

LEGAL PITFALLS OF SOCIAL MEDIA



SOCIAL MEDIA FOR BUSINESS MARKETING

PRESENTED BY:

JULIE DELLINGER, MARKETING DIRECTOR

WRIGHT, CONSTABLE & SKEEN LLP



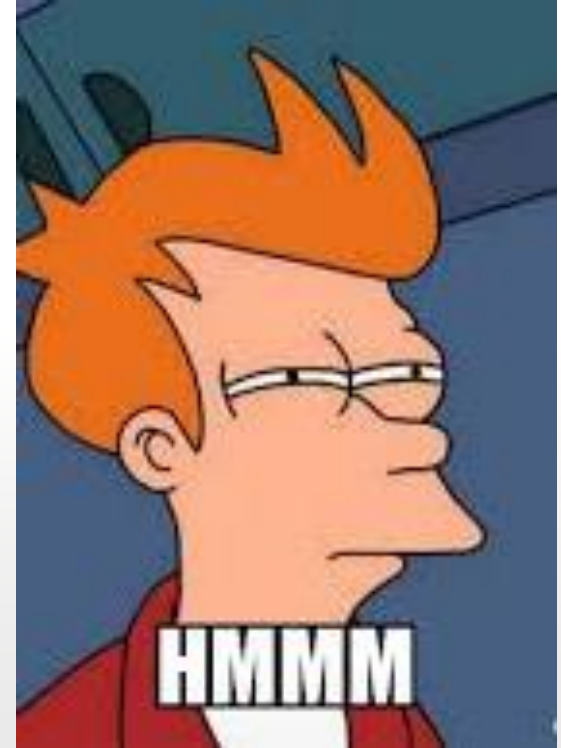
THE FOUR MAIN SOCIAL MEDIA PLATFORMS FOR BUSINESSES TO USE:



- Facebook: *1.66 billion daily active users*
- Twitter: *145 million daily active users*
- Instagram: *1 billion daily active users*
- LinkedIn: *121 million daily active users*

Q&A TIME:

*WHY would you want to have
social media for your business?*



WHEN DECIDING WHICH PLATFORMS TO USE, ASK YOURSELF:

- Why am I using this platform?
- Who will I reach on this platform?
- What post types work best on this platform?
- How are my posts unique to this platform?



If you can't answer these questions, maybe it's not the best idea to invest your time (or money) on that platform!



LINKEDIN FOR YOUR BUSINESS:

For today, we are going to spend a little time talking about how to use LinkedIn as a marketing tool.

LINKEDIN IS THE PERFECT FORM OF PASSIVE MARKETING!

- You can share and like as much as you want and the only people who will see it are the ones who have opened up their LinkedIn account with the goal of checking what everyone is sharing.
- Feel free to share and like freely!

YOUR PERSONAL LINKEDIN ACCOUNT

Q&A Time:

Do you have a personal LinkedIn account?

If not, your homework is to make one this week!



Julie Dellinger

WCS Wright, Constable & Skeen, L.L.P.

Marketing Director, Wright, Constable & Skeen, L.L.P.

Westminster, Maryland · 500+ connections

[Join to Connect](#)

About

With a diverse background in communications and marketing, Julie has a great deal of experience in developing communications plans, implementing branding strategies, and executing successful events. She excels at written business communications, including email campaigns, social media, websites and brochure copy.

Julie has a B.S. in Communications and an M.S. in Management with a focus on Marketing. She has over 15 years of management and leadership experience, and has managed staff both onsite and off-site. She is very detail oriented, flexible and has the ability to prioritize and handle multiple tasks and projects concurrently. Julie has well developed public speaking skills with experience speaking to groups ranging from 10 – 250 people.

YOUR PERSONAL LINKEDIN ACCOUNT TIP 1:

Make sure you have a
headshot and background
photo that work to
MARKET you as you want
to be seen.



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YOUR PERSONAL LINKEDIN ACCOUNT TIP 2:

If you haven't updated your profile in a while, take a look and make sure your job information is current and correct.



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YOUR PERSONAL LINKEDIN ACCOUNT TIP 3:

Use the About section to tell
your professional story.



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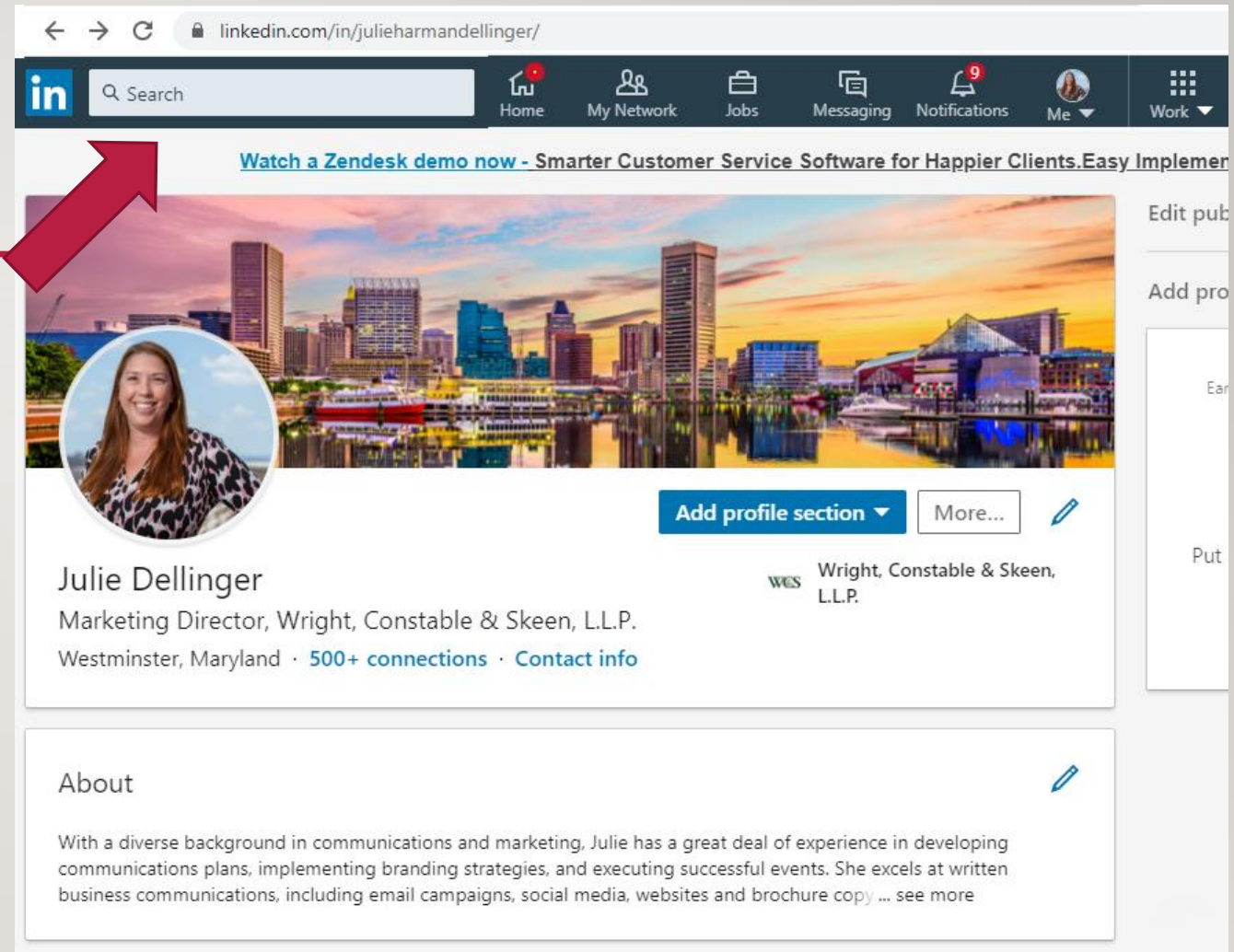
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USING YOUR PERSONAL LINKEDIN ACCOUNT TIP 1:

Connect with people. Use their email address or their name in the search box



USING YOUR PERSONAL LINKEDIN ACCOUNT

TIP 2:

Like, comment and share...
but remember that your
connections will be able to
see what you like and share!



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Activity



Thank you to everyone who helped make today's Rosie the Lawyer event a success, including: Tisha Edwards, MSW, JD, Jacia T. Smith, Esq, SPHR, Tywanna...

Shared by Julie Dellinger



With Coronavirus dominating the media (and is currently 9 out of 10 trending articles on LinkedIn), do you want to learn more about how to prepare...

Shared by Julie Dellinger



We are pleased to have one of our very own participate on a panel discussion of women leaders of the Baltimore Association of Baltimore City. To...

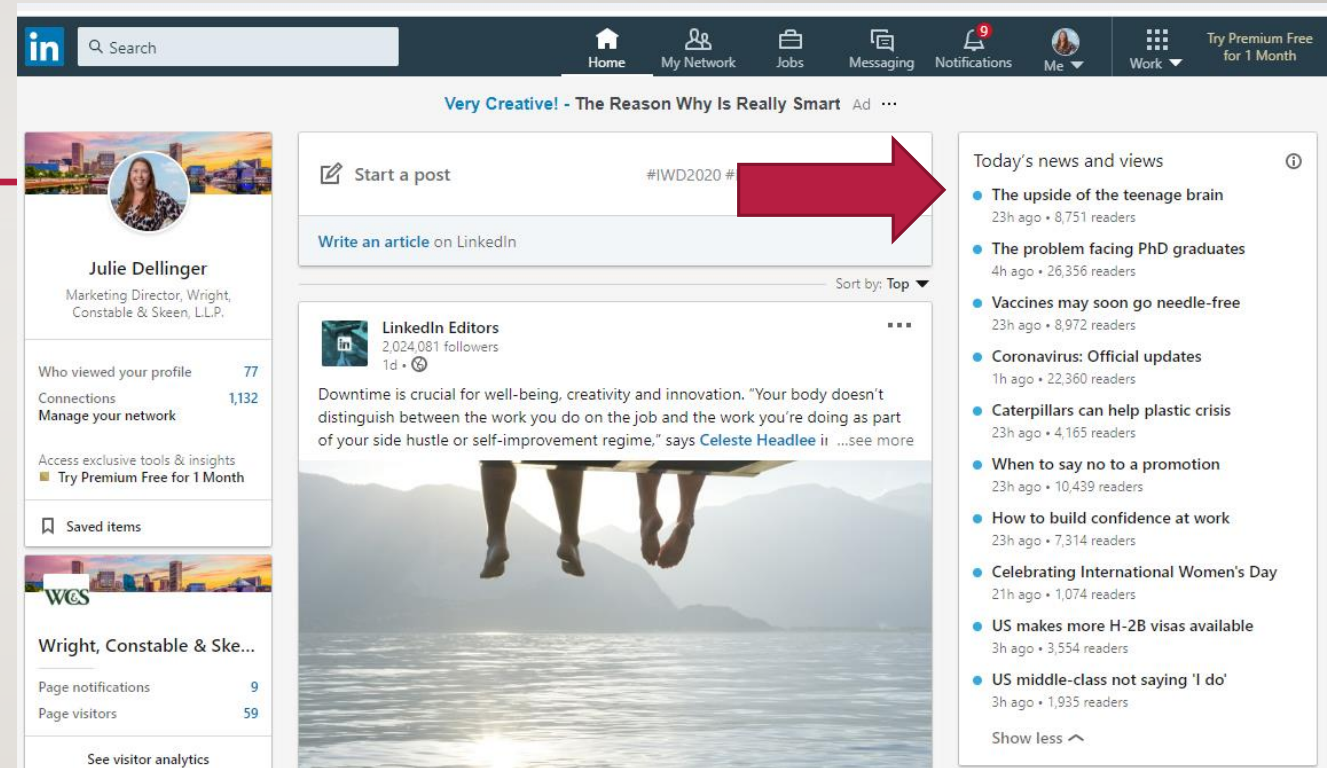
Liked by Julie Dellinger

USING YOUR PERSONAL LINKEDIN ACCOUNT

TIP 3:

Establish yourself as an expert!

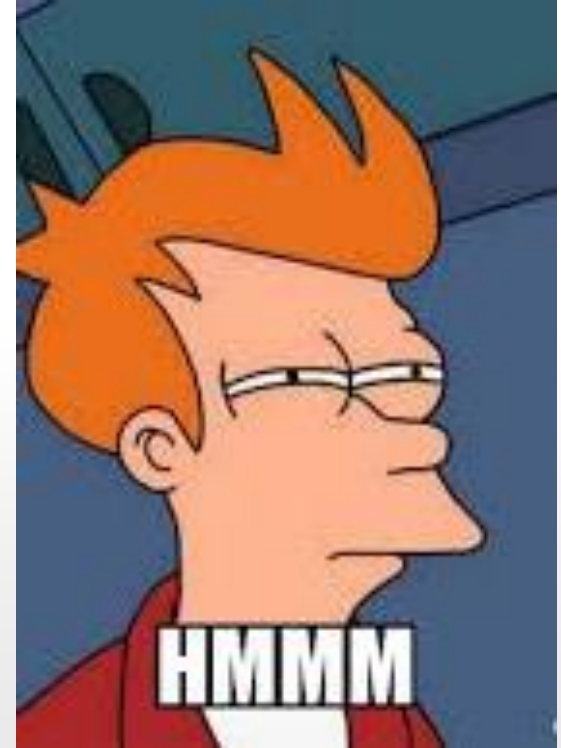
- Share things that are important to you (and your business).
- Check out what's trending (on the right-hand sidebar under Today's News and Views) and share it with a comment!



Q&A TIME:

Do you have a business LinkedIn Account?

What are some things you can share on your business LinkedIn Account?



USING YOUR BUSINESS LINKEDIN ACCOUNT TIP 1:

Be sure to establish more than one person as an administrator to the page.

When you're an administrator you can see Analytics including:

- Number of unique visitors
- Number of new followers
- Number of post impressions

The screenshot shows the LinkedIn profile of Wright, Constable & Skeen, L.L.P. in 'Admin view'. The page header includes the company logo, name, location (Baltimore, Maryland), and follower count (312). Below the header is a banner image of a city skyline. The left sidebar contains the 'Analytics' section, which is highlighted by a red arrow. The analytics data for the last 30 days is as follows:

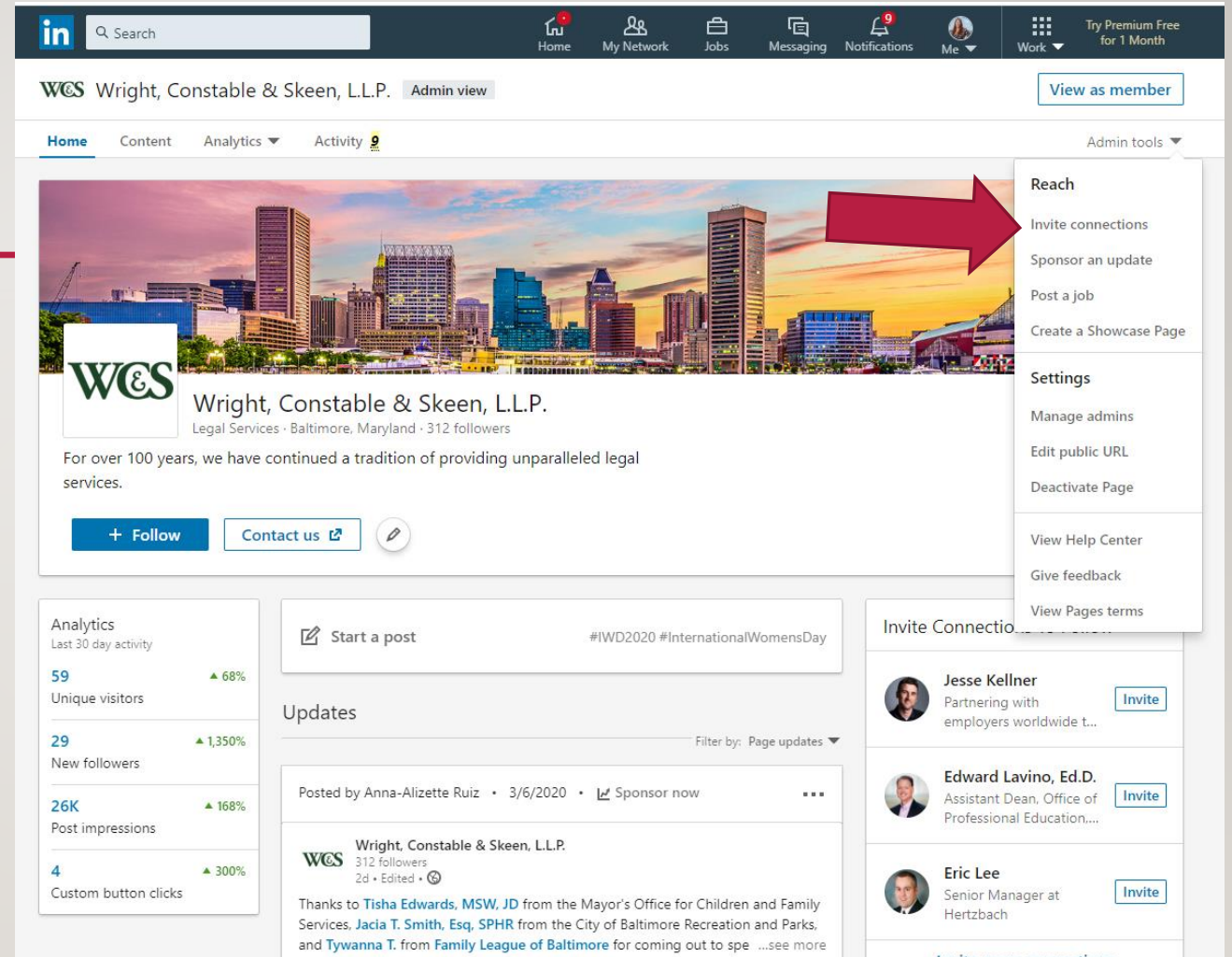
Metric	Value	Change
Unique visitors	59	▲ 68%
New followers	29	▲ 1,350%
Post impressions	26K	▲ 168%
Custom button clicks	4	▲ 300%

The main content area shows a 'Start a post' button and a recent post by Anna-Alizette Ruiz dated 3/6/2020. The right sidebar features an 'Invite Connections To Follow' section with three individuals: Jesse Kellner, Edward Lavino, Ed.D., and Eric Lee, each with an 'Invite' button.

USING YOUR BUSINESS LINKEDIN ACCOUNT TIP 2:

Grow Your Followers!

- Invite connections to like your page.
- Put your LinkedIn business page on your website.
- Put your LinkedIn business page on your work email signature.



The screenshot shows the LinkedIn profile of Wright, Constable & Skeen, L.L.P. The page includes a header with navigation links (Home, My Network, Jobs, Messaging, Notifications, Me) and a search bar. The profile banner features a city skyline at sunset. Below the banner is the company logo and name, followed by a description: "Legal Services · Baltimore, Maryland · 312 followers". A red arrow points to the "Reach" dropdown menu, which is open and shows options: "Invite connections", "Sponsor an update", "Post a job", "Create a Showcase Page", "Settings", "Manage admins", "Edit public URL", "Deactivate Page", "View Help Center", "Give feedback", and "View Pages terms". The "Analytics" section on the left shows metrics for the last 30 days: 59 Unique visitors (▲ 68%), 29 New followers (▲ 1,350%), 26K Post impressions (▲ 168%), and 4 Custom button clicks (▲ 300%). The "Updates" section shows a post by Anna-Alizette Ruiz dated 3/6/2020, sponsored by Wright, Constable & Skeen, L.L.P. The "Invite Connections" section on the right lists three people: Jesse Kellner, Edward Lavino, Ed.D., and Eric Lee, each with an "Invite" button.

Metric	Value	Change
Unique visitors	59	▲ 68%
New followers	29	▲ 1,350%
Post impressions	26K	▲ 168%
Custom button clicks	4	▲ 300%

SOCIAL MEDIA HOMEWORK: FOLLOWING UP AFTER A CONFERENCE

- *This Week:*
 - If you ended up with a stack of business cards, use them wisely. Connect with your new contacts on LinkedIn – search by name or email address from your personal LinkedIn account.
 - Once you are connected with someone, invite them to like your business LinkedIn account.
 - If you took any photos with new or existing contacts, share them on your LinkedIn page and tag them!
 - Tag the conference too, #VAM2020



LEGAL PITFALLS OF SOCIAL MEDIA

PRESENTED BY:
JUSTIN THATCH

GLEN ALLEN, VA

(804) 362-8354



SOCIAL MEDIA

forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos)



BRIEF DISCLAIMER

- Legal Information v. Legal Advice
 - This Presentation provides legal information for general consumption – all cases are fact-specific!

If you have specific questions, reach out



SOCIAL MEDIA TODAY

- **Your Board Members' Social Media Skills Can Increase Your Organization's Power** (from Forbes, Mar 2, 2020, 07:15am)
- **Social media reunites long-lost cat with her owners** (from Cape Cod Times, February 29, 5:08 PM)

ALSO ... SOCIAL MEDIA TODAY

- **Viral ‘skull breaker challenge’ circulating on social media puts children in danger** (from WDIV ClickOnDetroit, February 26, 2020, 6:02 pm)
- **Teen arrested after making threat against Florida high school on social media, deputies say** (from Fox 35 Orlando, March 1, 2020)

SOCIAL MEDIA & THE LAW

- Intellectual Property Law
- Regulatory Law
- Tort Law
- Employment Law & More!



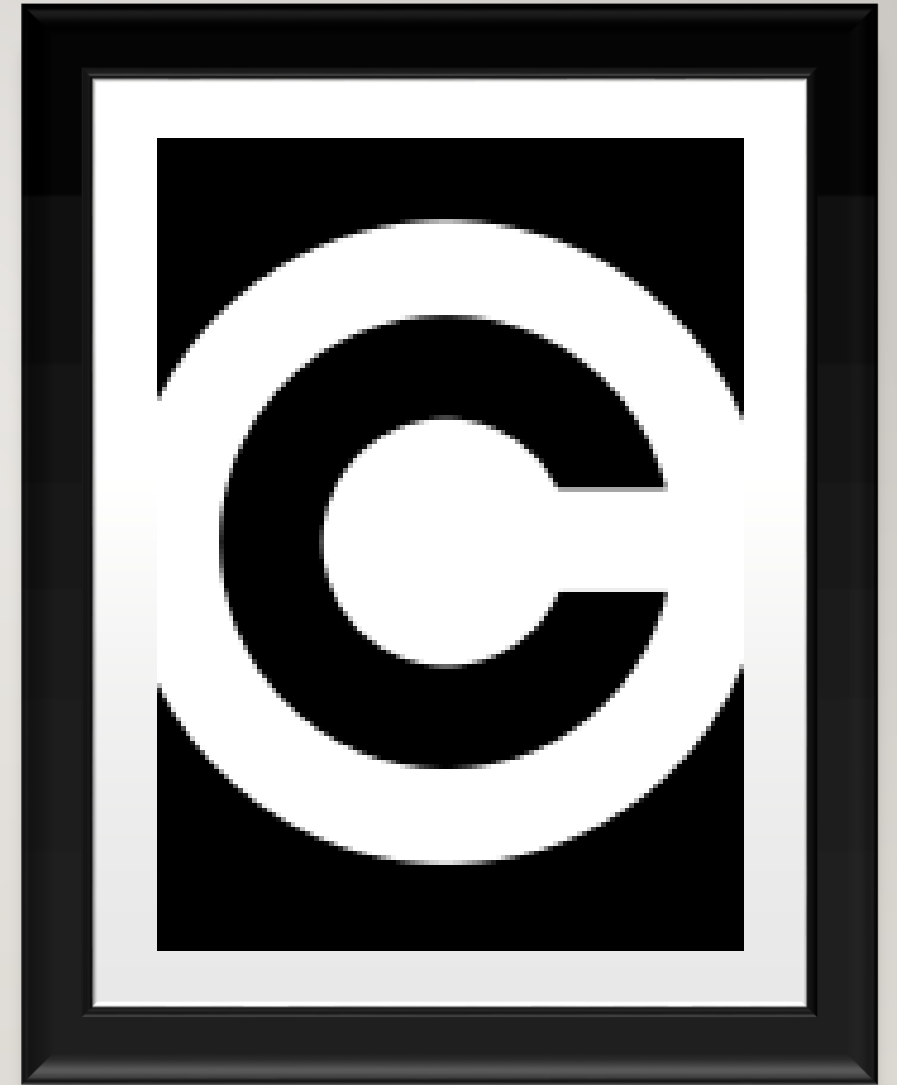
TODAY'S GOAL: ISSUE-SPOTTING

- What should you be looking out for in your use of social media?
- If there is a potential issue, how can it best be resolved?
- What are some things you can do to prevent future problems from arising?



INTELLECTUAL PROPERTY

Copyright Implications for Museum Social
Media Posts



COPYRIGHT LAW

- Article I, Section 8, Clause 8 of the U.S. Constitution –

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

First U.S. Copyright Act? - 1790



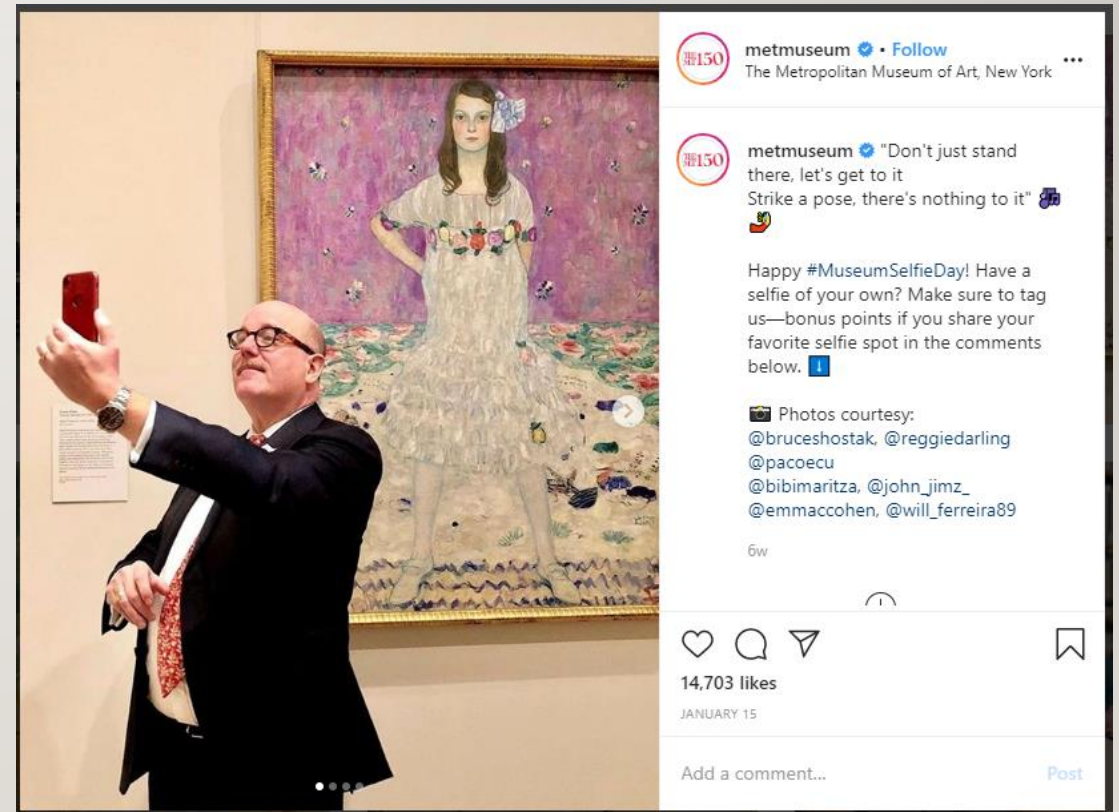
COPYRIGHT – “RIGHTS”

- Reproduce
- Distribute
- Display
- Perform
- Prepare derivative works



COPYRIGHTS & SOCIAL MEDIA

- Want to post about or with an item from your collections?
- What is the copyright status?
- Any other restrictions on dissemination from other sources? Contracts, etc.?



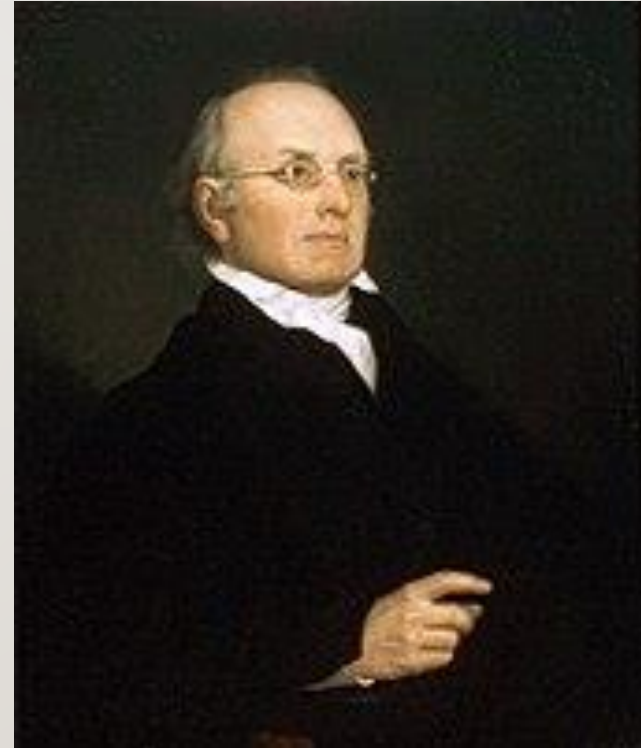
COPYRIGHT STATUS

- “original works of authorship fixed in any tangible medium of expression” [17 U.S.C. § 102(a).
- “Works of Authorship”:
 - (1) literary works;
 - (2) musical works, including any accompanying words;
 - (3) dramatic works, including any accompanying music;
 - (4) pantomimes and choreographic works;
 - (5) pictorial, graphic, and sculptural works;
 - (6) motion pictures and other audiovisual works;
 - (7) sound recordings; and
 - (8) architectural works.



“FAIR USE”

- Factor 1: The Purpose and Character of the Use
 - “Nonprofit educational purposes”
- Factor 2: The Nature of the Copyrighted Work
 - art, music, poetry, feature films, and other creative works v. nonfiction
- Factor 3: The Amount or Substantiality of the Portion Used
- Factor 4: The Effect of the Use on the Potential Market for or Value of the Work
 - Difficult





AUTHORS GUILD V. GOOGLE, INC., 804 F.3D 202 (2ND CIR. 2015)

- Google is commercial enterprise
- Whole books were being copied
- “Snippet” view was TRANSFORMATIVE
- Did not infringe author’s right to create derivative works



HOW ARE YOU USING COPYRIGHT-PROTECTED MATERIALS?

- Social media?
- Online catalogs/digitization?
- Producing educational materials?
- Museum-created content?

Services for faculty at Brown and RISD

the **WORLD** at your fingertips

MUSEUM ARTIFACTS can improve your teaching. They can help you make your arguments, attract student attention, and focus student work. They can bring the issues you care about to life.

Museum artifacts can enhance your research. The Haffenreffer's collection of nearly one million objects, global in scope and spanning half a million years, is available for use in faculty and student research.

Staff members at the museum can help you find artifacts. We can make suggestions of objects from a particular region, related to themes or ideas, or for use in student projects.

FOR MORE INFORMATION
Visit the museum's website: brown.edu/haffenreffer and click on "Services for Brown and RISD".

MUSEUM EXHIBITIONS AT MANNING HALL
21 Prospect Street, Box 1965
Brown University, Providence, RI 02912
PHONE 401-863-2065
HOURS Tuesday–Sunday 10am–4pm

COLLECTIONS RESEARCH CENTER AND OFFICES
300 Tower Street, Bristol, RI 02809
PHONE 401-253-8388
FAX 401-253-1198
HOURS Monday–Friday 8:30am–5pm

Haffenreffer
Museum of Anthropology

use museum artifacts in your teaching AND RESEARCH

Haffenreffer
Museum of Anthropology at Brown University

“PERMISSIONS CULTURE”?

- Fair use is UNCERTAIN
- Not a lot of museum-related case law
- GENERALLY, the factors weigh in favor of museums in fair use analysis
 - Cases support the use of copyrighted materials if the purpose is TRANSFORMATIVE and NONCOMMERCIAL, especially in the educational context
- Uncertainty leads to permission seeking which leads to \$\$\$

Article: Rosemary Chandler, Putting Fair Use on Display: Ending the Permissions Culture in the Museum Community, Duke L. & Tech. Rev., December 14 2016



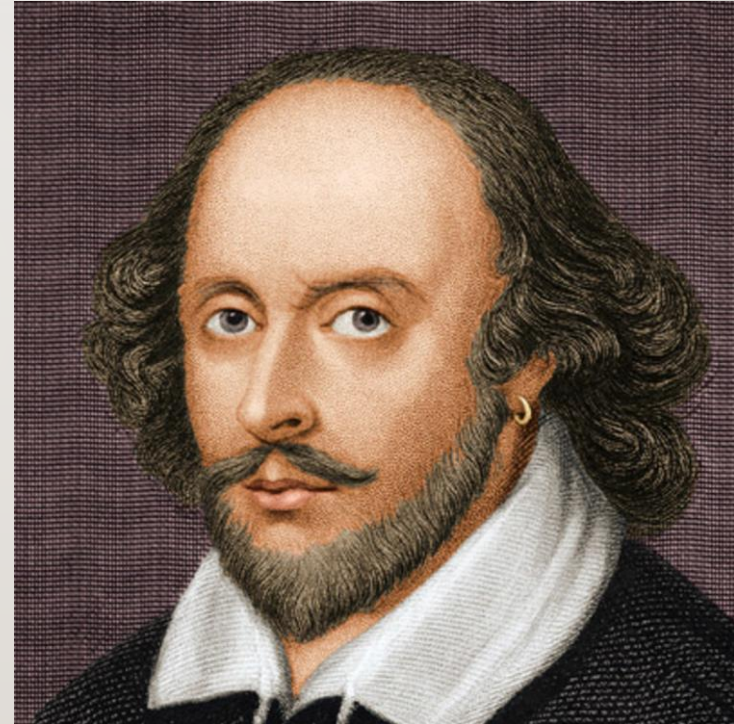
FAIR USE



Analyze & Document

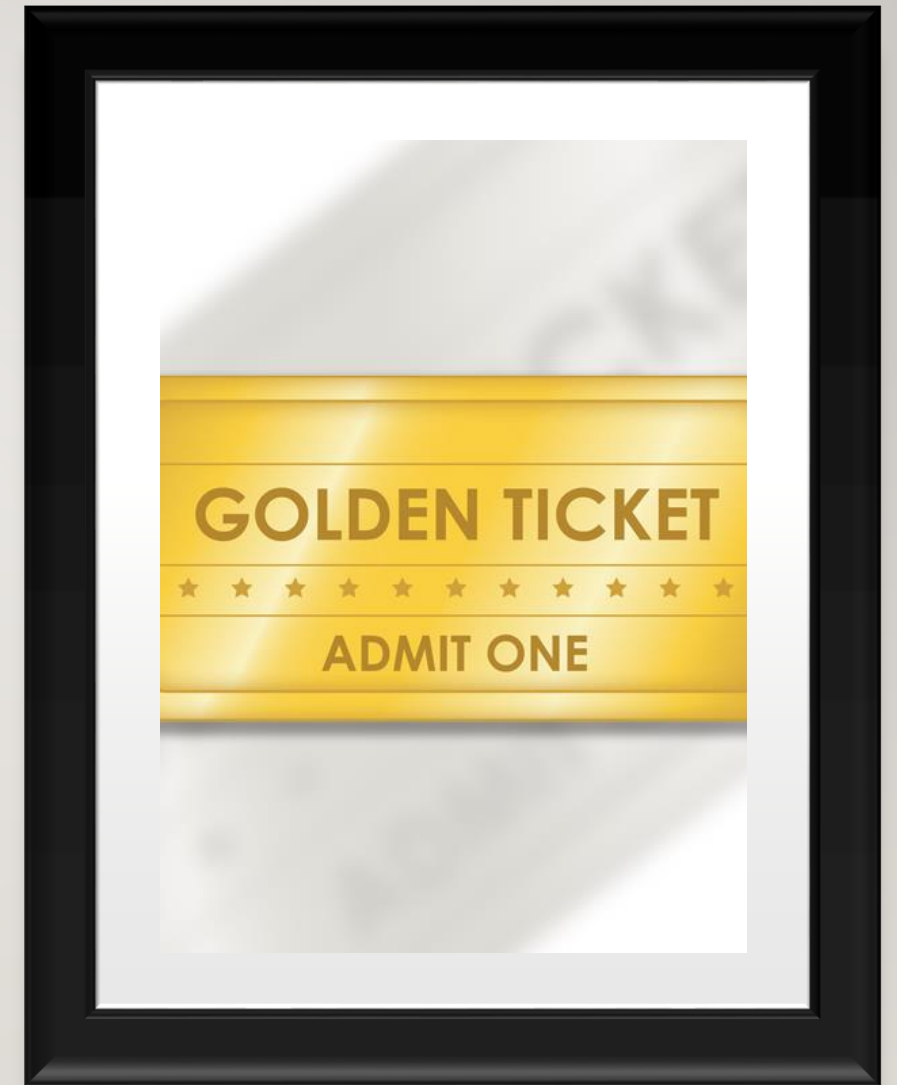
INFRINGEMENT V. PLAGIARISM

- One is unethical or a violation of academic norms
- One is illegal
- There is a big difference between giving credit where credit is due and getting permission



SOCIAL MEDIA GIVEAWAYS

Sweepstakes, Lottery, Contest





denverartmuseum • Follow
Denver Art Museum



denverartmuseum GIVEAWAY |
We're offering an all-inclusive trip for two to the 2020 Normandy Impressionist Festival, taking place April 3, 2020 through September 6, 2020, courtesy of Normandy Tourism. This six-night getaway to Paris and Normandy will give you the opportunity to walk in Claude Monet's footsteps and explore the lush countryside and seaside retreats Monet painted. This giveaway includes two round-trip tickets departing from any city in the U.S., accommodations, entry tickets to the exhibitions and car rental.

TO ENTER: Tag who you would take on this incredible trip in the comment section on this post AND state why



3,898 likes

JANUARY 21

Add a comment...

Post

Lottery

Sweepstakes

Contest



ILLEGAL GAMBLING?

- “Illegal gambling” means the making, placing, or receipt of any bet or wager in the Commonwealth of **money or other consideration or thing of value**, made in **exchange for a chance to win a prize, stake, or other consideration or thing of value**, dependent **upon the result of any game, contest, or any other event the outcome of which is uncertain or a matter of chance**, whether such game, contest, or event occurs or is to occur inside or outside the limits of the Commonwealth.

Va. Code Ann. § 18.2-325



Have you considered ...

CONSIDERATION?



VIRGINIA LAW ON SWEEPSTAKES

- **Prizes and Gifts Act** - (Va. Code Ann. § 59.1-415, et seq.)

§ 59.1-416. Representation of having won a prize, gift or any item of value.

A. No person shall, in connection with the sale or lease or solicitation for the sale or lease of goods, property, or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

- 1. The recipient of the prize, gift or item of value shall be given the prize, gift or item of value **without obligation**; and
- 2. The prize, gift or item of value shall be delivered to the recipient at no expense to him, **within ten days of the representation**.

B. The use of language that may lead a reasonable person to believe he has won a contest or anything of value, including, but not limited to, "Congratulations," or "You have won," or "You are the winner of," shall be considered a representation of the type governed by this section.



VIRGINIA LAW: RULES

- “conspicuously disclosing on whose behalf the contest or promotion is conducted”
- “as well as all material conditions which a participant must satisfy”
- Va. Code Ann. § 59.1-417(A)

SEATTLE ART MUSEUM INSTAGRAM GIVEAWAY

We're celebrating the Seattle Art Museum's 10,000+ followers on Instagram! Enter to win a year membership to Seattle Art Museum and a night stay at Inn at the Market.

To Enter:

1. Follow @SeattleArtMuseum and @InnatheMarket on Instagram
2. Repost SAM's 10K Celebration photo on your Instagram account. Include hashtag #SAM10KGiveaway and @SeattleArtMuseum in the caption

The entry period is April 13, 2015 through April 22, 2015.

See below for complete entry instructions and official rules.

NO PURCHASE NECESSARY. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING. Open only to legal residents of the 50 United States and the District of Columbia who are 18 years of age or older. Contest ends at 11:59 AM Pacific Daylight Time ("PDT") on 4/22/15. Sponsors: Seattle Art Museum ("SAM"). Winner will be chosen from all eligible entries using random.org.

VIRGINIA LAW: RULES

- “in any written material covered by this section, each of the following shall be clearly and prominently disclosed ...”
 1. The actual retail value of each item or prize
 2. The actual number of each item, gift or prize to be awarded
 3. The odds of receiving each item, gift or prize

5. Prizes and Odds One (1) winner will receive four (4) certificates each good for one (1) complimentary ticket for the 12 Annual Samoa Soiree at The Westin Virginia Beach Town Center, 4535 Commerce St, Virginia Beach, VA 23462, on Thursday, February 20, 2020 from 6:00 p.m. - 9:00p.m. E.T. Certificate numbers are 205 - 208. Not redeemable for cash value. Non-transferrable. (ARV: \$196 per winner)

Odds of winning depend on the number of eligible entries received.

UH OH?

- **§ 59.1-421. Action to enforce the provisions of chapter.**

Any consumer who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provisions. Any consumer who is successful in such an action shall recover reasonable attorney's fees, and court costs incurred by bringing such action.

SOCIAL MEDIA GIVEAWAY TAKEAWAYS

- Minimize steps needed for entry
- Make it random
- Be transparent!
- Write down the rules

Better to be thorough than sorry!



OTHER THINGS TO THINK ABOUT

- Employment Law
 - Are you looking at potential employees social media? Should you be?
 - Are you governing how your employees use social media to promote the museum?
Governing how employees run the museum page?
- Privacy Law
 - Are you posting things about visitors, containing images of visitors, etc.? Did you get their permission?
- Regulatory Law
 - Is your website/social media page compliant with all current laws/regulations?

HAVE POLICIES IN PLACE!

NOW ...



A PRIMER ON DEFAMATION LAW

AND APPLICATIONS TO SOCIAL MEDIA

TOM MORAN--WRIGHT CONSTABLE & SKEEN, LLP, GLEN ALLEN, VA

804-362-9434 TMORAN@WCSLAW.COM

WHAT IS DEFAMATION?

A civil tort (or wrong) involving a false statement of fact that harms the reputation of another.

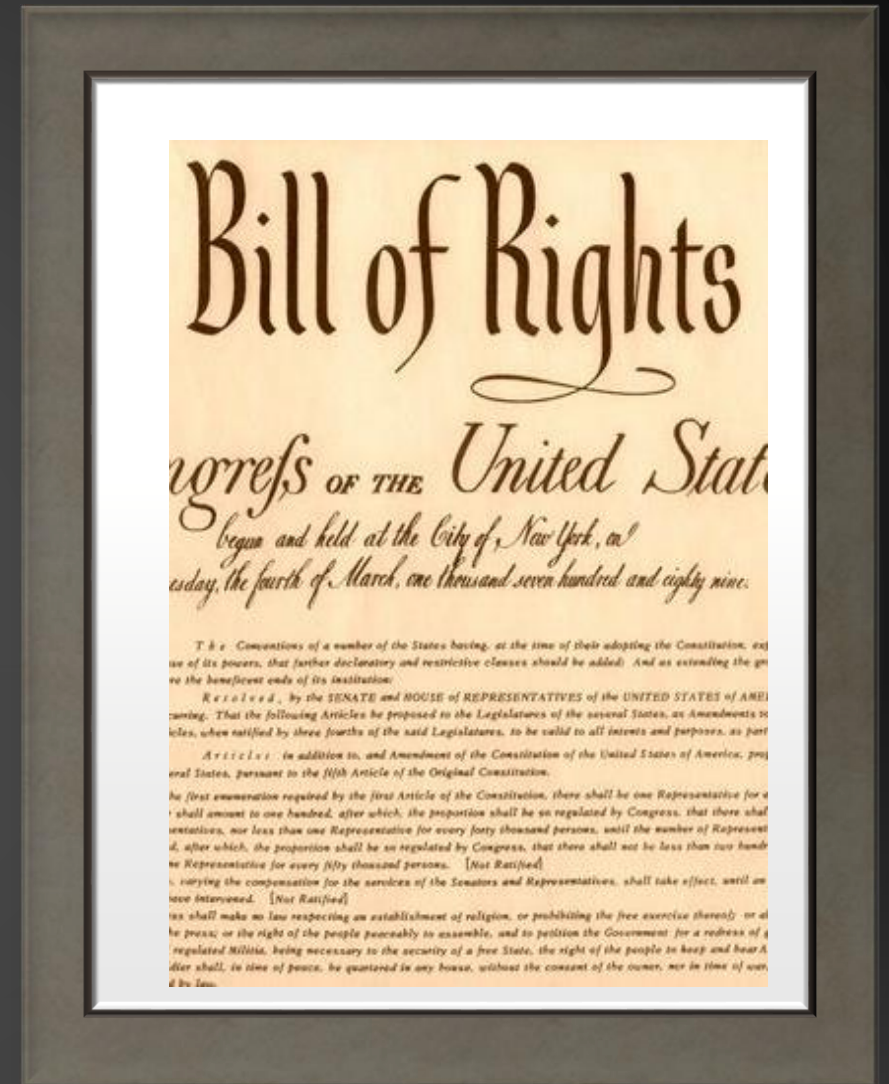
Libel? Slander? Disparagement?

Virginia treats all the same.



BUT WHAT ABOUT THE 1ST AMENDMENT?

- First Amendment guarantees free speech.
- It applies, but only to a point.
- Also a right to protect your own good name.



ELEMENTS OF DEFAMATION IN VIRGINIA

- A plaintiff hoping to succeed on a defamation civil suit in Virginia must prove:
 - 1. Publication
 - 2. An actionable false statement
 - 3. The requisite intent
- Also: One year statute of limitations

FIRST ELEMENT: PUBLICATION

- Not to be taken literally
- Only requires communication to third party
- Person-to-person interactions only qualify if knowingly overheard
- Anything posted on the internet will be sufficient



PRIVILEGE: WHEN PUBLICATION IS NOT PUBLICATION

Qualified Privilege

- Employment discussions (by far the most common)
- Local government or corporate board meetings
- Warnings of harm or danger
- Any communication where there is a “common interest” or duty

Absolute Privilege

- Statements made on legislative floor
- Legal proceedings

PRIVILEGE, CONT'D

- If there is an absolute privilege, no defamation
- If there is a qualified privilege, there may still be defamation.
- If qualified privilege applies, plaintiff has to prove malice
 - Knowledge that statements were false or reckless disregard at the time spoken
 - Statements made to others who have no interest in subject
 - Statements motivated by spite or ill will (most common)
 - Strong or violent language
 - Not made in good faith

REAL LIFE EXAMPLES

MALICE

- Name-calling, disparaging remarks toward plaintiff
- Plaintiff called a “liar, untrustworthy, lacking credibility”
- Defendant had a personal history of baseless complaints against particular profession
- Contentious history between co-workers

NOT MALICE

- Defendant failed to investigate allegations against plaintiff
- Defendant did not know plaintiff personally
- Defendant took no action in response to others’ use of epithets
- Defendant said he was mad at plaintiff

TAKEAWAYS FROM MALICE DISCUSSION

- No bright line as to what constitutes malice and what doesn't
- This issue is almost always going to be decided after a trial
- Trials are expensive
- In employment discussions, stick to facts that can be documented
- Remember – email is forever...and a plaintiff's lawyer's best friend

SECOND ELEMENT: ACTIONABLE FALSE STATEMENT

1. A statement that injures reputation
2. Factual in nature; and
3. Demonstrably false



TWO TYPES OF INJURY TO REPUTATION

Defamation *per se* – Injury is presumed for statements of:

- Criminal offense involving moral turpitude (dishonesty)
- Contagious disease that would exclude one from society
- Unfitness for office or employment
- Prejudice in profession or trade

Defamation *per quod* – Injury must be shown by the circumstances

- Innuendo combined with other facts
- Shame, disgrace, scorn, contempt of society
- Very fact specific, very high bar to clear
- Does not include “merely offensive or unpleasant statements”

FACTUAL STATEMENTS VS. OPINIONS

FACTUAL STATEMENTS CAN BE PROVEN TRUE OR FALSE

- “That lawyer just takes people’s money”
- Doctor “abandoned his patient”
- Appraiser “habitually late for appointments”
- “You lied”

OPINIONS ARE DEPENDENT ON THE VIEWPOINT OF THE SPEAKER

- Architect “charged 50% more than what could be considered reasonable”
- “Rude and unprofessional”
- “Threw a temper tantrum”

BE CAREFUL OF DISGUIISING FACTS AS OPINIONS!

- Courts distinguish between false factual connotations and pure expressions of opinion
- Adding “I believe” or “in my opinion” may not protect you.
- If an opinion implies an assertion of objective fact, it will be treated as factual.



OBVIOUS EXAGGERATION IS NOT DEFAMATION

- “Rhetorical Hyperbole” or exaggeration for effect
- These statements may be quite offensive, but not actionable
- Well-known insulting words fall under this category
- Words must be understood to state actual facts about a person
- Court will often look to context
- “Scab,” “traitor,” describing negotiation tactics as “blackmail”
- Parody, comedy

TRUTH IS ALWAYS A DEFENSE!

(but it can be costly to
litigate)



THIRD ELEMENT: REQUISITE INTENT DEPENDS ON THE PLAINTIFF

PRIVATE PERSON

- Relaxed Standard
- Defendant knew statement was false; or
- Defendant had no good reason to believe it was true; or
- Statement was negligent

PUBLIC FIGURE

- Heightened standard
- Requires “actual malice”
- Knowledge that statement or false; or
- Reckless disregard for truth

WHO IS A PUBLIC FIGURE?

- Government official
- Celebrity or other prominent person
- Limited purpose public figure:
 - Known to be involved with a particular controversy
 - Voluntarily attempting to influence the outcome

SOMEONE DEFAMED ME OR MY BUSINESS ON SOCIAL MEDIA. WHAT DO I DO?

1. Act proactively. Consider a Google alert.
2. Document. Screenshots, photos, saved pages (will depend on medium)
3. Contact a lawyer to discuss a cease and desist letter to the site admin or content manager (cite user agreement)
4. Understand that the host usually is immune if the content was produced by a user
5. Consider litigation against the poster, even where identity is unknown.

STRATEGIES FOR REMOVING CONTENT

- Don't know the poster? File a John Doe action.
- Court action allows poster's identity to be subpoenaed
- Pursue injunction/court order against poster
- Request removal of website from Google search results
 - Can be done directly through Google
 - Court can also order it

SUSPECT ONLINE REVIEWS

- Yelp, TripAdvisor, Angie's List, Amazon, etc.
- Star ratings can have a big impact on patronage
- First consider responding to review
- Common grounds for removal of reviews
 - Conflict of interest
 - Review does not reflect reviewer's personal experience
 - Inappropriate material such as hateful, lewd or threatening language
 - Falsity

TROLLS VS. DISSATISFIED PATRONS

TROLL

- Purposefully caustic, inflammatory
- Exaggeration
- Bad grammar
- Focused on attacking people

DISSATISFIED PATRON

- Sincere, even if using strong language
- Well composed
- Focused on bad experience/product

WHAT TO DO ABOUT YOUR TROLL PROBLEM

- No global approach
- Create a policy and apply it
- Can try ignoring
- Use facts
- Ban if you can
- Avoid simple deletion
- Litigation only in extreme cases



QUESTIONS?

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