
 BARRISTERS SOLICITORS TRADEMARK AGENTS	<b>Carters/Fasken                  Healthcare Philanthropy                  Checkup 2018                  Toronto - June 8, 2018</b>
<h2>Legal Issues in Fundraising on                  Social Media</h2> <p><b>By Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent</b>  <a href="mailto:tcarter@carters.ca">tcarter@carters.ca</a>                  1-877-942-0001</p> <p>© 2018 Carters Professional Corporation</p>	
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2	
<h3 style="color: #4F81BD;">A. INTRODUCTION</h3> <ul style="list-style-type: none"> <li>• Given the increasing use of social media by charities, this presentation identifies some of the legal risks that can arise with fundraising on social media, as well as the corresponding policies to manage those risks</li> <li>• The topics that will be covered are:                     <ul style="list-style-type: none"> <li>– What does fundraising on social media look like?</li> <li>– What are the legal issues and risks when fundraising on social media?</li> <li>– What can be done to manage the legal risks?</li> </ul> </li> </ul>	
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3

## B. WHAT DOES FUNDRAISING ON SOCIAL MEDIA LOOK LIKE?

### 1. Setting the Stage

- As the Internet is constantly evolving, fundraising on social media is in a continuing state of flux
- Social media builds on and encompasses the full breadth of online communication, and is becoming the key element of different methods for fundraising online
- Charities typically encourage supporters on social media to:
  - visit the charity’s own donation website or crowdfunding site to make donations; and
  - share information about the campaign on social media with their friends and families, who would potentially become supporters themselves

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4

## 2. Methods for Reaching Donors Online


### a) Charity websites and e-mail

- Most charities have their own website and use e-mail to reach out to donors

**WEB & EMAIL COMMUNICATIONS AT-A-GLANCE**


**92%**

OF NGOs WORLDWIDE HAVE A WEBSITE




**38%**

REGULARLY PUBLISH A BLOG ON THEIR WEBSITE\*



**87%**

HAVE A MOBILE-COMPATIBLE WEBSITE & BLOG





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**63%**

REGULARLY SEND EMAIL UPDATES & FUNDRAISING APPEALS TO SUPPORTERS & DONORS

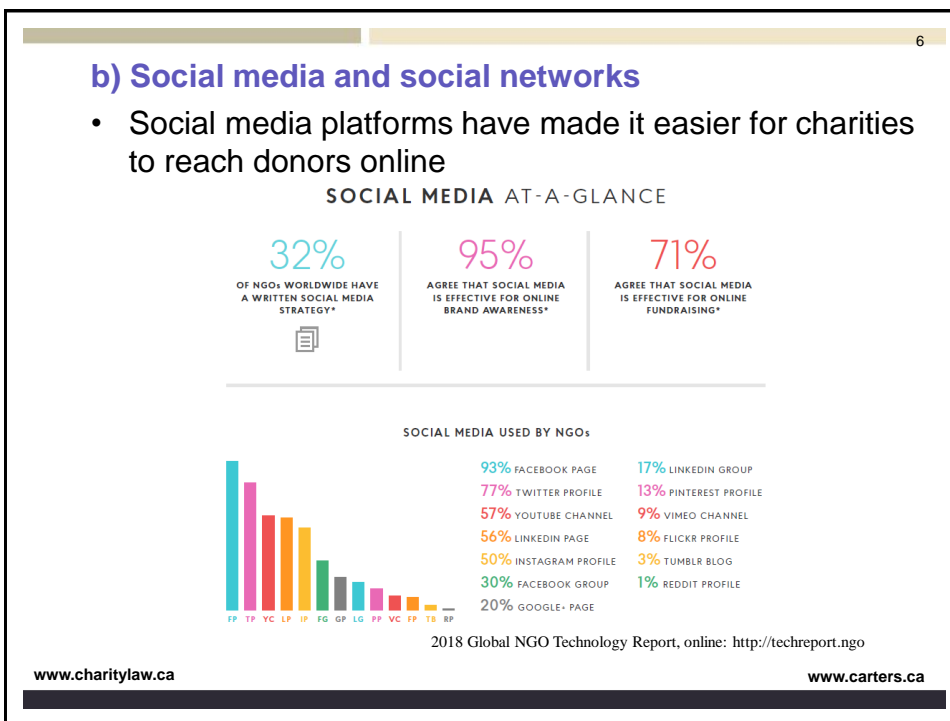
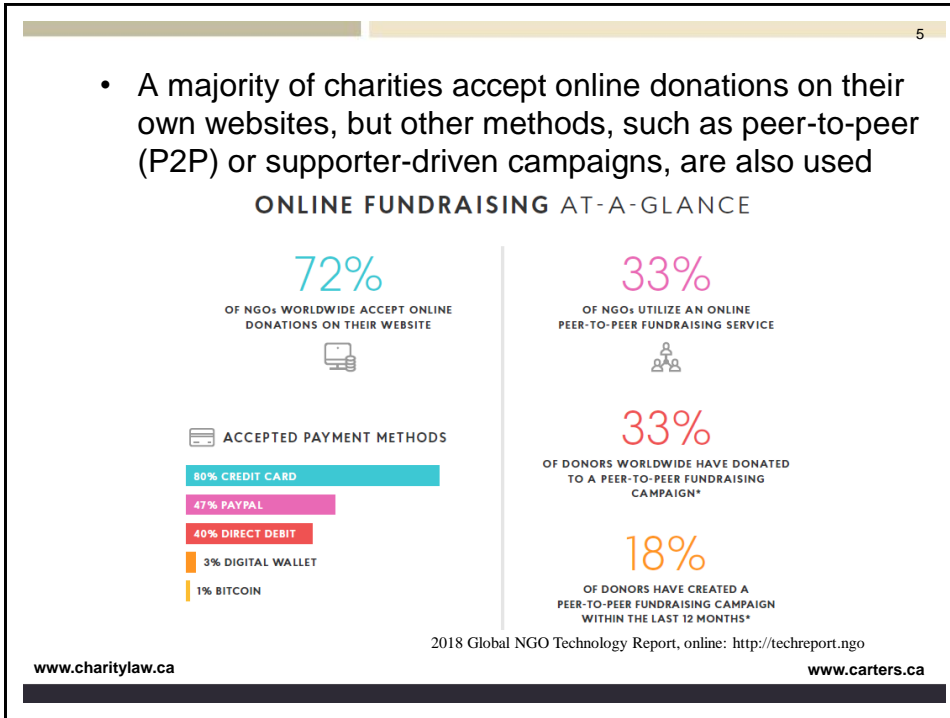
HOW NGOs SEND EMAIL UPDATES & FUNDRAISING APPEALS

- 63% EMAIL MARKETING SERVICE
- 15% THROUGH OUR CRM
- 8% USING BCC
- 9% OTHER
- 5% DON'T KNOW

2018 Global NGO Technology Report, online: <http://techreport.ngo>

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### 3. Examples of Fundraising on Social Media

#### a) Crowdfunding

- Crowdfunding involves fundraising by appealing to a “crowd” (broad group or network) of small donors, using the Internet and social media
- Crowdfunding is more commonly used for specific projects with a time-limited campaign strategy
- Crowdfunding generally involves three elements: the campaigner, the crowd, and the platform
- Crowdfunding platforms establish their own terms and the charity’s only option is to either accept those terms or not, with no bargaining power
- There are a variety of types of crowdfunding, but charities typically use donation-based or reward-based crowdfunding

#### b) Peer-to-Peer (P2P) Fundraising

- P2P fundraising involves empowering supporters of a charity to reach out to their friends, family and co-workers on social media to endorse a charity or a campaign of a charity as a cause they believe in and to ask their personal network to donate, often including photos and videos of themselves
- The request for support could be for a campaign run by the charity, such as “The Ride to Conquer Cancer”, or it can be for the supporter’s own campaign, e.g. a Do-It-Yourself (D.I.Y.) campaign
- With a DIY campaign, the supporter takes responsibility for the fundraising event, such as a “walk a-thon” or a “bike a-thon”

## c) Third-party Fundraiser Campaigns

- Similar to a DIY that is done as a P2P platform, third-party fundraising campaigns are also undertaken by third-parties as opposed to the charity itself, but has a larger outreach beyond simply friends, relatives and co-workers
- Third-party fundraising events are generally carried out utilizing some type of crowdfunding platform
- Responsibility for the third-party fundraising campaign lies with the third-party as opposed to the charity, and is generally carried out under a third-party fundraising agreement or licence agreement, but not necessarily
- The charity may have little control over the third-party fundraising event

## d) Text to Give

- Because mobile devices are becoming the preferred method of navigating the Internet, some social media crowdfunding campaigns also include “text to give”
  - A social media campaign encourages followers to use their mobile devices to send a paid text message as a donation to the charity, less a service fee to the provider

## e) Online Auctions

- These online auctions do not collect small donations from the “crowd”, but rely on the “crowd” to bid up the price of their items or events
  - Some examples of these types of platforms are: [www.omaze.com](http://www.omaze.com) and [www.charitybuzz.com](http://www.charitybuzz.com)

## f) Cryptocurrencies and Crypto-philanthropy

- Cryptocurrencies are “virtual currencies” that work as a medium of exchange through cryptographically secured digital records stored on a public, decentralized, distributed digital ledger referred to as a blockchain (said to make the data permanent and tamper-resistant)
- Blockchain technology is also being used to accept donations to charities and trace funds to increase donor confidence
- Ways in which cryptocurrencies are being used:
  - Accepting donations in cryptocurrency
  - Initial Coin Offerings (ICOs), which involves the charity creating its own cryptocurrency (e.g. Clean Water Coin; Pinkcoin)

## C. WHAT ARE THE LEGAL ISSUES TO CONSIDER WHEN FUNDRAISING ON SOCIAL MEDIA?

### 1. Data Sharing Issues

- Social media gives a false sense of security about personal information (e.g. a perception that “it is just me and my online friends”)
- The reality is that whatever is posted on social media will be shared and become permanent and virtually impossible to erase
- Large data sets are often collected without meaningful consent and later monetized
- IP-protected learning algorithms (artificial intelligence or AI) are able to harvest seemingly innocuous data from social media, sometimes without even the programmers knowing about it, to build profiles of individuals

- Social media networks' terms of use and privacy policies govern the use and storage of personal information, intellectual property, jurisdiction and more
  - Facebook's terms of use, entitled "Statement of Rights and Responsibilities", state that:
 

"You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings"
  - However, it also includes some revealing "consents":
 

"You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information, without any compensation to you"

- Similarly, Facebook's Data Policy states:
 

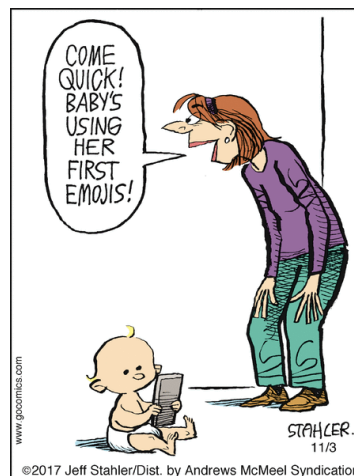
"we collect different kinds of information from or about you [...] including information about the people and groups you are connected to and how you interact with them [...] location [...] payment information [...] device information [...] information about you and your activities on and off Facebook [that we receive] from third-party partners"
- An excerpt from a privacy policy of a Canadian crowdfunding platform about links to third party websites:
 

"This website may offer links to other third party websites. You should be aware that operators of linked websites may also collect your personal information (including information generated through the use of cookies) when you link to their websites... [the platform] is not responsible for how such third parties collect, use or disclose your personal information, so it is important to familiarize yourself with their privacy policies before providing them with your personal information"

- Data sharing invites a number of questions for a charity using social media for fundraising:
  - What are the terms of use that the charity is accepting by using a social media site or an app?
  - Is the charity inappropriately collecting or using aggregate private data from donors, supporters, volunteers or employees?
  - Is the charity fully complying with applicable privacy legislation in encouraging donors, supporters, volunteers, or employees, to share data on social media? (see Privacy Issues below)
  - Could the charity be exposed to liability for unauthorized sharing of data, including possible class action litigation?

## 2. Privacy Issues

- Privacy is a key legal issue that arises with any fundraising campaign, but is particularly relevant in the context of social media
- The rapid pace of the online sharing of information has called into question how social media impacts an individuals' privacy
- The information posted on social media can unintentionally breach applicable privacy law





## a) What is Personal Information?

- “Personal information” is an important concept defined in privacy legislation as “any information about an identifiable individual”
- It does not include anonymous or non-personal information (*i.e.*, information that cannot be associated with a specific individual)
- Examples include: name, address, social insurance or health numbers, donations, and photos or videos of identifiable individuals



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- Information that has been de-identified or stripped of identifiable markers and anonymized data that cannot be linked back to individual records are treated as non-personal information that are not subject to privacy protection
- Risk of re-identification always exists
- Aggregated or group-level information may be personal information depending on the sample size



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## b) PIPEDA and “Substantially Similar” Provincial Legislation

- The *Personal Information Protection and Electronic Documents Act* (PIPEDA) is the main private-sector legislation for protecting privacy in all provinces that have *not* enacted “substantially similar” legislation
- PIPEDA applies to the collection, use or disclosure of personal information in the course of a “commercial activity” - broadly defined as any transaction, act or conduct of a commercial character, and includes the sale, lease or exchange of donor, membership or other fundraising lists
- Guidance documents from the Office of the Privacy Commissioner of Canada (OPC) as well as provincial Privacy Commissioners should also be considered

- Alberta, British Columbia, and Quebec have passed legislation substantially similar to PIPEDA
- Ontario, New Brunswick, Manitoba and Newfoundland have passed substantially similar legislation with respect to personal *health* information (e.g. in Ontario, it is the *Personal Health Information Protection Act* (PHIPA))
- In Ontario, the public-sector *Freedom of Information and Protection of Privacy Act* (FIPPA) governs “institutions” (e.g. universities and hospitals) and their use of non-health personal information
  - Applies to sharing of information between hospitals and associated foundations for fundraising
  - Freedom of information for accounts records

## c) Key Principles from Privacy Legislation and Fair Information Principles

- A charity is responsible for personal information in its custody and under its control
- Policies and practices regarding the management of personal information must be implemented
- An individual must be designated to oversee compliance with applicable legislation (“Privacy Officer”)
- Contracts which provide for the protection of personal information should be in place with any third party, e.g., data processors, partners, affiliates



- Storage outside of Canada involves additional issues
- Books and records requirement for charities

- Purposes for using personal information must be identified and documented at or before the time the information is collected
- Purposes must be those that “a reasonable person would consider appropriate in the circumstances” considering the sensitivity of the information
- The collection of personal information should be limited to that which is necessary for the purposes identified
- Personal information must be protected by appropriate safeguards
- When personal information that has been collected is used for a new purpose, the consent of the individual is required before the information can be used for that new purpose

## e) Donor Information

- Donor information constitutes personal information that must be respected and protected by the charity, especially in the context of fundraising on social media
- Who are donors? In addition to those making donations, they can include members, employees, patients, and even customers where a gift is tied to a purchase
- Donor information may include the donor name, mailing address, email address, phone numbers, birthdate, name of family members, photos, videos, financial information, name of business, place of employment, preferred donation restrictions, or health information
- Personal information on a third-party platform may also be the responsibility of the charity, depending on the terms of the applicable service agreements

- Develop a record retention policy that considers the charity's use of social media in collecting, using and disclosing donor information
  - Donor information forms part of the books and records that charities must keep, subject to applicable statutory retention periods under the *Income Tax Act* (ITA) (e.g., 6 years from the end of the tax year or 2 years from dissolution) and also in accordance with corporate law
- Charities wishing to exchange donor or membership lists with other organizations, whether connected or not, must first obtain express consent from each donor or member
  - If a donor list is obtained from a third party, ensure no computer program was used for scraping websites or generating a list of electronic addresses (address harvesting) in contravention of PIPEDA

## e) Posting Photos/Videos of Children on Social Media

- Images of identifiable individuals, including children, are personal information
- It is standard practice among schools and other entities to request the consent from the child's parent or guardian
- However, no definitive case law yet on whether a waiver signed by a parent is binding on a minor as a matter of public policy, so best to assume that it does not
- Parental consent is still helpful in providing evidence of due diligence
- If a charity does decide to assume the significant risk of photographing/posting images or videos of minors, it must obtain robust consents, including consent to data being stored, accessed or disclosed outside of Canada

## f) Collecting Personal Information from Children on Social Media

- Charities using social media should limit or avoid the online collection of personal information from children,
- Problem of inadvertent collection of personal information - e.g. many children use their real names
- Recommendations from the OPC include:
  - Limit/avoid collection from children
  - Obtain consent from parents of children under 13
  - Make sure default privacy settings are appropriate for the age of users
  - Verify that users are not using their real names as user names
  - Have contractual protections in place with online advertisers to prevent the tracking of users and monitor those online advertisers

## g) General Data Protection Regulation (GDPR)

- New European Union (“EU”) General Data Protection Regulation (“GDPR”) came into effect May 25, 2018
- GDPR will apply to Canadian charities that collect or process personal data of EU residents to offer goods or services (even at no-charge)
- GDPR requires parental consent to collect, use, disclose (“process”) personal information of a child under the age of 16
- Charities will be required to make “reasonable efforts” to verify that consent has been given
- GDPR will also require privacy notices and other information directed at children to be in plain language and easy to understand

- On February 28, 2018 the House of Commons’ Standing Committee on Access to Information, Privacy and Ethics tabled for consideration its report “Towards Privacy by Design: Review of the Personal Information Protection and Electronic Documents Act”
  - The Report contains 19 recommendations that would update PIPEDA and align it with GDPR, including the adoption of the following:
    - New right to data portability, to allow users to request and transfer personal information
    - New right to erasure, to allow users - especially children - to have their personal information deleted or taken down
    - New right to de-indexing, so personal information is not available in online searches



## h) Privacy Torts

- Canadian courts showing an increasing willingness to protect privacy interests
- *Jones v. Tsige* 2013 - Ontario Court of Appeal recognized a new common law tort of “intrusion upon seclusion”
- *Doe 464533 v. N.D.* - January 2016 Ontario courts recognized another new tort - “public disclosure of private facts” - still good law
- Privacy-related class action litigation is also on the rise in Canada - e.g. 2017 Winnipeg Royal Ballet class action brought by former students for intimate photos taken by instructor and posted online

## i) Breach of Security Safeguards

- As per clause 4.7 of Schedule 1 PIPEDA, “personal information shall be protected by security safeguards appropriate to the sensitivity of the information”
- Amendments to PIPEDA (Division 1.1) and new Regulations, coming into force on November 1, 2018, will provide mandatory procedures for reporting a breach of security safeguards
- A breach of security safeguards is defined as “the loss of, unauthorized access to or unauthorized disclosure of personal information resulting from a breach of an organization’s security safeguards [...] or from a failure to establish those safeguards” (PIPEDA s. 2(1))

### 3. CASL Issues



- Canada's Anti-Spam Legislation ("CASL") came into force on July 1, 2014
- CASL includes prohibition on the sending of commercial electronic messages ("CEM") unless the sender has express or implied consent and the message contains prescribed information
- A CEM is generally an electronic message that encourages participation in broadly defined "commercial activity"
- Normally, CASL does not apply to social media, but can apply if caught by definition of "electronic address", e.g., Direct Messaging on Twitter, Facebook messenger, LinkedIn messenger, etc.

- Regulations exclude CEMs that are sent by or on behalf of a registered charity as defined in subsection 248(1) of the ITA and the message has as its primary purpose raising funds for the charity
- Since some electronic messages sent by a charity may be CEMs, it is best to assume CASL will apply, subject to statutory exemptions
- Penalties possible under CASL include monetary penalties of up to \$10,000,000 for corporations and \$1,000,000 for individuals for a violation of the prohibition on sending CEMs or other prohibitions contained within CASL





## 4. Intellectual Property Issues

- Register and enforce intellectual property (“IP”)
  - The main types of IP that a charity will deal with are trademarks and copyright
  - A charity’s trademarks or brand is one of its most important assets - it distinguishes the charity from other organizations
  - With social media, branding reaches a large audience around the world in an instant
  - Failing to register trademarks in all applicable jurisdictions prior to using them online can lead to third parties poaching and registering those marks prior to the owner



- Hashtags (#YourCharityorCampaign) may need to be protected as registered trademarks
  - Some social media sites, such as Twitter, Facebook and Instagram allow users to tag the content they share with a “hashtag” so it can be grouped together
  - Some fundraising campaigns have encouraged supporters to upload photos or share stories on social media using the campaign’s hashtag
  - Concerns about hashtags include possible hashtag hijacking and/or damage to the brand or reputation of the charity
  - Popular hashtags for a charities’ name or major campaign can be protected as registered trademarks

## 5. Third-Party Fundraising Campaigns

- Several legal issues may arise in a crowdfunding campaign, depending on the circumstances of each case and any agreements with third parties
  - If the charity allows or encourages supporters to start their own fundraising campaign, is there an appropriate agreement in place to govern that relationship, such as an agency agreement?
  - Has the charity reviewed and been satisfied with the applicable crowdfunding platform's terms of service, if a platform is to be utilized?
  - Agreements with other third parties, such as sponsors and intermediaries, may give rise to additional issues of relationships



- Several legal issues arise when third parties, including P2P events, are undertaking fundraising events promoted on social media
- Because the name of the charity is being used in conjunction with the fundraising event by the third party, the charity could be seen as endorsing and/or being responsible for the event as if it was its own
- Some of the legal issues that could come up include
  - Civil liability for injuries at a fundraising event, including the abuse of children
  - Lack of necessary permits to hold an event
  - Misuse of IP as well as failure to exercise control required for appropriate licencing of IP
  - Misrepresentation to the public of how much money goes to the charity, *i.e.* gross or net proceeds



- Failure to obtain a waiver and/or release from participants for the charity and its board
- Failure to obtain indemnification of the charity and its directors and officers
- Failure of the third party to obtain appropriate insurance coverage that includes the charity and its directors and officers as additional insureds
- Failure to advise the insurer of the charity about the event, possibly resulting in loss of insurance coverage for failure to advise of a material risk
- Lack of appropriate agency appointment for the third party to receive and/or remit funds to the charity
- Failure to monitor and approve the crowdfunding site and/or giving portals with regard to the terms of use
- Lack of ability to audit third-party campaigns

## 6. Terms of Use (Contracts of Adhesion)

- Terms of Use (Contracts of Adhesion) for social media or crowdfunding platforms are “take-it-or-leave-it” contracts
- These terms of use generally cover:
  - Collection, use and storage of personal information, including pictures and videos
  - Use of intellectual property
  - Liability for representations made by the campaigner, and the exclusion of the platform’s liability
  - Jurisdiction in case of a dispute
  - Refunds and withdrawal of funds from an account
  - Service fees as a percentage of each donation
  - Assignment of contract by platform to a third party

- Regarding use of IP:
 

“If you provide material or post content onto the [the platform] website, you are hereby waiving all moral rights you may have in the material you have provided or posted. By providing or posting this material onto [the platform], you hereby grant to [the platform] a nonexclusive, royalty free, perpetual, and irrevocable license which allows [the platform] the right to use, edit, modify, adapt, reproduce, publish, distribute and display such material”
- Similar platforms typically will define “material or content” to include “photos, videos, text, graphics, logos artwork and other audio or visual materials”



- Regarding assignment of the contract to third-parties:
 

“The Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by any User, but may be assigned by [the platform] without restriction or consent”
- Regarding liability of the campaigner:
 

“[the platform] merely provides a technology platform to allow Campaign Owners to connect with Contributors. Users who access or use the Services do so at their own volition and are entirely responsible for compliance with applicable law”

“[the platform] makes no representations, warranties or other assertions as to the potential tax deductible status of any Contribution”



- Charities should review all terms of use carefully with legal counsel before agreeing to those terms
- While online terms of use do not allow for the charity, or any user, to negotiate the terms of service, knowing the limits imposed by these agreements will allow the charity to make better decisions with regard to the most appropriate use of these services
  - The enforceability of online contracts is ultimately to be decided by the courts, including the aspects of the contract determining which courts have jurisdiction and which laws are applicable



## 7. Jurisdictional Issues

- Forum selection clauses in social media platforms give rise to important jurisdictional issues
- For example, Facebook’s terms of service, state that the laws of the State of California will apply without regard to usual conflict of laws provisions
- In *Douez v. Facebook, Inc.*, 2017 SCC 33, the Supreme Court of Canada was asked to decide whether the forum selection clause contained in Facebook’s terms of use prevented a user in British Columbia from bringing a claim against Facebook
  - Since 2011, Facebook members who “liked” a post associated with a business, would have their name and portrait linked to an advertisement on the newsfeeds of that member’s friends

- An action was brought in British Columbia alleging that Facebook used personal information without consent for the purposes of advertising, contrary to s. 3(2) of BC's *Privacy Act*
- The majority of the Supreme Court of Canada held that the forum selection clause was unenforceable
- Also, enforcement of Canadian court decisions in a foreign jurisdiction is not straightforward, and may be subject to further litigation in the home jurisdiction where the online service provider is registered as a corporation (e.g. *Google Inc. v Equustek Solutions Inc*, 2017 SCC 34, decision by SCC could not be enforced in the US)

## 8. CRA Issues

- Relevant considerations by CRA when monitoring charities' online presence:
  - Does online content, including social media, indicate programs outside of the stated charitable purposes of the charity?
  - Does the website, email or social media provide a link - and therefore by implication have the charity agree and endorse problematic materials?
  - Does the website, email or social media content indicate prohibited activities, such as partisan political activities?
- CRA auditors may review social media content for information and data that may support a case for revocation



- CRA issues regarding fundraising:
  - Does the social media fundraising campaign result in an undue private benefit that is not necessary, reasonable and proportionate? *e.g.* a celebrity
  - Is the social media fundraising campaign illegal or contrary to public policy, such as criminally fraudulent or that facilitates an abusive tax shelter or terrorism?
  - Does the social media campaign, such as crowdfunding, direct gifts to a specific person, family, or other instances of private benevolence?
  - Is the social media fundraising campaign deceptive?
  - Does the social media fundraising campaign promote an unrelated business?
- Because the terms of use of crowdfunding platforms outside of Canada are not drafted with the ITA or CRA rules in mind, charities should consider:

- Do the funds received by the charity on a crowdfunding platform constitute a loan, a gift, or a combination?
- Is there an appropriate agency agreement in place to authorize the collection of funds for the charity and/or issue donation receipts?
- When a crowdfunding platform allows a donor to reverse a contribution, is the charity complying with ITA and CRA rules for returning gifts (as well as common law)?
- Is the charity able to comply with restrictions on funds in accordance with common law trust requirements of CRA (and provincial regulators)
  - Is the charity in control of the restricted purpose of a crowdfunding campaign, or has it been delegated to the donor?

## 9. Cryptocurrencies and Fundraising

- There are a number of legal issues associated with charities using cryptocurrencies in fundraising
- Receipting issues involving cryptocurrencies:
  - CRA technical interpretation 2013-051470117 states that cryptocurrencies are property for purposes of the ITA, but rather than “money” or “currency”, they are considered a commodity for tax purposes
  - Donations in cryptocurrencies are, therefore, subject to the rules for gifts-in-kind under CRA’s IT-297R2 *Gifts in Kind to Charity and Others* and IT-288R2 *Gifts of Capital Property to a Charity and Others*
  - As such, the fair market value (FMV) of the gift in kind as of the date of the donation must be determined before a tax receipt can be issued to the donor

- The determination of FMV for cryptocurrency donations could be subject to scrutiny by CRA
- Gifts of cryptocurrency above \$1,000 require an appraisal as generally required for in kind donations
- Other issues, such as the identification of the donor and determining if there is an advantage for purposes of receipting will also need to be considered
- Mining cryptocurrencies by a charity, either directly or through a pooled fund, might not meet the test of an ordinary investment governed by provincial trust legislation (e.g. prudent investor standard in Ontario)
- Initial Coin Offerings (ICOs), which involves the charity creating its own cryptocurrency (e.g. Clean Water Coin; Pinkcoin) will be subject to provincial securities legislation, unless they qualify for an exemption



- Regarding anti-money laundering and anti-terrorist financing issues with cryptocurrencies:
  - *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* provides that Regulations may be enacted “dealing with virtual currencies”
    - However, no regulations have been released yet
- Cryptocurrencies also raise issues of cybersecurity:
  - Increased risk of hacking and real world crime (extortion, violence, hostages), due to “privacy” afforded by the blockchain to criminals
  - Since transactions are not reversible, mistakes when completing a transfer incorrectly can be costly
  - There may be directors’ and officers’ liability for not maintaining appropriate cybersecurity measures



## D. WHAT CAN BE DONE TO MANAGE THE LEGAL RISKS?

### 1. Implementing a Social Media Policy

- Amongst other things, a social media policy may include the following:
  - Rules for the use of IP belonging to the charity
  - Restricted behaviours, such as posting material deemed inappropriate or which could discredit or cause embarrassment to the charity
  - Who is allowed to open a social media account or post “official” social media content on behalf of the charity
  - Use of the charity’s name or other trademarks or copyright on social media pages require consent

- Make reference to other relevant policies such as privacy policy, fundraising, etc.
- Include prohibitions on speaking on behalf of the charity or disparaging the reputation of the charity
- Possibly use of a disclaimer for personal social media posts such as *“The views expressed on this website are mine alone and do not necessarily reflect the views of [name of particular charity]”*
- Social media content should be reviewed by management on a regular basis
- Be prepared to immediately take down inappropriate content from social media and ban future posts from the persons responsible



## 2. Implementing a Privacy Policy

- Charities that are subject to PIPEDA should reflect the 10 principles in the Model Code
- Amongst other things, the public privacy policy should outline the following:
  - How personal information will be used, collected, and disclosed, including a document retention policy
  - How personal information is safeguarded
  - The process for making and handling complaints and requests for personal information
  - The process for dealing with, reporting and communicating data breaches
  - Identify the Privacy Officer and include contact information



### 3. Implementing a CASL Compliance Policy

- Due diligence defence under CASL may help mitigate against liability, or reduce the imposition of a penalty by the Canadian Radio-television and Telecommunications Commission (“CRTC”)
- What should a CASL compliant policy include?
  - Establish internal procedures for compliance with CASL, including training and record keeping, specially as it pertains to consent;
  - Establish auditing and monitoring mechanisms for the compliance program(s), including a process for employees to provide feedback to compliance officer;
  - Establish procedures for dealing with third parties

### 4. Implementing an Intellectual Property Policy

- Protect IP before posting it online
  - Avoid a costly branding blunder by completing the necessary due diligence ahead of time
  - Conduct trademark clearance searches to ensure marks are not encroaching on others’ marks before using them on social media
  - Register all trademarks, copyrights, and domain names to avoid poaching by third parties



## 5. Implementing a Policy for Fundraising on Social Media

- Any general fundraising policy should be amended to cover fundraising on social media, including:
  - Cross reference with other policies, such as social media, privacy, intellectual property, CASL
  - Identifying an acceptable presence of the charity on social media, and use of crowdfunding, cryptocurrencies and the different ways in which these may be combined or modified
  - Require supporters participating in a social media campaign to abide by the policies of the charity
- Consider not retaining payment information from donors (e.g. credit cards, banking information), so as to avoid becoming a target of cybercriminals

- Agreements for third-party fundraisers and P2P campaigns should include, amongst other matters:
  - A requirement that third parties protect the personal information of donors in comparable terms as those under the charity's privacy policy
  - Require third parties to adopt appropriate risk management policies, such as child protection and/or vulnerable person policies
  - The ability of the charity to maintain control over its intellectual property by a limited purpose licence
  - Providing adequate insurance for the charity and its directors and officers
  - Appropriate waivers and releases, possibly including indemnification of the charity and its directors and officers

## E. CONCLUSION

- Although social media has many benefits for charities, it is important to remember that discretion and common sense should be used when fundraising on social media
- A proactive approach to minimizing potential risks should be taken before a charity embarks on social media fundraising campaigns, including a review of existing insurance policies
- The primary way to manage the risk associated with fundraising on social media is to ensure that the various policies discussed above are implemented and reviewed on a regular basis



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