

The Values and Risks of Social Media Usage by Higher Education Institutions

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Social media has become a valuable tool for higher education institutions in their quest to attract the best students and achieve the best rankings. Students and prospective students rely on social media to such an extent that it would be an oversight for colleges and universities not to take advantage of the various platforms available to promote their distinct selling points. The fact that it was college students who created Facebook in the first place is telling of the shift in thought of students and prospective students toward an age of social media networking, researching and marketing.

This is a new age where students no longer need to go to a card catalogue to find a book in a library to cite for a research paper. With the click of a few buttons, the world is at their fingertips. The natural impulse these days is to scour the various social media platforms to research, socialize and network. Why would prospective students and parents wait for a hard copy brochure of a college or university to arrive by mail when they can find that information instantly by searching online? Even better is the ability to cut out the “searching online” step and instead receive automatic updates by “liking” or “following” a college or university’s page on Facebook, Twitter or Instagram.

Colleges and universities have come to appreciate the various social media tools and the extent to which they can be used to enhance their presence such as: posting pictures or links to articles to promote rankings, , providing video clips of virtual campus tours, promoting sporting events, providing links to charitable causes taking place on campus, , and utilizing social media in connection with crisis management plans. In fact, jobs have been created to focus solely on a college or university’s social media use. The University of Portland (Oregon), for example, has a position titled “Assistant Director for Media Relations,” and the individual in that position has created a blog to monitor what he sees as the best and most innovative uses of social media by higher education institutions. For more on this blog, go to: <http://socialmediaforcolleges.com>.

It is clear that in order for colleges and universities to remain competitive, attract the best candidates, and achieve the highest rankings, they will have to embrace social media and keep abreast of the latest and most creative ways to use social media for their benefit. To illustrate how significant social media has become to higher education institutions, StudentAdvisor.com recently released college rankings based on their use of social media. For a list of the top 100 social media colleges according to StudentAdvisor.com, go to: <http://www.studentadvisor.com/top-100-social-media-colleges>.

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As is true with any aspect of such a highly- regulated field as education, however, there are potential pitfalls to the use of social media. For example, institutions that receive federal funding are subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g [“FERPA”], which protects the confidentiality of student education records and “personally identifiable information.” Educational institutions are responsible for safeguarding these confidentiality rights, and their failure to do so can result in the termination of federal funding. While it is hard to imagine that any college or university would allow its social media platforms to become so intrusive as to implicate a student’s educational records, the disclosure of personally identifiable information is another story. FERPA defines “personally identifiable information” as, in part, any information that alone or in combination is linked or linkable to a specific student and is sufficient to allow a reasonable person who does not otherwise know the student to identify him or her with reasonable certainty. Such a definition could encompass photographs or the use of student names.

A means of avoiding this inadvertent disclosure of educational records or personally identifiable information is the adoption of a “directory information” policy and procedure. Under FERPA, education institutions can release directory information – which can include names, photographs, fields of study, addresses, dates of birth and even e-mail addresses -- without first procuring the specific student’s consent so long as the institution has provided prior public notice of the sort of information it considers “directory” and has informed students – or, if the student is not yet eighteen, their parents – of their right to refuse the disclosure of such information. Having enacted and informed the relevant individuals of the educational institution’s directory information policies, including the individual’s right to decline the release of such information, colleges and universities can, in the absence of such declination, use this information in their publications, on their websites, and on social media.

Another potential hazard, however, arises from the common law tort of invasion of privacy, specifically the publication of information that the affected individual wanted to keep private. For example, suppose a college or university placed on its website, or on a social media site, a picture of a Gay-Lesbian Alliance function that included a student’s picture and perhaps even his name, and that student had not disclosed his sexual orientation to his family and was, for whatever reason, seeking to limit knowledge of it to friends on campus. The educational institution’s release of the student’s photograph and name in this context could give rise to a claim that the institution tortiously invaded his privacy by publicizing something he sought to keep private.

It is difficult to assess whether such a claim would gain much traction in today’s society, as the evolution of social mores has undoubtedly redefined what constitutes a “reasonable man” standard. Nonetheless, there are individualized elements to each case that could result in liability for the college or university. In such a case, if the student had not opted out of the directory information notice, the educational institution could perhaps argue that by not refusing the release of directory information, the student had essentially waived any right to raise privacy claims stemming from such release. Whether a court would agree is unclear. Thus, in order to seek further insulation from potential liability, institutions could go beyond the tacit agreement to

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release what is inherent in a directory information policy and take the affirmative step of requesting actual written consent to the use of names, photographs and similar information. Key to this would be the language and scope of the consent and whether it was requested in a manner and context that would not be deemed coercive.

A related claim would be the release of information that personally identified a student and thereby exposed her to danger in the form of a stalker, or abusive ex-spouse or boyfriend. In such a case, the student's prior failure to decline the release of directory information would almost certainly provide the college or university with a stronger defense. By failing to decline the release of this information, it would be difficult for the student to assert that the institution had been negligent as she would almost certainly be unable to establish that the institution knew or should have known that the disclosure of her name, photograph or similar information posed a danger to her. At the same time, had the student opted out – fearing this very situation -- yet the college or university had nonetheless disseminated the information, then the educational institution could be facing a very different outcome.

As is evident, while the value of social media to higher education institutions is indisputable, there are potential risks. Consequently, it is imperative that educational institutions obtain legal counsel as to the legality of their use of social media – or even the contents of their websites – to ensure compliance with enactments such as FERPA and to avoid possible litigation.

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