

Social Media, Websites & Intellectual Property Infringement: They Mix Too Well!

Gänder Consulting Group, LLC – December 17, 2018

Technology and the Internet are wonderful. With just a few key strokes or taps you can share an article, post a photo or tweet a comment. However, extreme caution is recommended when staff, faculty, coaches and advisors use district-related websites and social media, and/or personal social media forums for district business. If not careful, the ease with which social media is used may drop your school district into the intellectual property (IP) (e.g., copyright and trademark) infringement abyss.

Contrary to what some may think, website and social media users should not presume they can share and re-post everything and anything found on the internet without repercussions. In the district's case, failure to legally use copyrighted publications, photographs and diagrams and other IP for educational and teaching purposes can result in infringement claims against the district.

Q: What should a District do? *A: Control the exposure!*

Tweets and posts can go viral in a few minutes. And removing (not necessarily deleting – see below) district-initiated posts really isn't too helpful given how items are re-tweeted/re-posted. As such, the best way to control this exposure is to not have the infringement occur in the first place.

1. Review the district's website and social media-use policies by staff, faculty, coaches and advisors in the course of their district work and activities. If the policy does not discuss identification and proper use of intellectual property, such as copyrighted and trademarked material, add it.
2. Remind district faculty, personnel, coaches and advisors about the downside to improperly using IP, i.e., being sued.
3. Re-educate staff, faculty, coaches and advisors about the proper way to potentially use copyrighted or trademarked material.
 - The best way to avoid problems is to get permission from the copyright owner. District librarians can assist with finding authors' contact information.
 - The United States Copyright Fair Use Doctrine allows use of copyrighted material without permission from, or compensation to, the copyright owner. HOWEVER, no one should presume the Fair Use Doctrine is an impermeable safe harbor.

If not already present, consider adding a procedure to the district's policy whereby district personnel vet the use of copyrighted material before doing so. Consult this document for more information:

<https://www.copyright.gov/circs/circ21.pdf>.

Q: If improper use of IP is found on a district website, social media or district personnel social media accounts, what should a district do? *A: Don't delete it – at least not right away.*

It's possible a post or tweet could be considered a public-school district "record," must be retained for a particular period of time, and cannot be deleted unless or until the district abides by Wisconsin Statute §19.21 (6). Consult DPI's "Wisconsin Records Retention Schedule for School Districts" before deleting a post or tweet.

The WASB Insurance Plan appreciates its endorsed property and casualty insurance agency partners, TRICOR, M3 and Arthur J. Gallagher, for raising WASB members' awareness about this urgent matter.

Please contact your local school district attorney or property and casualty insurance agent with questions.