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Social Media: Best Practices for Congregations and Teen Ministries

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WWWWH of Social Media

- WHO-the Employees, the Organization, the Volunteers
- WHAT-Emails, communication on Internet
- WHY-Reputation, Liability, Document Retention
- WHEN/WHERE-At Work, Off Work, Volunteering and Beyond
- HOW-Through computers, cell phones, PDAs, the internet

WHO is Using Social Media

- Everyone-General Public
- Includes Employees, Volunteers, Internet Users, and Youth
- A 2012 global Survey of Social Media in the Workplace Around the World conducted by Proskauer Rose LLP found that 69% of the 250 multinational businesses surveyed had dedicated social media policies, most of which covered both usage at work and outside of work. In the United States, smaller businesses also appear to be adopting social media policies as well, in addition to traditional employee-conduct policies and employee handbooks.

WHAT is Social Media

- User-generated content, supported by online tools - includes web-based and mobile technologies used to turn communication into interactive dialogue
- Primarily the Internet but also including smartphone and PDAs
- Twitter, Facebook, YouTube, LinkedIn, Flickr, Shutterfly, Blogs
- Also known as Social Networking
- Social Media has not only changed our method of communication, but it has fundamentally altered how we communicate.

FACEBOOK PHENOMENON

- 1.06 billion—Total number of users worldwide
- 680 million—Total number of mobile users worldwide
- 618 million—Total number of daily active users
- 141.5 —Average number of friends per user
- 240 billion—Total number of uploaded photographs
- 350 million—Average number of photographs/DAY
- 20 minutes—Average time spent per visit
- 1.24 trillion—Number of minutes on Facebook/DAY

TWITTER CRAZE

- 500 million—Total number of users worldwide
- 200 million—Total number of users active monthly
- 400 million—Average number of tweets sent per day (1 billion tweets every 2.5 days)
- 400 million—Average number of monthly visitors to twitter.com
- 208—Average number of followers per user

EMAIL

- 3.6 billion—Total worldwide active email accounts
- 918 million—Total worldwide corporate email accounts
- 2.7 billion—Total worldwide consumer email accounts
- 231 million—Total new email accounts THIS year
- 154.6 billion—Total worldwide emails/DAY
- 53.6 billion—Total number of consumer emails sent/DAY
- 15%—Percentage of emails received that are spam
- 23.2 million—Total number of spam received/DAY

www.pingdom.com

WHEN/WHERE

- During work, at home, on the go
- Everywhere
- Affecting everyone-even movie producers. Director Henry-Alex Rubin recalls Mr. Bateman half-jokingly remarking that he was making a silent movie when using social media in a movie. "There was a lot of having to sort of communicate and process the receiving of an answer without talking," says Mr. Bateman. "It could have gone really bad with a lot of eyebrow acting."
- SEC

WHY

- Social Networking is the communication of the future
- Gone are the letters to the editor
- Timeliness
- Low Cost
- Example Airbnb.com-using social media to make people more comfortable about the prospect of renting another's room or home. Also RelayRides-renting out your car to people by the hour.

Social Media: Pros

- Provides for Information Sharing – Consumer Feedback
- Extends Reach of Communications to a Larger Audience
- Assists in Image-Building and Creating Goodwill
- Serves as an Educational Tool re: Products/Services
- Serves as a Low Cost Marketing Tool

Employer Benefits

- Background Checks-You can and should.
 - ◆ Employers can check employees through social media, for instance
 - Can review sites like LinkedIn to verify previous work history or other information supplied by applicant or employee
 - Can review sites like Twitter, Facebook, MySpace, etc. for posting that may be viewed as harassment of other employees or to check on an employee who has called in sick (but is really at the Rangers game!)
 - Can NOT use information found on social media to discriminate against applicants or employees on the basis of race, religion, sexual orientation or other protected class

Social Media: Cons

- Reduces Face-to-Face and verbal communication – potential for miscommunication
- Can Be Manipulated for Personal Use
- Increasingly used to solicit potential plaintiffs for class action lawsuits
- One Negative Comment Can Damage Reputation
- Requires Constant Monitoring

Why Worry: Liability and Risk for the Employer

- Because Communication has fundamentally changed and morphed into a new phenomenon, so must the law.
- Liability for conduct involving social media, includes...

Social Media: Potential Liability

1. Right of Publicity/Privacy
2. Negligence and Negligent Hiring/Retention
3. Defamation, Libel, and Slander
4. Unauthorized Disclosure of Proprietary/Confidential Information
5. Copyright Infringement/Trademark Infringement
7. Labor – Fair Standard Labor Act issues
8. Intentional / Negligent Infliction of Emotional Distress

How Can an Employer Handle the Risk?

- Was the Person authorized by the Employer and/or within his or her scope of work?
- Understand an employee's First Amendment rights and how they apply
 - ◆ Recognize the Difference Between Public and Privately employed persons
- Employers Can Restrict Private Employees-Sometimes

Employer Liability-Scope of Work

- Was the Employee working at the time of the event?
- Whether an employer can be vicariously liable for the tort of its employees under a theory of Respondeat Superior depends on whether the employee or agent was acting within the scope of employment at the time of the act.
- Jurisdictions range from events solidly within the scope of employment to outside the common meaning.
- The scope of employment has been determined broadly, such that employer may still be liable for the conduct of an employee even though the employee is not engaged in the ultimate object of his employment. *See Alma W. v. Oakland Unified School Dist.*, 123 Cal. App. 3d 133, 139 (1981).

Private Employees

- Can be restricted because the state action doctrine shields private persons, including corporations, from having to comply with the Constitution.
- Instead, private employment relationships in most states—including Texas—are generally governed by the at-will doctrine: the presumption that, barring a contractual agreement, an employment relationship can end at any time for any reason.
- Consequently, private employers can restrict the free speech of their employees and terminate employees for engaging in speech that is protected by the First Amendment. An employer's right to restrict speech, however, is not without limits.

Is the Employee's Communication Private?

- Privacy Concerns
 - ◆ Courts often consider the following four (4) factors in determining whether an employee has an expectation of privacy in computer files and email:
 - whether the employer has a policy banning personal use
 - whether the employer monitors the use of the employee's computer or email
 - whether third parties have the right of access to the employee's computer or email
 - whether the employer notified the employee, or whether the employee was aware, of any use and monitoring policies

Employer-Email Use

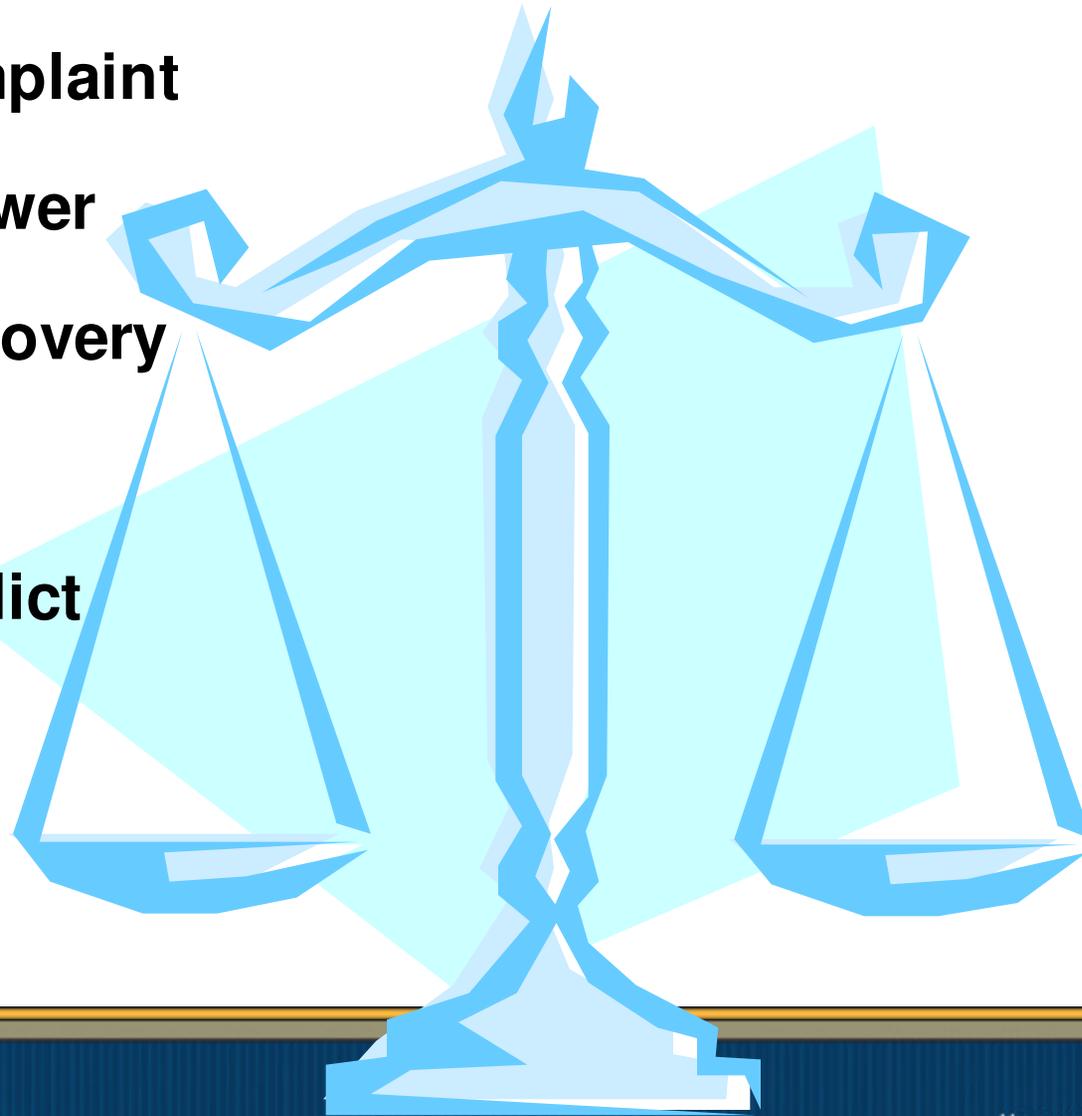
- Privacy Concerns
 - ◆ Whether the employee has a reasonable expectation of privacy in the communication is often the deciding factor in whether there has been a violation of privacy.
 - ◆ Typically, employee has no reasonable expectation of privacy in email boxes maintained by employer or email messages sent over employer's system. *See U.S. v. Simons*, 206 F.3d 392, 399 (4th Cir. 2000).
 - ◆ If an employee is using an organization's equipment, no privacy should be expected with proper communication.

What Could Happen?

- Federal Administrative Oversight
 - ◆ “Over the course of the last year, the NLRB has taken an active role in shaping the legal framework of social media use by employees. On Sept 2, 2011, an NLRB administrative law judge ruled that a nonprofit organization violated federal law when it fired five employees for messages posted on Facebook.” (2)
 - ◆ “Concerted activities for the purpose of collective bargaining or other mutual aid or protection” is the standard. NLRA Section 7.
- Reputation of Entity
 - ◆ Image Destroyed
 - ◆ Readers Quick to Judgment of Organizations tied to Religion
- During litigation, bias by jurors that Organization and Community Action groups should be open

You Could Be Sued

- **Complaint**
- **Answer**
- **Discovery**
- **Trial**
- **Verdict**



Litigation

Document & Evidentiary Issues: Retention

- Companies have a legal duty to maintain certain communications and documents
- Discovery process permits each party to review relevant documents in the possession or control of other parties (and even non-parties), and failure to preserve documents can result in sanctions within litigation, negative publicity
- The best way to avoid discovery sanctions is to have a sound Document Retention Policy and follow it

How to Implement

- With the increased use of social media, litigants now seek discovery of Electronically Stored Information (ESI)
 - Typically in the form of a Litigation Hold Either external or internal
 - What is Discoverable?
 - Of course, written (hard copy) and audio communications
 - Email, Text Messages, Instant Messages
 - Tweets, Facebook and Message Board/Blog Postings
 - Metadata – Here today, gone tomorrow...maybe.

How ESI is Discovered

- Social Media evidence can be obtained via traditional methods of discovery (i.e. written discovery, depositions)
- Requests for access to an opposing party's hard drive or other electronic storage device
- Subpoenaing Facebook or other social networking sites, directly, for its account records and history of communications.

Discovery & Evidentiary Issues

- Severe sanctions may be imposed for non-compliance with requests for discovery of ESI – including disclosures of usernames, logins and/or passwords
 - ◆ McMillen v. Hummingbird Speedway, Inc., No. 113-2010 CD (Pa. CP Sept. 9, 2010)
 - *Court grants motion to compel private sections of social network site*
 - ◆ Zimmerman v. Weis Markets, Inc., No. CV-09-1535 (Pa. CP May 19, 2011)
 - Judge Charles H. Saylor issued a thorough opinion analyzing the Facebook frontier: “...liberal discovery is generally allowable, and the pursuit of truth as to alleged claims is a paramount ideal. . . Facebook and MySpace do not guarantee complete privacy,”

Discovery & Evidentiary Issues

- *EEOC v. Simply Storage, Case No. 1:09-cv-1223-WTL-DML* (U.S. District Court, Indiana)
 - ◆ Court allowed production of all profiles, postings, messages and photos that reveal, refer or relate to any emotion, feeling or mental state
- *Beye v. Horizon Blue Cross Blue Shield, 568 F.Supp.2d 556* (D. N.J. 2008)
 - ◆ Insurer sought production of emails, diaries, and all communications related to eating disorder. Judge ordered production including all entries on Facebook and MySpace

Tip to Keep Social Media Private

--Not all ESI is discoverable. Some communications are protected under the Attorney-Client Privilege

--When requesting legal advice or communicating with the Law Department via social media, use the following designation:

Privileged and Confidential

Attorney-Client Communication

Request for Legal Advice

- Generally, for a communication to be privileged, it must be:
 - a) between a client and his/her attorney, acting in a legal capacity
 - b) for the purpose of obtaining legal advice, not business advice

Best Practices - Social Media Policy

To avoid the pitfalls related to Social Media, companies utilizing interactive, user-generated media should have a sound Social Media Policy establishing the terms and parameters of use

Here are some Tools, Guidelines to Consider and the Policy Outline

TOOLS FOR AN EFFECTIVE SOCIAL MEDIA POLICY

- Adhere to the code of conduct and other applicable policies – sync policy with core values and existing policies and procedures
- Establish procedures for regular monitoring of social networking sites bearing company's name
- Educate employees on the policy and the consequences of inappropriate communications – prior employees and new
- Consult with IT/Legal Department before responding to negative posts
- Establish policy against forwarding or posting jokes or other non-company related information

Guidelines-Personal v. Private Life

- Organization leadership should determine whether to allow its supervisors and managers to keep a personal presence on the social networking sites. If this is acceptable, then both a public and private account should be used for persons who lead the ministry.
- Consider implementing a Policy that use of the organization's name or brand must be approved by the organization prior to use. Once that permission is granted, also state it can be revoked for violation of Policy.

Guidelines-Permanent

- Remember all internet postings are permanent, able to be duplicated and may go viral.
- Use your common sense. If you wonder whether or not to communicate or post, don't do it until you consult with the organization.
- Speak in first person.

Guidelines-Consider BYOD

- BYOD-Bring Your Own Device Policy
 - ◆ Better for smaller groups
 - ◆ Sample Policy would include: permission from the management, use of an anti-virus software and a mobile device management system (MDM) for saving company information
 - ◆ Use of a Password
 - ◆ Other considerations include restriction of the time of use, persons who can use the device and preset ringtones.

Guidelines for Social Media Communications

- Educate Employees that before sending:
 - Consider whether a face-to-face meeting is more appropriate
 - Consider your audience - does everyone “need to know?”
- Think before you write, send and forward
- Choose your words carefully
- Balance the risk with the benefits
- State the facts, not subjective opinions
- Be careful with email subject lines

I Want to Draft a Policy-Now What?

- *Questions and issues to consider before drafting a Social Media Policy for your organization.*
- First, what is the current use of internet communication at your organization, if any. For instance, who uses the computers owned by the organization and do you allow internet access? Do your employees use email for work and private communication and do people have email addresses that include your organization's name?
- Are there any ethical standards you want your employees and volunteers to follow? Do you have a designated technology resource/person for questions? Who will approve this Policy or deviations from the Policy?

The Policy Itself

Policies to Consider Implementing for your Private Organization-Honesty

- Be open and honest about who you are when you communicate. Our organization trusts and expects you to exercise personal responsibility whenever they use social media, which includes not violating the trust of those with whom you are engaging. However, these policies are not meant to interfere with your legal rights to bargain collectively or engage in concerted or protected activities.

The Policy

Policies to Consider Implementing for your Private Organization-Privacy

- Respect your privacy, your co-workers' privacy and the organization's privacy by not providing confidential information to anyone. Also, employees/volunteers are prohibited from sharing anything via social media channels that could violate another employee/volunteer's right to personal privacy.

The Policy

Policies to Consider Implementing for your Private Organization-Disclaimer

- Only those officially designated can use social media to speak on behalf of the organization in an official capacity, though employees/volunteers may use social media to speak for themselves individually or to exercise their legal rights. If and when a designated person uses social media to communicate on behalf of the organization, they should clearly identify themselves as an employee/volunteer.

The Policy

Policies to Consider Implementing for your Private Organization-Youth

- If you are communicating with youth in any manner, such as through social media, act as you would if you were communicating in person.
 - ◆ Specifically, if you decide to “friend” or email the minor, do so with transparency and do so in a group or do not communicate at all.
 - ◆ Make sure your Facebook page is set to “public” and/or include other recipients to all communications.
 - ◆ Do not participate in one on one communications with a minor and consider setting up a group with separate profiles for all to participate jointly.

The Policy

Policies to Consider Implementing for your Private Organization-Copying

- Do not violate copyright and fair use laws and do not plagiarize another's work. Obtain permission if you wish to use material created by someone else.

-Mixing Private and Public Information

- Do not use the company's email address for personal use.

The Policy

Policies to Consider Implementing for your Private Organization - Respect

We welcome and respect all types of people, cultures and customs. Harassment, threats, intimidation, ethnic slurs, personal insults, obscenity, racial or religious intolerance, abuse, and any other form of behavior prohibited by law and/or in the workplace is also prohibited via social media channels.

Do not engage in any such behavior and do not make or comment on any such behavior or comments or remarks.

The Policy

Policies to Consider Implementing for your Private Organization-Disclaimer

- Use a disclaimer saying that what you communicate is your personal opinion and not that of the organization. Two sample social media disclaimers include:
 - ◆ (1) “I work for and this is my personal opinion”; and
 - ◆ (2) “I am not an official spokesperson but my personal opinion is...”
- This requirement is not meant to interfere with your legal rights to bargain collectively or engage in concerted or protected activities, but rather to ensure that others can easily distinguish the official position of the organization or the organization’s management from those of our employees/volunteers.

The Policy

Policies to Consider Implementing for your Private Organization-Best Judgment

- Users should use their best judgment when engaging in social media activities and should be on guard against actions and discussions that could harm the interests of our community, faith or other persons.
 - No Photographs Without Permission
- Before posting photographs of any person, obtain their permission.

The Policy

Policies to Consider Implementing for your Private Organization-Disclaimer– Report, Be Consistent

- If you see a violation of this Policy, report it to the organization. If you have questions about the Policies, Guidelines or posting, please contact your designated person.
- All of the organization's other Policies apply to the use of social media. All social media communication by employees should take into account the organizations' values, reputation and workplace policies.

The Policy

Policies to Consider Implementing for your Private Organization-Disclaimer– Result, Signature

- Any violations of the Code of Conduct may result in discipline by the organization and/or termination of employment or volunteer opportunities.
- Results in needless firing, loss of friends and parishoners
- Signature of Employee/Volunteer for the employee's file

The Policy

When drafting a social media policy, it is important that employers consider, amongst other things, that the policy:

- incorporates a clear **definition** of social media websites (as developments are occurring rapidly in this area, this definition may need to be revisited regularly);
- is consistent with the employer's own approach to how it uses social media websites, for example, the language and methods it adopts for its advertisements and communications with its customers;
- is **consistent** with the employer's values, reputation, and other workplace policies (particularly those relating to bullying, harassment, discrimination, and confidentiality);
- contains a clear definition of who the social media policy applies to;
- sets out when social media websites can be accessed;
- clarifies what employees can and cannot write on these social media websites and whether they are authorized to represent the business in any of their comments on these social media websites;
- may include a positive obligation on employees to report any breach of the policy by other employees; and
- sets out disciplinary procedures for a breach of the policy.
- In addition to the contents of a social media policy, particularly due to the developing nature of social media websites, it is important that the policy is regularly reviewed and employees receive regular training on the policy.

Example-Dallas Police

- “It’s an F-minus in judgment,” said veteran Dallas defense attorney George Milner III, who has represented officers in the past and is not involved in the case.
- Even if Baum wasn’t actively involved in the case, as his attorney said, the police officer’s social networking comments could pose a problem for his colleagues.
- Dallas instituted a social media policy in recent years which notes that defense attorneys can use officers’ online postings to discredit testimony. The policy bars officers from posting derogatory comments against another employee and confidential records or information.
- To Milner, Baum’s posts and the photo collage incident will at the very least impact the way citizens view their police officers.
- “From a public perception standpoint it suggests that a significant number of our Dallas police officers have the maturity level of a 16-year-old or a high school kid,” Milner said. “It only takes one here, one there to cause the public to believe there is this systemic problem throughout the department which I don’t believe exists.”

Credits/Bibliography

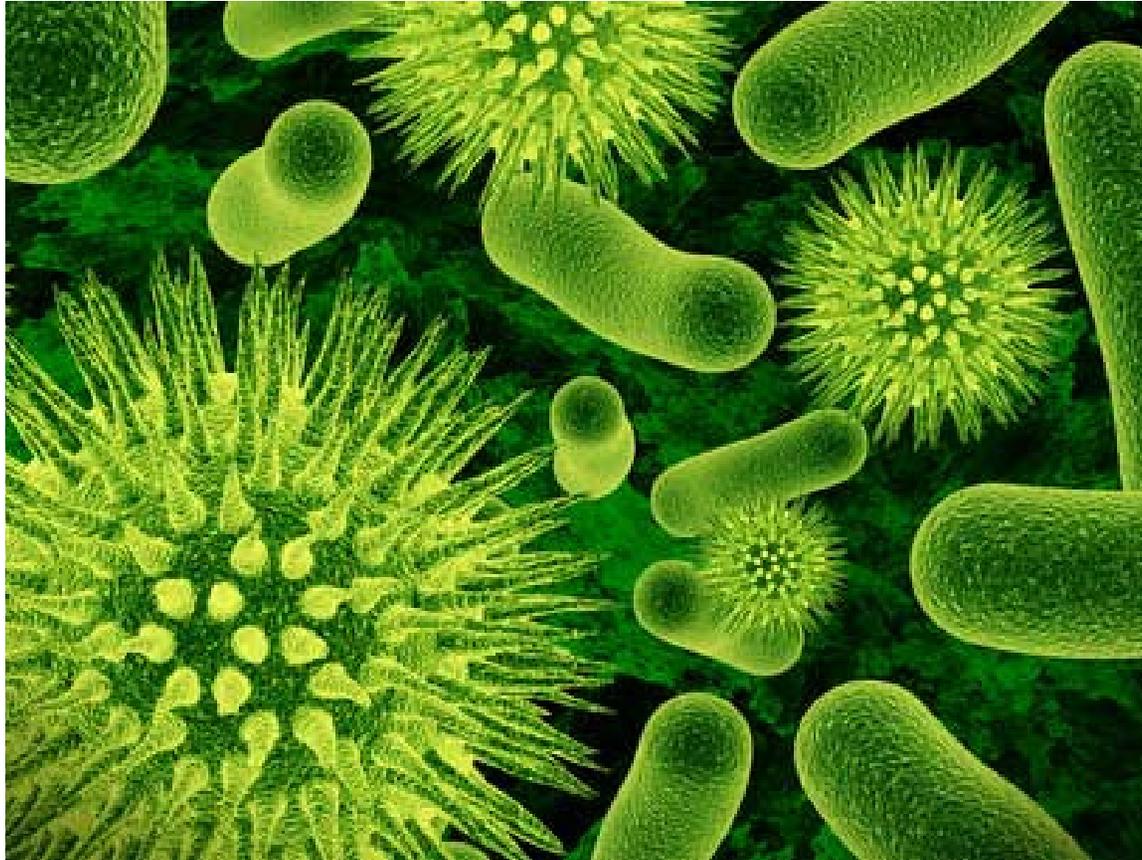
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Social Media-Related Statutes

- Electronic Communications Privacy Act (ECPA)
 - ◆ 18 U.S.C. 2510: Prevents unauthorized government access to electronic communications in transit
- Stored Communications Act (SCA)
 - ◆ 18 U.S.C. 2701: Prevents unauthorized government access to electronically stored communications
- Computer Fraud and Abuse Act (CFAA)
 - ◆ 18 U.S.C. 1030: Punishes and protects against computer hacking

Social Media-Related Statutes

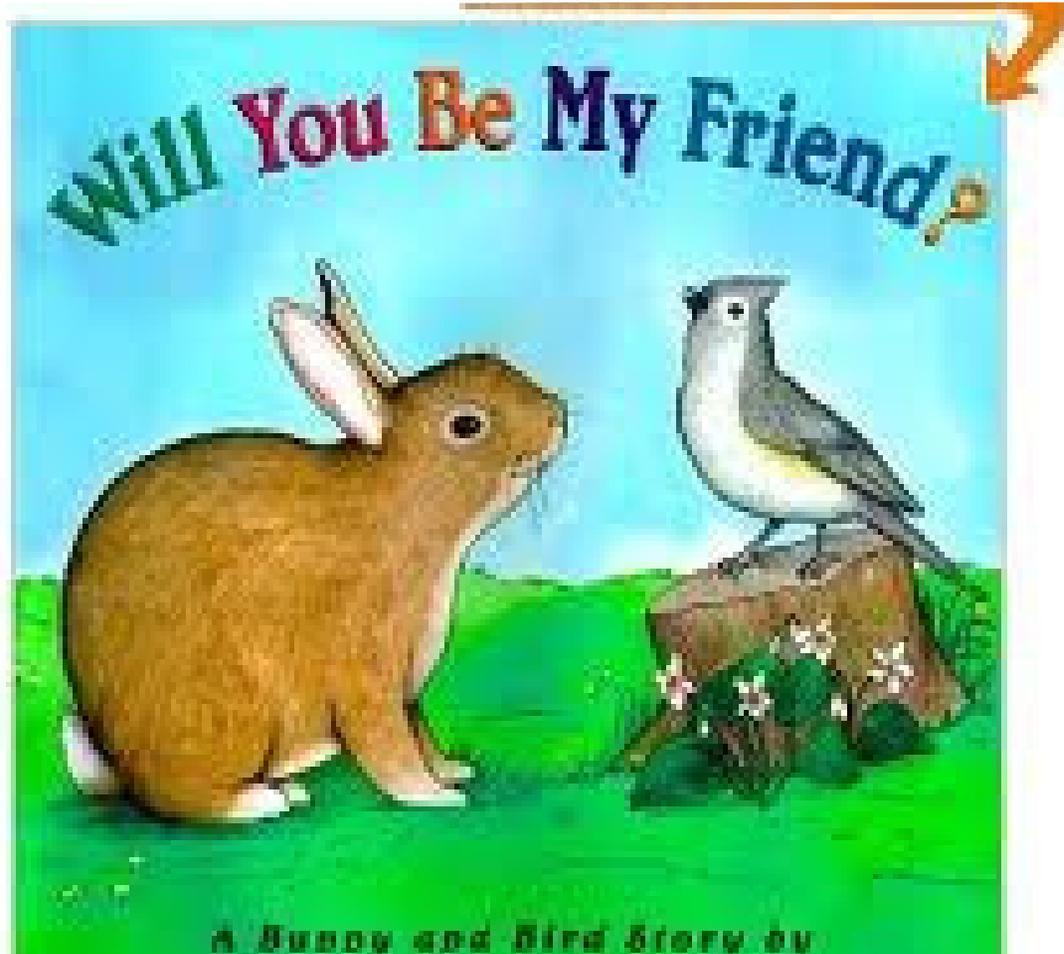
- Communications Decency Act (CDA) – 47 U.S.C. 230: regulates indecency and obscenity over the Internet
 - ♦ Immunity Provision: “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. 230(c)(1).
 - ♦ **Three (3) Factor Test for Immunity:**
 - defendant is a provider or user of an interactive computer service
 - the cause of action treats the defendant as the publisher or speaker of the information
 - the information at issue is provided by another information content provider
 - ♦ *See Zeran v. America Online, Inc.*, 524 U.S. 937 (1998) and *Delfino v. Agilent Technologies, Inc.*, 145 Cal. App. 4th 790 (2006).



Viral



SPAM



Friend