Lunch & Learn: Corporate Use of Social Media

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Lunch & Learn

- 2nd Monday of each month
- 45 minutes via webinar
- Unaccredited CPD points
- Rolling 3 month schedule
  - [to be inserted]
Today

• Questions at the end. Or e-mail me afterwards

• Phones are muted to reduce background noise

• I’ll unmute at the end
Agenda

• Social Media Policies – More Platforms, New Risks?
• Ownership of Social Media Accounts
• Platform Terms & Conditions
• Advertising and Marketing
Agenda

- New Platforms, New Risks
- Ownership of Social Media Accounts
- Platform Terms & Conditions
- Advertising and Marketing
Anonymous Apps

The douchebag execs at Nike are going to lay off a bunch of the eng team who developed The FuelBand, and other Nike+ stuff. Mostly because the execs committed gross negligence, wasted tons of money, and didn't know what they were doing.

secret

Share with your friends, secretly.
Speak freely.

I'm the receptionist at my company. When everyone leaves for lunch, I sneak into the board room and make believe I'm the CEO.
Social media at work: some facts and figures

• What are employees doing?
  • When using social media for personal use:
    • 1% have posted confidential business information
    • 14% have posted a status update/tweet re: work
    • 22% have posted a status update/tweet re: work colleague
    • 28% have posted photos of work colleagues or business activities
    • 39% have befriended a work colleague/business contact on Facebook
    • 39% have connected to a work colleague/business contact via LinkedIn
Risks

• (Inadvertent) disclosure/sharing of confidential/proprietary business information

• Damage to the employer's brand/reputation

• Liability for employees' use, *e.g.*,:
  • Vicarious liability for harassment, discrimination and victimisation
  • Employee endorsements and advertising

• Potential escalation of small disputes/disagreements
Social Media Policy Basics

• Policy must be living document

• Be aware of new tech developments and update regularly

• Engage, educate and train staff

• Be creative
Enterprise Social Networks
Corporate Platforms

Pinterest
Corporate Use of Social Networks

Company-sponsored Twitter profiles, Facebook Pages, blogs, and other Web 2.0 presences are ubiquitous

• A 2012 study by Burson-Marsteller* showed that, of the Fortune Global 100:
  • 82% have **Twitter** accounts
  • 74% have **Facebook** Pages
  • 79% have branded channels on **YouTube**
  • 36% are using **corporate blogs**
  • Over 25% use all four of the above

• The Fortune Global 100 were mentioned **1.4 million times** across social media platforms in **one month**

• **100%** of the Ad Age Top 100 Advertisers have established Facebook Pages for their Brands

• As of June 30, 2011, **LinkedIn counted executives from all Fortune 500 companies as members**

*Source:  http://www.burson-marsteller.com/social/Summary.aspx/*
Corporate Use of Social Networks

“For many marketers, their Facebook fan bases have become their largest web presence, outstripping brand sites or e-mail programs either because a brand's traditional web-based ‘owned media’ is atrophying or because more consumers are migrating to social media.”*

*Source: AdAge (http://adage.com/digital/article?article_id=145502), August 23, 2010
Corporate Use of Social Networks

Enterprise Social Media

- In 2011, companies spent over $767 million globally in enterprise-focused social media and networking tools
  - Industry leaders include IBM Connections, Jive, Yammer and NewsGator
  - Analysts forecast that spending on enterprise social media will grow 42.4% annually through 2016 to $4.5 billion
  - IBM Connections and Jive lead in adoption with over 20% market share
  - 85% of Fortune 500 companies—and over 200,000 employers total—are using Yammer, a microblogging and collaboration platform
    - Yammer is the fastest growing vendor in the sector
    - Yammer was acquired by Microsoft in June 2012 for $1.2 billion
Pros and Cons of Maintaining Corporate Presence on Social Networks

**PROS**

- Ability to create and leverage a powerful marketing and PR tool
- Increased exposure, traffic and popularity
- Greater insight into public’s perception of your products and services

**CONS**

- Potential for issuing hair-trigger public statements that are impossible to retract/expunge
- “Official” statements may not represent company’s position
- Real-time complaints and drawn-out disputes may exacerbate PR headaches

"Rarely, [are] Twitter messages praising an airline. It's usually attacking an airline. ‘Screw american airlines. Every plane has Been broken. . . .’, read one post from Twitter user sheissilenttoo. ‘United airlines, you are the bane of my existence,’ user elnodonle wrote.”

Pepsi’s apology through Twitter for its “suicidal calorie” ad short-circuited a potential PR crisis.
Social Media Marketing Gone Awry

• Waitrose Supermarket Twitter Campaign

Waitrose asked Twitter users to finish the sentence “I shop at Waitrose because ______. #WaitroseReasons.”

• Similar to the McDonald’s #McDStories campaign, Twitter users primarily used the prompt to make fun of Waitrose and the upscale nature of the market.
Typically, a social network operator will establish an overarching set of terms and conditions that govern both individual and corporate access to its services.

**Issue:** A company that creates a corporate presence on a third-party social media platform is unlikely to have legal control over end users’ interaction with that presence.

**Upshot:** Companies need to think creatively about how to exert control over their presences on third-party social media platforms.
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Terms of Use for Dunkin’ Donuts’ Website
Website vs. Facebook Page

Dunkin’ Donuts’ Facebook Page

Dunkin’ Donuts
8,219,726 likes · 163,353 talking about this · 27,914 were here

Food/Beverages
*Official Dunkin’ Donuts Page* America runs on Dunkin’, and DD Facebook runs on You.

About
Photos
Likes
8.2m
DUNKIN’ K-CUP® Packets
Fan of the Week

Dunkin’ Donuts’ Facebook Page
Website vs. Facebook Page

Note “Privacy” and “Terms” links at bottom of Page...
Facebook’s Core Terms of Use (”Statement of Rights and Responsibilities”)
Facebook’s Terms of Use: Detailed View

1. Terms of Use (“Statement of Rights and Responsibilities”)
2. Payment Terms
3. Pages Terms
4. Developer/Platform Policies
5. Advertising Guidelines
6. Promotions Guidelines
7. Facebook Connect
8. Escalation Procedures
9. Developer PR Policy
10. Branding and Promotion Policy
11. Facebook Credits Terms

Privacy Policy
Would You Sign This Contract?

• You are the company’s General Counsel. An employee informs you that she is entering into a contract on behalf of the company – the contract includes the following terms:
  
  • Grants a **sub-licensable, transferable, royalty-free, worldwide license** to your company’s IP
  
  • Other party can **monetize company’s IP** by running ads against it, without compensation to your company
  
  • Other party can issue a press release about the new relationship, **featuring the company’s trademarks**, with **no input** from the company
  
  • The contract terms can be **changed at any time** by the other party.
  
  • Your company must **indemnify** the other party from all claims, with **no limitations on liability**
Terms of Use Issues in Social Media

- **Challenge:** Exerting more control over your company’s presence on a third-party social network

  - **Possible solution:** Include your company’s terms in – or link custom terms from – your company’s Facebook Page or Twitter profile

    - *E.g.*, on Facebook, in an existing or new Page app (e.g., a new “Terms of Use” Page app)

    - *E.g.*, on Twitter, in your Website or Bio field

      - **Note** – Twitter’s recent redesign *obscured* many elements of existing background images; much less space to squeeze text or a link into image

      - Note that each platform’s TOU would still apply – leading to potential ambiguity/user confusion (or even prohibitions)

- **Another possible solution:** Depending on your company’s leverage, negotiate for the right to have your company’s terms apply in lieu of the platform’s terms (potentially with modifications/flow-down provisions to accommodate the platform’s needs)
Terms of Use – Managing the Risks

Takeaways for companies building on third-party social networking platforms:

• Review the platform’s terms of use – carefully review the platform’s terms of use (including all incorporated terms) and monitor them for changes

• Inform users of your own terms of use – seek to impose your terms of use on end users; consider how and where to make them available
  - **Beware**: Do not run afoul of your obligations under the platform operator’s terms of use
  - **Practice Tip**: Customize your terms of use for the particular platform!

• APIs – if accessing a platform’s APIs, review all terms applicable to those APIs, and note any limits (e.g., frequency of calls to APIs)

• Backup plan – irrespective of the applicable terms, a platform could always limit use, block access, or otherwise pull the rug out from under you; if no arm’s length agreement, consider your backup plan
Facebook Page Basics

• Facebook makes it possible for brands to create corporate “Pages”
  • Content is reasonably customizable—including ability to add or remove “apps” or sub-pages containing content

• Facebook members can post to a Page’s “Timeline” without having to “like” the Page
  • Facebook gives Page administrators the ability to moderate user posts, including by removing posts and reporting or permanently blocking offending users...
    • ... but Facebook does not give administrators the ability to pre-screen user posts
  • A Timeline can be set to show only the Page administrator’s posts by default, or to disable user posts entirely

• Major brands with a presence on Facebook see significantly more product spending from customers who “like” their Facebook Page than from non-“like” customers
Twitter Basics

• Twitter allows you to post brief messages to a network of followers
  • Messages can be up to **140 characters** in length

• Messages sent via Twitter = “Tweets”
  • To send or receive Tweets, you need a Twitter account
  • Instead of sending a dozen e-mails, one message is posted to your Twitter account and displayed to all of your followers (“one-to-many”)
  • You can use Twitter as a microblog – anyone can read Tweets at a public Twitter profile (although most followers read Tweets in their feeds)
  • You can block specific followers from viewing your Tweets

• Enhanced functionality
  • *Retweeting* allows users to easily forward others’ Tweets to their followers
  • *Lists* let users curate sets of favorite feeds, even ones the user is not following
  • *Direct Messaging* lets users communicate privately one-to-one through Twitter
Google+ Basics

• Google+ launched in June 2011, billed as a service aimed at “mak[ing] sharing on the web more like sharing in real life”
  • “Circles” are a central part of the service, allowing users to share posts, links, photos or videos with different user-set groups such as “Friends,” “Acquaintances” or “Family”

• At first, Google+ profiles were only available to individuals, and not websites or organizations
  • This lead to some strange work-arounds, like “Techathew Cruncherin” for the technology news website Techcrunch

• On November 7, 2011, Google launched Google+ Pages, allowing “businesses and brands . . . [to] connect with the customers and fans”
Pinterest Basics

- Pinterest is a “virtual pinboard” where users can collect and share images.
- Shared images, or “pins,” are organized into user-defined groups called “boards”
  - Boards can be public or private; a public board can have more than one user authorized to “pin” images or videos to that board
  - Public boards can be “followed” by other users
  - Pinterest provides a “Pin It” bookmarklet; a user can keep this bookmarklet in their browser’s bookmark bar, and “pin” nearly any image they come across while browsing the web
Website vs. Facebook Page

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Website vs. Facebook Page (cont.)

Intel’s Facebook Page provides Facebook’s policies at the very, very bottom of the page.
**Website vs. Facebook Page (cont.)**

**Solution:** A link to Intel’s “House Rules” from top of Intel Facebook page

"By using or accessing this page, you agree to comply with Facebook’s Terms and Conditions. While we are excited to hear from everyone, it is important to note that postings by fans to Intel’s Facebook page do not necessarily reflect the opinions of Intel, nor does Intel confirm their accuracy."

Link to Intel’s Privacy Policy
Website vs. Facebook Page (cont.)

Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities ("Statement," "Terms," or "SRR") derives from the Facebook Principles, and is our terms of service that governs our relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement, as updated from time to time in accordance with Section 14 below. Additionally, you will find resources at the end of this document that help you understand how Facebook works.

1. Privacy

Your privacy is very important to us. We designed our Data Use Policy to make important disclosures about how you can use Facebook to share with others and how we collect and use your content and information. We encourage you to read the Data Use Policy, and to use it to help you make informed decisions.

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:

1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.

2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).

3. When you use an application, the application may ask for your permission to access your content and information as well as content and information that others have shared with you. We require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information. (To learn more about Platform, including how you can control what information other people may share with applications, read our Data Use Policy and Platform Page.)

4. When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).

5. We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them).
Website vs. Facebook Page (cont.)

Facebook’s Privacy Policy

VI. Some other things you need to know

Safe harbor

Facebook complies with the U.S.-EU and U.S.-Swiss Safe Harbor frameworks as set forth by the Department of Commerce regarding the collection, use, and retention of data from the European Union. To view our certification, visit the U.S. Department of Commerce’s Safe Harbor website at: https://safeharbor.export.gov/list.aspx.

As part of our participation in the Safe Harbor program, we agree to resolve disputes you have with us in connection with our policies and practices through TRUSTe.

If you would like to contact TRUSTe, visit https://feedback-form.truste.com/watchdog/request.
These and other contractual restrictions apply to applications integrated into one’s Facebook page as well as external websites that interact with Facebook via Facebook Plug-ins.

In general, for any data received from Facebook, “you must obtain explicit consent from the user who provided the data to [Facebook] before using it for any purpose other than displaying it back to the user on your application.”

- You will only request the data you need to operate your application
- You will have a privacy policy that tells users what user data you are going to use and how you will use, display, share, or transfer that data . . . .
- You will not directly or indirectly transfer any data you receive from us, including user data or Facebook User IDs, to (or use such data in connection with) any ad network, ad exchange, data broker, or other advertising or monetization related toolset, even if a user consents to such transfer or use.

Note: Restrictions apply to all data received from Facebook, not just personal information.
Sample Privacy Terms (cont.)

- You will not sell or purchase any data obtained from [Facebook] by anyone.
  - If you are acquired by or merge with a third party, you can continue to use user data within your application, but you cannot transfer data outside your application.

- You cannot use a user’s friend list outside of your application, even if a user consents to such use,
  - but you can use connections between users who have both connected to your application.

- You will delete all data you receive from us concerning a user if the user asks you to do so,
  - and will provide an easily accessible mechanism for users to make such a request. We may require you to delete data you receive from the Facebook API if you violate our terms.

- You will not include data you receive from us concerning a user in any advertising creative, even if a user consents to such use.
User Generated Content

FTC Endorsement Guides:

- Bloggers who endorse products or services must disclose material connections with the providers of such products or services.
- An endorser’s failure to disclose the connection could result in liability for both the advertiser and the endorser.
- Under the revised Guides, both advertisers and endorsers may also be liable for false and unsubstantiated claims made in an endorsement.
Social Media Sign-in and Plug-ins
What is Social Sign-In?

• Social Sign-in enables a user to sign on to a third-party website without having to go through a separate registration process.
  • Instead, the user can use existing credentials from a social networking site
    • Facebook Login is the most commonly used; Google is second most popular.*

• Advantage for the user: ease of use and convenience
• Advantage for websites: data sharing

* Source: http://janrain.com/blog/social-login-trends-across-the-web-for-q4-2012/
What are Social Media Plug-Ins?

- Social plug-ins enable users to like or tweet, or bookmark or otherwise interact with your website using social media.
  - The “Like” buttons and other sharing tools allow social networks to track browsing history without using cookies.
  - They also enable data sharing.
How Social Sign-In Works

• The website sends an encrypted version of the user’s email address, and Facebook tries to match it with its encrypted database of email addresses.
  • If there is a match, Facebook tells the website the User ID associated with the email address.
  • So when the user logs into the website using Facebook, the website can link your Facebook account to your account on that website.

• Social networks can provide a lot of data about registered users to the third party website.

• When a user logs in to a website using their Facebook account, Facebook gives the website:
  • Basic info (also known as the “public profile”), which includes your User ID and your public information.
  • Friends’ User IDs (also called your friend list) as part of your basic info.
Facebook Login Terms

• For Users: “Facebook Platform lets you log into other applications and websites using your Facebook account.
  • When you log in using Facebook, we give the site your User ID (just like when you connect with any other application), but we do not share your email address or password with that website through this process without your permission.

• For websites: “You will not directly or indirectly transfer any data you receive from us, including user data or Facebook User IDs . . .
  • to (or use such data in connection with) any ad network, ad exchange, data broker, or other advertising or monetization related toolset, even if a user consents to such transfer or use. By indirectly we mean you cannot, for example, transfer data to a third party who then transfers the data to an ad network. By any data we mean all data obtained through use of the Facebook Platform (API, Social Plugins, etc.), including aggregate, anonymous or derivative data.”
Twitter Login Terms

• End users must be presented with the option to log into Twitter via the OAuth protocol.
  • End users without a Twitter account should be given the opportunity to create a new Twitter account as provided by Twitter. You must display the Connect with Twitter option at least as prominently as the most prominent of any other third party social networking sign-up or sign-in marks and branding appearing on your Service.

• If you allow end users to create social updates from your own social service or a third party social networking, micro-blogging, or status update provider integrated into your Service (“Update”),
  • you must also display a prominent option to publish that content (or a link if the Update is not text or longer than 140 characters) to Twitter.

• Once an end user has authenticated via Connect with Twitter, you must clearly display the end user's Twitter identity.
Digression: APIs and Social Listening

- **API** = Application Programming Interface
- A software-to-software interface that enables applications, such as your website or app, and a server application (e.g., Twitter) to talk to one another in a manner that is essentially invisible to end users
  - Social Sign-In and Social Plug-Ins are APIs
- Using a social network’s APIs is likely to be subject to *even more rules*:
  - Software rules
  - Contractual rules – additional terms and conditions
- Data collected through an API may be subject to the platform’s terms
- Be aware of potential differences across platforms
- Be aware that consumers may not know that their data is being collected
  - Or by whom, or for what purposes
Sample API Terms

2. Commercial Use. You agree not to use the YouTube API for any of the following commercial uses unless You obtain YouTube’s prior written approval:

- the sale of the YouTube API, API Data, YouTube audiovisual content or related services, or access to any of the foregoing;
- the sale of advertising, sponsorships, or promotions placed on or within the YouTube audiovisual content or player; or
- the sale of advertising, sponsorships, or promotions on any page of the API Client containing YouTube audiovisual content, unless other content not obtained from YouTube appears on the same page and is of sufficient value to be the basis for sales.

XI. Additional Policies Governing Facebook Connect

A. Login/Connect

2. When Facebook Connect is used to allow a user to "sign in" or authenticate with your website, the Facebook Connect option must be presented at least as prominently as the most prominent of any other sign in or authentication method on your site, and not as a secondary option.

REST API Rate Limiting

The default rate limit for calls to the REST API varies depending on the authorization method being used and whether the method itself requires authentication. In an ideal world, your requests would count against the authenticated limit even on calls not requiring authentication. Unfortunately, this is not currently the case but will likely be rectified soon.

- Anonymous calls are based on the IP of the host and are permitted 150 requests per hour. This classification includes unauthenticated requests (such as RSS feeds), and authenticated requests to resources that do not require authentication.
- OAuth calls are permitted 350 requests per hour.
“Social Listening”

• Social Listening: scanning Tweets or Facebook posts, etc., that are made in public, and that are visible to everyone, collected directly from the profile (e.g., not via an API)
  • The data is public…
  • …but the public may not expect it to be collected for commercial reasons

• Integration with other data (e.g., appending data from other sources) could be seen as worrisome

• Unexpected or unknowing uses, and uses of large amounts of public data of special concern
Data Collection via APIs & Social Listening

• FTC has not weighed in on use of APIs or on Social Listening
  • Danger of “large platform provider” concerns spreading out to those who use or provide APIs?
  • But that doesn’t mean they won’t—especially if consumers complain (where else?) on social media.

• No consumer class actions filed yet based on use of APIs or Social Listening
Lunch & Learn

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