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I. Social Media and Wealth Management

(A) Whether Technological Advancements Have Infringed Upon Ones Right to Privacy?

As a company, ones online identity is defined by their "domain name" [1] a unique identity protected by "trade marks and [principles of] branding."[2] From that platform, information can be disseminated, although alterations to protected works are not covered by copyright infringement laws, subsequent "right to distribute modified copies of the work"[3] are by "rights given to the author."[4] Digital communication networks and digital trail[s][5] track exactly that, what is being produced, how its being produced, and who is being affected by the production of that material source. So-called "wrongdoers" are individuals who engage in the "unlicensed" sharing of "music and video" which has been considered a copyrighted work.[6] There is a difference between the "old copyright laws [of] the internet and … electronic submission[s] [which] can have the unexpected consequence of increasing the reach of copyright."[7] Traditional copyright laws, differ from those of the internet, because such "over-protection" delineates subtle differences between "primary and secondary infringement,"[8] primary meaning the "copying" of works, and secondary meaning the "distribution" of works, liability is therefore based upon "knowledge" to some "fixed [degree]" that the "distribution of the information" falls within one of these two definitions of traditional copyright laws as applied to the internet.[9] One of the main concerns of distribution of copyrighted works, not authored by or with permissions from the one to whom rights have been given, occurs when faced with the possibility that subsequent additional works can be created by use of technology, "recreated by computer," the key issue being whether the law extends so far as to over-protect further uses beyond the initial violation, primary or secondary, misuse of copyrighted works. In fact, "the advent of digital technology has overturned the underlying economic assumptions of the original law."[10] That being said, "every act of electronic distribution is also an act of copying if a transient copy counts as infringement."[11]

One forum to help raise awareness, as to copyright laws, and the dissemination of information that may or may not be protected by copyright laws granted to the author, is social media. Building "situational awareness culling data [can help to] obtain a clearer picture."[12] FEMA discusses the significance of the sharing of information online, and warns that "rumors and misinformation can spread quickly over social networks" however, not all networks are "self-correcting [requiring] swift intervention [to] dispel rumors spread [by] new information [or] common practice[s]."[13] In the event of an emergency "responding quickly and effectively" can help to curtail the misuse of "new, incorrect, or conflicting information." [14] Part of the

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[1] Internet Law and Regulation 4th Edition
[2] Id. at 1.
[3] Id. at 1.
[4] Id. at 1.
[5] Id. at 1.
[6] Id. at 1.
[7] Id. at 1.
[8] Id. at 1.
[9] Id. at 1.
[10] Id. at 1.
[11] Id. at 1.
[12] IS-0042 – Social Media Emergency Management, FEMA
[13] Id at 12.

process of responding in cases of emergency to the misuse of information by rumor, is to "engage the community and [to] build mutual trust." [15]

(B) Online Advertising and Marketing Developments

The growth in online "digital and internet advertising"[14] has resulted in "new guidelines … complicating companies' compliance programs."[15] Whenever "marketing" is used for social media, there are a few "regulatory concerns" to keep in mind, by compliance officers.
The primary role of compliance officers to financial firms is to protect the reputation of their companies.[16] Protecting the "integrity of the markets"[17] means staying in compliance with "Securities Exchange Commission (SEC)" their primary concern being "communications pertaining to conducting business."[18] Among the requirements are "truthful, not misleading, [while] includ[ing] risks and … proper disclosures."[19] What is communicated to and from associates within a business is just as important as communications sent from businesses, especially online on social media. One of the ways in which social media use may be monitored is by "limit[ing] engagement with pre-approved content."[20] Every firm is different when it comes to their "risk tolerance"[21] with policies that reflect the principles by which a company operates. Some companies opt not to engage in the use of social media, but some seek "to increase their online presence via digital and internet advertising." The FTC has "published guidelines that digital advertisers like financial service companies … [have used when] consider[ing] … marketing their products online."[22] Its important to note that "online marketing efforts …span" beyond "multiple digital platforms."[23] These spaces include "personal computers to tablets to mobile phones"[24] including the product itself being marketed, by uses of technology. In marketing products, sometimes influencers are used to market a company, who must abide by "written social media polic[ies] that provid[e] guidance to their influencers."[25] Social media is but one "digital communications network" that has the primary responsibility of its members to companies, to comply with guidelines set forth by the FTC, especially with regards to communications within a company.[26] The FTC is responsible for taking "reasonable steps to secure [the] personal data and information" while "handling consumers' sensitive data" and be sure not to compromise "the level of care the company" applies to "privacy and security features in their marketing materials."[27]

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[14] 73 Bus. Law. 517
[15] Id. at 14.
[16] Id at 14.
[17] Id. at 14.
[18] Id. at 14.
[19] Id. at 14.
[20] Id at 14.
[21] Id at 14.
[22] 1. 73 Bus. Law. 517
[23] 1. 73 Bus. Law. 517
[24] 1. 73 Bus. Law. 517
[25] 1. 73 Bus. Law. 517
[26] Internet Law and Regulation
[27] Id.

(C) Confidentiality and Social Media

Confidentiality applies to "strategic business plans; market and competitive assessments, analyses, studies, profiles, and forecasts." The purposes for protective orders are to prevent the complication of matters and interests to the privacy of user data and information protected by the FTC. There are plenty of risks associated with the storing and compiling of confidential information" requiring "good cause" on behalf of the party to whom a protective order is granted to prove that "an unacceptable risk of, or opportunity for, "inadvertent disclosure" of that information" presents itself, in the face of exposure. There are issues as to the predictability of disclosure of confidential information, and it is argued that the consequences of disclosure are irreversible, and upon disclosure, a series of repercussions exist that are automatically occurring upon exposure to confidential information, that it cannot be reversed, knowledge of information, and communications resulting from knowledge of such information. Therefore, whether disclosure is inadvertent or purposeful, is the measure by which "careful and sensitive assessment" is taken to determining whether inhouse counsel or outside counsel should be chosen during any "competitive decision-making" process. Why? Because "It is very difficult for the human mind to compartmentalize and so suppress information once learned, no matter how well-intentioned the effort may be to do so." Employees designated the responsibility of handling confidential information are determined by whether, upon court approval, a confidential order, they are designated to handle "competitively sensitive information." Upon disclosure of information on social media, one of the factors under assessment by FTC regulations are trade secrets, it is the preference of companies to select employees to whom confidential information is considered understood, and no nuanced opinion of information, would interfere with their ability to protect by court order, knowledge if made so, of information requiring an "intimat[e] familiar[ity] with the processes and formulations" of such confidential information. This applies to not only trade secrets, but also to mergers, which may or may not require disclosure of confidential information, to sensitive decision making processes as applied to "antitrust counseling and litigation, mergers and acquisitions, and capital financing." The only way to protect use of confidential information from social media is to "carve out a special category of Highly Confidential information for them that is not accessible to in-house designees" this is to prevent the sharing of information that cannot be uninfluenced by exposure to information, from spilling out onto social media, and by creating rules for outside counsel to follow, who are not subject to such psychological limitations presented by exposure to confidential information, as they are not the ones sharing or posting on social media, unaffected as inhouse counsel would be, as seen by third parties.[28]

[28] FTC v. Advocate Health Care Network, 162 F. Supp. 3d 666, 2016 U.S. Dist. LEXIS 24788, 2016-1 Trade Reg. Rep. (CCH) P79,519