

FOCUS

President's Message

Stephen Dwyer

Digging Deeper, Reaching Farther

It is my distinct pleasure to serve as the 30th president of WMACCA. Stepping into this role for 2011, I recognize that I have big shoes to fill. Each of the past WMACCA presidents has made his or her mark on the chapter — strengthening it, expanding it, and making it, in my opinion, the strongest ACC chapter in the country. Indispensable to the chapter's success is what I believe to be the finest staff in all of ACC; Ilene Reid, Frost Telegadas and Robin Hayutin make our jobs, as volunteer leaders, that much easier, expertly guiding the chapter on a day-to-day basis with skill and judgment.

As a result, we have much to be proud of. Through the efforts of our volunteer leaders and staff

- WMACCA's membership is approaching 1,900 members, making it the largest chapter in the entire country;
- WMACCA was selected large chapter of the year by ACC in 2009, 2006, 2005, and 2000;
- Last year, we offered more than 80 educational programs to our

members, each specifically tailored to the interests and needs of the in-house community, making our programming unsurpassed;

- WMACCA has helped elevate the profile of the in-house community, engaging in a concerted public relations and outreach campaign;
- Our relationships with our law firm and corporate sponsors have never been stronger, and we look forward to another mutually beneficial year of collaboration; and
- Our diversity initiative continues to play an essential role in our chapter's efforts to enhance the professional lives and opportunities for our members.

This is but a snapshot of our accomplishments, and I think it is safe to say that we are clicking on all cylinders and thriving.

But, as with all things, there is room for improvement. During the coming year, we will continue on



with all of our major initiatives, but will endeavor to dig deeper and reach farther. In digging deeper, we will obtain member input to improve chapter operations, resources, and benefits; identify new volunteers and

potential chapter leaders; and reinforce the commitment of the board and volunteer leaders to improving WMACCA. We also will assess our progress in fulfilling objectives set forth in the 2007 chapter strategic plan and implement steps to fulfill or, as appropriate, revise outstanding objectives.

In reaching farther, we will bolster our efforts to recruit new members — particularly, large law departments as well as individual in-house attorneys within the chapter's geographic footprint.

A key component of our success this year in achieving these objectives will be the use of what we informally call "ambassadors" — individuals who serve as liaisons with spon-

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Lawyers and Social Media: Using New Interactive Channels To Drive Better Corporate Legal Service

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If you read the constant email solicitations bombarding you these days regarding lawyers and social media, you'd be inclined to think that the only issue of interest to lawyers in the field of social media is the mandate to concentrate on the development of a good corporate social media policy. In this article, I hope you will begin to think beyond those confines and to realize that social media is no longer just "social." It is now commonly used in the workplace, for business communications and to help lawyers collaborate to solve legal problems. To benefit their careers, in-house counsel need to consider using social media outlets wisely and strategically, and in doing so, it will also advance the ability of in-house counsel to better serve their clients' needs.

Let's start with what we know.

ACC is an in-house counsel network, created in 1982, as a vehicle to serve the interests and unique workplace needs of in-house counsel by offering practical resources and networks. In the early years, these types of benefits were usually delivered in person through chapter meetings, committee engagement, resource development and delivery, and through our advocacy efforts for in-house bar issues in emerging case law and to influence regulatory issues. In 2011, all that has really changed is that new technologies now enable us to do all of these activities more efficiently through the use of social networking platforms. These platforms allow members to get what they need most, quickly and comprehensively, wherever they are when the problem arises. And what they can retrieve will be based on relevant and shared experiential knowledge — not just mountains of impersonal, third-hand data.

In 1982, ACC was the only game in town for in-house counsel. Now, there are myriad ways for in-house lawyers to connect, network and advocate *without* ACC's involvement: law firms (and all kinds of

other providers) are now offering free or corporate counsel-focused CLEs, vendors have all kinds of customized resources, and there are many social media-enabled platforms on which corporate counsel can "connect." So the question is ... who will win your trust and affinity as the most relevant, trustworthy and valuable network aggregator of what you need?

The answer continues to be ACC precisely because we're moving toward aggressive adoption of social networking technologies that offer you new and exciting ways to use ACC services through networks you trust and via platforms that quickly connect you to reliable and practical answers to your clients' problems. ACC social and community platforms will offer you the benefit of expanded and interactive knowledge networks that will allow you to tap into the ideas and experiences of new contacts from other industries and geographies to not only help you keep up, but excel. I'd like to suggest that getting involved in social media generally, and through the new ACC interactive platforms specifically, will enable you to do your job better than ever before.

But as with any emerging technology, you'll have to engage in order to benefit — you will find that you only get out what you're willing to put in.

Social Media = Content + Conversation, Customized by the User

This is really all about creating the best and most reliable knowledge network. You've always tapped your knowledge networks by making a phone call, sending an email, or chatting with the person you met in the hallway or at a chapter event or ACC Annual Meeting. Those personal networks are still invaluable for obvious reasons. But members are finding that new ideas and more robust knowledge networks can be created through interactive social media

in ways that are not supported by a more static web environment, or in one-on-one exchanges that do not involve many members sharing at once for a breadth of perspective and the ability to sift out the "wisdom of the crowd."

When personal knowledge networks do not yield a solution to a problem, most of our members are now comfortable going to the Web, and for ACC members that includes surfing and searching ACC.com for answers. Until recently, most sites offered only content provided by site administrators or official "publishers" — community members did not have the means to share their experiences through "static" or read-only pages. Social media platforms transform static sites by merging content with direct communication among peers. With social media platforms, you can learn from and share your own experiences and content with in-house counsel you may never meet in person.

So, where are lawyers in terms of use/comfort with new media platforms and technologies? You might be surprised...

- 43 percent of in-house counsel cited blogs and 26 percent cited social media Web sites among their top "go-to" sources.
- New media consumption of business, industry and legal news/information among corporate counsel is increasing, and it's not just the newbies to practice:

69 percent of counsel aged 30–39
47 percent of counsel aged 50–59
57 percent of counsel aged 40–49
52 percent of counsel aged 60+ years

- Surveys report that the social networking/new media tools that in-house counsel value most are LinkedIn, blogs, and Wikipedia.

Source: 2010 Corporate Counsel
New Media Engagement Survey
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Here's what I draw from this and other social media usage surveys out there:

- Your companies are using new media aggressively to get their work done and your products and services out there, yet some lawyers still don't see social media as advantageous to getting legal work done.
- Lawyers are online and reading social media while at work, but many are "lurkers" and are not yet willing to collaborate publicly in their use of it.
- While a portion of ACC's current membership may not be aggressively using social media to get their jobs done each day, the trends are clearly moving in the direction of greater use at companies and in the legal industry.

Does the likelihood of your increasing comfort, use or familiarity with social or new media mean that you are looking to ACC to offer such interactive options? I sure hope so!

But the answer is influenced, to my mind, by whether your thinking on new media options is limited to what you know about how folks of all kinds currently engage on Facebook (sharing family pictures or personal interests), or how lawyers may search for profiles on LinkedIn for professional credentialing or read the WSJ Law Blog in order to take a temperature on an emerging issue.

Give it a try.

Here is how you can look to ACC to engage in social media to help solve your legal problems better, communicate and connect more effectively with others who have the answers or experience you need and to find and customize relevant content not available elsewhere.

- You can engage in more member-to-member and member-to-group interaction on ACC communities (<http://www.acc.com/community>). While our first communities were created for ACC committees and are very popular and well-established already, there are a growing number of active communities hosted by ACC Chapters, or groups that don't have the critical mass or interest in

being a full-fledged committee, but wish to form a network around a topic of interest.

- You can follow ACC on Twitter (a micro-blog with in-house counsel news items) or read In-house ACCess (<http://www.inhouseaccess.com/>), the ACC blog with longer, more insightful pieces on in-house counsel issues where you can post your own comments. Your voice matters and is influential. But only if it's exercised!
- You can join ACC groups on other public social media platforms such as LinkedIn (where over 4,000 people already are connected through our ACC group), or on LOR (LOR is Legal OnRamp, where we have an ACC Value Challenge community and many of your peers inside and outside engage in conversation on value topics). The value of ACC networking is not limited to interaction on our site.
- You can engage in posting reviews of the outside counsel you use and find the evaluations of firms used by other members on the best referral network in the profession — the ACC Value Index (www.acc.com/valueindex). The AVI gives you access to more than 4,000 evaluations on more than 1,100 firms in hundreds of jurisdictions by practice specialty. Every review contains a link to connect you to the reviewer. That's the power of a social media platform.
- You can articulate your issues or raise your voice to share your opinions or perspectives on ACC member blogs that will reach lawyers in your practice area and other decision makers through our media connections ... you don't need to establish your own blog; you've already got our soapbox to stand on.
- You can enhance your own membership profile page on our community platform or eGroups area to include information that allows ACC and

others to find you if something they have is of targeted relevance to your practice (and allows you to find others). You have a simple introductory profile page when you join an ACC Community for the first time — but if you want to harness the power of this membership network, we will soon be rolling out options to allow you to enhance your own member profile exponentially.

- You can help lead on ACC advocacy initiatives that promote change that you would value or your client would benefit from — you can add your support, your name or your comments to ACC public policy positions, model process or practice standards we're promoting, information on who is involved in driving which issues that allow you to engage with other groups doing great things, and more.
- You can choose to drive direct to your desktop the most relevant ACC chapter, committee, legal resource, surveys, benchmarks and education offerings. While all of this will continue to be available to you through our website and our offices, we continue to enable you to customize and streamline delivery of only the content which is most meaningful to you, as seen in ACC Newsstand. This information is changeable as your needs evolve.



I'm about to turn 50 (I'd cry, but it would only encourage my crow's feet to appropriate more real estate on my face). As I look backwards and forwards, I am challenged and sometimes even daunted by the changes that are transforming our practice. But the more I learn, the more I am truly excited by the opportunities that some of these new offerings create. And I hope you will be curious enough to find out for yourself, too.



And you can always reach me at hackett@acc.com, or follow me at HackettInHouse on Twitter. Here's to what's next!

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sors and current members to assess their participation in and satisfaction with the chapter, as well as new members who would welcome an introduction to fellow WMACCA members and all that our chapter has to offer.

In addition to playing a critical role in our chapter's activities, this concept — in-house counsel as ambassadors — extends beyond our chapter, as well.

Often, and unfortunately in many cases as a response to scandals, the legal community at large publicly implores its members to represent the bar in a professional manner in all their dealings. The problem with this is that, oftentimes, the focus of this rallying cry is outside counsel and their dealings with the general public.

Of equal importance, of course, are in-house counsel and our interaction with our clients — the organizations that we work for. In-house practice is significantly different from that of outside counsel — our interaction with our client is daily and constant. We live with and see the practical ramifications of the advice and counsel we give, and thus tailor our advice with practical realities, and the short-term and long-term goals of the client, in mind.

Given this constant daily interaction with our clients, it is of paramount importance that, at *all such times*, we serve as ambassadors of our profession and act in a professional, certainly ethical, and, of course, dignified manner. If we all strive to act in such manner, we will elevate the profile of the in-house community perhaps higher than any WMACCA

public relations campaign ultimately ever could.

Last, I firmly believe that being an ambassador for our profession means that we have an obligation to give back to that profession. In that regard, I urge all WMACCA members to become more involved with our chapter — whether it be through pro bono efforts, taking on a leadership role, recruiting new members or providing feedback on how we can improve the chapter. WMACCA will thrive because of it, you will make a valuable contribution and grow as a professional, and the in-house community as a whole will benefit.

I very much look forward to the coming year.

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CPSC's Consumer Complaint Database: What Businesses Need to Know

**By John Sweeney & Bill Womble, Jr.
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For years, the Consumer Product Safety Commission has provided an outlet for consumer complaints, while still offering businesses some degree of protection against publication of false or irresponsible claims.

However, the Commission's development of a consumer complaint database (www.saferproducts.gov) stands to practically eliminate those safeguards and put both manufacturers and retailers at risk that false and misleading information will be published about their products on a government sanctioned web site. The CPSC's planned database requires the publication of consumer complaints that meet certain very minimal requirements, and the onus then will fall on the companies to refute or explain those claims or prevent the publication of trade secrets.

The risks posed by this database, which went live in March 2011, are considerable. There is a real possibility that a well-intended, but erroneous, complaint that a product is dangerous will adversely affect good, safe products from responsible, safety-conscious manufacturers. There is a real possibility that a manufacturer will improvidently respond on the public database in a way that will injure the credibility and future of the company. And there is a real possibility that activists, disgruntled former employees or competitors will lodge false or misleading complaints on the public database and otherwise misuse this public resource in order to damage a company's good name.

What is the Consumer Complaint Database — and How Will It Work?

So why is the Consumer Product Safety Commission building a consumer complaint database?

In August 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA), which greatly increased the tools at the Commission's disposal. One of the key requirements of the law is the creation of a public database containing all the reports of harm the Commission receives from the public, provided they meet certain minimal requirements.

The exact details of the database were created in a highly contentious debate. The Commissioners voted 3-2 to approve the database as it now exists.

Consumer Product Safety Commission Chair Inez Tenenbaum said, "This database is one of the most significant requirements of the CPSIA.... I believe that an informed consumer is an empowered consumer and this is another example of how the CPSA is creating tools to empower consumers."

But not all Commissioners agree with these sentiments. Commissioner Anne Northup said, "Only accurate information is helpful to consumers trying to make purchasing decisions based on safety factors. The final rule adopted today by a partisan 3-2 majority of this Commission does not share that perspec-

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tive. Instead, it promises to produce an inaccurate and confusing Database that would fail to fulfill its primary purpose.... The Commission's misguided decision to implement this version of the final rule will produce a database that wastes taxpayer money, confuses and misleads consumers, raises prices, kills jobs, and damages the reputations of safe and responsible manufacturers."

Similarly, Commissioner Nancy Nord added, "There is a good chance that this will be a 'post it and forget it' activity with inaccurate information remaining in a government sanctioned database. Safety is not advanced by this approach."

The National Association of Manufacturers also has spoken out against the database plan, saying it will not improve consumer safety and is likely to spread damaging misinformation about companies.

"We're not opposed to a database," Rosario Palmieri, vice president for infrastructure, legal and regulatory policy at the National Association of Manufacturers, said. "We're opposed to a database that's full of inaccurate information."

Here's how the database will work: Consumers will go to the Web site and file a report online. From there, the manufacturer, importer or private labeler ("manufacturer") named in the complaint will be notified by Consumer Product Safety Commission staff within five days.

Then, the CPSC will post the report on the public database within 10 days unless the CPSC determines the claim is materially inaccurate (e.g., another's product) or contains confidential, trade secret information. The burden of proof falls squarely on the company in these instances, not only to provide information to the CPSC demonstrating the report is materially inaccurate or contains confidential information, but to do so in time for the CPSC to make the determination before the 10 day deadline. The complaint will be posted on the public database unless the CPSC determines it is either materially inaccurate or contains confidential information within the 10 days so companies must be diligent about getting objections to the CPSC.

When the report is posted for the public to see, the manufacturer or private labeler still has the option and right to post a comment responding to the report. CPSC will attach the comment to the consumer's report of harm for the public to see. The CPSC may remove or amend the complaint even after it is posted publically if the CPSC determines that it is materially inaccurate or contains confidential trade secret information.

So who can make a report to the database? Just about anyone with access to the Internet. Reports of harm may be submitted by consumers, government agencies, health care professionals, child service providers, and public safety entities. "Consumers" includes users of consumer products, family members, relatives, parents, guardians, friends, attorneys, investigators, professional engineers, agents of a user of a consumer product, and observers of the products being used. The CPSC will not release the person's name or other personally identifiable information on the public database.

Incidents reported prior to March 11, 2011 will not be posted on the database. However, the CPSC is encouraging members of the public to provide reports of past incidents for the database, so incidents from long before the start of the database may still end up in the system.

Reports may be filed online, over the telephone or by mail. Database users do not have to register or log in to read the reports, as they will be freely available to any and all viewers of the database online.

Over time the database will contain an enormous amount of information, and make that information available to consumers at a few clicks of a mouse. In Phase 1, anyone will be able to read incident reports or reports of harm that the CPSC receives from the public, along with any manufacturer's comments. According to the CPSC, later phases will allow consumers to access results of safety research that the agency conducts. The CPSC expresses the hope that with all that information, consumers will be able to identify and remove products believed to be hazardous from their homes and maybe even avoid purchasing those products in the first place.

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Manufacturers, importers and private labelers can register with the CPSC's Business Portal. Registered businesses will receive reports of harm involving their company's product quickly via e-mail. Companies who are not registered will be sent reports by mail. Given the tight 10-day timeline for responding, registering with the CPSC may give companies valuable additional time to investigate and consider responding. Registering requires a company to fill out a simple online form with basic contact information. A person must be identified as the CPSC's primary contact.

What Companies Need to Know

The decision to implement the database has been made, and the Commission moved full steam ahead with implementing it. So, corporate leaders and in-house counsel should be aware of the following:

1. The CPSC database went live March 11, 2011. As of that time, any complaint to the Commission that a product causes harm can be accessed online by anyone. If a complaint contains a material misstatement or a trade secret, an objection on that basis must be sent to the CPSC, reviewed and agreed to by the CPSC, within 10 days to avoid public airing. The Washington Post likens it to "the massive equivalent of an Internet bulletin board on which consumers can post personal safety reviews of products."

Certain products, such as tobacco, alcohol, automobiles, tires, food, drugs and cosmetics, are excluded from the database. But that still leaves millions of consumer items subject to potentially false and misleading public complaints on a federal government website.

The information posted on the database will be maintained permanently, and can be searched by product, manufacturer, importer, private labeler and probably other means.

2. All consumer complaints cannot be vetted by the CPSC. Previously, such complaints to the agency were required to be kept private unless the CPSC found they had sufficient merit to notify the manufacturer and/or distributor, and then most complaints were only available through a Freedom of Information Act request. Some complaints were investigated by the Office of

Compliance, and could require public action, such as a product recall.

However, the consumer complaint database represents a 180-degree shift in regulatory approach. Now, federal regulators are disclaiming responsibility for the accuracy of information entered into the database. And, the CPSC will not remove a public complaint on the database without proof satisfactory to it that the wrong manufacturer or product has been blamed, or that another similar material misstatement has been made or the report contains confidential trade secrets.

The nature of this new, public database makes it a practical impossibility for the CPSC to review all complaints for merit, and the Commission has disclaimed any such responsibility. Instead the Commission is required to make the complaints public unless a company objects and the CPSC agrees that the grounds for objection are well taken.

The potential certainly exists for the database to be abused by false complaints. Unscrupulous competitors, disgruntled employees, and advocacy groups may abuse the database resource. And even though the CPSC will not be actively reviewing the information, the information still will carry the weight of the government behind it, in the eyes of many in the public, because it appears on an official federal web site.

3. Companies only have a 10-day window to prevent false or misleading claims, or breaches of confidential information, from being published. So companies, or their outside legal counsel, need to be constantly monitoring both complaints forwarded to them by the CPSC and posted publically on the database for allegations about their consumer products. Even companies that register with the CPSC shouldn't rely on the Commission to contact them with reports – vigilance of the postings on the public database is crucial.

Immediately upon receiving a report concerning one of their products, companies and their legal counsel should identify materially inaccurate information and ask the CPSC to correct or not publish. If the report is published anyway or not removed, companies should consider having their explanatory comments published with the report.

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Commenting may give the company the chance to provide its side of the story and appear proactive to consumer concerns. On the other hand, some business leaders may take the approach that commenting would “dignify the complaints with a response.” Moreover there is always a concern that whatever comment the company makes is used against it out of context later. The company must respond quickly and exercise some judgment on whether to say anything publically and what exactly to say. It may be more important to take the time to investigate and respond accurately, than to make a quick response which implies less than a concern for safety, or worse, gives reason for challenging the company’s credibility.

Product manufacturers, importers and private labelers need to develop a plan for monitoring complaints to the CPSC and the database, and responding to false or damaging complaints. Each company must consider a number of factors including the types of products they manufacture and hazards associated with them, the nature of the incidents reported, and the resources available to respond to reports. We recommend the following steps:

- Register with the CPSC
- Identify a contact person
- Implement a calendaring system
- Have an investigative team on stand by
- Identify key decision makers to approve comments

- Develop a library of model responses for certain repeat issues, to be used only with specific approval of decision makers in each case after investigation has revealed sufficient facts
- Consult with your legal team, both in-house and outside counsel, on best possible courses of action.

John Sweeney has more than 30 years of experience defending companies in major product liability litigation. He regularly serves as national counsel, creating and supervising comprehensive defense strategies in mass tort cases across the country. He is listed in The Best Lawyers in America and Maryland Super Lawyers. Sweeney practices in Womble Carlyle’s Baltimore office and can be reached at JSweeney@wcsr.com.

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