

# Is your company protected?

How to protect your company from the risks posed by technology **Interviewed by Sue Ostrowski**

**A**s technology continues to evolve, the risk of doing business online continues to increase. Businesses often fail to plan for transactions completed via the Internet and e-mail. They also often don't have the proper protection in place when they market their products and services via social media.

To make sure that your company is protected in the world of social media and online transactions, you need to develop policies and procedures to avoid unnecessary risk and liability, says Donald R. Scherer, an attorney in the Business Services Group at Stark & Knoll Co., L.P.A.

"An ounce of prevention is worth a pound of cure," says Scherer. "Plan upfront and spend small amounts of money to update your forms, to make sure that your employees are integrating your terms and conditions properly and that they understand your company's online expectations. If you don't, you're going to get hit with a big lawsuit somewhere off in no-man's land, when you could have planned for that and made it much less expensive for yourself."

*Smart Business* spoke with Scherer about how to protect your company from the risks that technology poses.

## Have risks increased for businesses as they are using more technology?

Yes. Companies are facing increasing risks, partly as a result of social media. It's more difficult for companies to brand themselves because they have a lot of people — including employees — talking about their brand, and not always in a positive light. In addition, you have employees who have the potential to damage the company, either by exposing confidential information online through social media, or by making comments that could potentially jeopardize relationships with clients. Additionally, companies are branching into new markets via online transactions without doing proper research or planning.

## What are some of the most common mistakes that businesses make with technology?

In the past, you had to wait days for a purchase order and days for the acceptance. Now you can enter into a transaction in a couple of minutes and get the order shipped before you ever would have received the purchase order in the past.



**Donald R. Scherer**  
Attorney, Business Services Group  
Stark & Knoll Co., L.P.A.

As a result, people are entering into transactions via e-mail and don't even recognize they're doing so. Typically, when you enter into a written transaction, you include terms and conditions. But when companies enter into transactions electronically, they often forget to include those terms and conditions. And if you receive a purchase order online and accept that purchase order online, forgetting to include terms and conditions can lead to legal issues where you would have otherwise been protected by favorable contract terms in your agreement.

Also, companies are expanding globally as they sell online, but they don't understand the ramifications of a global transaction versus an intrastate or intra-U.S. transaction. When you have a global transaction, commercial law that applies within the U.S. may not apply. Instead, you may be subject to U.S. treaties with other countries, and you need to be aware of what those are and how they are different from traditional commercial law.

## What can a business do to protect itself from these risks before they blossom into a major problem?

With respect to social media, create policies regarding your company's own

**DONALD R. SCHERER** is an attorney in the Business Services Group at Stark & Knoll Co., L.P.A. Reach him at (330) 572-1317 or [DScherer@stark-knoll.com](mailto:DScherer@stark-knoll.com).

social media pages in the form of social media terms of use for third-party users. As it relates to employees, you can't have someone policing every employee's online activity to see if they're saying something negative, but you can adopt a comprehensive employee social media policy to set forth your expectations for employees' online content. This can be accomplished by modifying your employee handbook.

With respect to online transactions, companies need to update their terms and conditions to ensure that they are complying with whatever type of international law may apply. If you're selling goods over the Internet, U.S. treaties can be substantially different from traditional commercial law that you'd normally understand to apply to an interstate contract. You can frequently opt out of these treaties, but you have to make sure you've done it properly.

Finally, you need to ensure that if you're entering into transactions electronically that you're incorporating those terms and conditions into your transaction, and we can help you do that.

## How can businesses stay ahead of the curve as technology and society cause changes to the way they do business?

The best way is through planning. If you're going to expand your business into a new market or a new technology, talk with your advisers to make sure that everything you're doing is compatible with those new technologies and markets.

A lot of planning can be done up front by working with your attorney and your accountant. You wouldn't go into business in Brazil and not familiarize yourself with any accounting requirements that might apply. So if you're going into business in Brazil via online transactions, you need to look at the legal ramifications, as well.

Continue to review your policies on a regular basis as technology and markets continue to change. If you put a social media policy in place a couple of years ago, it might not account for things like Twitter or other new technology, and terms and conditions might have become outdated as you move into new markets. <<

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