Social Media, Libraries, and the Law

Thursday, March 17, 2011
Time: 12:00pm to 1:00pm
Speaker: Mary Minow

Agenda
Terms of Service: Flickr, Facebook, Twitter
Creating content
Protecting Library from User Content
Special Issues with Children
Social Media Policies

Terms of Service
Flickr, Facebook, Twitter etc

APPS.GOV
Federal government negotiated terms of service amendments

Note: Twitter terms acceptable to U.S. General Services Administration
https://www.apps.gov/
https://forum.webcontent.gov/page=TOS_agreements

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Federal Model Terms of Service

- No ads
- No indemnification
- Change governing law
- Termination only for breach
- Allow agency spiders
- Modify user content – limited to format/display
- No endorsement of products
- etc.

http://gpo.usa.gov/lm

State and Local Governments
FACEBOOK

Jan. 2011 – National Association of Attorneys General and National Association of State Chief Information Officers negotiate Facebook agreement;
http://www.infopeople.org/training/webcasts/webcast_data/321/index.html

Creating Content

http://www.infopeople.org/training/webcasts/webcast_data/225/index.html

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Finding Public Domain Images

Music, Videos

http://search.creativecommons.org/

Protecting Library from User Content

Defamation, False Information, Negligence ... You’re not responsible

Matchmaker.com immune when user posted false profile for Star Trek actress – stalking

Geekbox v Metropolis.com, Inc., 189 F.3d 1129 (9th Cir. 2000)

Sect. 230 broad protection – from false information, negligence, sexually explicit content, discrimination BUT NOT COPYRIGHT

No 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)

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Ever-so-slight caution: Roommates case

- Internet roommate locator service
  Required users to use pull-down menus: age, gender, sexual orientation, children
- No immunity as co-producer of content search system based on illegal criteria
- Yes immunity for free text “Additional Comments” - even gross discrimination
- DON’T ASK FOR ILLEGAL INFORMATION
  Fair Housing Council of San Fernando Valley v. Roommates.com
  521 F.3d 1127 (9th Cir. 2008)

What about users that infringe copyright?

IMPORTANT!!
- e.g. user posts someone else’s article ...

SAFE HARBOR
- Must register agent with Copyright Office
- Must inform users of policy, agent contact info
- May then follow take-down procedures
- No direct financial benefit

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Look up your Institution

Example: MIT Museum Copyright Agent on file with Copyright Office

Example: MIT Copyright Policy

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ONE PAGE FORM: FILL IT OUT. SEND IT IN.

DMCA:
Digital Millennium
Copyright Act
www.copyright.gov/onlinecp

Sample Takedown Notices

Elements of notification

Written communication to designated agent
- Physical or e-signature of copyright holder
- Identify work(s) sufficiently for removal
- Contact info for complaining party
- Good-faith belief that use is unauthorized
- Penalty of perjury

17 USC § 512(j)(3)

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What about Fair Use?

- Lenz v. Universal Music Corp.

Lenz v. Universal Music Corp, 572 F. Supp. 2d 1150 (N.D. Cal. 2008); updates at http://dockets.justia.com/dockets/california/ handle/70-100/724011/116424
Video at www.youtube.com/watch?v=Q156HP4Y9c

Takedown notice sender must consider Fair use

Best Practice:
Follow takedown procedures for any content

- Register once. Update if agent changes.
- Use established procedure, even if not user generated.
- Consider friendly notice and crowd-sourcing:
  “Do you have information about a collection item? Please let us know! And let us know if you believe that you hold rights to an item on our website.”
  ... link to DMCA agent info

CAUTION: Takedown policy can mitigate risk and demonstrate good faith. Not a substitute for seeking permissions.

Special Issues with Children

Federal law requires parental consent for children under 13 for online comments at commercial websites

Children's Online Privacy Protection Act (COPPA)

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Social Media, Libraries, and the Law

Children's Online Privacy Protection Act (COPPA)

Commercial services
- Notice to parents about information practices
- Verifiable parental consent before collecting
- Parents must have access to child’s info
- Confidentiality, security and integrity of child’s personal info

... link to privacy policy on any page where info is collected

Federal Trade Commission (FTC)
www.ftc.gov/privacy/coppafrqs.htm

Verifiable Parental Consent

FTC rules
- Parent signs and emails/faxes in
- Credit card
- Use toll-free number
- Public key technology

www.ftc.gov/privacy/coppafrqs.htm

Children Without Consent

Noncommercial sites may choose to comply with COPPA.

Competing Principle: don’t restrict user participation based on age

FTC
Okay to use ratings, drop down decision
Not
No free text, no messaging

http://opi.bibliocommons.com

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Children are not eligible to use services that require submission of personal information and we require that minors (under the age of 18) do not submit any personal information to us. This includes submitting personal information to the State as part of a user profile or personalization profile. If you are a minor, you can use these services only if used together with your parents or guardians. If you are a minor you should seek guidance from your parents. If the state decides to begin collecting personal information from children, it will notify parents that it is being requested, disclose the reasons for collecting it, and disclose our intended use for it. The state will seek parental consent before collecting any personally identifiable information. If it does collect it, parents may request information on the type of data being collected, view their child’s information and, if they choose, prohibit the state from making further use of their child’s information. The state will not provide personal information about children to third parties.

Social Media Policies .. and Free Speech

- Define purpose of the space
  - Teen reading club
  - Children’s poetry group
- Ask for civility (but don’t enforce)
- Remove OFF TOPIC
  - Cialis
  - Personal attacks that are off topic
- Bury offensive posts

The broader the space’s purpose, the harder it is to take down content.
Social Media, Libraries, and the Law

Social Media Policy Elements

- Degree of employee access
- Account management
- Acceptable Use for employees (time, purpose)
- Expectations/Consequences of violations
- Agency content
- Legal issues
- Security
- Users

California – Policy Issues

Management
- productivity, bandwidth, reputation, security

IT
- authorized users
- control file exchange, links

Users
- no confidential info
- speaker authorization
- no masquerading
- no work passwords

Summary

Terms of Service: Flickr, Facebook, Twitter
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Thanks for listening!

- Mary Minow, J.D., A.M.L.S.
  LibraryLaw.com