

C o m m u n i c a t i o n s a n d M e d i a  
A L E R TMAY  
2008

## TODAY, EVERYONE IS A PUBLISHER

**“Blog.”** That word was unheard of just a few years ago. Now both the word and the phenomenon are ubiquitous. Everyone seems to read one. And many — from companies to individuals — seem to have one of their own, or to be thinking of starting one. One online source (Technorati’s State of the Blogosphere), estimates that about 120,000 new blogs are created every day, or about 1.4 new blogs every second! Over 12 million American adults currently maintain a blog, and an increasing number of Fortune 500 companies have established blogs accessible to those outside the company.

Just what is a “blog,” or “Web log,” defies precise definition. According to *Merriam-Webster*, it is a “regularly updated Web page containing the personal thoughts of the author and, often, links to other blogs and pages on the Internet.” Blogs can be launched in a short amount of time, require little to no technical expertise, are frequently updated, and tend to be informal. The available topics they can discuss are limitless.

Unfortunately, so are the opportunities for legal liability. From defamation to copyright and trademark infringement to employment disputes, the blogosphere is fraught with

danger. For example, in February, Cisco Systems Inc., the California-based computer equipment company, found itself embroiled in a Texas defamation case because one of its employees posted anonymous comments on his blog that suggested misconduct in the filing of Texas patent infringement claims. Three years ago, Apple Computer, Inc. sued a number of blogs and Web sites that reported on its upcoming products, claiming that they revealed the company’s trade secrets.

Blogs, like Web sites, are accessible anywhere on the Internet, and they therefore raise potential liability questions everywhere they can be read, both locally and overseas. Their spontaneity and informality create a significant liability potential, as blogs often are published without the editorial controls used by traditional media. And because blogging is such a new communications medium, the rules that apply to blogs are still evolving. The questions are particularly tricky if the blog is published by an employee while at work, or, as often is the case today, while conducting business from home or another off-site location — even if there is no clear corporate knowledge or authorization of the publication. If the blog is published by a corporate employee, the corporation’s finances may present an attractive target for any lawsuit.

*(continued on page 2)*

---

*(continued from page 1)*

If either you or your organization publishes a blog or is thinking of doing so, or if any of your employees publishes a blog, you need to consider the legal pitfalls that can face blog publishers before the problems arise and to create policies to address them. For example —

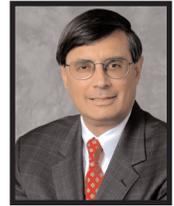
- Online postings are subject to the same defamation laws as statements made in other media. Are you prepared to address that type of liability?
- A cause of action may lie against an employer for a blog item that an employee posted online, even if the employee did not write it on the employer's own blog or website. What is your policy on employee blogs?
- When corporate officers blog, the corporation may be jointly and severally liable for the officer's intentional tortious conduct. Have you discussed this with your executives?
- Although Section 230 of the Communications Decency Act shelters those that host blogs from liability for others' blog postings, a corporation may be liable for postings if it is deemed to have provided the content itself, instead of just a forum for that content. What controls do you have over your Web content?

---

***We can help.*** Schnader's Communications and Media Practice Group has decades of experience representing traditional communications media and addressing the many legal issues faced by publishers. *In today's world of the Internet, everyone has become a publisher.* Schnader's Communications and Media Practice Group applies the expertise it has honed in its traditional media practice to the new communications media — including blogs. If you need help navigating this new terrain, give us a call. The world of publication may be new to you. But it is not new to us. ◆

For more information, contact the authors:

Carl A. Solano,  
Communications and Media Practice  
Group Chair and Partner  
(215) 751-2202  
csolano@schnader.com



Chad Cooper, Associate  
(215) 751-2000  
ccooper@schnader.com



Edward J. Sholinsky, Associate  
(215) 751-2000  
esholinsky@schnader.com



*This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.*