Do You Know Where Your Content Is?
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We are living in a world of digital media where the options for dissemination continue to grow. Companies of all sizes are posting content on their web pages, Facebook, LinkedIn, Twitter, YouTube, Instagram, and Snapchat. For dedicated content creators, this may also include Pinterest, or one of the many video or audio streaming platforms. The variety of methods of dissemination is multiplied even further for companies that maintain different platforms for different productions, brands, and targeted audiences. This multi-platform world brings with it increased options for companies and their content creators to reach audiences of a myriad of demographics, interests, and critically, buying habits.

However, with additional options comes additional risk. Dissemination of content across more platforms and reaching more audiences means greater likelihood that an error or publication of incorrect facts will reach those increased audiences. It also creates an internal challenge for each company to keep track of what content is placed on which platform, and what steps are needed if the company wishes to quickly take down content or issue a retraction after making a determination to do so. Over the years, many companies have turned their focus toward crisis plans, business continuity plans, and succession plans. In order to avoid the negative business toll taken by a fire, natural disaster, act of terror, or cyber event, many companies have performed a deep dive into their corporate structure and set up plans for an appropriate coordinated response to enable business continuity, and ensure compliance with corporate and
legal obligations. Some have set up “phone trees,” delegated tasks, or even handed out “fire warden” hats to establish a chain of command and make sure everyone knows his or her role. A company that publishes content should likewise consider how it would act in the event of a “content crisis” and the first step is to know where the content is. That may seem like a simple task but, in this multi-platform world that is not always the case.

There are many types of content crises that could occur. The most obvious one is where the company learns that it published erroneous information and has made the choice to take it down or issue a retraction. Some states have retraction statutes that limit damages in a defamation suit where a retraction responsive to a takedown request adheres to legal requirements. However, there are many items that bear upon whether to issue a retraction or just a correction, including the scope, timing, and manner of the request, and the concern that a retraction or correction would revive a statute of limitations. The decision of whether or not to take down or correct content depends on the facts of any given situation, as well as a granular legal analysis of relevant statutory and case law, which will not be addressed herein.

Another scenario would be where the company agrees to refrain from broadcasting or publishing content pursuant to an agreement, it needs to keep careful track of all distribution channels in order to comply. Also, if the company is obligated to preserve audio, video, or other content in order to avoid spoliation of evidence, it needs to know where to find the content that must be preserved.

In the event of a crisis, the company needs to know where the content was published. Was it on a website? A streaming platform? Facebook? Twitter? Instagram? Snapchat? LinkedIn? Pinterest? YouTube? If there are multiple platforms, which websites? Which Facebook pages? Which YouTube channels? Was the content in written form, photographic, videographic, or some combination? In what countries was the content disseminated? Who is responsible for knowing which platforms were involved in publication?

This raises the question of what the remediation process will look like. Who are the content creators involved? Who are the editors? Who has final editorial control? Who has authority to direct a correction or retraction? Who is in charge of making any actual changes on the respective platforms? Is it a different department with a different chain of authority? Who has physical technical control to make the change? Does each platform have a different person with editorial or technical control? Does each corporate division or channel have a different person with editorial or technical control? Is there anyone in place to coordinate this response? Has legal counsel been brought into the conversation?

The ability to answer these questions swiftly might minimize the likelihood of a claim of defamation, invasion of privacy, violation of the right of publicity, copyright violation, or trademark infringement or, at the very least, might minimize the loss. A company that is armed to respond to the challenges of multi-platform distribution can carry out its risk management tasks with greater ease and success.

If faced with an immediate need to take down or correct content, unraveling the corporate maze can be quite onerous. Being nimble in the face of a content crisis can go a long way toward averting a claim or mitigating damages. Companies that publish content may want to create a content crisis plan or, if one is already in place, carefully review the one they have. A thorough understanding of corporate structure and chains of editorial and technical command, coupled with a comprehensive content crisis plan, is an invaluable addition to any risk management practice.
Winter WICL Meeting

WICL’s discussion of #NeverAgain with Lauren Hogg, Class of 2021 – Marjory Stoneman Douglas

Lauren Hogg - The Parkland Generation “Draws the Line” and Inspires in Miami

The story of Parkland is well known. The Valentine’s Day mass shooting ended with 17 victims dead. That day, Lauren Hogg was sitting in her fourth period television production class when the shooting started. What appeared initially as a joke, as the school was to have a code-red drill (an active shooter simulation) became far worse.

In the aftermath, Lauren, along with her brother, David Hogg, authored the book #NeverAgain – A New Generation Draws The Line, an in-depth look at the making of the #NeverAgain movement. “Before February 14, we thought we had plenty of time. We wanted to do something that would make the world a better place, to fight for justice as lawyers or activists or crusading journalists, to be responsible citizens and raise good-hearted children. But first we had to finish high school. After February 14, we knew how fast time could stop…” They, along with fellow members of the #NeverAgain movement, also contributed to Glimmer of Hope: How Tragedy Sparked a Movement.

Lauren joined WICL, along with Robyn Mohr of Loeb & Loeb, sharing her story and experiences on that day and those that followed along with her experiences as a young person thrust into the spotlight through a national tragedy.

After a presentation, Lauren and Robyn answered questions from an audience moved by the experiences and maturity of the young student before them. With her strong voice and passion, many left moved and inspired.

Copies of #NeverAgain and Glimmer of Hope can be purchased at Amazon.com
It is hard to believe that we are moving into spring (and near the end of the Forum year)!

This has been an exciting year for the Women in Communications Law (WICL) Committee, and for the Forum on Communications Law. We are pleased that so many of you have been able to join WICL for cocktails, interesting and enlightening speakers, great conversations, good food and networking, and, on occasion, just pure entertainment.

I hope you share our enthusiasm about continuing to provide opportunities for discussions around, and hearing from speakers on, important topics, such as workplace sexual harassment – and protecting brave individuals who speak up to tell their stories – such as we heard from the TIME’S UP Legal Defense Fund administered by the National Women’s Law Center, and the #NeverAgain movement – and Lauren Hogg, who, along with other students, started a movement to speak out, organize, and spread awareness about gun violence.

In the past year, we have enjoyed strengthening our WICL friendships and connections (and making new ones), sharing the delicious food at Natsumi, and talking with each other about how we can continue to support each other and the larger community.

As I finish up my term as one of your Co-Chairs, I want to say a big thank you to my fellow Co-Chair, Jenn Dukarski (who will stay on for another year) and our Co-Chair-Elect Kristen Rodriguez, both of whom have been invaluable partners this past year (and who I have enjoyed getting to know better as friends). I am also excited that Dana Green is our incoming Chair-Elect. Needless to say, we are in great hands next year and I look forward to what they have planned.

Finally, I look forward to seeing many of you in Austin next year for the Annual Conference. We promise to show you a good time! And, I know that Jenn and Kristen (and Dana) will plan something special for WICL.

Thank you for spending this Forum year with us. We hope that you will continue to stay involved and engaged.
A Leadership Minute: Harnessing Strategic Thinking

In his 2003 book, THINKING FOR A CHANGE, 11 WAYS HIGHLY SUCCESSFUL PEOPLE APPROACH LIFE AND WORK, John C. Maxwell discusses habits in our thoughts that can lead to positive action in our lives and careers. When thinking about personal growth, business opportunities and mentoring, the ideas of strategic thinking often come to mind. Not unlike the notion of a business plan or even the plans of the greatest military commanders, the science of planning and directing can help us tackle the challenges that we each face along the path. The benefits of a strategic approach include:

Simplification: Applying strategic thinking (which Maxwell sees as “planning on steroids”) can simplify most challenges by defining what is truly in issue and adding ease to the path to get there.

Questioning: By using strategic thinking techniques, you can break down any complex challenge into precise, refined questions.

Navigating Uncertainty: Planning assists in managing the concerns that we cannot forecast. By its nature, strategic thinking seeks to highlight the possible outcomes of today’s decisions rather than contemplate decisions that may or may not arise in the future.

So, how can one apply strategic thinking?

Break down the issue: Maxwell turns to the old Henry Ford adage “Nothing is particularly hard if you divide it into small jobs.” For Mr. Ford, that meant dividing the assembly of the car into different steps. Even today, car manufacturers know each movement made by each employee and how each turning of a component, driving of a screw, and connecting of wires leads to the final product. But it becomes more complex when we’re contemplating how to harness the next step in a career – regardless of whether it’s moving from one firm to another, joining an in house team, or making the push from associate to partner. That decision can be broken down by function, timetables, responsibilities, purpose, or any other increment that makes sense.

Understand why you’re seeking the change before assessing the how: Far too often, we jump immediately to how we’re going to take our next step. We don’t often assess why we’re changing or what we’re leaving. Perhaps it’s a move to boost pay or to reduce hours, to go from the West Coast to the East or vice versa. Understanding why and what is causing the internal disruption could help you avoid landing in a situation where you’re about to face the same struggles and challenges.

Review your resources: Most of us have people that we feel comfortable talking with – on many subjects – and some level of physical resources (money, time, supplies, materials, etc.) When making a truly strategic decision, we should assess our current resources and take advantage of them. In terms of people resources, we at WICL hope you consider each other resources that you’re able to bounce ideas off of and to collaborate with.

These are just a few areas in applied strategic thinking. We will be addressing this further, in the context of taking that next career step at the WICL breakfast in Las Vegas. We hope to see you there!
WICL Newsletter

WICL Co-Chairs:
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Get Involved!

Newsletter Subcommittee
Responsible for putting together three newsletters each year, the one you are reading now in the fall/winter and one in the spring. Please consider contributing articles, news items about your successes and career, or help in putting the newsletter together.

Web Subcommittee
Responsible for overseeing and updating the content on the WICL section of the Forum Committee’s website. We hope this subcommittee will be in close contact with the newsletter subcommittee.

Speaker’s Bureau Subcommittee
Responsible for recruiting candidates from our membership and establishing a list of WICL members who would be willing to speak/present on media/communications-related topics. These candidates would develop presentations on their own field of expertise and could be called upon to speak at WICL and Forum events.

Upcoming Events

Spring in Las Vegas: April 6-7, 2019
In connection with the 38th Representing Your Local Broadcaster continuing legal education seminar at the NAB Show at the Encore Hotel in Las Vegas, WICL hosts a Dinner & Show event. Keep an eye out for updates on the show and dinner.

November in New York City:
We are thrilled to be meeting in New York for two special social events: a Dinner & a Show event and after theater meal at Café Un Deux Trois; and a networking and educational luncheon.

Annual Forum Meeting:
Mark your calendar and save the date for the 25th Forum Annual Conference! It’s… Texas!