ROUTE 2.0
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ROUTE 2.0 Module Unit: Legal Issues in Social Networking (Copy Rights & IP issues) Advanced

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03	December 3rd 2012	Improved with input peer-to-peer
04	March 14th	Second improvements

EXECUTIVE SUMMARY

This document deals with social media for communication strategies generally and particularly with legal issues in social networking. Moreover, it is intended for people working in the field of tourism. It is study material for the ROUTE 2.0 beginners training and part of the work package 5. Its content was developed by the Business Development Friesland.

Firstly, the unit module describes the legal considerations companies should have when using social media for their corporate marketing strategy. It discusses the legal implications of social networking activities such as copyrights, ownership & control and content that violates rights. The module also takes a close look to the terms of use of LinkedIn, Facebook and Twitter and stresses the importance of being aware of the Term of Use of social networking sites. Finally some pointers are given on how companies can set up a social media policy for their employees.

This work package is led by First Elements.

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1 OVERVIEW MODULE UNIT: LEGAL ISSUES IN SOCIAL NETWORKING

1.1 Who

This module is intended for people working in the field of tourism who are interested in learning more about social media marketing. It is made for beginners with no or only very little knowledge of social media. However, basic computer literacy is required.

1.2 What

This module is a basic introduction into legal issues in social networking. By the end of this session the trainee should be able to:

Objectives	Topics
1. Define the term 'intellectual property' and explain its importance.	An introduction on IP
1. Understand that it is important to consider the legal issues that arise when using social media.	Legal Considerations of Social Media Marketing – an introduction that describes why it is important to be aware of the legal issues in Social Media.
2. Understanding that existing laws apply equally to online and offline conduct.	Legal Implications of Social Networking Activities – how to handle copyrights, ownershiop and control and be aware to never post any comments that violate rights.
3. Understanding the importance reading the terms of use of the social networking sites they are using.	Terms of Use – an introduction on the terms of use of the Social Media sites LinkedIn, Twitter and Facebook.
4. Understand the importance of a social media policy for employees.	Social Media Policy for employees – Tips on what to include in a social media policy.
5. Discuss with other trainees the case study. Do you feel the mentioned twitter campaign should be banned? Why? Is it misleading to have idols twittering for a brand? Why?	Case Study - Nike has become the first UK company to have a Twitter campaign banned.

1.3 Structure of the Module Unit

- An introduction on Intellectual Property
- Legal Considerations of Social Media Marketing
- Legal Implications of Social Networking Activities
    - Copyrights
    - Content ownership and control
    - Content that violate rights
- Terms of Use
    - LinkedIn
    - Twitter
    - Facebook
- Social Media Policy for employees
- Case Study
- Questions, Glossary, FAQ's, Further readings, References

2 AN INTRODUCTION ON INTELLECTUAL PROPERTY

Intellectual property (IP) management is about protecting and managing valuable ideas and innovations. A company's IP can offer customers something new and different which helps to distinguish the business from its competitors. The company can also sell or license these rights, generating an important revenue stream.

Intellectual property rights are valuable assets for your business and so you should protect them against infringement, otherwise their worth will be diluted.

You may be surprised at how many aspects of your business you can protect. For example, its name and logo, designs, inventions, works of creative or intellectual effort or trade marks that distinguish your business are all types of IP. Some IP rights are automatically safeguarded by intellectual property law, but there are also other types of legal protection you must apply for.

Intellectual property is a legal field that represents the property of your mind or intellect.

It is called 'intellectual' property because it is the product of human imagination, creativity, and inventiveness, such as: inventions, literary and artistic works, as well as symbols, names, images, and designs used in business.

Intellectual property is divided into two categories:

- **Industrial property**, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source;
- **Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

An example of the intellectual property rights associated with a bottle of beer is illustrated in Figure 3.1

- Recipe, method of manufacture (Patent)
- Shape of bottle (Registered Design)
- Text on label, in an advertisement (Copyright)
- Trade name 'Red Cap' (Trade Mark)

Figure 3.1: Intellectual Property Rights Associated with a Bottle of Beer

From this we can see that that the four main types of intellectual property are

- Patents (protect how something works)
- Registered designs (protect how something looks)
- Copyright (protects the expression of ideas)
- Trade marks (protect the brand)

3 LEGAL CONSIDERATIONS OF SOCIAL MEDIA MARKETING

From a marketing perspective, what could be better than social media for marketing your brand?

However, it is necessary to keep in mind the legal consequences of your actions. In all your enthusiasm, legal implications are easy to forget.

If you consider how fast social media had exploded and how little most people understand about it, it is not difficult to understand that almost no specific regulations regarding the commercial use of social network is available. As the law moves so much slower than development in social media, the law has not described specific rules on social media.

Yet, if you understand the basics of existing law regarding offline marketing, you will be able to know how to deal with the legal issues in online marketing.

In this module you will learn about the basic legal principles.

4 LEGAL IMPLICATIONS OF SOCIAL NETWORKING ACTIVITIES

- **What are the legal Implications of Social Networking Activities?**

Keep in mind that existing laws apply equally to online and offline conduct.

- **How would you review an official press-release?**
- **How would you review a twitter-message?**
- **Is the content you post on a social networking site being reviewed prior to its release in the same manner you would do with other official content?**

The most important rule in using social media (both personally and commercially) is: Think before you post online!

Social media tools provide an instantaneous means of communicating with your entire online community. Using these tools in haste can lead to unintended and perhaps even disastrous results.

A perfect example is the undoubtedly well-intended 'tweet' in early February from U.S. Congressman Peter Hoekstra that he had just landed in Iraq for what was supposed to be a secret trip.

- **Are You Disclosing Sensitive or Proprietary Information?**

From the visitors-side of your account, it is important that it is clear if the accounts are accessible to third-party users, e.g. open groups on Facebook. Make sure this is clarified to the visitors of your account.

- **Do you want people that visit of follow your account to see posts and comments that are made by your company ?**
- **Do you want it to be clear that post are made by an employee working for your organizations or by the owner of the organization itself?**
- **Did you include an explicit clarification that opinions of individuals are opinions of the user and not of the employer?**

4.1 Copyrights

Anytime you are publishing content on a social network, including text, graphics, photos and images, compliance with applicable copyright laws is an important consideration.

- **Have you secured the right to post all third party content?**
- **Have you asked for permission for the people that are in your pictures?**

Text

Text is intellectual property. You have the right to quote a text by stating the source. If you don't name the source it's a violation of intellectual property rights. You may rewrite (in your own words) the information of your source (and name the source). To some extent (sentences, not pages) you are also allowed to copy the text directly (without rewriting it) if you state the source and mark it as a direct quote by using quotation marks e.g. "Quotation is the repetition of someone else's statement or thoughts. Quotation marks are punctuation marks used in text to indicate the words of another speaker or writer." from Quote, Wikipedia,

http://en.wikipedia.org/w/index.php?title=Quote&oldid=517726047 (accessed 22 October 2012).

Do	Don't
Always state the source	Use sources without stating the source
Find good sources and rewrite the information in your own words and state the source	Copy long text (pages) directly (even if you name the source)
If you find a catchy quote (or even a matching paragraph etc.) you could copy it directly (without rewriting it), mark it as a quote (by using quotation marks) and state the source	

Images

Images are intellectual property. IPR regarding images is more restrictive than regarding text. Normally, you don't have a right to quote images. Using an image without the explicit approval of the right's owner is a violation of intellectual property rights (even if you name the creator). However, especially for images there are also open copyright-licenses, like Creative Commons (CC).

CC enables scientists, educators, artists and other creators and owners of copyright- or database-protected content to waive those interests in their works and thereby place them as completely as possible in the public domain, so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright or database law.

(http://creativecommons.org/about/cc0 accessed December 3rd 2012)

There are different CC models. Some require that the data is rereleased as CC or that the image is not changed other only that you state the creator of the image (or video, text etc.).

The different licenses can be found on: http://creativecommons.org/licenses/

3 samples of CC licenses (there are 6 different models) from Creative Commons, About The Licenses, http://creativecommons.org/licenses/?lang=en (accessed 17 October 2012)

CC BY: This license is the most open CC model. It requires that you only state the creator of the data (image, video, text etc.).	CC BY NO: This license requires that you state the creator of the data but you have to use it unchanged and in whole.	CC BY NC SA: This license requires that you state the creator of the data, forbids the commercial use and demands that it is rereleased as CC (ShareAlike).

Do	Don't
Use Creative Commons images and follow the stated requirements (see CC webpage) and always name the creator/author Ask the rights owner for permission if you don't use Creative Commons images and always state the creator/author	Use images without the explicit permission of the owner

Search platforms for CC data are:

http://search.creativecommons.org/

http://www.flickr.com/creativecommons/

http://commons.wikimedia.org/wiki/Main_Page

4.2 Content ownership and control

Define in advance which person in your organisation is allowed to create accounts, and on which platforms the person is allowed to create an account. Who has access and who is allowed to change data?

- **Who owns your social networking profile page?**

Although you might think content is gone once a page is deleted, sometimes the opposite is true. Some social networks retain the right use or share your deleted information.

- **Once deleted, is the content truly gone?**

4.3 Content that violates rights

No illegal content should be posted, including content that violates rights of a third party (offending content, glorification/approval/belittlement of violence, racism, discrimination, sexist content, pornographically etc).

- **Could any of your posted content be considered insulting to a third party?**

Make sure you don't post any content that contradicts essential foundation principals of the contractor/company. Among others ideologically point of views should be considered.

4.4 4.4 Privacy rights

Posting photos or videos of people without their permission can also result in liability based on breach of privacy rights. The best practice is to obtain a release of likeness from each person in a photo or video before posting it, particularly if it could be argued that the content is for a commercial purpose or use.

4.5 Competition

Social media environments provide a forum for offensive statements to be made about individuals, and critical remarks to be made about companies' products and services. Organisations with overenthusiastic employees attempting to get a leg up on competitors may post comments or remarks that may not be fully accurate or true about an individual or a competitor's products or services. This could lead to a potential lawsuit and liability. Social media sites and blogs that allow comments may also involve such statements made by third parties over which the organization has little to no control.

(http://www.infolawgroup.com/2011/06/articles/social-networking/the-legal-implications-of-social-networking-the-basics-part-one/ Accessed March 13th 2013)

4.6 Fact vs. opinion

It is important to keep in mind that, when posting a comment on a social media platform, there is a difference between a opinion and a fact.

A fact is something that can be proven, sometimes backed by statistics. Opinion refers to a judgment or personal feeling that is not founded on proof. Opinion statements are characterised by "I think", "I believe" and "the best", "the worst", etc.

Hence, factual claims you make on social media platforms have to be true. Opinions are covered by the right of free speech. If a guest posts on a rating platform: “The hotel room was awful” you cannot do anything since it is an opinion. If somebody posts “The hotel was 10 km away from the beach”, this is a factual claim. If your hotel is in fact just 1 km away from the beach, you can notify the webmaster of the platform and make sure this comment gets deleted.

5 TERMS OF USE

Most social networking sites address the use of third party content in their terms of use.

In order to manage the online content of your organisations social media account, read the terms of use for the social networking site. Social networking sites differ widely in their policies and practices.

5.1 LinkedIn

When you use LinkedIn, for example, you agree to their terms of use. LinkedIn requires its users to grant LinkedIn a:

"nonexclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicenseable, fully paid up and royalty free right ... to copy, prepare derivative works of, improve, distribute, publish, remove, retain, add, and use and commercialize, in any way now known or in the future discovered ... without any further consent, notice and/or compensation to you or to any third parties"

with respect to all submitted content.

(LinkedIn Terms of Use: http://www.linkedin.com/static?key=user_agreement (accessed September 19th 2012)

5.2 Twitter

Twitter, on the other hand: "claims no intellectual property rights over the material [users] provide" .

Twitter's "Basic Terms" include the statement that users are "solely responsible for . . . any data, text, information, screen names, graphics, photos, profiles, audit and video clips, links" that the user submits, posts or displays.

Another Basic Term states that users "must not, in the use of Twitter, violate any laws in your jurisdiction (including but not limited to copyright laws)."

Users of Twitter can remove their profile at any time deleting their account.

(Twitter Terms of Use: http://twitter.com/tos accessed September 19th 2012)

5.3 Facebook

Many social networks provide a mechanism to notify them of violating activities by their users. Facebook, for example, has a separate “Facebook Copyright Policy” in addition to its Terms of Use, with explicit directions on how to report incidents of copyright violation and indicating that Facebook will take prompt action upon receipt of such a report, including taking down violating content and terminating repeat offenders

(Facebook Terms of Use: http://www.facebook.com/copyright.php, accesses September 19th 2012)

- **Have you reviewed the Terms of Use of the social media platforms you use?**

When you are using social media sites, make sure you review the terms of use, so that you understand the ownership and control issues. When you do, you can make informed decisions about whether to use the site or not. If you choose to use a specific social media site; think about what content you post.

6 SOCIAL MEDIA POLICY FOR EMPLOYEES

While most employees are warned about behavior on Facebook, companies are facing their own challenges for alleged blunders in dealing with social media.

A little common sense would suggest that your best defense against legal action is to establish a social media policy template. Examples of what it might include:

- **Twitter Usage Policy** – outline how employees can use Twitter to share, interact and communicate professionally.
- **Facebook Usage Policy** – show staff how to be an Ambassador for your business on Facebook Fan pages.
- **LinkedIn Usage Policy** – series of guidelines for using this professional network
  site and using LinkedIn groups. Companies should be aware of the fact that the connections employees have on LinkedIn is also your customar list, which makes it difficult to protect it.
- **Company Blogging Policy** – guidelines for employees writing on corporate blogs; how to respond to comments, queries, feedback, and press enquiries.
- **Personal Blogging Policy** – use this to help employees understand their obligations when using personal blogs.
- **Social Media Risk Management Policy** – guidelines to reduce risk for employees and managers using Social Media sites.
- **Brand Usage Policy** – use this to ensure that your brand is used consistently across all social media network sites.
- **Code Of Conduct** - extensive list of Do's and Don'ts when using social media network
  sites.

Outline what is and isn't appropriate in social media, and then to train employees about the policy.

Go to module 4 'Managing people and resources' for more information about social media policy for employees.

7 CASE STUDY

Nike has become the first UK company to have a Twitter campaign banned, after the advertising watchdog decided that its use of the personal accounts of footballers Wayne Rooney and Jack Wilshere broke rules for not clearly telling the public their tweets were ads.

Nike, which has lucrative sponsorship deals with the Manchester United and Arsenal footballers, ran the Twitter campaign as part of a wider marketing push under the Make It Count advertising strapline.

A tweet posted by Rooney, who has 4.37m followers, said: "My resolution — to start the year as a champion, and finish it as a champion...#makeitcount gonike.me/makeitcount".

Figure 7: http://www.flickr.com/photos/terryhart/3876488907/

Figure: source: The Guardian: http://www.guardian.co.uk/media/2012/jun/20/nike-twitter-campaign-banned

A tweet from Wilshere, who has followers, said: "Jack Wilshere stated "In 2012, I will come back for my club — and be ready for my country.#makeitcount.gonike.me/Makeitcount".

The Advertising Standards Authority (ASA) received a complaint that it was not clear the footballers' tweets were advertising.

Nike UK said both players were well-known for being sponsored by the retailer which argued that Twitter "followers" would not be misled about the relationship it had with the players.

The company said it has spoken to both players about their "goals for 2012" and they were free as part of the campaign to independently reply or retweet consumer tweets "at their own discretion".

The company added the web address in the tweet was clearly branded as Nike, and that the message carried the company's ad strapline, making it clear which tweets by the players were personal and which were ads.

- **Do you feel this twitter campaign had to be banned? Why?**
- **Is it misleading to have idols twittering for a brand? Why?**

The ASA said it was understood from its investigation that the final content of the tweets was "agreed with the help of a member of the Nike marketing team".

The ASA said the average Twitter user would scroll through many tweets a day, quite quickly, and that as such the marketing code states that ads must be "obviously identifiable".

"We considered that the Nike reference was not prominent and could be missed," said the ASA. "We considered there was nothing obvious in the tweets to indicate they were Nike marketing communications."

The watchdog added: "In the absence of such an indication, for example #ad, we considered the tweets were not obviously identifiable as Nike marketing communications and therefore concluded they breached the [advertising] code. The ads must no longer appear. We told Nike to ensure that its advertising was obviously identifiable as such".

QUESTIONS

Q1 **What is Intellectual property?**

☒ Intellectual property is a legal field that represents the property of a mind or intellect.

☐ Intellectual property is the legal field that protects only texts and images.

☐ Intellectual Property is the legal field that protects industrial inventions only.

Q2 **Which of the following statements is <u>false</u>?**

☐ Creative Commons is a project that promotes open content.

☒ Creative Commons is a platform where you can buy images and photo's

☐ Creative Commons is a platform where you can find images that you can use without restriction under copyright or database law.

Q3 **What is the most important rule in using social media?**

☒ Think before you post online.

☐ Read the terms of use of socials media platforms.

☐ Always use Creative Commons.

GLOSSARY

- LinkedIn
- Facebook
- Social Media
- Social Network
- Twitter
- Creative Commons

GLOSSARY

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FAQs

What are Creative Commons?

CC enables scientists, educators, artists and other creators and owners of copyright- or database-protected content to waive those interests in their works and thereby place them as completely as possible in the public domain, so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright or database law.
(http://creativecommons.org/about/cc0 accessed December 3rd 2012)

FURTHER READINGS

Social Media and Intellectual Property (IP) - Five-minute talk by Antone Johnson

Discussion of challenges faced by corporations when their employees use social media. Excerpted from the ACCA-SoCal In-House Counsel Conference on January 20, 2010 in Los Angeles.

http://www.youtube.com/watch?v=tp8tT7q_hsk

Chapter 1 - Privacy and Copyright Legal Considerations of Social Media Marketing

17/2/12 Chapter 1 in a 3 part series on Privacy and Copyright Legal Considerations of Social Media Marketing. It's time again," says our featured guest speaker, Jim Thomas, Attorney/Owner at Minor & Brown, "to remind ourselves that our social media should not only be effective, it should not get us sued." Sage stuff, Jim.
Jim will review the legal pitfalls facing your business in copyrights, confidentiality and privacy, as well as how to handle negative comments and reputational issues. Presented by Webolutions & Denver Dataman.

http://www.youtube.com/watch?v=KoEGBmA1VVQ

More information about national legislation

Spain:	
The Netherlands:	www.reclamecode.nl
Germany:	http://www.rechtzweinull.de/archives/131-Social-Media-Marketing-Recht-Dos-and-Donts-beim-Werben-im-Social-Web.html http://www.omsels.info/
Cyprus:	

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Ivanwalsh; Using Social Media Policies to Reduce Legal Issues by on January 26, 2011 WWW-page (13 september 2012)

http://www.socialmediapolicytemplates.com/social-media-policy-government/social-media-policy-legal/136/

LinkedIn Terms of Use: http://www.linkedin.com/static?key=user_agreement

Twitter Terms of Use: http://twitter.com/tos

Facebook Terms of Use: http://www.facebook.com/copyright.php

The Guardian, Nike becomes first UK company to have Twitter campaign banned. Mark Sweney Wednesday 20 June 2012. WWW-page (13 september 2012)

http://www.guardian.co.uk/media/2012/jun/20/nike-twitter-campaign-banned.