

The legal risks of corporate blogging.

By Lawrence Savell



A CORPORATE BLOG can certainly help your company “get the word out” in an effective and efficient manner. But that valuable online presence may carry with it substantial legal risks.

Let’s first define what we mean by a corporate blog. It’s a blog that’s written, published and maintained by or at the direction of a company — by company employees working within the scope of their employment or by an outside contractor/vendor, or some combination thereof.

Increasing your sensitivity to potential claims can help reduce your company’s liability exposure. Here are some guidelines.

1 Consider whether your content may defame a person, business or product. Generally, a defamatory statement is a false and disparaging assertion about another that causes injury to reputation. A few things to keep in mind:

- Statements may be protected if they are truly opinions and are not capable of being proved either true or false.
- The fair-reports privilege protects fair and accurate reports of governmental proceedings and records.
- Truth is a complete defense to a defamation claim, but it’s still a good

idea to reduce risks by incorporating less-than-absolute words like “may” or “might” or terms like “alleged” or “reported.”

If you determine that a defamatory statement was posted on your blog, a prompt removal and correction or clarification should help reduce potential damages.

2 Don’t use another party’s copyrighted material without permission. Be sure you incorporate only material that you own or that you have permission or the right to use. There is one exception: “Fair use” allows other parties besides the copyright owner to use copyrighted material in a reasonable manner without the owner’s consent in certain circumstances. Common examples include parody, criticism, commentary and news reporting. But you should credit the author.

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3 Be careful when using the trademarks of others. Make sure that you have permission to use any other individual's or company's brand names or trademarks that you display. Trademark issues can also include the registration of domain names that allegedly infringe on existing trademarks and the use of trademarks of others in metatags. An example of the latter: Company A inserts the trademarked name of Company B in Company A's metatags. This is a no-no because it might confuse people who are looking for Company B's blog but are directed by a search engine to Company A's blog.

4 Watch out for potential invasions of privacy. Statements that invade the privacy of others can provide the basis for a legal claim. With increasing federal and state legislation regarding Internet privacy, many bloggers post (and many readers expect to see) privacy statements promising to protect the confidentiality of personal information that may be provided or collected, such as that transmitted in the course of blog registration/log-in by those seeking to post comments. Blog hosts must comply with their own established policies.

5 Keep applicable advertising laws and regulations in mind. Certain blogs may be viewed in whole or part as advertisements. An example: the blog of a business that pointedly extols the quality of its staff and services to potential customers and clients. If so, bloggers must comply with applicable advertising, consumer protection, deceptive practice and unfair-competition laws and regulations.

6 Recognize the risks of employee blogging. Companies are generally held responsible for actions their employees perform within the scope of their employment. Employers should remind employee bloggers that corporate policies may apply to their blog postings. These may include policies regarding proprietary

And for Good Measure

There are a number of additional steps you or your company can take to minimize legal exposure relating to a corporate blog.

Check your insurance policies.

Determine whether these types of risks are covered. If they're not, consider obtaining additional coverage such as third-party media liability coverage for infringement and liability costs associated with Internet publishing.

Use disclaimers.

As noted, you may be able to disclaim or deny liability to a degree through properly worded statements posted on your blog.

Consider a posted "terms of use" notice.

Set forth the parameters of use and require acceptance of the terms.

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or confidential information of the business and its clients, as well as applicable governmental requirements such as securities laws regarding disclosures.

7 Take care when drafting contracts with outside providers of corporate blog content. If you use an outside person or entity to create content for your blog, be sure your agreement with that provider gives you the rights you need. It should be structured as a grant of "all rights" to your company, or as a "work made for hire," with an express agreement that the copyright belongs to the party commissioning the work. (For content created by an employee within the scope of his job, the employer automatically owns all rights, and thus no grant is necessary.)

8 Beware of allowing posts or comments by third parties. These can present significant risks that can be avoided by simply not allowing them. Your business model may encourage third-party contributions to your corporate blog, however. In that case, notify posters that they are representing that they have the right to post the content in exchange for your giving them the opportunity to post. This may reduce your liability somewhat, but if a poster plagiarizes material, you may still be found responsible if the true owner sues. The Digital Millennium Copyright Act may provide some insulation if applicable and if you remove infringing content once alerted. The Communications Decency Act of 1996 may provide some protection regarding defamatory statements posted by a third party.

9 Be careful about providing external links. Accompany them with a notice disclaiming responsibility for and denying any endorsement of products, services or information contained on outside sites.

10 Retain legal counsel. As you can see, your potential liability largely depends on the details of your circumstances. To get the full picture, consider preventive legal review or monitoring by in-house or external counsel with expertise in these areas. Ask your lawyer to educate and update involved personnel on pertinent legal issues, and consult counsel on questions about contemplated blog content.

Sensitizing yourself and your company to the major legal issues and taking steps to deal with them in advance can help reduce the risks of legal liability for corporate blogs. An ounce of prevention can save you a lot of headaches and expense down the road. ■

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