



# Managing Risk for Online Communities

 **SNAPSHOT**

**SPEAKERS**

Maddie Grant ([Social Fish](#)), Ben Martin ([Online Community Results](#)), Blake Hegeman ([Virginia Association of Realtors](#))

**COMPETENCIES**

Policy & Governance

**MATURITY PHASES**

CMM2, CMM3

## TOP THREE TAKEAWAYS

This call was organized by Maddie Grant, a Community Roundtable Champion. Maddie facilitates the working group at TheCR for association and not-for-profit members. She invited Ben and Blake to share their expertise and answer questions on the topic of managing risk for online communities.

1. **Monitor for these top 3 legal issues:** Community managers should monitor for the following:
  - a. Defamation.
  - b. Intellectual property infringement.
  - c. Anti-trust violations.
  
2. **Practice due diligence for the Terms of Use policy.** Ensure that these three key factors are in place with respect to the company's Terms of Use policy:
  - a. The Terms of Use policy is readily available.
  - b. The Terms of Use are followed.
  - c. There is sufficient training on the Terms of Use within the organization/association.
  
  - d. **Limit the number of moderators.** Due to the importance of being able to train all moderators in risk management as a way to demonstrate due diligence, Blake recommends that an association permit only a limited number of moderators. This should be written right into the policies and procedures. Ideally, one person should own the responsibility and have final approval for any postings, meaning any content produced by the organization/association.

## OVERVIEW

1. **Maddie's Background:** Maddie is a Digital Strategist with Social Fish. Her focus is on associations and non-profits. As a Community Roundtable Champion in this space, Maddie plans to host several of these types of calls over the next year with various subject matter experts who have community management proficiency.
2. **Ben's Background:** Ben works for Online Community Results, a consultancy firm specializing in the unique needs of associations and non-profits, especially as it relates to white label, members-only or branded online communities. He used to work with Blake at the Virginia Association of Realtors (VAR).
3. **Blake's Background:** Blake is Deputy General Counsel at VAR. He has been with the Association for eight years and has his Certified Association Executive Credentials.
  - a. Blake wanted to disclose that he did not attend this call on behalf of VAR. He attended on behalf of himself as he is very passionate about this topic.

## BEST PRACTICES

1. **Know the Top Three Legal Issues Facing Associations:** Blake shared his top 3 legal issues facing associations:
  - a. **Defamation:** Defamation is defined as making a false statement about somebody else in writing or verbally that harms their reputation. Online, people tend to be more aggressive than they would be face-to-face. Online the evidence is there, making it difficult to refute or defend.
  - b. **Intellectual Property Infringement:** It is incredibly simple to cut and paste from someone else's website. However, for large companies who own copyrights, it is very easy for them to track copyright infringements. Permission is always needed before posting.
  - c. **Anti-Trust Violations:** This is especially true in the association world because there are many competitors who come together to promote the interests of their industry. The anti-trust laws seek to prevent trade restraint, boycotts or price fixing.
2. **Practice Due Diligence:** It is not enough to have a set of Terms and Conditions without the following 3 practices. 1) Are the Terms and Conditions readily available? 2) Are the Terms and Conditions followed? 3) Is their sufficient training on the Terms and Conditions?
3. **Permit Only a Limited Number of Moderators:** Ideally, one person should own the responsibility and have final approval for any postings. Ultimately, that should be the CEO's decision, but Blake has generally seen this responsibility lie with the VP of communications or the director of communications with training from in-house or external counsel. Blake further explained that the courts are looking to see if the organization applies their online Terms and Conditions to the online community group and whether or not it trains the staff responsible for those policies and procedures. Blake recommends quarterly training for risk management.
4. **Follow These Steps in the Event of an Anti-Trust Violation:** Blake advises that if anyone in the community starts talking about fees, the moderator needs to stop that conversation immediately and state: "As a reminder to the community, we do not allow speaking about individual company policy related to fees. This is an important risk management area for the association and I'd ask that everybody that is online agree". If that cannot be done in real time and it has been an ongoing discussion, Blake suggests contacting legal counsel immediately.

## LESSONS LEARNED

- Ben asked Blake his opinion on whether public-facing social media or privately owned is riskier for an organization, especially an association or a non-profit. Blake believes that the privately-owned internal community association is a little more risky because the internal policies and procedures of the public-facing companies like Facebook and Twitter have incredible amounts of legal protection. The association really owns the content. Therefore, as the content producer, they need to be very well trained on content moderation as they will take on more liability for what is posted.
- With respect to the top three legal issues brought forth by Blake, Maggie asked how much of the responsibility lies on the community manager, especially in the case of anti-trust and defamation. The important thing to know as a community manager is to not engage in selecting and/or editing any comments that are posted. That would make the community manager a publisher and puts him/her in danger. So, the risk is minimal in terms of defamatory comments made by others on the site as long as the association did not publish it. Blake's advice would be to have a well-crafted Terms of Use policy that includes a zero tolerance rule on that kind of behavior. In addition, ensure that the defamatory comments are deleted immediately.
  - **Copyright:** In terms of intellectual property infringement, there is something called a Digital Millennium Copyright Act. That generally holds associations harmless if a third party goes on to an online community group and posts content that he/she does not own and it infringes on somebody's copyright. However, there needs to be clear policies included in the company's Terms and Conditions of use. For example, clear contact information that a copyright owner can go to immediately to ask for the content to be removed. Generally speaking, if someone contacts you saying that something has been wrongfully posted, act immediately to notify the person who posted it. Give them the opportunity to rebut and if they can't, take it down immediately.
  - **Anti-Trust:** This risk is a lot scarier. Anti-trust violation is any conversation in which one member has stood up and said: "I think we should all charge this amount of money in commissions" and nobody else in the association meeting disputes it. Even if it was a common commission for everybody, the Department of Justice would look at that as an implied anti-trust violation simply because everybody happened to be charging similar fees. It comes across as an implied conspiracy.

## LESSONS LEARNED, CONT.

- Blake advises associations to protect themselves by providing training for anybody who monitors their online community. Have an anti-trust policy linked to the Terms and Conditions of use. Any time your association sees anything online in which people are talking about individual business practices like fees they charge or any type of encouragement relating to anti-trade or boycotting, it needs to be immediately removed. Furthermore, everyone involved must loudly disassociate themselves from that online comment. If it continues, shut it down and call your attorney immediately.
- Maddie wondered if, when an individual agrees to the Terms of Use by checking the box, it is enforceable in terms of what was just discussed in the above point. Blake replied that it is a heavily litigated issue currently. Some courts have ruled that a link to the company's Terms and Conditions at the bottom of the web page is not adequate. They have found in favor of organizations that required a click that prompted the individual to agree to the Terms and Conditions before entering the website. That will be more powerful at protecting the association.
  - Ben asked if there are any circumstances in which a community manager could be held personally liable for any of the violations mentioned. Blake replied that, generally speaking, the community manager will most likely fall under the protection of the association's policy and enjoy that corporate shield against personal liability, unless they engage in criminal activity such as fraud or deceit. If they initiate anti-trust and/or perpetuate anti-trust activity or if they are part of a defamatory comment, they could see some personal liability.
- Blake advised participants to craft an internal social media policy for their association that governs who can do what and when. Ensure that it is compliant with the National Labor Relations Act (NLRA), which applies to non-supervisory employees everywhere. The Internet is the new water cooler and employees are allowed to engage in protected, concerted activity for the benefit and protection of each other. Bad-mouthing a company online about pay could be a protected activity under NLRA. It is best to run the policy by corporate counsel for NLRA compliance.
- Negative non-employee comments are often voiced on Twitter or Facebook. A social media policy would be for an employee (vs. consumer) who goes on his/her own Facebook page to voice an opinion. This point is in addition to what has been discussed in this call from a risk management standpoint.

## LESSONS LEARNED, CONT.

- Maddie asked Blake for advice on how to bring members into a community that has opted-out of receiving emails from the company. It is important to consider the Can-Spam Act, which is a federal law that prevents communicating with individuals who have indicated that they do not want to receive communications. Blake added that he would never recommend migrating an entire database of individuals and then opening up a community profile without specifically gaining their consent. Instead, explain as part of the consent process what will be included in the profile and to respond by X date if they choose to opt-out of that activity. To be even safer, Blake recommends asking for affirmative action to opt-in to the process.
  - Ben recommends making it opt-in up until a certain point. When the community reaches a certain level, it should become opt-out because the danger of perpetual opt-in is that it becomes difficult to grow the membership and to build-up champions and/or community catalysts. However, before the opt-out method is put in place, multiple communications explaining the new practice must be sent out to members, while also giving them the option to opt-out in those pieces of communication.
- When it comes to walking the line in terms of what would be considered offensive in the online community, the litmus test in Blake's mind is whether or not a reasonable person would find it offensive. When in doubt, ask around and see what others think. There should be room for free and fair exchange, but the line is crossed for liability when it is discriminatory against a protected class. The rest is more public relations oriented. Ben looks at this on a case-by-case basis. He feels that that is the soft side of community management. Having good relationships within the membership and calling upon community champions helps to quell any dissent.
- Hillary asked Ben and Blake for their last pieces of advice:
  - Blake feels that there are tools that the organization can use to protect itself. The three that he would advise to have on hand are a Terms of Use policy, to train on that policy and to have a limited number of trained professionals who are allowed to post to the community.
  - Ben's biggest concern is that community management tends to be assigned to junior staff who do not understand the nuances of anti-trust, defamation and copyright infringement. Again, it is crucial to train and hire people who have that level of understanding. As well, ensure a proper Terms of Use policy is in place and that people agree and sign off on it at the outset of entering the site/community. Lastly, consistently remind members of those terms of use.

## **ADDITIONAL INSIGHTS**

Hillary asked participants to share the biggest risk they have faced in their social community:

- One participant shared that his biggest fear or risk is to put a lot of time, money and effort into creating online resources to build an infrastructure, but if people do not take advantage of it or if the company does not do a good job of creating a strong reason for engagement, it feels like it is all for nothing.
- One participant has a unique community in that her target audience involves those working in the government. Her risk is walking a fine line between what is appropriate for the target audience and being careful of the image it may project. The membership is very sensitive to what is appropriate and sometimes an issue can spiral into something that becomes bigger than is warranted.
- Another participant stated that her risk is privacy and reputation and being able to create a community where people have a safe space to talk about professional issues without identifying themselves, even in the context of that safe association space.