



**Monday, October 19**  
**9:00 am–10:30 am**

**201 Don't be a Party Pooper, Let Your  
Business be Social. Just Watch What it Does!**

**David Benck**

*Vice President & General Counsel*  
Hibbett Sporting Goods, Inc.

**Theodore Claypoole**

*Attorney- Intellectual Property*  
Womble Carlyle Sandridge & Rice, PLLC

**Whitnie Henderson**

*Legal Counsel/ Legislative Advocate*  
Association of California Water Agencies

## Faculty Biographies

### **David Benck**

David M. Benck is the vice president and general counsel for Hibbett Sporting Goods Inc., a Birmingham, Alabama based retailer of sporting goods. His responsibilities include providing legal counseling to the entire organization and managing the legal department.

Prior to joining Hibbett Sporting Goods, he served in various legal roles for Momentum Telecom, ITC Deltacom, and Just for Feet where he has provided counsel in a variety of substantive areas, including employment law, real estate law, commercial law, software licensing, advertising law, and intellectual property law.

He currently serves as adjunct professor of law at Cumberland School of Law, where he teaches "Practicing Law In House", is listed on the American Arbitration Association's Roster of Neutrals, and serves on an advisory committee to Norton Board of Directors for Birmingham-Southern College.

Mr. Benck received a BA from Birmingham-Southern College and is a graduate of the University of Alabama School of Law.

### **Theodore Claypoole**

Theodore Claypoole is a member in the intellectual property transactions team at Womble Carlyle in Charlotte. He works with clients on e-commerce and social networking issues, as well as data management and privacy concerns.

He has served as assistant general counsel in technology, data security, e-commerce, and intellectual property for Bank of America, and in-house legal counsel for CompuServe, advising electronic communities. He has also worked in the advertising and computer marketing industries.

Mr. Claypoole is on the board of directors for the Carolina Minority Supplier Development Council, and provides pro-bono counsel to art-related charities and institutions.

He is a graduate of Duke University and the Ohio State University College of Law.

### **Whitnie Henderson**

Whitnie Henderson is the legal counsel and a legislative advocate for the Association of California Water Agencies (ACWA) in Sacramento, California. As the association's

inaugural counsel, Ms. Henderson has the sole responsibility of creating the Office of Legal Counsel, as well as providing general legal representation of the organization. She also lobbies for the association before the legislative and executive branches in several areas including water conservation/use efficiency, groundwater, water rights, eminent domain, and employer/employee relations.

Prior to joining ACWA, Ms. Henderson was the legislative project coordinator for the Judicial Council of California, Office of Governmental Affairs.

Ms. Henderson is a former member and past chair of the Committee of Bar Examiners (CBE), the entity responsible for the development and administration of the bar examination. She currently sits as a member of an advisory committee to the CBE tasked with reviewing and making recommendations on proposed rules and guidelines for California's accredited law schools. She also serves as chair of the Volunteer Center of Sacramento, an organization that matches volunteers with opportunities in nonprofit organizations throughout the Sacramento Valley. Ms. Henderson is a past president of the Capitol Network, an organization of government relations professions who raise money for charities that serve women and children in California. Ms. Henderson teaches a course in legislative advocacy and statutory law at Lincoln Law School of San Jose.

Ms. Henderson graduated from San Francisco Law School, where she wrote for and served as managing editor of the law review.

## Social Networking for In-house Counsel

By Ted Claypoole, David Benck and Whitnie Henderson

### Definitions: The Current Social Media Landscape

Social Media includes a constantly changing number and variety of internet and otherwise interactive sites, software and applications that allow users to communicate with each other.

From Wikipedia: “**Social media** is media designed to be disseminated through social interaction, created using highly accessible and scalable publishing techniques. Social media supports the human need for social interaction with technology, transforming broadcast media monologues (one to many) into social media dialogues (many to many). It supports the democratization of knowledge and information, transforming people from content consumers into content producers. Businesses also refer to social media as [user-generated content](#) (UGC) or [consumer-generated media](#) (CGM). Social media can be said to have 3 components;

1. Concept (art, information, or meme).
2. Media (physical, electronic, or verbal).
3. Social interface (intimate direct, community engagement, social viral, electronic broadcast or syndication, or other physical media such as print).”

We will be focusing primarily on the most popular and influential internet social media in 2009

Social media, even by our limited definition is rapidly changing. Blink and you will miss the next trend. For example, in 2006 comScore Media Metrix released its social media demographic reports concluding:

“Visitors to MySpace.com and Friendster.com generally skew older, with people age 25 and older comprising 68 and 71 percent of their user bases, respectively. Meanwhile, Xanga.com has a younger user profile, with 20 percent of its users in the 12-17 age range, about twice as high as that age segment’s representation within the total Internet audience. Not surprisingly, Facebook.com, which began as a social networking site for college students, also draws a younger audience. More than one-third (34 percent) of visitors to Facebook.com are 18-24 years old, approximately three times the representation of that age segment in the general Internet population.”

By March of 2009, the following report was culled from Facebook statistics: “the majority of US Facebook users are now over 25. There are now 6 million users 13-17, 19.5 million 18-25, 13.4 million 26-34, 9.7 million 35-44, 4.6 million 45-54, and 2.8 million over 55. In other words, there are more Facebook users 26-44 than 18-25 today.” From the web publication *Inside Facebook*, which also reported that the fastest growing demographic on Facebook is women over 55.

Analyze social media demographic and clearly see that all demographic groups from nearly all regions of the world are already online in some form of social media, and their numbers are growing. ( See <http://123socialmedia.com/2009/01/01/social-media-demographics-and-analytics-2008-2009/> including useful charts and graphs, writing, “2008 proved that social media isn’t just for teenagers. More and more professionals and businesses are finding new ways of using social media tools and understanding the conversation. The problem is that we have a HUGE conversation: a worldwide multi-generational conversation that is mixing personal ideas with professional objectives.”)

Reaching these groups can be easier than ever for your business, and this is a double-edged sword. How do you take advantage without hurting yourself?

## Popular General Social Media Sites

As an online activity, social networks are growing rapidly: In March 2009, Nielsen Online published statistics that showed social networks and blogs were the 4th most popular online activity ahead of personal email, Member communities are visited by 67% of the global online population, time spent is growing at 3 times the overall internet rate, accounting for almost 10% of all internet time, [PDF, Nielsen Online, March](#)

**Facebook.** Media guru Tom Anderson recently wrote:

“Facebook far exceeds the other major social networking sites in popularity and value, according to a new social media study released today by Anderson Analytics.

The survey of 5,000 U.S. social media users found that Facebook members were the most loyal among regular users of the four major social networking service (SNS) destinations – Twitter, MySpace and LinkedIn being the other three – and that they also saw the most value in the hugely popular service.

When users among respective SNS were asked in which network was the most valuable, 75% said Facebook, followed by MySpace (65%), LinkedIn (30%) and Twitter (12%). Flipping the question, only 29% of respondents said they could “probably do without” Facebook, compared to 43% for Twitter and 35% for MySpace; LinkedIn also scored 29% on this query.

Facebook has 78 million regular users, defined as those logging on at least once a month, according to the Anderson Analytics report, followed by MySpace (67 million), Twitter (17 million) and LinkedIn (11 million). MySpace has the youngest user group, with an average age of 29, while LinkedIn’s audience is the oldest, 36 on average, the survey found. The average age of Facebook users was 34; for Twitter, it was 33.

The Anderson Analytics report, found an estimated 110 million people in the U.S., or 36% of the total population, are regular users of social networking sites. Youth is still a major determinant of social networking usage, the report found, with 61% or 67 million regular users, defined as those logging on at least once a month, under age 35.”

<http://www.tomhcanderson.com/2009/07/13/new-social-media-study-facebook-trumps-other-social-media-as-most-valuable-majority-of-users-can%E2%80%99t-do-without-popular-site/>

Facebook allows users to communicate through private or public messages, provides software applications and content, and includes commercial areas for businesses to reach their customers, employees or investors.

**MySpace:** Once the premier social networking site, MySpace has fallen into disrepute. As interactive communities go, MySpace is known more as a place of vice and sin than a paragon of virtue. In February 2009, the New York Times reported that MySpace had officially admitted finding more than 90,000 registered sex offenders on its site.

<http://www.nytimes.com/2009/02/04/technology/internet/04myspace.html?ref=technology>

Started as place for bands to exhibit their music and meet their fans, MySpace is still heavy with fandom and friending celebrities of all types. Therefore, it is more of a force in the music and modeling businesses and in building personal reputations than a place for established brands to reach adult audiences.

**Yahoo Groups:** Similar to the Usenet News Groups of the pre-graphic, early 1990s internet, these groups and countless others like them bring together special interest groups like fans of the Red Sox, people interested in how food was prepared in the middle ages, or toy train collectors to post information for each other to consider. Community bonds can be very strong and frequently flow to free chat functions for more immediate interaction.

**Youtube:** Owned by Google, YouTube is an interactive video site where anyone can post videos on the site, use the YouTube technology to post videos to other sites, or otherwise disperse video content throughout the web. Companies often wrap Youtube video campaigns into their standard advertising packages, and smaller businesses can use Youtube technology to provide video marketing efforts an inexpensive kick. See my own marketing videos, available on my lawfirm's website and on Youtube. <http://www.wcsr.com/lawyer-bio.php?id=75>

**iTunes:** Operated by Apple, iTunes is more often defined as a corporate networking site, but it provides channels for social networking as well, and is a good example of how a corporation can create its own branded sandbox in which its customers are locked in to play. The iTunes site offers comments and user suggestions on songs, podcasts, commercial videos and more.

**Chat functions from everybody:** All of the major email providers also include chat functions, including Gmail, Hotmail, AIM (for AOL) and Yahoo! where people can meet online and talk to each other. In addition, sites for special interests groups like romance writers, Republicans, or fans of Japanese anime also include these functions, turning each one into a social networking site.

## Interactive Blogs and RSS Feeds

**The Blogosphere:** Blogs are regularly updated postings, usually written, although podcasts are considered audioblogs or videoblogs. Blogs may cover any subject and are searchable with the powerful RSS toolkit that allows bloggers to syndicate what they write. Many commercial and media sites include blogs, which may be studious and scientific, but nearly always include at least a smattering of opinion and evidence of the writer's personality. Famous, influential and popular bloggers include Matt Drudge (politics), Perez Hilton (celebrities), Wonkette (social and political adventures in DC) and Michael Arrington (Technology). Blogs usually include interactivity as readers comment and add their own opinions, and many blogs are offering live chat features to discuss the topic of the day.

**LiveJournal:** This site is illustrative of a blogging site that can serve as a personal diary broadcast to the world (or narrowcast to a select group of friends), a writer's workshop or a commercial promotion site. LiveJournal seems like a more literate version of Facebook, built around longer writing. People write blogs, build communities, post pictures or videos, make friends and comment on everything else that is being posted.

**Twitter:** Allowing microblogging at 140 characters per shot, Twitter is being used by many people and businesses to send out targeted messages. The friending feature and outside applications can make Twitter interactive.

## Immersive Environments and Rich Media

Three dimensional immersive environments are the present and the future of social media.

- Plummeting price of storage in the past 6 years has facilitated video and immersive technologies
- An estimated 17 million of South Korea's 48 million people regularly sign on to 3D immersive games or other web sites.
- IBM announced in 2006 that it is spending more than \$10 Million that year to develop 3D technology, and has spent multiples of this amount since.

### *Second Life and Immersive Wikis:*

A wiki is a collaborative process online where the entire community creates a project with their own individual contributions.

Ian Hughes, IBM: *"Second Life appears to have started a wave of interest possibly because it is more like a 3d wiki and less like a 3d game. Communities exist in 3d worlds and are often centered around game concepts, clans, etc. Second Life has changed by having simple content creation tools and a real economy with a real US Linden\$ exchange rate that allows exchange of currency both ways. So in many ways it's more of a country, with a freedom to create social groups, manufacture and sell virtual goods or just be an interested observer and consumer. Building well does take talent, just as writing a good piece on wikipedia.org requires some skill or authoring a popular blog. However, there is no game style leveling up, it is almost instantly accessible and has a low install footprint more like a browser."*

Economic engine: Second life has its own money and its own economy. In July 2009, the last month before completion of these materials, second life recorded 27,840,722 monetary transactions taking place on the site, with items of real value trading. 59,945 of these transactions were valued at above 20,000 L\$ (or approximately \$76 by the then current exchange rate of 260 Linden Dollars per US Dollar). See second life statistical charts:

<http://secondlife.com/statistics/economy-data.php>

### **Second Life legal issues:**

Jurisdiction: Linden Labs is in San Francisco. The Second Life Terms of Use subject the users from all over the world to California law. Is second life a jurisdiction of its own, that makes its own rules, or is Second Life subject to wet world jurisdiction, and if so, which one? Even so, how much leeway does Linden Labs have in choosing which laws apply to actors from multiple jurisdictions in Second Life?

Intellectual Property: As virtual worlds proliferate, can a individual's avatar port from one of these worlds to another?

Second Life Users can own the intellectual property that they contribute to the site: See, Second Life Terms of Use:

**“1.3 Content available in the Service may be provided by users of the Service, rather than by Linden Lab. Linden Lab and other parties have rights in their respective content, which you agree to respect.**

You acknowledge that: (i) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programs, animation, text and other creative output (collectively, "Content"), and (ii) Content may be provided under license by independent content providers, including contributions from other users of the Service (all such independent content providers, "Content Providers"). Linden Lab does not pre-screen Content.

You acknowledge that Linden Lab and other Content Providers have rights in their respective Content under copyright and other applicable laws and treaty provisions, and that except as described in this Agreement, such rights are not licensed or otherwise transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from Linden Lab.

Certain of the fonts in the Meta family of copyrighted typefaces are used in Second Life under license from FSI FontShop International. You acknowledge that you may not copy any Meta font that is included in the Viewer and that you may use any such Meta font solely to the extent necessary to use the Linden Software in Second Life and that you will not use such Meta fonts for any other purpose whatsoever. “

Registration of second life avatars can create usable intellectual property in the wet world: For example, see U.S. Trademark Registration No. 3531683 for the Aimee Weber avatar, which claims computer programming services, namely, content creation for virtual worlds and three dimensional platforms in International Class 42.



In addition, real-world brands are often duplicated in Second Life, often without the knowledge of the trademark holders. See <http://virtuallyblind.com/2007/05/04/trademark-infringement-vws/> which discusses several examples, such as more than 100 stores selling “nike” products, although Nike does not sell or license its brand there.

One legal problem involves the theft of entire realistic rendering of New Orleans' French Quarter and move to site called “OpenLife”. See news story discussing designer's lawsuit: [http://www.internetevolution.com/author.asp?section\\_id=785&doc\\_id=180504](http://www.internetevolution.com/author.asp?section_id=785&doc_id=180504)

**Real World Regulations; Export and Banking:** Second Life's Terms of Service document requires contributors to comply with local laws and regulations including those for export of technology. Encryption and other software code has traditionally been a restricted export in many countries including the US. How can these laws be enforced across borders in a virtual wiki world where the operator only controls the environment and not the specific code created by its community members?

In January, 2008, Linden Labs terminated all banks in second life and restricted banking to entities that are currently and appropriately chartered by a real world government. Banks in the US could not comply, because to attempt to do so would probably violate the anti-money laundering, know-your-customer rules. This change in business rules was necessary because of a run on the virtual banks in second life. See, <http://online.wsj.com/article/SB120104351064608025.html>

**Immersive and Multiuser Game Space:** With more directed activities than Second Life, multiplayer games are consuming hours per week for millions of players. Whether based around sports, shopping, lifestyle enhancement, star wars characters or dragons and trolls. MMORPGs (Massive Multi-Player Online Roleplaying Games) continue to grow and build community, many paying for online access as well as for weapons and equipment on the site and from other users. An industry of “character farmers” has sprung up, whereby people with internet access, low resources and lots of time can build characters in these games and sell them to people with more money and less time to play the game. Why start as a level 1 wizard when you can begin the game as an experienced and powerful level 33 wizard?

Wikipedia describes the current state of multiplayer gaming as follows: Worldwide revenues for MMORPGs exceeded half a billion dollars in 2005, and Western revenues exceeded US\$1 billion in 2006. In 2007 and 2008 the virtual goods buying and trading has increased dramatically. Next to the more traditional subscription model, virtual goods are a second source of revenues for publishers. In 2008, Western consumer spending on subscription MMOGs grew to \$1.4 billion. The most popular MMORPG, [World of Warcraft](#), has had over 11 million paying subscribers as of 2009.

Multiplayer games are quickly going mobile, where players use their handheld devices to play the games online.

Many companies are tapping into these multi-user communities for advertising, marketing and brand identification. Players in these games can easily spend upwards of 30 hours a week in this entertainment, building relationships and solving problems.

## Business Oriented Sites

**LinkedIn:** The premiere business social network, LinkedIn allows business people to keep track of their contacts, to join special interest groups, and to receive email notifications when someone contacts them on the site. Offering many of the tools and options of Facebook, LinkedIn provides an online resource aimed at adults in business.

**Ebay:** The famous auction site creates communities of merchants and encourages communities of collectors to build its business model. Commerce and auctions are the payoff for these communities, but many ebay users develop friendships and learn about their areas of collection or interest from the links, the contacts and the interactivity of this site.

**Bank of America Small Business Site:** In 2008, the Bank of America created a small business networking site within BankofAmerica.com. This site allowed customers to ask questions, but also to interact with each other and to build networks within the site.

## Legal Social Networks

**Martindale Hubble:** With blogs, practice area centers, chat functions and job boards, Martindale.com demonstrates how any site drawing people bonded by a special interest can create a community using social networking technology. The site boasts a database of more than 100,000 experts and consultants to help attorneys with their cases. All of this is built around the standard lawyer listing – now in easily searchable database form – that made the Martindale Hubble series of books indispensable to past generations of lawyer seekers.

**Law.com:** A lawyers social network built around a legal news site, Law.com was created for purpose of building a community of lawyers. It also contains job and expert databases, events and CLE calendars and legal research help. Increased interactivity is likely to follow on this and all other “community” sites.

**Above the Law:** Evolving from the snarky website popular with law students and younger associates, Above the Law brings the snark to an entirely new level, with reporting about

## Classifications and Legal Issues

One way to evaluate the legal considerations of popular Social Networking Sites is to divide them into two classifications:

1. Individual Usage of Social Networking Sites; and
2. Corporate Usage of Social Networking Sites.

As discussed above, there are numerous forms that Social Networking Sites can take. Usage of Social Networking Sites is growing primarily through the following four sites. We'll focus the discussion on these four; however, the evolution of this technology is incredibly fast. Some of these will probably cease to exist in a few years, to be replaced by new, unanticipated forms of Social Networking Sites.

### 1. **Facebook**

Facebook allows users to “friend” and interact with people of their choosing and to join networks organized by city, workplace, school, and region. People can also update their personal profiles to notify friends about themselves.

### 2. **MySpace**

MySpace is similar to Facebook, but lacks some of the privacy controls that have made Facebook more popular. MySpace was the most popular social networking site in the United States, but lost this status to Facebook during late 2008.

### 3. **LinkedIn**

LinkedIn is a business-oriented social networking site founded mainly for professionals. Many ACC members utilize LinkedIn to network and connect with others in similar fields. In fact, the ACC has a sponsored group that LinkedIn members can join to communicate which currently has approximately 3,000 members.

### 4. **Twitter**

Twitter allows users to answer the question “What are you doing right now?” in 140 characters or less. Users type brief updates known as “tweets” into Twitter’s site at Twitter.com or send them to Twitter as text messages.

According to Time, *How Twitter Will Change the Way We Live*, P. 36 (June 15, 2009), the following chart reflects the changes in users of these websites over the twelve month period from April 2008 through April 2009:

	<u>Users in April 2008</u>	<u>Users in April 2009</u>	<u>Percent Change</u>
Facebook	22.48 Million	71.29 Million	+217%
MySpace	58.75 Million	54.60 Million	-7%
LinkedIn	Unknown	39 Million	Unknown
Twitter	1.2 Million	17.10 Million	+1298%

\*Note that these numbers can vary dramatically from source to source. For example, Facebook currently (<http://www.facebook.com/press/info.php?statistics>) claims over 250 million users.

### **INDIVIDUAL USAGE OF SOCIAL NETWORKING SITES**

Individuals utilize the Social Networking Sites for numerous purposes from communication, interaction, self promotion, to entertainment. According to a recent Deloitte survey, 22% of employees visit Social Networking Sites five (5) or more times per week, and 23% visit them between one and four times per week. ([http://www.deloitte.com/dtt/cda/doc/content/us\\_2009\\_ethics\\_workplace\\_survey\\_220509.pdf](http://www.deloitte.com/dtt/cda/doc/content/us_2009_ethics_workplace_survey_220509.pdf))

Companies can use tools like “PubSub” or “Feedster” to monitor what is being said about them on social networking sites and blogs. Companies also utilize services to scour the Internet for blog postings mentioning the Company.

### **CORPORATE USAGE OF SOCIAL NETWORKING SITES**

Before a company should consider the usage of a Social Networking Site, the company must start with the sites' Terms of Service.

1. Facebook's Statement of Rights and Responsibilities does not expressly address corporate users. However, it advertises with click-through ads “Create a Facebook Page – Start talking to your customers on Facebook in a few easy steps.”
2. MySpace.com's Terms of Use Agreement provides that “The MySpace Services are for personal use of Members and may only be used for direct commercial purposes if they are specifically endorsed or authorized by MySpace.”
3. LinkedIn's User Agreement requires the user to represent that they “are not a direct competitor of LinkedIn.”
4. Twitter's Terms of Service, while silent on who may use the service expressly reserves the right to “reclaim usernames on behalf of businesses...that hold legal claim or trademark on those usernames.”

Companies are hiring Social Networking employees for numerous tasks:

- Employment Recruiters utilize the Social Network Sites to find candidates faster, screen them better and reach out to individuals they wouldn't see otherwise.
- Marketing Strategists utilize the Social Network Sites to find the best way to interact within various social sites and online communities, interacting with users, growing brand awareness, creating buzz, increasing traffic and providing valuable information.
- Enterprise Architects are being hired to address various networks, multiple platforms, development initiatives and security.

### **HOW ARE CORPORATIONS USING SOCIAL NETWORK SITES?**

#### 1. Hiring and Background Checks

Background checks help defend companies against claims of negligent hiring. Companies can perform background checks by reviewing the following:

- A. Criminal History;
- B. Credit History;
- C. Driving Records;
- D. Sexual Offender Registries; and
- E. Social Networking Sites

#### 2. Collaboration

Companies have also seen that some forms of social networking can be beneficial by fostering networking between employees, sharing information quickly and cost effectively across geographically diverse offices, and establish broader circles by keeping in touch with former employees.

#### 3. Communication

With Customers: Some of the major utility companies use Twitter to communicate with customers regarding outages and repair timelines.

Chevron and Shell use Twitter to post hurricane updates.

Comcast Corporation uses Twitter to reach out to customers regarding their services, from faulty DVRs to trouble with their Internet connections.

With Employees: Disaster Recovery Plans require clear, concise and effective channels of communication to be effective.

With the Public: Virginia Tech University received much criticism for their handling of the Cho shooting massacre. Two of the ultimate findings of the investigation included:

- The Virginia Tech Police Department erred in not requesting that the Policy Group issue a campus-wide notification that two persons had been killed and that all students and staff should be cautious and alert.
- Senior university administrators, acting as the emergency Policy Group, failed to issue an all-campus notification about the WAJ killings until almost 2 hours had elapsed.

The Los Angeles Fire Department uses Twitter to post alerts about major fires and road closures; the Washington Department of Transportation uses Twitter for traffic alerts and route changes for ferry vessels.

#### 4. Marketing

Consumers now expect companies that they shop and purchase from to share product and service information with them. They can and are researching products, services, and companies as they make purchase decisions. Companies have the ability to integrate their marketing strategies and promotional efforts while influencing the perception of their brand, and to leverage consumer feedback. The greatest asset a company can have is a base of consumers who feel a sense of loyalty and connection to their brand—and social networking can enhance that connection.

#### 5. Researching plaintiffs or lost witnesses

Reviewing blogs, public Facebook postings, or Twitter comments for evidence can help undermine plaintiff's liability theories and damage claims.

## **LEGAL RISKS OF SOCIAL NETWORK SITES**

### 1. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Defendant website allowed members to post news articles to which they added commentary. Members posted the entire text of articles, including those from plaintiff's website. *L.A. Times v. Free Republic*, 2000 WL 565200 (C.D. Cal. 2000).

There is significant usage and misuse of company logos and insignias. Employees regularly feel comfortable cutting and pasting their company logos onto the employees personal Social Networking Site.

## 2. PROTECTION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION

One Court ordered an ISP to identify people that Apple accused of stealing trade secrets and leaking information about Apple products through websites but left unresolved whether three ISP employees who claimed journalistic shield law protection of sources were indeed journalists.

*Apple Computer v. Doe 1, et al.*, 139 Cal. App. 4th 1423 (2006).

## 3. HIRING AND BACKGROUND CHECKS

According to some reports, as many as 50% of Companies and 77% of job recruiters check out potential employees on the Web. In June 2009, all applicants for employment in Bozeman City, Montana were asked to submit a list of all "current personal or business websites, web pages, or memberships on any Internet-based chat rooms, social clubs or forums, to include but not limited to: Facebook, Google, Yahoo, YouTube.com, MySpace, etc." This policy was withdrawn in July 2009.

Using Social Network Sites to conduct hiring and background checks can trigger numerous laws. Some of the laws pose risk for the company. Some of the laws protect the company. They include:

A. Title VII/Americans with Disabilities Act/Age Discrimination in Employment Act: Social Networking Sites often reveal demographic information, information about employee political affiliations and/or off-duty activities that Companies are prohibited from considering. Most will identify gender, marital status, race, sexual orientation and parental status. Photos are also posted which reveal ethnicity and approximate age. Some users disclose their experiences fighting various medical conditions and disabilities on blog posts and/or their social networking website profiles.

While it is not per se illegal or discriminatory to review an applicant or employee's Social Network Site, companies typically go to extensive measures to preserve the "defense of ignorance." Job applications do

not ask questions relative to age, race, or disability. The defense of ignorance is unavailable if a company views an applicant/employee's profile and/or blog post. Thus, companies who conduct background investigations using online Social Networking Sites and blogs are at *potential* risk of discrimination claims when they obtain information about non-obvious characteristics that are protected under discrimination laws. That being said, to date, no actual reported cases were found.

California prohibits discrimination against employees for lawful activities conducted outside of the workplace. Cal. Lab. Code 98.6, 96(k). Several other states have similar prohibitions. Thirty states and the District of Columbia, for example, protect smokers from termination based solely on such activity. Again, the company can lose the "defense of ignorance."

*Blakey v. Continental Airlines, Inc.*, 164 N.J. 38, 751 A.2d 538 (2000) - Company has a duty to take effective measures to stop employee harassment of a co-worker when it knows or should know harassment is taking place in the workplace or work-related settings; NJ Supreme Court remanded case to determine whether "Crew Member Forum" electronic bulletin board was sufficiently connected with workplace to allow liability. In reality, harassment in the Social Networking world is not any different than in the physical workplace.

B. Duty of Loyalty: Employees are the agents of the company and, under traditional agency law, owe a duty of loyalty to their company. This duty of loyalty requires an employee to refrain from a wide variety of conduct. For example, the duty of loyalty precludes an employee from divulging trade secrets or confidential information. More importantly, however, an employee possibly breaches the duty of loyalty when he or she posts a blog or comment on a social networking site which criticizes the Company's products, services or operation methods.

C. The Fair Credit Reporting Act ("FCRA"): The FCRA requires an applicant's or employee's consent before a company may engage a 'consumer reporting agency' to conduct a background check. FCRA does not prohibit companies from receiving or using a consumer report that contains information derived from social networking sites or blogs, but it does require them to disclose to the individual that such information was the basis for an adverse employment decision.

D. National Labor Relations Act ("NLRA") - The NLRA forbids companies from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing for collective bargaining purposes, or engaging in concerted activities, or refraining from any such activity. All companies, whether unionized or not, should be cautious when monitoring or investigating employee blogs or social networking sites if the topics of conversation might include salary, benefits, union representation and other terms and conditions of their employment. As such, a company may not take information it discovers on an employee's blog or social networking post regarding union activity and threaten him or her with an adverse employment action if they join or vote for a union or engage in protected concerted activity.



E. Reasonable Expectation of Privacy & The Federal Stored Communications Act/Federal Wiretapping Act - Companies have taken a wide variety of measures to reduce employee electronic resources abuse. Companies now frequently warn employees that all electronic activity is monitored. Such warnings are intended to erode the level of privacy an employee reasonably expects. Companies monitor electronic communications to increase productivity, maintain confidentiality and to limit liability for employee misconduct. Notwithstanding, employees engage in sending and receiving personal e-mails and accessing the Internet for blogging and social network even though there are on notice from their companies that their electronic activities are subject to monitoring, discovery and disclosure.

A company may be subject to potential liability for invasion of privacy if: (1) the applicant or employee reasonably believes that the website is private; (2) the site promotes itself as private; and (3) if the company used pretext to gain access to the profile or blog posting. Companies should make sure that their written policies regarding the use of company furnished data and telephone communications equipment clearly state the employee has no expectation of privacy in any communication.

Several cases hold an employee does not have a reasonable expectation of privacy in email sent or received from the company's computer or email system. In one case, a Court found that employee had a reasonable expectation of privacy in workplace emails after evaluating company policy stating users have a limited privacy expectation despite routine monitoring and notice that personnel files may be discoverable under law. *Brown-Crisuolo v. Wolfe*, 601 F. Supp. 2d 441, 449-50 (D. Conn. Mar. 9, 2009)

In a separate case, emails were sent by an employee to her attorney using the company computer but from her personal email account. The emails were recovered by the company from the temporary Internet files on the company computer but were originally sent through the employee's Web-based password protected email account. What about the attorney-client privilege? Lower court held emails were not privileged, relying upon the fact that the Employee Handbook warned: "Email and voice mail messages, Internet use and communication and computer files are considered part of the company's business and client records. Such communications are not to be considered private or personal to any individual employee." The appellate court found that the attorney-client privilege substantially outweighed the company's argument that the emails were company property because they were sent from a company laptop. *Stengart v. Loving Care Agency, Inc.*, 2009 N.J. Super. LEXIS 143 (June 26, 2009)

Generally, a company is permitted to monitor work-related use of electronic generated communications if certain conditions are met. The Wiretap Act permits a company to intercept electronic communications where there is a legitimate business reason for the interception. If an employee does not restrict access to his or her blog or social networking profile, then a company is likely permitted to view its contents. If, however, access is restricted, then a company likely violates the Stored Communication Act and Wiretapping Act through "intercepting" communications in an unauthorized manner. Some courts have held that the SCA prohibits companies from accessing and monitoring employees' online activities without proper authorization, and prevents companies from using illicit or coercive means to access employees' private social media accounts in an effort to root out critical or disgruntled employees.

*Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868, 880 (9th Cir. 2002) – Involved a Pilot maintained website that only authorized employees could visit. Authorized employees voluntarily gave password to an unauthorized employee who accessed the site. Plaintiff sued his company under the SCA for unauthorized access to his website. Unauthorized access and review of the contents of a password protected web site can constitute violation of the SCA. Court held that company violated the SCA because the authorized employees had never actually accessed the site and therefore were not authorized “users.” The SCA “allows a person to authorize a third party’s access to an electronic communication if the person is 1) a ‘user’ of the ‘service’ and 2) the communication is ‘of or intended for that user.’”

*Van Alstyne v. Elec. Scriptorium Ltd.*, 560 F.3d 199 (4th Cir. 2009)- Company president gained access to employee’s personal email account repeatedly after her termination. The U.S. Court of Appeals for the Fourth Circuit allowed punitive damages and attorneys’ fees, even absent a showing of actual damages.

*Pietrylo v. Hillstone Rest. Group d/b/a Houston's* (D.N.J., No. 06-5754, jury verdict 6/16/09)-

Two New Jersey waiters were fired after their managers took offense to comments they posted on a password protected MySpace account. A third employee gave managers her password to access the account, but claimed she was coerced into doing so. Jury found:

- Managers had violated the SCA by intentionally accessing the MySpace page without authorization;
- The jury awarded compensatory and punitive damages; and
- Defendant liable for plaintiffs’ attorneys’ fees.

#### F. Defamation & “Cybersmearing”

Defamation is a two-way street. Some case law reveals situations where companies are accused of defaming ex-employees, competitors and others. A company may be liable for defamatory statements made by an employee if the employee had the apparent authority from the company to speak on its behalf, under theories of ratification, respondent superior or negligent supervision/retention. However, most of the existing case law addresses ex-employees or anonymous employees defaming the company or one of its executives.

A prima facie showing of defamation required before court would grant subpoena to Web host to obtain the identity of an anonymous blogger. *Krinsky v. Doe 6*, 2008 WL 315192 (Cal. App. 2008)

Santa Clara County, California jury awarded Company \$775,000 in compensatory and punitive damages against former employees for defamation and invasion of privacy. *Varian Medical Systems, Inc. v. Delfino*, Santa Clara County Super. Ct. No. CV780187 (Dec. 18, 2001).

Court did not issue the company an injunction to keep former employee from publishing false statements about it on her blog because of the strong presumption against prior restraints of speech and the established law against issuing preliminary injunctions in defamation cases, and because the Company failed to show irreparable harm. *Bynorg v. SL Green Realty Corp.*, 2005 WL 3497821 (S.D.N.Y. 2005)

#### G. Name Squatters

Social networking sites offer many new opportunities for businesses to reach out to their customers and to promote their brands, but businesses should be mindful of user name squatters. With a few keystrokes squatters have the potential quickly to spread misinformation, cause confusion and tarnish a company's hard-earned reputation. What can be done?

1. Establish good internal policies to prevent your own employees from squatting;
2. Preemptively register marks and names your company wants to protect;
3. Regularly and thoroughly monitor sites for unauthorized use; and
4. Contact the Social Networking Site and demand return of the mark. Each of the Social Networking Sites discussed above have a dispute process to address this situation.

#### H. Violations of Terms of Service

Companies must review the "click and accept" Terms of Service for any Social Networking Sites they are considering using. They vary significantly. If terms of service violation occurred, then there is a possible tortious interference with business expectancy claim.

#### I. Ediscovery Issues

Although beyond the scope of this discussion, many e-discovery issues can arise related to Social Networking Sites.

### **Identifying and Reducing Risks through the Development of Your Social Media Policy**

As you've already heard, social media or networking sites can provide benefits to corporate environments, but they also present some concerns:

- Employee venting about the company
- Employee protection of company from bashing by others
- Employees spending too much time networking and not working
- Defamation of the company, customers or others
- Dissemination of misinformation
- Sharing trade or other company secrets
- Disclosure of confidential or private information
- Unofficial background checks
- More

### **What is a Social Media Policy?**

In its simplest terms, a social media policy is your company's principles and guidelines for communicating online to the outside world.

### **Why your company needs one**

Regardless of what your company does, people are talking about it – good, bad or indifferent. Social media is becoming a mainstay in communications. You can use this to your advantage by acknowledging its use by your employees and customers, and manage the risks by making it clear to your employees where the lines are drawn between their professional use and personal use of the medium.

### **What should be included in Social Media/Networking Policy?**

- Determination of corporate position
- Identification of who's responsible and for what?
- Definition of social media (scope)
- Clarification of content ownership
- Privacy Respect privacy
- Determination of who manages and participates

- Ground rules of use on company time
- Identification of topics that are off limits
- Monitoring and enforcement
- Training
- Other relevant provisions

### **How to go about drafting your policy - Policy Development Process**

- Define the issue or problem
  - Do you need a written policy?
  - What is the purpose of the policy?
    - Will you encourage social media usage or merely tolerate it?
    - Clarify corporate usage v. personal usage
  - Who will be impacted by the policy?
  - Identify concerns to be addressed by policy
- Identify and form stakeholder group
  - Managers
  - Staff
  - IT
  - Legal
  - Others?
- Conduct research and gather information
  - Brainstorm
  - Sample policy language
  - Current usage
    - Identify employees who have accounts
    - Identify networks they are using
    - Identify how they are using them and how that usage might benefit your company or where risks are

- Current (and related) policies, if any
  - Employee ethics
  - Communications
  - IT: server, computer, email
  - Privacy
  - Confidentiality
- Relevant law
- Debate and discuss potential policy content
  - Does the policy adequately cover subject?
  - Is the policy good practice (business, personnel, etc.)?
  - Is the policy reasonable? Practical?
  - Is the policy enforceable? Can it be administered?
  - Is the policy consistent with other policies?
- Draft the policy after deciding on content
- Review and Analyze
- Revise
- Review and Analyze, if necessary
- Revise, if necessary
- Adopt
  - Through appropriate internal channels and procedures
- Distribute and Communicate
  - To all relevant personnel
  - Provide training as necessary
    - Ensure appropriate knowledge and skills obtained by those affected by, implementing and enforcing the policy
- Oversee Implementation
  - Make sure policy accomplishes the goal for which it was intended
- Evaluate and Modify

- Where policy falls short in either implementation or enforcement be prepared to modify where necessary

TEMPLATE AND SAMPLE (IBM & INTEL) POLICIES ATTACHED

**FIRST DRAFT POLICY TEMPLATE by JAMES WONG (law.com June 16, 2009)**

So bearing all the risks and repercussions in mind, here is a proposed draft policy based upon a review of current best practices.

1. *THIS COMPANY BELIEVES THAT SOCIAL NETWORKING IS AN IMPORTANT FORM OF COMMUNICATING.*
  - a. The policy should begin with a discussion of the company's orientation towards social networking. Describe the company's communication goals and benefits that may be derived from social networking. Include, if relevant, internal departments that benefit from social media and any initiatives that may be in place to improve communications. (Twittering or texting, for example, may be an inexpensive and reliable way to communicate widely in case of a companywide crisis.) Then itemize a non-exclusive list of risks that are posed by uncontrolled postings into social networking.
  
2. *COMPANY EMPLOYEES SHOULD COMPLY WITH ALL EXISTING COMPANY POLICIES.*
  - a. Make a list of existing company policies. Emphasize that social media should not be used as a means to run around existing policies. Use examples such as teams setting up collaboration sites outside of company authorized applications, or banning HR from using Facebook to screen job applicants.
  - b. The Employee Code of Ethics should be referenced and attached to the policy
  
3. *USE PERSONAL EMAIL ADDRESSES ONLY ON SOCIAL NETWORKING SITES.*
  - a. Company email addresses should be used only for company related communications---much as a company letterhead in the ink-and-paper days.
  - b. Also, company emails are subject to different retention policies. Does an employee really want their personal blogs subject to a litigation hold?
  
4. *DO NOT USE THE COMPANY LOGO OR TRADEMARK WITHOUT WRITTEN CONSENT*
  
5. *WRITE IN THE FIRST PERSON AND USE A DISCLAIMER*



- a. Distinguish between personal opinions and those that represent the company's official position.
- b. Use a disclaimer reviewed by the company. The disclaimer should clearly state that the opinion is that of the author and does not represent the view of the company.

6. *WHERE APPROPRIATE, DISCLOSE ASSOCIATIONS WITH THE COMPANY*

- a. When discussing company activities, should disclose connection to company and role within company
- b. Postings should not attempt to conceal conflicts of interest
- c. If posting is going to be negative about the company, consider distancing yourself from the company first
- d. Use good judgement and strive for accuracy in communication
  - i. Errors and omissions reflect poorly on the company and may expose the company to liability

7. *RESPECT OUR STAKEHOLDERS*

- a. Do not disrespect our competitors, customers, vendors, business partners, and other stakeholders in the company
- b. Do not reference, cite, or post images of our stakeholders without their express written consent

8. *RESPECT INTELLECTUAL PROPERTY RIGHTS*

- a. Where appropriate, reference and cite sources
- b. Do not upload materials without permission
- c. All postings should comply with the company's applicable confidentiality, privacy, and disclosure policies

From: [www.cio.com](http://www.cio.com)

## Twitter Tips: How to Write a Twitter Policy for Your Employees

– C.G. Lynch, CIO

**August 05, 2009**

As Twitter's popularity grows, it has forced many organizations to set guidelines for what types of information their employees can share on the service. But in trying to construct a policy, many companies grapple with how to balance the transparency social networking tools enable with the need to safeguard company information.

Twitter, like most social networks, [blurs the line between workers' personal and professional lives](#). On one hand, a Twitter account could reflect someone's life with family and friends. On the other hand, it could communicate experiences at work — or, more likely, it conveys a bit of both. Some people try to manage multiple accounts, but few have the time. Plus, if people change companies, multiple accounts are bad for continuity and maintaining followers.

Consequently, employees in this middleground on Twitter are uneasy. They want to be genuine and uninhabited in their tweets, but they don't want to post something that will harm their company or, worse, get themselves fired. While some people say the information they decide to share should be a matter of commonsense — Twitter, after all, isn't the first communications technology to come along — employees need guidance. For its part, Twitter *is* different than past technologies.

"Some people make the argument: If companies aren't screening phone conversations, why would they worry about Twitter so much?" says Caroline Dangson ([@carolinedangson](#)), a social media analyst at IDC. "But Twitter is so open. What you say can spread virally. It's searchable and stays online. It's different than live conversation on the phone."

After contacting analysts and examining the Twitter use policies that some companies have created, we found some common guidelines that can help. As you'll learn, in the spirit of social media, they should be constructed with input from the bottom-up. You should also expect some hiccups along the way.

### 1. Update Your Surely Outdated Code of Business Conduct

Your business code of conduct for employees — whether on your company intranet or deteriorating inside a filing cabinet — should be reviewed before setting a Twitter policy. The Twitter policy will become an addendum to it, and eventually, it should be woven into it entirely. In many cases, companies find that the rules in place for information sharing will be severely outdated due to the nature of the Twitter medium, says Jeremiah Owyang ([@jowyang](#)), a senior Forrester analyst who writes a [blog on Web Strategy](#).

"Social media moves much faster than a set of corporate rules," he says. "In many cases, you'll need to update them, and it's important to encourage your company to do it right away to help prevent mistakes [by employees on Twitter]."

The code of conduct can help cover the basics around disclosure, which includes what information should never be shared with anyone, whether the mouthpiece for doing so is phone, e-mail, Twitter or any other form of communications, says IDC's Dangson. This includes the obvious examples, like certain financial data, copyrights and other forms of proprietary information that aren't public. Employees also shouldn't tweet information the company shares with a partner or customer without gaining their permission to do so, Dangson adds.

When the time comes to announce that you have worked up a policy for Twitter, you will want to conveniently link to this overall code of conduct for context. You also should add Twitter to the list of ways in which it's possible to expose information.

## **2. Identify Twitter Accounts**

You should then identify who has a Twitter account within your company. Owyang recently described [a variety of Twitter profile types](#) on his blog.

In general, there are two main types of accounts as it concerns a business — company-sponsored Twitter accounts and individual Twitter accounts operated by the people who work there. The former most likely reside in your marketing, customer service or communications departments.

These company Twitter handles generally focus on helping customers and reaching out to the public. Some companies, such as Dell, [have a page on their website](#) displaying their company accounts. Company accounts can be operated by one person, or a team. Frank Eliason, a customer service manager at Comcast, runs the [@comcastcares](#) account on Twitter, for instance.

But it's employees' personal accounts, which they own and manage, that will be harder to identify. For privacy reasons, some people might not want to tell their employer they have a Twitter account at all. According to analysts, that's fine — provided they don't say anywhere in the profile or in their tweets that they work for you (or drop the suggestion of it).

But as soon as they identify themselves as being a part of your company, then they need to be aware that, conscious or not, they in some way represent the business. The things they say about their company will become part of the public discourse, and they will have to follow guidelines.

## **3. Encourage a Disclaimer**

One answer to this representing-the-company dilemma: For any employee who isn't an executive, or designated spokesperson for the company, a Twitter policy should encourage that he puts a disclaimer on his profile. Something simple can go a long way: "I'm a writer for CIO.com, but the opinions tweeted here don't reflect those of my employer."

"It allows people to speak freely, while at the same time feeling like they are protecting their company," Owyang says.

## **4. Work Together on Guidelines**

Since social media tends to be a bottom-up phenomenon, it doesn't make sense to construct guidelines that don't solicit employee input, says Dangson. On the employer side, there must be the realization that companies will be sharing more information with the public as a result of these tools. On the employee side, people must recognize that some information will always

remain off-limits for sharing, and that in many ways, they are speaking for the company on a variety of matters.

### 5. Cases in Point: Social Media Guidelines from IBM, Intel

As you might guess, technology companies have led the way in crafting social media policies. IBM was one of the earliest companies to adopt a set of guidelines around social media. Big Blue used a wiki to compile input from their employees to construct its policy. [IBM's social media guidelines](#), posted online, have a few elements that might help companies looking to craft their own Twitter policies:

- 1. Respect copyright and financial disclosure as laid out in the code of conduct.
- 2. Speak in the first person to help identify that you speak for yourself, and not the company.
- 3. Respect your audience by writing in thoughtful language (avoiding insults, slurs or obscenity).
- 4. Don't pick fights, and be the first to admit and correct a mistake.

Intel also has some interesting thoughts in [its social media policy](#). Some of these include:

- 1. Write what you know by sticking to your expertise.
- 2. You're responsible for everything you write.
- 3. If it gives you pause, pause. (Especially important on an instant publishing medium like Twitter)

### Concluding Advice

Your company's Twitter policy will vary depending on your industry, taking into account, for instance, how secretive your corporate culture is and the regulations you must follow. Companies should work with their employees to figure out what's fair and, more importantly, realistic. When employees make Twitter mistakes (and they will), employers should try to handle the matter constructively by talking about what a more appropriate tweet would have been, and why it bent the policy in place.

While it's well and good to say employees are "responsible" for everything they tweet, your people should feel that the company stands behind them when they contribute intelligent and thoughtful material.

*[C.G. Lynch](#) covers consumer web and social technologies for [CIO.com](#). He writes frequently on [Twitter](#), [Facebook](#) and [Google](#). You can follow him on [Twitter](#): [@cglynch](#).*

© 2008 CXO Media Inc.

## IBM Social Computing Guidelines

*Blogs, wikis, social networks, virtual worlds and social media*

In the spring of 2005, IBMers used a wiki to create a set of guidelines for all IBMers who wanted to blog. These guidelines aimed to provide helpful, practical advice—and also to protect both IBM bloggers and IBM itself, as the company sought to embrace the blogosphere. Since then, many new forms of social media have emerged. So we turned to IBMers again to re-examine our guidelines and determine what needed to be modified. The effort has broadened the scope of the existing guidelines to include all forms of social computing.

Below are the current and official "IBM Social Computing Guidelines," which continue to evolve as new technologies and social networking tools become available.

### Introduction

#### **Responsible engagement in innovation and dialogue**

Whether or not an IBMer chooses to create or participate in a blog, wiki, online social network or any other form of online publishing or discussion is his or her own decision. However, emerging online collaboration platforms are fundamentally changing the way IBMers work and engage with each other, clients and partners.

IBM is increasingly exploring how online discourse through social computing can empower IBMers as global professionals, innovators and citizens. These individual interactions represent a new model: not mass communications, but masses of communicators.

Therefore, it is very much in IBM's interest—and, we believe, in each IBMer's own—to be aware of and participate in this sphere of information, interaction and idea exchange:

**To learn:** As an innovation-based company, we believe in the importance of open exchange and learning—between IBM and its clients, and among the many constituents of our emerging business and societal ecosystem. The rapidly growing phenomenon of user-generated web content—blogging, social web-applications and networking—are emerging important arenas for that kind of engagement and learning.

**To contribute:** IBM—as a business, as an innovator and as a corporate citizen—makes important contributions to the world, to the future of business and technology, and to public dialogue on a broad range of societal issues. As our business activities increasingly focus on the provision of transformational insight and high-value innovation - whether to business clients or those in the public, educational or health sectors—it becomes increasingly important for IBM and IBMers to share with the world the exciting things we're learning and doing, and to learn from others.

In 1997, IBM recommended that its employees get out onto the Internet—at a time when many companies were seeking to restrict their employees' Internet access. In 2005, the company made a strategic decision to embrace the blogosphere and to encourage IBMers to participate. We continue to advocate IBMers' responsible involvement today in this rapidly growing space of relationship, learning and collaboration.

### IBM Social Computing Guidelines: Executive Summary

1. Know and follow IBM's [Business Conduct Guidelines](#).
2. IBMers are personally responsible for the content they publish on blogs, wikis or any other form of user-generated media. Be mindful that what you publish will be public for a long time—protect your privacy.
3. Identify yourself—name and, when relevant, role at IBM—when you discuss IBM or IBM-related matters. And write in the first person. You must make it clear that you are speaking for yourself and not on behalf of IBM.
4. If you publish content to any website outside of IBM and it has something to do with work you do or subjects associated with IBM, use a disclaimer such as this: "The postings on this site are my own and don't necessarily represent IBM's positions, strategies or opinions."
5. Respect copyright, fair use and financial disclosure laws.
6. Don't provide IBM's or another's confidential or other proprietary information. Ask permission to publish or report on conversations that are meant to be private or internal to IBM.
7. Don't cite or reference clients, partners or suppliers without their approval. When you do make a reference, where possible link back to the source.
8. Respect your audience. Don't use ethnic slurs, personal insults, obscenity, or engage in any conduct that would not be acceptable in IBM's workplace. You should also show proper consideration for others' privacy and for topics that may be considered objectionable or inflammatory—such as politics and religion.
9. Find out who else is blogging or publishing on the topic, and cite them.
10. Be aware of your association with IBM in online social networks. If you identify yourself as an IBMer, ensure your profile and related content is consistent with how you wish to present yourself with colleagues and clients.
11. Don't pick fights, be the first to correct your own mistakes, and don't alter previous posts without indicating that you have done so.
12. Try to add value. Provide worthwhile information and perspective. IBM's brand is best represented by its people and what you publish may reflect on IBM's brand.

### **IBM Social Computing Guidelines: Detailed Discussion**

#### **The IBM Business Conduct Guidelines and laws provide the foundation for IBM's policies and guidelines for blogs and social computing.**

The same principles and guidelines that apply to IBMers' activities in general, as found in the IBM Business Conduct Guidelines, apply to IBMers' activities online. This includes forms of online publishing and discussion, including blogs, wikis, file-sharing, user-generated video and audio, [virtual worlds](#)\* and social networks.

As outlined in the Business Conduct Guidelines, IBM fully respects the legal rights of our employees in all countries in which we operate. In general, what you do on your own time is your affair. However, activities in or outside of work that affect your IBM job performance, the performance of others, or IBM's business interests are a proper focus for company policy.

**IBM supports open dialogue and the exchange of ideas.**

IBM regards blogs and other forms of online discourse as primarily a form of communication and relationship among individuals. When the company wishes to communicate publicly as a company—whether to the marketplace or to the general public—it has well established means to do so. Only those officially designated by IBM have the authorization to speak on behalf of the company.

However, IBM believes in dialogue among IBMers and with our partners, clients, members of the many communities in which we participate and the general public. Such dialogue is inherent in our business model of innovation, and in our commitment to the development of open standards. We believe that IBMers can both derive and provide important benefits from exchanges of perspective.

One of IBMers' core values is "trust and personal responsibility in all relationships." As a company, IBM trusts—and expects—IBMers to exercise personal responsibility whenever they participate in social media. This includes not violating the trust of those with whom they are engaging. IBMers should not use these media for covert marketing or public relations. If and when members of IBM's Communications, Marketing, Sales or other functions engaged in advocacy for the company have the authorization to participate in social media, they should identify themselves as such.

What does an IBMer's personal responsibility mean in online social media activities? Online social media enables individuals to share their insights, express their opinions and share information within the context of a globally distributed conversation. Each tool and medium has proper and improper uses. While IBM encourages all of its employees to join a global conversation, it is important for IBMers who choose to do so to understand what is recommended, expected and required when they discuss IBM-related topics, whether at work or on their own time.

**Know the IBM Business Conduct Guidelines.** If you have any confusion about whether you ought to publish something online, chances are the BCGs will resolve it. Pay particular attention to what the BCGs have to say about proprietary information, about avoiding misrepresentation and about competing in the field. If, after checking the BCG's, you are still unclear as to the propriety of a post, it is best to refrain and seek the advice of management.

**Be who you are.** Some bloggers work anonymously, using pseudonyms or false screen names. IBM discourages that in blogs, wikis or other forms of online participation that relate to IBM, our business or issues with which the company is engaged. We believe in transparency and honesty. If you are blogging about your work for IBM, we encourage you to use your real name, be clear who you are, and identify that you work for IBM. Nothing gains you more notice in the online social media environment than honesty—or dishonesty. If you have a vested interest in something you are discussing, be the first to point it out. But also be smart about protecting

yourself and your privacy. What you publish will be around for a long time, so consider the content carefully and also be judicious in disclosing personal details.

**Be thoughtful about how you present yourself in online social networks.** The lines between public and private, personal and professional are blurred in online social networks. By virtue of identifying yourself as an IBMer within a social network, you are now connected to your colleagues, managers and even IBM's clients. You should ensure that content associated with you is consistent with your work at IBM. If you have joined IBM recently, be sure to update your social profiles to reflect IBM's guidelines.

**Speak in the first person.** Use your own voice; bring your own personality to the forefront; say what is on your mind.

**Use a disclaimer.** Whether you publish to a blog or some other form of social media, make it clear that what you say there is representative of your views and opinions and not necessarily the views and opinions of IBM. At a minimum in your own blog, you should include the following standard disclaimer: "The postings on this site are my own and don't necessarily represent IBM's positions, strategies or opinions."

**Managers and executives take note:** This standard disclaimer does not by itself exempt IBM managers and executives from a special responsibility when blogging. By virtue of their position, they must consider whether personal thoughts they publish may be misunderstood as expressing IBM positions. And a manager should assume that his or her team will read what is written. A public blog is not the place to communicate IBM policies to IBM employees.

**Respect copyright and fair use laws.** For IBM's protection and well as your own, it is critical that you show proper respect for the laws governing copyright and fair use of copyrighted material owned by others, including IBM's own copyrights and brands. You should never quote more than short excerpts of someone else's work. And it is good general blogging practice to link to others' work. Keep in mind that laws will be different depending on where you live and work.

**Protecting confidential and proprietary information.** Social computing blurs many of the traditional boundaries between internal and external communications. Be thoughtful about what you publish—particularly on external platforms. You must make sure you do not disclose or use IBM confidential or proprietary information or that of any other person or company in any online social computing platform. For example, ask permission before posting someone's picture in a social network or publishing in a blog a conversation that was meant to be private.

**IBM's business performance.** You must not comment on confidential IBM financial information such as IBM's future business performance, business plans, or prospects anywhere in world. This includes statements about an upcoming quarter or future periods or information about alliances, and applies to anyone including conversations with Wall Street analysts, press or other third parties (including friends). IBM policy is not to comment on rumors in any way. You should merely say, "no comment" to rumors. Do not deny or affirm them—or suggest either denial or affirmation in subtle ways.

**Protect IBM's clients, business partners and suppliers.** Clients, partners or suppliers should not be cited or obviously referenced without their approval. Externally, never identify a client, partner or supplier by name without permission and never discuss confidential details of a client



engagement. Internal social computing platforms permit suppliers and business partners to participate so be sensitive to who will see your content. If a client hasn't given explicit permission for their name to be used, think carefully about the content you're going to publish on any internal social media and get the appropriate permission where necessary.

It is acceptable to discuss general details about kinds of projects and to use non-identifying pseudonyms for a client (e.g., Client 123) so long as the information provided does not make it easy for someone to identify the client or violate any non-disclosure or intellectual property agreements that may be in place with the client. Furthermore, your blog or online social network is not the place to conduct confidential business with a client.

**Respect your audience and your coworkers.** Remember that IBM is a global organization whose employees and clients reflect a diverse set of customs, values and points of view. Don't be afraid to be yourself, but do so respectfully. This includes not only the obvious (no ethnic slurs, personal insults, obscenity, etc.) but also proper consideration of privacy and of topics that may be considered objectionable or inflammatory—such as politics and religion. For example, if your blog is hosted on an IBM-owned property, avoid these topics and focus on subjects that are business-related. If your blog is self-hosted, use your best judgment and be sure to make it clear that the views and opinions expressed are yours alone and do not represent the official views of IBM. Further, blogs, wikis, virtual worlds, social networks, or other tools hosted outside of IBM's protected Intranet environment should not be used for internal communications among fellow employees. It is fine for IBMers to disagree, but please don't use your external blog or other online social media to air your differences in an inappropriate manner.

**Add value.** IBM's brand is best represented by its people and everything you publish reflects upon it. Blogs and social networks that are hosted on IBM-owned domains should be used in a way that adds value to IBM's business. If it helps you, your coworkers, our clients or our partners to do their jobs and solve problems; if it helps to improve knowledge or skills; if it contributes directly or indirectly to the improvement of IBM's products, processes and policies; if it builds a sense of community; or if it helps to promote IBM's Values, then it is adding value. Though not directly business-related, background information you choose to share about yourself, such as information about your family or personal interests, may be useful in helping establish a relationship between you and your readers, but it is entirely your choice whether to share this information.

**Don't pick fights.** When you see misrepresentations made about IBM by media, analysts or by other bloggers, you may certainly use your blog—or join someone else's—to point that out. Always do so with respect, stick to the facts and identify your appropriate affiliation to IBM. Also, if you speak about a competitor, you must make sure that what you say is factual and that it does not disparage the competitor. Avoid unnecessary or unproductive arguments. Brawls may earn traffic, but nobody wins in the end. Don't try to settle scores or goad competitors or others into inflammatory debates. Here and in other areas of public discussion, make sure that what you are saying is factually correct.

**Be the first to respond to your own mistakes.** If you make an error, be up front about your mistake and correct it quickly. In a blog, if you choose to modify an earlier post, make it clear that you have done so.

**Use your best judgment.** Remember that there are always consequences to what you publish. If you're about to publish something that makes you even the slightest bit uncomfortable, review the suggestions above and think about why that is. If you're still unsure, and it is related to IBM business, feel free to discuss it with your manager. Ultimately, however, you have sole responsibility for what you post to your blog or publish in any form of online social media.

**Don't forget your day job.** You should make sure that your online activities do not interfere with your job or commitments to customers.

\*Virtual worlds present a number of unique circumstances, not all of which are covered in these guidelines. Please refer to the companion, "[Virtual worlds Guidelines](#)" for additional guidelines around identity, behavior, appearance and intellectual property.

### **Intel Social Media Guidelines**

These are the official guidelines for social media at Intel. If you're an Intel employee or contractor creating or contributing to blogs, wikis, social networks, virtual worlds, or any other kind of social media both on and off intel.com—these guidelines are for you. We expect all who participate in social media on behalf of Intel to be trained, to understand and to follow these guidelines. Failure to do so could put your future participation at risk. These guidelines will continually evolve as new technologies and social networking tools emerge—so check back once in awhile to make sure you're up to date.

#### ***When You Engage***

Emerging platforms for online collaboration are fundamentally changing the way we work, offering new ways to engage with customers, colleagues, and the world at large. It's a new model for interaction and we believe social computing can help you to build stronger, more successful business relationships. And it's a way for you to take part in global conversations related to the work we are doing at Intel and the things we care about.

If you participate in social media, please follow these guiding principles:

- Stick to your area of expertise and provide unique, individual perspectives on what's going on at Intel and in the world.
- Post meaningful, respectful comments—in other words, no spam and no remarks that are off-topic or offensive.
- Always pause and think before posting. That said, reply to comments in a timely manner, when a response is appropriate.
- Respect proprietary information and content, and confidentiality.
- When disagreeing with others' opinions, keep it appropriate and polite.
- Know and follow the [Intel Code of Conduct](#) and the [Intel Privacy Policy](#)

#### ***Rules of Engagement***

**Be transparent.** Your honesty—or dishonesty—will be quickly noticed in the social media environment. If you are blogging about your work at Intel, use your real name, identify that you work for Intel, and be clear about your role. If you have a vested interest in something you are discussing, be the first to point it out.

**Be judicious.** Make sure your efforts to be transparent don't violate Intel's privacy, confidentiality, and legal guidelines for external commercial speech. Ask permission to publish or report on conversations that are meant to be private or internal to Intel. All statements must be true and not misleading and all claims must be substantiated and approved. Product benchmarks must be approved for external posting by the appropriate product benchmarking team. Please never comment on anything related to legal matters, litigation, or any parties we are in litigation with without the appropriate approval. If you want to write about the competition, make sure you know what you are talking about and that you have the appropriate permission. Also be smart about protecting yourself, your privacy, and Intel Confidential information. What you publish is widely accessible and will be around for a long time, so consider the content carefully.

**Write what you know.** Make sure you write and post about your areas of expertise, especially as related to Intel and our technology. If you are writing about a topic that Intel is involved with but you are not the Intel expert on the topic, you should make this clear to your readers. And write in the first person. If you publish to a website outside Intel, please use a disclaimer something like this: "The postings on this site are my own and don't necessarily represent Intel's positions, strategies, or opinions." Also, please respect brand, trademark, copyright, fair use, trade secrets (including our processes and methodologies), confidentiality, and financial disclosure laws. If you have any questions about these, see your Intel legal representative. Remember, you may be personally responsible for your content.

**Perception is reality.** In online social networks, the lines between public and private, personal and professional are blurred. Just by identifying yourself as an Intel employee, you are creating perceptions about your expertise and about Intel by our shareholders, customers, and the general public—and perceptions about you by your colleagues and managers. Do us all proud. Be sure that all content associated with you is consistent with your work and with Intel's values and professional standards.

**It's a conversation.** Talk to your readers like you would talk to real people in professional situations. In other words, avoid overly pedantic or "composed" language. Don't be afraid to bring in your own personality and say what's on your mind. Consider content that's open-ended and invites response. Encourage comments. You can also broaden the conversation by citing others who are blogging about the same topic and allowing your content to be shared or syndicated.

**Are you adding value?** There are millions of words out there. The best way to get yours read is to write things that people will value. Social communication from Intel should help our customers, partners, and co-workers. It should be thought-provoking and build a sense of community. If it helps people improve knowledge or skills, build their businesses, do their jobs, solve problems, or understand Intel better—then it's adding value.

**Your Responsibility:** What you write is ultimately your responsibility. Participation in social computing on behalf of Intel is not a right but an opportunity, so please treat it seriously and with

respect. If you want to participate on behalf of Intel, take the Digital IQ training and contact the [Social Media Center of Excellence](#). Please know and follow the [Intel Code of Conduct](#). Failure to abide by these guidelines and the Intel Code of Conduct could put your participation at risk. Contact [social.media@intel.com](mailto:social.media@intel.com) for more information. Please also follow the terms and conditions for any third-party sites.

**Create some excitement.** As a business and as a corporate citizen, Intel is making important contributions to the world, to the future of technology, and to public dialogue on a broad range of issues. Our business activities are increasingly focused on high-value innovation. Let's share with the world the exciting things we're learning and doing—and open up the channels to learn from others.

**Be a Leader.** There can be a fine line between healthy debate and incendiary reaction. Do not denigrate our competitors or Intel. Nor do you need to respond to every criticism or barb. Try to frame what you write to invite differing points of view without inflaming others. Some topics—like politics or religion—slide more easily into sensitive territory. So be careful and considerate. Once the words are out there, you can't really get them back. And once an inflammatory discussion gets going, it's hard to stop.

**Did you screw up?** If you make a mistake, admit it. Be upfront and be quick with your correction. If you're posting to a blog, you may choose to modify an earlier post—just make it clear that you have done so.

**If it gives you pause, pause.** If you're about to publish something that makes you even the slightest bit uncomfortable, don't shrug it off and hit 'send.' Take a minute to review these guidelines and try to figure out what's bothering you, then fix it. If you're still unsure, you might want to discuss it with your manager or legal representative. Ultimately, what you publish is yours—as is the responsibility. So be sure.

### *Moderation Guidelines*

Moderation is the act of reviewing and approving content before it's published on the site. Intel does not endorse or take responsibility for content posted by third parties. It is preferred that all content be posted by registered users of a site in accordance with accepted terms and conditions and a code of conduct.

**Intel Content:** We do not moderate content we publish. This means we allow our blog authors to post directly without approval, as long as they have taken the required trainings.

**Anonymous Content:** Anonymous content is defined as content submitted as a comment, reply, or post to an Intel site where the user has not registered and is not logged in to the site. For anonymous content, we require moderation on all submissions. Authors of the originating content and space moderators are required to review the content for approval or deletion before the content can be published.

**Registered Content:** Registered content is content submitted as a comment, reply, or post to an Intel site where the user has registered and is logged in to the site. We do not require moderation of registered content before the content is published to the site. Registered content is directly published and content is moderated post-publishing.

Intel strives for a balanced online dialogue. When we do moderate content, we moderate using three guiding principles.

**The Good, the Bad, but not the Ugly.** If the content is positive or negative and in context to the conversation, then we approve the content, regardless of whether it's favorable or unfavorable to Intel. However if the content is ugly, offensive, denigrating and completely out of context, then we reject the content.

**Last updated:** May 2009

## ACC Extras

Supplemental resources available on [www.acc.com](http://www.acc.com)

Social Media and Social Networking Policies and Procedures  
Sample Form & Policy. June 2007

<http://www.acc.com/legalresources/resource.cfm?show=488070>

Online Social Networking and Your Career: Are You Staying Ahead of the  
Game?

ACC Docket. August 2008

<http://www.acc.com/legalresources/resource.cfm?show=16821>

Blogging Policy

Sample Form & Policy. May 2009

<http://www.acc.com/legalresources/resource.cfm?show=244267>

Please note, these additional resources are provided by the Association of Corporate  
Counsel and not by the faculty of this session.