
THE OTTAWA REGION CHARITY & NOT-FOR-PROFIT LAW SEMINAR

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Going Social: Using Social Media to Accomplish Your Mission

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**The 2016 Ottawa Region
Charity & Not-for-Profit Law
Seminar**

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Going Social: Using Social Media to Accomplish Your Mission

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OVERVIEW

- What is "Social Media"?
- The Benefits of Using Social Media to Accomplish Your Mission
- The Pitfalls of Using Social Media to Accomplish Your Mission
- Social Media Risk Management


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A. WHAT IS "SOCIAL MEDIA"?

- Websites and applications that enable users to create online communities where they can share content or network with others
- Social media sites are based on user participation and user-generated content
- Social networking sites provide users with the ability to upload profiles, post comments, links, photos and videos, join "networks" and add "friends"




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- Examples of Social Media
 - LinkedIn
 - Facebook
 - Twitter
 - Instagram
 - Pinterest
 - Blogs
 - Etc.



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- Who is Using Social Media



unicef



Canadian Cancer Society



WWF



World Vision





THE SALVATION ARMY

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B. THE BENEFITS OF USING SOCIAL MEDIA TO ACCOMPLISH YOUR MISSION

- It's very inexpensive
- It offers a quick way to target new markets
- It helps expand your audience and reach
- It helps your supporters spread the word about you
- It can assist with employment/volunteer recruitment
- It allows you to receive instant feedback



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- It helps to increase website traffic
- It allows sharing of content in a timely manner
- It strengthens relationships with donors/volunteers/partners/clients on a more personal level
- It helps to increase brand awareness with little to no budget

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- Social Media: Jump on Board, or Miss the Boat
 - Given all these benefits, you're probably thinking you should jump on board, before you miss the boat...but,
 - Prior to jumping on board, the pitfalls of social media need to be considered

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C. THE PITFALLS OF USING SOCIAL MEDIA TO ACCOMPLISH YOUR MISSION

Same issues – different platforms

1. Privacy Issues
2. CRA Regulatory Issues
3. Intellectual Property Issues
4. Other Issues of Concern

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1. Privacy Issues

- The information posted or collected on social media sites may breach privacy laws
- Privacy laws that apply in the “real world” also apply in the online world
- There is no express exemption to privacy laws for charities and not-for-profits

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- Privacy laws apply to social media:
 - Personal information can only be used for the purposes for which it is collected
 - Informed and voluntary consent must be obtained for use, collection or disclosure of personal information
 - Prior to posting information, informed consent must be obtained - including for photos/videos
 - Personal information of minors is considered “sensitive” and so can be found to be subject to a higher standard than the same information of an adult - consents will likely not be enforceable
 - Ensure individuals are aware if your website or blog has tracking devices such as “cookies”

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2. CRA Regulatory Issues

- Does your online presence accord with your stated charitable objects?
 - This is important for both organizations seeking charitable status and those that already have charitable status
 - CRA will review your online content, including the materials to which your organization links, to see if it accords with the information provided in your application

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- Relevant considerations:
 - Does information on your partner's websites provide different information than yours?
 - Does website content indicate programs outside of your stated purposes?
 - Does your website link - and therefore by implication agree and endorse - problematic materials?
 - Does your website content indicate prohibited activities?

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- Does your online presence include materials that could lead to revocation?
 - Be cautious of what is posted on social media sites about your organization
 - CRA auditors will review website content for information and data that will support cause for revocation
 - This can include links to other organizations and material, as well as reviewing internet search history for the organization's computers

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3. Intellectual Property Issues

- Main considerations:
 - Protecting your IP
 - Register trade-marks and copyright
 - IP Infringement
 - Copyright and trade-mark infringement



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- Protecting Your IP
 - Your brand is your organization's face to the world - it communicates your identity and credibility
 - Your brand is one of your organization's most important assets - distinguishes you from other charities
 - With social media, branding reaches a large audience around the world, in an instant
 - Prior to using your IP online, make sure you own the relevant IP
 - Register all trade-marks, copyright, domain names

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- Failing to ensure that you own the IP prior to using trade-marks on social media can lead to third parties poaching your marks and registering the marks before you do
- The first user of a mark is technically entitled, but the first party to file gains a significant advantage in securing rights
- The first person to register may effectively "usurp" the rights of the first user
- Once registered, the validity of a trade-mark can only be attacked in Federal Court, which is a lengthy and very costly process

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- Take steps to ensure that social media does not tarnish your brand reputation:
 - Monitor misuse of marks and enforce rights
 - Most social media operators have a take-down policy for IP infringement
 - Make sure all marks are used properly
 - Use proper markings
 - Use the trade-mark consistently
 - Use mark distinctively
 - Train staff on proper usage

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- IP Infringement
 - Social media can expose your organization to liability for infringing the intellectual property rights of others
 - This can happen when:
 - You use copyright protected material on your social media page that does not belong to the organization
 - You use trade-marks on your social media page that do not belong to the organization

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- Copyright infringement
 - Need to review both reproduced content and links to other websites
 - Remember to also check newsletters or weekly updates that are posted
 - Consideration needs to be given to who is the owner of the work
 - If the organization does not own the work, any reproduction of that work on social media can constitute copyright infringement

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- Generally, the owner of the work is the author, unless an exception exists, such as:
 - Work made in the course of employment vests in the employer, unless there is an agreement to the contrary
 - Author must be human - corporations cannot be an author
- The above applies only to "work made in the course of employment" by employees
 - Independent contractors and volunteers are not usually considered employees
- All contracts should be reviewed by legal counsel

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- Trade-mark infringement
 - Avoid trade-mark misuse
 - Ensure ownership of any trade-marks used on social media
 - Cannot use other organizations trade-marks
 - Most social media sites have trade-mark infringement policies
 - Monitor social media sites for postings by employees and third parties that may infringe trade-marks

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4. Other Areas of Concern

- Employees use of social media
 - Employees may reveal confidential information either intentionally or inadvertently
 - Employees may use the organizations trade-marks incorrectly, leading to dilution and weakening the organization's brand
 - Employees may infringe the IP of others



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- Electronic Discovery and Evidence - Regardless of the privacy settings, information and communication on these sites can now be used as evidence in litigation
- Libel, cyber-stalking, cyber-bullying - The content could be defamatory or lead to cyber-stalking and cyber-bullying
- Data breach - Third parties "hacking" into the social media page and inappropriately using it to tarnish reputation
- Large audience - Although this is a benefit, it is also an issue - once something is posted, it reaches a world-wide audience immediately, and is open to individual criticism and interpretation - once posted, it's impossible to control or get back

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D. SOCIAL MEDIA RISK MANAGEMENT

- One way to manage the risk associated with social media is to have various procedures and policies in place prior to using social media, which may include:
 1. Implementing a social media policy
 2. Updating your privacy policy
 3. Implementing a posting policy
 4. Updating employment contracts and policies
 5. Ensuring all IP is protected



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1. Implementing a Social Media Policy

- Keep in mind that there is no 'one size fits all' social media policy; it will need to be adapted to fit the needs of the organization and its employees
- Employers should carefully consider what they wish to include in their social media policy and ensure that the policy is consistently implemented
- For example, does the social media policy only reflect the use of the employer's social media accounts, or the use of employee's personal social media pages as well?
 - Often organizations have a social media policy which outlines the use of the *organization's* social media and a separate employment policy which governs the use of *personal* social media pages

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- A social media policy which covers the use of the *organization's social media pages* should outline the following:
 - Identify the types of social media the organization plans to utilize
 - Identify who is allowed to post "official" social media communications on behalf of the organization
 - Ensure that employees, volunteers, and directors exercise responsibility when posting on the organization's social media pages

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- Ensure that social media activity is reviewed regularly
- Outline the restricted behaviours, such as posting information that would compromise the practices of an organization, engaging in any form of harassment or racist/derogatory remarks, and/or violating copyright or trademark laws
- Make reference to other policies such as employment, posting and privacy policies

❖ *Stay tuned - I will cover the use of "personal" social media pages in the "employment policy" section of the presentation...*



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2. Updating Your Privacy Policy

- If your organization is engaging in social media, your privacy policy should consider some of the following:
 - Have you informed individuals that their personal information including photographs and videos will appear on the organization's social media pages?
 - Do you have a process in place for handling complaints regarding personal information that appears on social media?
 - Have you obtained informed consent to post photographs and videos?



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3. Implementing a Posting Policy

- If you have a "fan page" where the public can post content and comments, it is essential to have a public facing "Posting Policy"
 - The policy outlines the "rules of the road" for users wanting to play in your space
 - Clearly explain the types of materials that will not be permitted to be posted and reserve the right to remove, edit or modify content
 - Clearly communicate that the views expressed on the page do not represent the views of your organization

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4. Updating Employment Contracts and Policies

- Employment Contracts
 - Review employment contracts to ensure they clearly state that the organization is the owner of all work and that moral rights are waived
 - Ensure that similar contracts are in place for volunteers, independent contractors, designers, etc., otherwise the copyright vests in these entities by default
 - Make reference to social media policies and any employment policies

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- Employment Policies
 - Employers should carefully consider and tailor their employment policies to deal with social media
 - For example, the employer should consider the following when creating their employment policies:
 - Explain to employees the extent that the policy covers "personal" social media pages. For example:
 - **Use of the organization's IT systems:**
Personal use of email, internet usage, and social media may be monitored when using the organization's IT to ensure that operational needs are met, and that any security issues are addressed - employees should have no expectation of privacy in that regard

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- **Use of social media during work hours:**
Employees should keep personal social media use to a minimum during work hours
 - Explain what social media is and include recommendations regarding employees' *personal* social media pages
 - Include prohibitions on speaking on behalf of the employer
 - Discourage employees from identifying themselves with their employer
 - Remind employees of their confidentiality obligations
 - Prohibit the use of the organization's trade-marks or copyright protected material
 - Advise employees of the consequences of violating the policy

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5. Ensuring all IP is Protected

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


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E. CONCLUSION

- Although social media can help charities and not-for-profits accomplish their missions, it is important that a proactive approach to minimizing any potential risks be taken before embarking on social media campaigns
- One way to manage the risk associated with social media is to ensure that various procedures and policies are in place prior to using social media
- Lastly, it is important to keep in mind that there is no expectation of privacy with respect to social media posts, as these posts can often be viewed by hundreds, if not by the general public at large

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