



Does Your Institution Need a Social-Media Policy?

BY PAMELA J. BERNARD

Most people over 25 years old do not use the vast array of new social-networking technologies—Facebook, Twitter, YouTube, wikis, avatars—as much as our younger students do every day. Yet everyman holds the power of global publishing, even anonymously, and colleges must now grapple with intellectual-property issues, defamation, privacy concerns, and free-speech rights that arise when employees use these Web-based applications on university computers.

Higher-education institutions typically have adopted computer-use guidelines, commonly called “acceptable use” policies. Such policies, however, may not have been drafted with the new, robust Web-based technologies in mind. How should your institution deal with the following issues?

Expectations of privacy. Institutional computer-use policies or electronic-communication policies may already address the privacy expectations employees have when using university-owned computers. Courts generally will support a college’s right to access employee emails sent on its computers, provided that its policy clearly states as much, and importantly, provided that such actions are reasonable. Typical provisions might give a college the right to review without notice the content of anything written or stored on its computing systems to protect those systems. On the other end of the spectrum, the policy may prohibit reviewing an employee’s emails or Web-browsing history except when a health and safety issue exists, only with his or her consent, or in other narrow circumstances.

But these policies probably were not written with social media in mind. Courts are just beginning to address the expectations of privacy in such instances. For example, when an employee posts a comment about an internal management squabble on Facebook using a university computer, should the policy give the institution the right to obtain access to that account from Facebook? Checking in with legal counsel to understand the current thinking of the courts as cases emerge is helpful to avoid inadvertent intrusions into employees’ privacy.

Because of its sensitivity, setting forth institutional privacy expectations often requires more than a pronouncement. Many colleges also will need to vet

such policies through faculty governance groups or other campus stakeholders.

Excessive use of institutional computing resources. Excessive personal use by employees of institutional computing systems can be more difficult to manage now given the ease of communication and extent of information available on the Web via new social-networking opportunities. Although institutions can ban all personal use, an “occasional” personal-use policy usually is more practical. More-active management of employees’ productivity also can reduce work time employees may spend on the Internet for personal purposes.

Intellectual-property issues. Employees also now have more opportunities than in the past to disclose confidential material and trade secrets over university computers and networks. At a minimum, your policy should make clear that using social media cannot violate any other institutional policy.

Employer use of social media in the hiring process. Colleges, too, must understand that online postings are fraught with error and can form the basis for claims against an institution when used as part of hiring or disciplinary actions. Hiring officials should understand that conducting a Web search of an applicant’s name may not yield accurate information on which a decision should be made, and blog allegations that might also be potential violations of work rules can be just plain wrong.

A word about students: Student postings may also trigger many legal issues and violate student-conduct codes. Such postings can convey threatening or suicidal thoughts, as well. How institutions deal with these issues is also ripe for discussion.

Framing acceptable-use policies to include all computer-based applications, without specially dealing with social media, can make it easier to keep up with rapidly expanding technologies. The downside is that they may not be specific enough to provide guidance to employees or satisfy a court. Whether or not an institution adopts a special policy dealing with social media, presidents and trustees would be wise to understand how these technologies can impact their institutions’ reputations and legal interests.

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