Cyber law Comes to Campus:
Social Media, Records, Privacy and the Law
KSU’s Second Annual Cyber Security Awareness Day Conference
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Growth in Use of Social Media

- Pew Research Center's Internet & American Life Project

- April 2009-May 2010:
  - 18-29 yr olds -- 13% growth (76%-86%)
  - 50-64 yr olds -- 88% growth (25%-47%)
  - 65+----------100% growth (13%-26%)

Risks of Social Media Use

- Non-Legal Risks
- Legal Risks

Open Records and Meetings Laws

- Posts on Social Media sites by public employees as part of their job may be open under Open Records laws
- Transacting business on social media sites could run afoul of public meetings laws

Georgia Open Records Act

- General Rule—the record is open
- However, there are a number of specific exceptions that could prevent release of the records.

Family Educational Rights and Privacy Act (FERPA)

- 2 Principles:
  1. Right to access your own educational records
  2. Right to prevent others from having access to your educational records

What is an "educational record"? Records directly related to a student and maintained by an educational institution or a party acting for it
Records Issues
- Potential Conflicts between Open Records Act and FERPA
- Student records maintained electronically, so it is easy to release them to others—often by mistake
- Invasion of Privacy Claims

First Amendment Issues
- Is there a right of access to a government’s sponsored social media site?
- Can you restrict access to government sponsored social media?
- What type of “forum” is created:
  - Public
  - Limited or designated public forum
  - Nonpublic forum

Copyright Issues
- Use of Photos and Videos—Who owns them?
- Use of Music (Performing Rights License)

Trademark and FTC Issues
- State and Federal Registrations
- False Endorsement Claims

Employment Issues
- Background Checks using Social Media
- Misuse of social media in the workplace
- Limited 1st Amendment rights of public employees

Disability and Access to Social Media
- Americans with Disabilities Act
- Sections 503 and 504 of the Rehabilitation Act
- Section 508 of the Rehabilitation Act—currently only applies to Federal agencies
Defamation

• Blogs can pose a real problem

• Tweets and e-mails often include statements that a person would not normally make in written conversation

Advertising and Fund Raising

• Limitations on testimonials and endorsements in electronic media by Federal Trade Commission Regulations

• Using Social Media for Fund Raising may implicate State laws regarding registration of fund raisers.

Preventive Measures

• Have clear policies about who speaks for the institution through social media

• Have written agreements for the use of photos, videos, and music.

• Establish clear, written rules for public access to government-run social media sites

Questions