

# TOP TEN TIPS FOR OPERATING IN CYBER SPACE

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# Social Media

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- 4.8 billion mobile users, 4.2 billion people with a toothbrush



845 million monthly users, 250 million photos are uploaded every day, 2.7 billion "likes" per day



465 million accounts, 175 million tweets a day, USA has 107 million members



2 new members join every second, USA has 57 million members, LinkedIn is the 36<sup>th</sup> most visited website in the world



2 billion views per day, over 829,000 videos uploaded each day



10.4 million registered users, most users are female, drives referral traffic to retailers

# TIP ONE: USE OF SOCIAL MEDIA IN HIRING

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- Social Media can be a helpful vetting tool
- Potential pitfalls:
  - Information on protected characteristics (age, race, disability, gender) readily available on social networking profiles
  - Allows researcher to obtain information on protected characteristics
- ❖ Best Practices:
  - DON'T perform searches on an ad hoc basis
  - DO search only public content
  - DO establish a firewall
  - DO document a legitimate, nondiscriminatory reason for hiring
  - DO establish a social media research policy and train employees

## TIP TWO: SOCIAL MEDIA and BRAND MANAGEMENT

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- Employee's posts can reflect on the company and its image.
- Employer's should craft social media policy that achieves marketing strategy while protecting company from legal harm.
- Employee has right to free speech, but no right to defame Employer.

### ❖ BEST PRACTICES

DON'T be overly broad in your policy

DO prohibit comments that are vulgar, obscene, threatening, harassing, etc.

DO require Employee to use a disclaimer when expressing views

DO prohibit disclosure of proprietary or confidential information

DON'T fail to notify, train Employees on policy

# SOCIAL MEDIA GONE WRONG

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██████████ OMG I HATE MY JOB!! My boss is a total perwy ██████████ always making me do ██████████ stuff just to piss me off!! ██████████

Yesterday at 18:03 · [Comment](#) · [Like](#)



██████████ Hi ██████████, i guess you forgot about adding me on here?

Firstly, don't flatter yourself. Secondly, you've worked here 5 months and didn't work out that i'm gay? I know i don't prance around the office like a queen, but it's not exactly a secret. Thirdly, that ██████████ stuff' is called your 'job', you know, what i pay you to do. But the fact that you seem able to ██████████ up the simplest of tasks might contribute to how you feel about it. And lastly, you also seem to have forgotten that you have 2 weeks left on your 6 month trial period. Don't bother coming in tomorrow. I'll pop your P45 in the post, and you can come in whenever you like to pick up any stuff you've left here. And yes, i'm serious.

Yesterday at 22:53

Write a comment...

# TIP THREE: PROTECTING THE VALUE OF SOCIAL MEDIA

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- *PhoneDog v. Kravitz* (N.D. of California)
  - Employee compiled 17,000 Twitter follows on account @PhoneDog\_Noah
  - Employee left company and “flipped” his Twitter account to @noahkravitz
  - Employer filed suit and sought damages of \$2.50 per month, per follower (\$42,500/month)
  - Court rejected Employee’s attempts at dismissal
- *Christou v. Beatport* (D. of Colorado)
  - Former business partner left business and kept login information and friends list of nightclub’s Myspace account, and began using account for his competing business.
  - Rejecting a motion to dismiss, court allowed claim that a Myspace page and the associated friend list can be protectable trade secrets to go forward.

## ❖ BEST PRACTICES

DO amend existing employment agreements to address social media, e.g., require former employees to unlink and defriend their LinkedIn, Facebook, and other social network contacts connected with the company

DO establish ownership in the “handle” with the Employer

DO assign more than 1 employee to maintain company profiles

# TIP FOUR: WEBSITES and IP PROTECTION

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- Copyright – Protect Content:
  - What’s copyrightable? Software code, text and graphics on the site, the “look and feel” of the site
  - Protection applies once in “fixed, tangible” form
  - Registration advantages
  - Copyright notice - © [Year of Publication] [Copyright Owner]
- Trademark – Protect Brand:
  - Words or symbols used to identify a source of goods or services
  - Registration advantages
  - Trademark notice – <sup>TM</sup> (Trademark) <sup>SM</sup> (Service Mark) ® (Registered mark)
  - Fair uses
- Patent:
  - Websites embodies a novel “business method”

## TIP FIVE: EMPLOYEE'S RIGHT TO PRIVACY AND PUBLICITY

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- Right of Privacy vs. Right of Publicity
  - Invasion of Privacy - portrayed falsely and in a highly offensive manner
  - R of Publicity - right to use name, image, etc. for commercial purposes
- Issues Arise in the Context of:
  - Posting Employee's likeness on website/social network
  - Use of Employee's likeness in advertising campaign
  - Employee's use of Employer email, mobile phones, etc.
  - Employer's search of social networking sites

### ❖ BEST PRACTICES

DON'T use Employee's name or likeness without approval

DO disclaim expectation of privacy on work computers, systems, etc.

DON'T ask for Employee's/Applicant's social media passwords



# TIP SIX: PRIVACY POLICIES

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- Do I need a Privacy Policy? YES
- What should a Privacy Policy include?
  - How info is collected
  - Kinds of info collected
  - How info will be used or shared
  - How customers will be notified of changes to policy
  - Policy's effective date
- ❖ BEST PRACTICES
  - DO conspicuously post PP on website main page
  - DO commit to adhering to PP terms
  - DON'T copy and paste a PP from another site
  - DO review and update PP yearly

# TIP SEVEN: TERMS AND CONDITIONS POLICIES

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- What is it? A contract between you and the user.
- Why is it important?
  - Ensures content is properly owned by you and licensed to users
  - (Attempts to) limit owner's liability through disclaimers
  - Identifies the terms upon which goods and services are supplied
- **❖ BEST PRACTICE** – template info only in low risk fields
- Enforceability
  - Click Wrap Agreements
  - Browse Wrap Agreements
  - Misc. – placement, retain copies, special considerations for minors

## TIP EIGHT: GOOGLE ADWORDS

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- Ads placed next to GOOGLE search results to boost website traffic and sales => “Sponsored Links”
- Competitive Bidding
- Trademark Issues
  - Competitor’s Purchase of TM’d keywords – OKAY
  - Competitor’s Use of TMs in ads – NOT OKAY
- Cease and Desist Letter/Possible Causes of Action

## TIP NINE: POSTING AND LINKING OF THIRD-PARTY CONTENT

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- Posting Content From Third-Party Website:
  - Copyright owners have certain exclusive rights
  - Penalties for wrongful copying
  - ❖ Best Practices:
    - DO assume material is protected
    - DON'T count of “fair use”
    - DO obtain permission before reposting content
    - DO remove unauthorized material immediately
- Linking to Third-Party Website:
  - Links enhance usability and usefulness of a website
  - ❖ Best Practices:
    - DO review Terms and Conditions Policy to ensure links are permitted
    - DO ensure link only transports visitor to website
    - DON'T duplicate the information contained in the link
    - DO disclaim liability for linked content

## TIP TEN: CYBERSPACE ALPHABET SOUP

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- Anti-cybersquatting Consumer Protection Act (ACPA)
- Children's Online Privacy Protection Act (COPPA)
- Communication Decency Act (CDA)
- Digital Millennium Copyright Act (DMCA)