in advance.



Train employees to follow the policy

Communicate the policy to employees and make sure they are aware that their electronic communications at work may be intercepted, analyzed and archived by the company. Inform them about consequences for violations.



Enforce the policy

When issues arise, companies need to be consistent about enforcing the consequences outlined in the policy. This not only encourages employees to follow the policy, but also establishes a stronger argument in any lawsuit that the company took adequate steps to control social network usage.



Prepare for the unexpected

Companies should have a crisis management plan in place to handle incidents. This may include strategies for managing negative publicity, removing false postings, and arranging for cyber risk coverage with their insurance agent.

Online Resources Referenced in This Article

- <http://blog.nielsen.com/nielsenwire/global/social-networking-new-global-footprint> for a summary of the March 2009 Nielsen report
- www.ftc.gov/opa/2009/10/cybersecurity.shtm
- www.onguardonline.gov
- www.travelers.com/technology to find a link to Travelers August 2009 social media risk survey

About the Author

Kirstin Simonson is an underwriting director with Global Technology at Travelers and specializes in cyber liability risk issues which includes Technology Errors and Omissions coverage, Network and Information Security coverage (privacy) and Communications and Media Liability coverage.

Global Technology at Travelers provides insurance and risk management solutions to the technology industry. To learn more, visit us at www.travelers.com/technology or contact your independent agent or broker.



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