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Just because it's easy and you can do it, doesn't mean you should

By MARK J. GOLDEN, FASAE, CAE | 11/21/2012



That was the common thread from the presentations and discussion at TREND's Annual Communications Legal Update on Oct. 26. An expert panel of attorneys provided more content per minute than you typically get at this kind of session, and that content was both important for associations and technically complex.

Among the high level takeaways was to remember that most of the arcane web of political communication, intellectual property, privacy, and commercial law that governs our digital world was written decades before digital was a reality. But that doesn't excuse us from having to conduct our association communications activities (particularly our online and social media communications) in compliance with those rules. In other words, it doesn't need to make sense to apply to you.

For example, if an individual "likes" a political candidate's campaign page or a company's product page on Facebook, does that constitute an endorsement?

And what are the implications for your association if that individual is publicly and prominently recognized as an officer or director of your organization, even if they don't identify themselves as such?

Or, if you require a donation or a purchase to get in on an offer, you are conducting a lottery, regardless of the purpose behind the offer. And that triggers not just federal, but potentially all 50 different and often conflicting state regulatory schemes.

As one of the panelists, Venable attorney A.J. Zottola, pointed out, the association needs written policy on electronic communications, but too often, such association policies take one of two, equally ineffective approaches:

- There's the "flower child" approach, that it is all cool and everyone should feel free to express themselves any where and any way they feel moved to, as long as it is done with love.
- And there's the "prison warden" approach, that states that, unless expressly and specifically authorized, it is forbidden.

In the end a far more nuanced approach is necessary, one that fully recognizes the limits and potential liabilities of the law, but balances risk and benefit.

It might be surprising, coming from a panel of attorneys, but the overarching message was more positive and encouraging than inhibiting. Be mindful of the rules, but don't let them define strategy for you. First, decide what you want to do, and then find the appropriate organizational vehicle, media and legal construction to get it done. And it can be done. But be mindful that ignorance of the law is not a defense. Neither is the purity of your intentions. Just because you never meant for your association's social media communication to be a contest, convey an endorsement, or make a defamatory statement, doesn't excuse you in the eyes of the law.

This is why programs of this sort are so important for our association community.

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