



Top 10 Misunderstandings Between Community & Legal Teams

 **SNAPSHOT**

SPEAKERS

Ryan Garcia ([Dell](#)), Rachel Happe & Jim Storer (TheCR)

COMPETENCIES

Policy & Governance

MATURITY PHASES

CMM2

TOP THREE TAKEAWAYS

Working with an organization’s legal team is a necessity. However, as was expressed in this call it does not have to be a negative experience. If approached correctly, working with the legal team can actually be a very collaborative experience.

1. **Full disclosure.** Ryan’s main message was the importance of full disclosure. In order to advise a business client properly, a lawyer needs all the information at all times. It is very important that a business client continues to keep the lines of communication open with the attorney, even after the advice has been given.
2. **Risk is cornerstone of every decision.** At times it may feel that lawyers are overly cautious and not in tune with the needs of the business. Ryan wanted to stress two things. First of all, a lawyer will advise based on the organization’s risk tolerance. Secondly, the legal mind has been trained to identify risk. All their training has been geared to look for not only the immediate ramifications, but also the potential ramifications. Do not mistake this as an unwillingness to help. They are simply providing risk factors. Furthermore, a good lawyer will work with you to help mitigate those risks.
3. **Avoid “Yes/No” questions.** When speaking to your legal team, a best practice is to frame your questions in a way that avoids a “yes/no” response. Do not play in your lawyer’s world (i.e. “Can I get sued?”). Instead, ask your lawyer to play in your world (i.e. “What are the biggest risk areas that I can do something about?”)



OVERVIEW

1. **Ryan's Background.** Ryan has been an attorney with Dell for a little over six years. Dell is formatted regionally and Ryan works with the America's region. As a technology enthusiast, Ryan jumped at the opportunity to support the social media group and has been in that role now for over a year.

Ryan first came to Dell as a litigator. He then switched over to support the consumer business. For a number of years he supported Dell's consumer indirect sales/retail sales. As a technology enthusiast, he jumped at the opportunity to support the social media group and has been in that role now for over a year.

BEST PRACTICES

1. **Top 10 Misunderstandings:** Ryan offered his top 10 misunderstandings between community and legal:

10. There's no such thing as "The Wild West". The misconception is that this is all new, so therefore there are not any rules. There definitely are rules/laws that need to be followed. We just need to learn how to adapt these rules/laws within social media until such time as new laws can be enacted.

9. Most of the time, lawyers are just the messenger. Ryan stressed that lawyers are really just the messenger, so please "don't shoot the messenger". They do want to help their business clients win, but they cannot change the rules. Their job is to help their clients and business partners interpret the laws and take steps to reduce the risk. Keep in mind that the risks are almost always external. Ryan asked participants to try and understand the position of the lawyer in that they are trying to give advice based on those external risks.

8. There's no such thing as a free lunch or a risk-free plan. Everyone can get sued by anyone for anything. Whether the lawsuit sticks is a whole other matter. Other questions are whether or not the lawsuit has any merit and/or how long it will take to get rid of a completely ludicrous lawsuit. Just understand that those are completely independent questions of whether or not you can get sued.

7. Things that keep your lawyer awake at night. Ryan stated that this is less of a misunderstanding and more of an awareness that he wanted to impart on participants. The biggest worry is whether or not the business client has been honest and forthcoming with all the facts. Secondly, the lawyer worries that people may change something without telling the lawyer after he has imparted his/her advice. That one change may have a material impact on the advice that has been given.

BEST PRACTICES, CONT.

6. *The legal mind sees the world through horrible, blood-stained glasses.* Lawyers are trained to look for the worst-case scenario. For years they have been trained to look at immediate ramifications and potential ramifications. Their job is to mitigate risk.

5. *A lawyer's favorite answer is "it depends" so you should craft your questions to get something more useful.* Ryan suggests that if you want something better as an answer, do not play in the lawyer's world. Instead, ask the lawyer to play in your world. Do not ask: "Can I get sued for this" or "How will it play out in a lawsuit?" Instead, ask: "What are the biggest risk areas that I can do something about?" If you ask a lawyer for that kind of guidance, then he/she can speak from experience based on what they have seen, on emerging issues or actual cases. In turn, the lawyer will be able to give you some steps to help you work with your business team to mitigate those potential risks.

4. *Involving legal at the last minute is a really, really bad idea.* Ryan stated that every lawyer has an optimal timeframe for which he/she prefers to become involved. That is your first step – figure out that timeframe. Ryan shared that he would err on the side of involving the lawyer too early, but understands that sometimes things move really quickly and getting time with an attorney can be difficult. Therefore, try to figure out that optimal timeframe for the attorney that you work with within your organization.

3. *Contracts and terms and conditions don't have to be written in legalese.* Ryan stressed that this is just his view, but he does not believe that terms and conditions need to be written in legalese. When the terms and conditions are long and arduous to read, people simply will not read them. As such, Ryan has worked with the global team at Dell to develop a more user-friendly social media policy.

2. *Earlier in your process, legal can help with goals; later in the process, legal can help with details; reversing the two is like crossing the streams in Ghostbusters.* The bottom line is that you should involve your attorney more than once. When the goals are set, that is when your lawyer can help with more of the specifics.

1. *Good lawyers should use the word "no" only as a last resort.* Working with legal is about understanding the risks and the steps that can be taken to mitigate those risks. It is then the attorney's job to advise on what can be done within the context of those risks. Again, ensure that your questions are not phrased for a "yes/no" response.

ROUNDTABLE SUMMARY

Top 10 Misunderstandings Between
Community & Legal Teams



BEST PRACTICES, CONT.

- 2. Adopt an Attitude of Collaboration with your Legal Team:** One member shared that when he first started working with his legal team, he had a defensive posture. However, once he began working with them it was really much more of a collaborative effort. The legal team can actually be quite creative. Therefore, as a best practice he advises others to take on that collaborative attitude from the beginning. You will find that they really can be a strategic consultant. Get feedback on the ideas that you wish to act upon. Through that process, legal can actually help you to break down some of the barriers to success.
- 3. Do your Research Before Approaching Legal:** One participant shared that he suggests to his community managers to do their research first, define their questions, their plan and their goals prior to meeting with legal. Not only does it prevent follow up calls, but as suggested above, it allows the legal team to collaborate with you and become your partner.

LESSONS LEARNED

- A lawyer on the call supported Ryan’s list. He believes that it offers a foundation that can be used on a case-by-case basis, perhaps even just a few of the principles at a time. It is a succinct form that can provide opportunities for discussion. In particular, he supported the need to have all the information at all times, as well as the fact that the role of the lawyer is to support the business initiatives while also letting the client know when they start to deviate from the organization’s comfort zone for risk tolerance.
- One participant shared that when working with his legal team, he finds that it takes quite a bit of time for them to process their questions. His question was whether or not the lawyer feels the urgency of the business side in terms of what they are trying to accomplish. Ryan replied that a lawyer struggles the most when they are given a pure legal question out of the context of the corporate goals. Try framing the question this way: “This is what we’re doing and this is what we want to achieve. We understand that there may be some legal risks here, but what can we do to mitigate those risks?” That at least puts the question in the proper context.
- One participant wondered where lawyers could go to better educate themselves in the social media space. Ryan cautioned that some of the events found in a Google search can be hit or miss. Ryan was impressed with an event he attended organized by Evan Marcus Conference Group. They have a regular series entitled: “Social Media Legal Strategies”. Ryan is also chairing an event called: “ACI for Social Media Business Technology and the Law.
- Another question was raised as to the need to solve these legal issues on a regional level vs. a global level. Ryan replied that there is always some legal issue that needs to be regionalized, especially when you start talking about employment activities. Until such time as there is one universal law, when there is an intersection of various laws that cross borders there will need to be some regional or country level changes.
- One member asked Ryan if his list pertains to just the North American culture or if it is more universal. Ryan replied that, in all honesty, he has only worked with international attorneys within Dell. However, everything that is outlined on this list also resonates with them.

ADDITIONAL INSIGHTS

In the roll call, a few participants shared the issues that they are experiencing currently with respect to their legal challenges:

- A few members stated that they are working with their legal teams to develop various guidelines and policies.
- Legalities surrounding content and curation and affording appropriate attribution.
- Helping the community to meet certain guidelines in order to receive Federal stimulus dollars from Medicare and Medicaid.
- Working with legal to understand how expanding into a global market will impact their terms of service, etc.