

#Goals: Using Social Media without Getting Sued

7th Edition: Trends in Marketing Communications Law

In the rapidly changing social media landscape, new ways to create, share and use content are continually emerging, and this has left marketers scrambling to ensure that their legal compliance efforts keep pace with the changes. In social media, the maxim, “the more things change, the more they stay the same,” is fitting. From Promoted Tweets to shoppable product stickers in Instagram Stories, marketers have to stay vigilant, as the same legal framework applies. Everything from a marketer’s use of user-generated content or photographs, music or artwork in Snapchat stories to fully developed TikTok campaigns is not immune from copyright infringement claims just by virtue of being featured in a transient new form of media.

Developments in technology also make it easier for copyright owners to identify potential infringements, increasing the practical risk of a marketer receiving a claim. Automated bots allow copyright owners to scour the web for uses of their content, and send cease and desist letters demanding a costly settlement or threatening to bring a lawsuit. YouTube’s Content ID uses artificial intelligence (AI) to flag content to copyright owners, who can then decide whether to leave the content in place and receive advertising revenue, have their content removed from the video, or have the entire video taken down. Yet even AI is not perfect and can lead to unfounded claims, so marketers should review any Content ID matches, including any takedowns, as penalties can include loss of a marketer’s YouTube account.

Social media channels continue to expand, even as new ones come onto the stage. The explosive growth of TikTok continued in 2020, culminating in over 1 billion users worldwide, the majority of which are GenZers. Despite ongoing uncertainty about the platform’s future in the United States due to efforts by the Trump administration to ban TikTok for national security concerns, marketers are continuing to make use of the platform. While many marketers have joined in on the action, the platform has posed unique challenges for legal compliance. TikTok makes it easier than ever to share music on the platform, which creates numerous copyright risks to marketers wishing to capitalize on the newest social media platform.

With TikTok sweepstakes and promotions also in high demand, marketers are turning to sponsored hashtag challenges, which offer a popular way to increase engagement. But hashtags raise their own set of risks — from trademark concerns to compliance with the Federal Trade Commission’s disclosure guidelines. Additionally, promotions on TikTok must still comply with applicable state sweepstakes and promotions laws, including the creation and posting of official rules, which must be tailored to each TikTok campaign.

Key Takeaways

- Marketers can expect to see more developments in social media in 2020, but legal compliance obligations remain the same.
- Among other things, marketers must observe requirements imposed by the social media platforms’ terms of service.

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