

## **SOCIAL MEDIA CONTRACTS (OUTLINE)**

**Presented by: Drinker Biddle & Reath**

### **I. Panelists**

Elena Laskin, *Comcast Interactive Media*

Priya Sanger, *Wells Fargo & Company*

Ira Kalina, *Drinker Biddle & Reath*

### **II. Social Media Terms of Use**

- A. Ability to Amend/Evolve the Terms
- B. License to (Not Ownership of) User Generated Content
- C. Additional User Generated Content Terms
  - No responsibility/endorsement
  - Right, but not obligation, to review/edit/remove
- D. The Do's and Don'ts vs. Separate Guidelines
- E. Right to Terminate Account and/or Service
- F. Consider Interaction with Other Business Agreements
- G. Business Specific Terms
- H. Clickwrap vs. Browsewrap
- I. DMCA Notification Process
- J. Standard Web Site Legal Terms of Use
  - User Responsibility for Registration and Password Security
  - Feedback/Submissions (as opposed to User Generated Content)
  - Disclaimers re Third Party Applications/Links
  - Copyright/Trademark Protection
  - Disclaimers and Limitation of Liability
  - User Indemnification Obligation
  - Choice of Law/Forum

**III. A Brief Word about Social Media Privacy Policies**

- A. Disclosure, Disclosure, Disclosure
- B. Geolocation
- C. Cookies, Web Beacons, etc.

**IV. Employees and the Acceptance of Third Party Terms of Use**

- A. Corporate Presence on Third Party Social Media Sites
- B. Managing Employees through Social Media Policies

**V. “Negotiating” with Social Media Players**

- A. Direct Negotiations vs. Publicly Available Developer Terms
- B. Perils of Developer Terms

## SOCIAL MEDIA CONTRACTS

### SAMPLE TERMS

#### A. AMENDING THE TERMS

##### *Common Model:*

The Company may revise and update these Terms of Use at any time without notice by posting the amended terms to the Web Site. Your continued use of the Web Site means that you accept and agree to the revised Terms of Use. If you disagree with the Terms of Use (as amended from time to time) or are dissatisfied with the Web Site, your sole and exclusive remedy is to discontinue using the Web Site. THE MOST CURRENT VERSION OF THIS AGREEMENT, WHICH SUPERSEDES ALL PREVIOUS VERSIONS, CAN BE REVIEWED BY CLICKING ON THE “TERMS OF USE” HYPERLINK LOCATED ON THE WEB SITE.

##### *Current Facebook Model:*

1. We can change this Statement if we provide you notice (by posting the change on the Facebook Site Governance Page) and an opportunity to comment. To get notice of any future changes to this Statement, visit our Facebook Site Governance Page and become a fan.
2. For changes to sections 7, 8, 9, and 11 (sections relating to payments, application developers, website operators, and advertisers), we will give you a minimum of three days notice. For all other changes we will give you a minimum of seven days notice. All such comments must be made on the Facebook Site Governance Page.
3. If more than 7,000 users comment on the proposed change, we will also give you the opportunity to participate in a vote in which you will be provided alternatives. The vote shall be binding on us if more than 30% of all active registered users as of the date of the notice vote.
4. We can make changes for legal or administrative reasons, or to correct an inaccurate statement, upon notice without opportunity to comment.

#### B. License to User Generated Content

##### *Current Facebook Model:*

...you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.

##### *Current YouTube Model:*

For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works

of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.

*Current LinkedIn Model:*

....you grant LinkedIn a nonexclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicenseable, fully paid up and royalty-free right to us to copy, prepare derivative works of, improve, distribute, publish, remove, retain, add, process, analyze, use and commercialize, in any way now known or in the future discovered, any information you provide, directly or indirectly to LinkedIn, including, but not limited to, any user generated content, ideas, concepts, techniques or data to the services, you submit to LinkedIn, without any further consent, notice and/or compensation to you or to any third parties

*Current Google Model:*

11.1 You retain copyright and any other rights you already hold in Content which you submit, post or display on or through, the Services. By submitting, posting or displaying the content you give Google a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, the Services. This license is for the sole purpose of enabling Google to display, distribute and promote the Services and may be revoked for certain Services as defined in the Additional Terms of those Services.

11.2 You agree that this license includes a right for Google to make such Content available to other companies, organizations or individuals with whom Google has relationships for the provision of syndicated services, and to use such Content in connection with the provision of those services.

11.3 You understand that Google, in performing the required technical steps to provide the Services to our users, may (a) transmit or distribute your Content over various public networks and in various media; and (b) make such changes to your Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services or media. You agree that this license shall permit Google to take these actions.

### **C. Miscellaneous Terms re User Generated Content**

(i) You understand and acknowledge that you are responsible for whatever content you submit, and you, not the Company, have full responsibility for such content, including its legality, reliability and appropriateness. By uploading or otherwise transmitting material to any aspect of the Web Site, you warrant that the material is your own, is in the public domain or otherwise free of proprietary or other restrictions and that you have the right to post it to the Web Site.

(ii) Any content and/or opinions uploaded, expressed or submitted to a message board, blog, chatroom or any other publicly available section of the Web Site (including password-protected areas), and all articles and responses to questions, other than the content provided by the Company, are solely the opinions and responsibility of the person or entity submitting them and do not necessarily reflect the opinions of the Company. All information publicly or privately transmitted through the Web Site is the sole responsibility of the person from whom such information originated, and the Company will not be liable for any error or omissions in content. The Company cannot guarantee the identity of any other users with whom you may interact in the course of using the Web Site or the authenticity of the data provided by other users.

(iii) The Company reserves the right, but does not assume any responsibility, to (a) remove any material posted on the Web Site which the Company, in its sole discretion, deems inconsistent with the foregoing commitments, including any material the Company has been notified, or has reason to believe, constitutes a copyright infringement; (b) terminate any user's access to all or part of the Web Site; and (c) reformat, excerpt or translate any content submitted by users. However, the Company can neither review all material before it is posted on the Web Site nor ensure prompt removal of objectionable material after it has been posted. Accordingly, the Company assumes no liability for any action or inaction regarding transmissions, communications or content provided by third parties. The Company reserves the right to take any action it deems necessary to protect the personal safety of users of the Web Site and the public; however, the Company has no liability or responsibility to anyone for performance or nonperformance of the activities described in this paragraph.

### **D. Do's and Don'ts**

#### *Sample Laundry List*

You agree not to do any of the following: (1) upload to or transmit on the Web Site any defamatory, indecent, obscene, harassing, violent or otherwise objectionable material, or any material that is, or may be, protected by copyright, without permission from the copyright owner; (2) use the Web Site to violate the legal rights (including the rights of publicity and privacy) of others or to violate the laws of any jurisdiction; (3) intercept or attempt to intercept content or messages not intended for you; (4) misrepresent an affiliation with, or otherwise impersonate, any person or organization; (5) upload to or transmit on the Web Site any advertisements or solicitations of business; (6) restrict or inhibit use of the Web Site by others, including disrupting the normal flow of dialogue, causing a screen to scroll faster than other users are able to type, or otherwise acting in a way which affects the ability of other people to engage in real time activities via the Web Site; (7) upload or otherwise transmit files that contain a virus or corrupted data; (8) collect information about others (including e-mail addresses) without their consent; (9) download a file or software or include in a message

any software, files or links that you know, or have reason to believe, cannot be distributed legally over the Web Site or that you have a contractual obligation to keep confidential (notwithstanding its availability on the Web Site); (10) post “spam,” transmit chain letters or engage in other similar activities; (11) advocate illegal activity or discuss an intent to commit an illegal act; (12) seek to exploit or harm children by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (13) disobey any policy or regulations including any code of conduct or other guidelines, established from time to time regarding use of the Web Site or any networks connected to the Web Site; (14) falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is permissibly uploaded; or (15) engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Web Site, or which, as determined by the Company, may harm the Company or users of the Web Site or expose them to liability.

**E. Right to Terminate Account/Modify Services**

*Simple Termination Right:*

The Company reserves the right, in its sole discretion, to terminate your access to any or all of the Web Site or any portion thereof at any time, without notice. Upon termination, you shall cease to use the Web Site in its entirety. Your right of access may be terminated without notice by the Company, without any obligation or other liability, if you fail to comply with these Terms of Use.

*Termination for Cause (Current LinkedIn Model):*

LinkedIn may restrict, suspend or terminate the account of any User who abuses or misuses the Services. Misuse of the Services includes inviting other Users with whom you do not know to connect; abusing the LinkedIn messaging services; creating multiple or false profiles; using the Services commercially without LinkedIn’s authorization, infringing any intellectual property rights, violating any of the Do’s and Don’ts listed in Section 10, or any other behavior that LinkedIn, in its sole discretion, deems contrary to its purpose. In addition, and without limiting the foregoing, LinkedIn has adopted a policy of terminating accounts of Users who, in LinkedIn’s sole discretion, are deemed to be repeat infringers under the United States Copyright Act.

*Right to Modify or Discontinue Services Generally:*

The Company reserves the right at any time to modify, suspend or discontinue, temporarily or permanently, the Web Site and its related services (in whole or in part) with or without notice. You agree that the Company shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Web Site.



# Drinker Biddle

## Ira M. Kalina

Partner

**Ira Kalina** is a partner and vice -chair of the Intellectual Property Practice Group. His practice is concentrated in technology transactions, information technology, research and development, intellectual property, licensing, and advertising. Ira counsels clients from a diverse array of industries, including health care, media, gaming, financial services, entertainment, education and traditional manufacturing.

Ira advises clients regarding development and leveraging of innovation, whether independently or in conjunction with third parties through joint ventures, investments and strategic alliances. He has worked with clients to negotiate joint research and development projects, sponsored research programs with universities and national laboratories, and establishing dedicated labs between universities and industry. He also assists with inbound/outbound licensing programs, technology transfer, distribution and asset distribution.

Ira counsels clients with respect to all aspects of information technology, from software licenses, network services and equipment leasing through system implementation and broad -based outsourcing arrangements. He has developed considerable skill in counseling companies with Internet -based business initiatives with respect to all technology and Web issues, from site development, infrastructure implementation and hosting through distribution, content licensing, promotions and advertising. He regularly counsels clients on open -source licensing, open -source initiatives and the potential impact of open -source on mergers and acquisitions.

In addition to his law firm experience, Ira worked in -house as vice president of business development and general counsel of a Chicago -based Internet startup. During his tenure there, he was responsible for developing relationships with online content and service providers, network providers and distribution partners. Ira also served as licensing counsel to WMS Gaming Inc., a leading manufacturer of video slot machines, and Midway Games Inc., a leading developer of home video games, where he advised the companies with respect to software development, inbound and outbound licensing, e -commerce issues, advertising and promotions.

Ira received his bachelor's degree in history and economics from



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### RELATED PRACTICES

#### Intellectual Property

- > Information Technology & Outsourcing
- > Online & E-Commerce Initiatives

#### Health

- > Regulatory Environment
  - > Privacy, HIPAA & Security
- > Business & Finance
  - > Outsourcing, Procurement & Information Technology

#### Government & Regulatory Affairs

### EDUCATION

- > The University of Chicago, J.D. 1994
- > University of Michigan, B.A. 1991

### BAR ADMISSIONS

- > Illinois

### PROFESSIONAL AND CIVIC ASSOCIATIONS

- > Board Member, Chicago College of Performing Arts of Roosevelt University





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## **Ira M. Kalina | Page 2**

the University of Michigan. He is also a graduate of the University of Chicago Law School. He currently serves on the Board of the Chicago College of Performing Arts of Roosevelt University.

### **PUBLICATIONS**

Of PACS and Trolls: How the Patent Wars May Be Coming to a Hospital Near You, *The Health Lawyer*, October 2006.

Toward a Longitudinal Health Record, *Health Law and Health Information Tehnology Client Memorandum*, August 2006.

Hospital PACS Systems Targeted for Patent Suits, *Intellectual Property Client Memoradum*, December 2005.

The Ins and Outs of Open Source, *Consulting to Management*, Vol. 16, No. 3, September 2005.

Hospitality and the European Data Privacy Directive, *The Bottomline*, December 2003.

### **SPEAKING ENGAGEMENTS**

*Healthcare, Data Governance, and Information Integrity Legal Issues*, 2009 Annual Information Integrity Conference, Naperville, IL, 11/17/2009.

*Technology Rules: Legal Issues and Their Market Impact*, SUPERCOMM2009 Digital Media & Broadband Entertainment Forum, Chicago, IL, 10/23/2009.

*The Art of Global Corporate Development*, 11th Annual Corporate Venturing & Strategic Investing Conference, Palm Springs, CA, January 19 -20, 2009.

*Electronic Health Records: Legal Update and Case Studies*, Scottsdale Institute Teleconference, April 11, 2008.

*Raising Venture Funding for Open Source: The Investor Perspective*, Open Source in Mobile (OSiM) USA 2008, San Francisco, CA, March 11, 2008.

*Technology Partnerships and Alliance Management*, 10th Annual Corporate Venturing & Strategic Investing Conference, Palm Springs, CA, February 5, 2008.





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*Successful Strategies for Negotiating Medical Transactions & Investments*, Renaissance American Management, Inc. & Beard Group Fourth Annual Physician Agreements and Ventures Conference, Chicago, IL, November 1 -2, 2007.

*Hospital Support of Private Physician EHRs: Strategies and Perspectives*, HIMSS (Greater Chicago Chapter) Fall Program, Chicago, IL, 10/25/2007.

*Licensing of Video Content in the YouTube and iPhone Era*, Complex Intellectual Property Licensing Seminar, Philadelphia, PA, June 22, 2007.

*Financial Overview, Hospital/Physician EMR Strategies: Selecting and Rolling out an EMR to Community Physicians*, Chicago, IL, 05/16/2007.

*Information Tech Procurement Issues in Healthcare Information Technology and Outsourcing Contracts*, Healthcare Financial Management Association Annual Spring Conference, Branson, MO, May 9, 2007.

*Strategies for Managing Vendor Negotiations*, College of Imaging Administrators Annual Spring Assembly, Chicago, IL, April 2007.

*Business Impacts of Intellectual Property*, Krannert School of Management, Purdue University, West Lafayette, IN, September 8, 2006.

*Implementing a Successful IT Procurement Process*, NativeTech 2006, Scottsdale, AZ, May 17, 2006.

*Negotiating IP Ownership*, TiECon 2005 Midwest, Chicago, IL, October 1, 2005.

*Life Cycle of a Major Technology Purchase: From Vendor Selection Through the Final Contract*, NativeTech 2005, Las Vegas, NV, May 16-17, 2005.

*HIT Contracts Exposed: Uncovering Hidden Financial Terms and Negotiating Leverage*, HFMA Indiana Annual Meeting, Indianapolis, IN, April 14, 2005.

*Open Source Licensing*, Chicago Java Users Group, Chicago, IL,



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September 21, 2004.

*Outsourcing: Strategies for Vendor Selection and Negotiations*, HIMSS Summer Conference, Las Vegas, NV, June 14, 2004.

*Open or Shut: The Case of Open Source vs. Proprietary Licensing*, OSS Chicago, Chicago, IL, May 13, 2004.

*Business and Valuation Risks: The Case for Open Source Audits*, The Great Wide Open: Examining the Pros and Cons of Open Source Software Breakfast Briefing, Chicago, IL, May 14, 2004.

*Negotiating Strong Information Technology Agreements: Avoiding the Pitfalls*, National Indian Gaming Association 2004 Trade Show & Convention, Albuquerque, NM, April 6, 2004.





Elena Laskin serves as General Counsel and Vice President, Legal and Business Affairs for Comcast Interactive Media, the business unit of Comcast dedicated to conceptualizing and developing the company's online and multiplatform entertainment and media businesses, including Xfinity.com, XfinityTV.com and the XfinityTV mobile applications. In this role, Elena has advised Comcast's online businesses in all matters, including content acquisitions, revenue generation, regulatory/privacy, marketing, social media, and technology.

Prior to joining Comcast Interactive Media in 2006, Elena handled mergers and acquisitions matters as an Assistant Deputy General Counsel for Comcast Corporation, and prior to that she was a corporate and securities associate at Dechert, LLP.

Elena holds a B.A. from Tufts University, and a J.D. from Georgetown University Law Center



Priya Sanger is Senior Counsel in the Wells Fargo & Company Law Department in San Francisco, CA. As part of the Strategy & Operational Risk Legal Group, Priya is the primary retail mobile lawyer at Wells Fargo in the area of mobile banking and payments. She is also one of the primary lawyers for Wells Fargo's social media and enterprise marketing groups, advising on the bank's presence on Facebook, Twitter, and other social media platforms. Her practice areas have also included eCommerce transactional work and regulatory guidance; international operational risk mitigation, including privacy, information security, and export control; online web accessibility related to Americans with Disabilities Act; and technology transactions, including serving as the primary in-house lawyer in over 13 large M&A technology transactions.

Priya is President of the Bar Association of San Francisco, and she has the distinction of being the first in-house lawyer and the first South Asian to be elected President of the Bar Association of San Francisco (BASF) in the Bar's 138-year history. She previously served as President of the San Francisco Bank Attorneys Association. She is currently Chair of the Volunteer Legal Services Program (VLSP) Board, and sits on the Advisory Committee for the Asian Pacific Bar of California.

Priya is a graduate of Smith College (B.A. Latin/Classics) in Northampton, Massachusetts, Stanford University Overseas in Rome, Italy, and the S.J. Quinney College of Law at the University of Utah in Salt Lake City, Utah.