



All In Good Face

A brief look at the protection of your intellectual property in the era of social networking.

The membership on social networking sites such as Facebook, Twitter and MySpace runs in the hundreds of millions. Facebook reports more than 350 million active users around the world with almost half of them using Facebook every day. This includes people in every continent, even Antarctica.

Increasingly, business enterprises from the small start-ups to the huge conglomerates have been using Facebook to advertise to consumers and potential consumers about latest business trends, improvements in products and services and sales and discounts in an attempt to capitalise on the vibrant and potential market that exists on social networking sites. Many of the most well-known brands have set up corporate pages on Facebook LinkedIn and Twitter.

However, all enterprises large or small should be sensitive to the intellectual property risks that are potentially associated with marketing and using their brands on social networking sites.

The terms of use on Facebook (found by clicking the link "Terms" found on the bottom right hand corner of every Facebook page) state that a user owns all of the content and information he posts on Facebook but grants Facebook a "non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook ("IP License"). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it."

The implications of these terms are far-reaching. The licence essentially states that Facebook has the right to unconditionally use any content posted on its site as it chooses. If, for example, a user has written an article and posted it on their page for viewing by his friends, Facebook could arguably copy, modify and distribute that content as it likes. Businesses that have Facebook pages with their logos have implicitly consented to the use by Facebook of their brands without any say. Unfortunately, if a company wishes to use Facebook for advertising and marketing, they have no choice but to accept Facebook's Terms of Use. A company may take comfort, however, that the nature of Facebook's operation is such that they are unlikely to have any need or inclination to use any of the IP Content posted by its users in a derisory or derogatory way.

The real threat to businesses that use social networking sites, however, is the potential intellectual property infringement from third parties or possible misuse by employees.

Some key things for businesses to consider implementing to protect intellectual property on social networking sites are:

1. Assign an employee or a team of employees the responsibility to monitor the corporate pages on social networking sites. This individual would have the task of monitoring comments and postings as well as to ensure maintenance of the company's brand image.
2. If your company has an official web page, ensure that all corporate pages on social networking sites have links to the company's official web page. This allows for the social networking sites to serve as a portal for access to the main web page.
3. Create, review and/or amend company policies as it concerns the use by employees of social networking sites and information disclosed about the company. The exposure to the public of company procedures, internal activities or planned projects, even casually by employees, may be detrimental to the viability and on-going success of the business. As a result, it may be necessary to make it a condition of employment that disclosure of company matters cannot take place on any social networking sites.
4. Ensure familiarity with the Terms of Use on any social networking sites. Where necessary seek legal guidance on the implications of the Terms on the operation and scope of use of these sites by the company.
5. Some social networking sites, like Facebook, have intellectual property infringement forms that allow users to report infringements. Ascertain whether the sites used by your company have such a form and familiarize yourself with the basis and conditions of utilisation of the form.

Rights holders must vigilantly and actively follow through on strategies to protect their intellectual property on the Internet and should never sacrifice these measures in response to increasing pressure to be more creative in the ways they interact with their market. The development and maintenance of an effective brand protection and enforcement policy can make a significant impact in ensuring that social networking sites do not infringe your business' intellectual property.

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