

## **EBig.org Blogging Special Interest Group**

Tonight, the Ebig.org blogging SIG met at its new location at the University of Phoenix in Concord, California. Charles Smith, Chief Legal Council at Fastlane Ventures gave an excellent presentation on the legal implications of blogging - what you should know before putting fingers to the keyboard.

You can check out my notes and [Eric Rice's notes](#), too.

Biggest takeaways for me:

- 1) Employers should develop specific blogging policies
- 2) Employees need to use more common sense when posting.

(Disclaimer: These notes and this presentation do not constitute legal advice. You should consult a lawyer for legal advice. The views expressed by Charles Smith do not reflect the views of me or Tennant Consulting or its sponsors or clients.)

The bold headings represent new slide titles or the outline of the discussion. What follows is a combination of my notes of Charles' slides and my summary of the commentary in the room.

### **What is a weblog?**

A weblog is website that's extremely easy to create and update. If you can surf the Internet, you can create a weblog. Weblogs have specific defining characteristics:

- Regularly updated by the author
- Blog entries organized by date and topic
- Readers may add their comments to the blog..which allows interaction and a dialog to be created.

Charles showed an example of [Adam Kalsey's blog](#), one of the people in the audience, for those who unfamiliar with blogs. Charles pointed out that Adam has posts from Dec 4, Dec 3, you can go over to the right side of his blog and see all the archives, or look by topic. And view people's comments on his posts.

### **Isn't this just a website?**

Key differences –

- Extremely easy to create and manage a weblog
  - o Anybody can do it
- Dialogue, not monologue
  - o Much more interesting than a traditional one-way corporate site

- RSS/ATOM
  - o Easy for readers to track and read many blogs
  - o Allows readers to subscribe and receive new posts much like email.

Blogs are growing quickly. The slowest rate at which the blogosphere has doubled in size is once every 5 months.

– Dave Sifry, Technorati

Charles showed a graphic showing the meteoric rise of blogging and the growth of the blogosphere.

## **Why blog?**

Two types of bloggers. Why you'd blog depends on who you are:

### **Individuals**

- Write/discuss topics of high personal interest
- Share passion

### **Companies**

- Engage customers/interested persons in an intimate conversation. You'll find the best corporate blogs are transparent corporate blogs that allow customers to comment.
- Put a human face on your company. Corporate blogs will go through marketing and PR, and not have a personal voice.
- Search engine placement. The nature of linking and cross referencing blogs.
- Employees doing it with or without corporate approval.

We talked about who pays attention to blogs, and who reads them. Bill Flitter pulled up some stats on Google from Pew indicating 11% of Internet users have posted or read blogs – but the audience here imagined many folks polled probably didn't know they were looking at blogs in some cases, so the numbers could be higher.

## **Legal issues**

Anybody with an Internet connection can publish their thoughts to a global audience.

- Inaccurate/misleading phrases confuse these legal issues.
  - o Weblog = personal publisher
  - o Weblog = online diary

These are not accurate – everything on a blog is viewable by the entire world.

For example, information moves very fast in the blogosphere – e.g., company information can give a global audience immediate information about your company.

## **Defamation**

### Overview

- Two forms:
  - o Libel – with written word,
  - o Slander -- through some kind of gesture

### Elements

- Name calling, heated words not enough
  - o “Joe is a hot-headed jerk” is not enough
  - o Compare: “Joe sells arms to Al Qaeda” – that would be libel.
- Published to at least one other person
- Of or concerning the plaintiff
- Comment needs to be defamatory: actually injures reputation or standing

## **Defamation Examples**

- Blogger posts false statement on weblog
  - o Underage blogger: Parental liability - Subscribe to your kids' blogs and follow what they're writing
- Blogger republishes defamatory statement
  - o Fact-checked newspapers different from informal blogs. There was a case with mailserv lists, person wrote a letter to the mailserv list, with something like, “Joe's a pedophile”. The courts ruled that newspapers have a higher standard – mailserv lists are informal discussions, and found the mailserv not liable. Blogs may be similar to mailserv lists. As long as it's a personal blog, not the New York Times blog, the blogger is probably not liable.
- Blog reader posts false statement in blog comments. Is the blogger liable?
  - o Does blog publisher actively control comments? What responsibility does the publisher have for that person's comments? If the blogger has active control over comments, there's a pretty good case that there could be liability.
    - Pre-approve comments
    - Edit
  - o Comment removal policy
    - A good practice for bloggers is to take off comments, and make it part of the terms of service that they have the right to do so.
  - o Require registration to comment
    - On some sites, there's no authentication required – anyone can comment and pretend to be someone they're not. Could I get nailed for that as the blog publisher? A protective device is to establish authorization and allow comments, so only people who create an account and are “trackable” can

comment. Corporations will use this to mitigate their liability.

## **Copyright**

- Copyright protection is extraordinarily broad.
- Fair use – is a defense for copyright infringement. Allows the use of protected works for socially productive purposes without first seeking permission.
- Some of these socially productive purposes uses include commentary, news analysis, scholarship, and teaching. If for the common good, then permission is not required.
- Key factors
  - The amount and importance of the portion that you used in relation to the copyrighted work as a whole
  - The effect of the potential market value of the copyrighted work.
  - Commercial use? If you're not making money on it, less likely to be an issue.
- Copyright examples – blogger republishes a news article and in its entirety with no attribution or link.
  - Result: copyright likely infringed. Also likely to anger creator.
- Blogger republishes short excerpt with attribution and link
  - Likely protected by Fair Use doctrine
  - Plus attribution and link benefits the author. Credit, traffic, and search engine ranking.
  - The analysis isn't crystal clear, and it also comes down to social norms and common sense.
- Best practices
  - (Re) Publish only as much as required to make your point.
  - Make an attribution to the original author
  - Link to the original source
  - If you do those things, you'll be in good shape and make the original author happy with traffic, etc.

## **Creative Commons**

- A group of copyright and free speech advocates have gotten together and allow people to take images and quotes and republish them.
- Creative commons makes it easy for the public to re-use copyrighted materials
- Author can give up rights to public – for example, if they want something distributed more freely
  - Attribution
  - No commercial use
  - No derivative works
  - Share alike
- Works are clearly marked with the selected Creative Commons license
  - Visit <http://creativecommons.org>

## **Issues for Companies #1**

Leakage of proprietary information

Sensitive corporate information winds up on employee blog.

- Microsoft
  - o Pictures of new Macs arriving at Microsoft and did post, “Even Microsoft wants G5’s”
- Friendster
  - o Blog post regarding software development and “notoriously pokey” site led to employee being fired. Was a software developer hired to improve the software; did a post saying the software was pokey and slow no longer is.
- Employment agreements cover some of this.
- It isn’t a matter of blogging policies – it’s basic employee relations
- Blogging puts a spotlight on this.
- Some companies post “codes of conduct” and include in employee agreements.

## **Issues for Companies #2**

Disparaging or provocative blog entries

- Starbucks
  - o Employee sick, but manager wouldn’t let him go home.
  - o Employee’s blog entry aggressively attacked Starbucks and manager
  - o Result: fired
- Delta Airlines
  - o Stewardess posted quasi-suggestive photos of herself in Delta uniform on Delta airplanes
  - o She was finally fired

## **Issues for Companies #3**

- Product liability
  - o Imagine having a product on the market – and you have a corporate blog, through some twist of fate, someone uses instructions and cuts their finger off; but when you get into blogs, people might make a comment here or there – could come after the company that sanctioned the blog.
  - o Hasn’t happened yet, but might.
- SEC regulations
  - o Quiet periods – might need to tell bloggers they can’t blog
  - o Comments on prospective financial performance would be taboo
  - o Companies need to say you can’t post to your blogs, or you can’t post at any time.

## **Weblog policies**

- Best practice is to have a blogging policy
- A blogger in every company
  - Every midsize company has an employee who blogs
- Blog-related legal issues are complex
- Company should clarify their policies on blogging
  - Sets employee expectations
  - Protect against legal liability
  - Protect against bad publicity – no Starbucks or Delta situations
- Consult with legal counsel in preparing and implementing policy.

## **Sample Corporate Blogging policy (from Charlene Li, Forrester Research)**

[http://forrester.typepad.com/charleneli/2004/11/blogging\\_policy.html](http://forrester.typepad.com/charleneli/2004/11/blogging_policy.html)

1. Make it clear that the views expressed in the blog are yours alone and do not necessarily represent the views of your employer.
2. Respect the company's confidentiality and proprietary information.
3. Ask your manager if you have any questions about what is appropriate to include in your blog.
4. Be respectful to the company, employees, customers, partners, and competitors.
5. Understand when the company asks that topics not be discussed for confidentiality or legal compliance reasons.
6. Ensure that your blogging activity does not interfere with your work commitments.

Overall, this was an excellent session. Thanks to the speaker, Charles Smith, for his work and a great overview. And thanks to Bill Flitter for putting it on, and to the sponsors, the University of Phoenix, Pheedo and eBig.