

URMIA *Insights*

By Ken Goldstein, Assistant Vice President and Worldwide Media Liability Manager,
Chubb Group of Insurance Companies

With the explosion in the number of blogs and the popularity of websites such as Facebook, Twitter, and YouTube, colleges and universities can be transformed overnight into a media company. The potential advantages of the heightened public exposure can be enormous for those institutions embracing social networking, but the risks are just as large. Every time employees or students post new blog entries or update their own or the school's social networking pages, colleges and universities may be exposed to the same risks that concern traditional publishers.



Yet a large percentage of organizations have left themselves exposed to potential losses by failing to implement basic measures to manage their publishing risks. In a survey of 1,000 Americans, conducted by Opinion Research Corp. and sponsored by the Chubb Group of Insurance Companies in April 2010, 64 percent of the respondents said their company had no policy for talking about the company on social networking sites.

Without a formal policy, your institution may be allowing employees and students with no professional publishing experience to post articles or commentary online that are tied to your college or university. A clear policy that covers several critical dos and don'ts when posting to a website or blog may help a college or university avoid legal problems by establishing an appropriate code of conduct for all employees and students.

Some of the most significant risks that a formal policy should address are:

- **Defamation** - This is an institution's biggest exposure. When an employee tarnishes another individual's or organization's reputation, it can be costly not only in monetary damages but also to your own institution's reputation. In a defamation lawsuit, a host company likely will be treated as a media organization, so web-posting employees should understand what constitutes defamatory material.
- **Copyright Infringement** - Posts cannot legally incorporate copyrighted material, except under limited circumstances. Otherwise, absent the copyright holder's permission to use the protected material, most material is not considered to be in the public domain and freely available for use.
- **Personal Privacy** - If the material included in a post violates a federal or state law that protects specified personally identifiable information, the college or university could be required to notify all individuals whose information was jeopardized, plus cover the cost of credit monitoring and possible monetary penalties.
- **Employment Practices** - Critical, unflattering, insensitive, and racially and sexually charged comments could trigger harassment claims from fellow employees or students.

There are some steps that institutions may take to help mitigate the risk of a media liability lawsuit, including the following:

- Monitor blogs and other web posts in order to respond quickly to any inadvertent, as well as intentional, violations of the school's social networking policy.
- Act fast to take down infringing or offensive material.
- Deny access for repeat offenders to the institution's website or its social media sites.
- Limit access to institution accounts/passwords to help protect proprietary and non-public information in the institution's care, custody, and control.
- Designate a social media specialist with appropriate experience and knowledge to pre-screen content.

Risk transfer is an additional measure an organization can take to minimize losses arising from social networking activity. A traditional media company can transfer its risks by purchasing media liability insurance. Non-media companies, such as colleges, also can purchase media liability insurance, but they may rely on the personal injury and advertising injury provisions of the commercial general liability (CGL) insurance policy for protection. That can be risky since some CGL insurance policies may exclude personal and advertising injury claims arising from social media activity. Other CGL policies cover only claims arising from the content generated by the institution's employees but not claims stemming from content the public posts on the institution's website or its other social media sites.

Some CGL policies may extend insurance coverage to the content the public posts but only if the college or university edits the content to remove problematic material. At the same time, however, editing public postings could lead to even bigger legal problems, as the Communications Decency Act of 1996 grants website hosts immunity to claims arising from unedited comments posted by the public (i.e., mere passive hosting).

In a sound risk management program, however, risk transfer has to be built on a strong foundation of loss prevention. With social networking, silence is golden only for claimants whose rights have been violated by a blogger or web poster left without any guidance.

Ken Goldstein is assistant vice president and worldwide media liability manager at the Chubb Group of Insurance Companies. He can be reached at goldstek@chubb.com. If you would like to serve as a guest author in an upcoming URMIA Insights, please contact the [URMIA National Office](#).

Copyright © 2011 URMIA Insights. All rights reserved.