

The background of the slide is a photograph of a large-scale art installation. It consists of a dense grid of red and blue oval-shaped panels suspended from a metal ceiling structure. The panels are arranged in a repeating pattern, creating a vibrant, textured effect. The lighting is bright, highlighting the colors and the metallic framework.

# Use of Social Media In a Best Practices Compliance Program

Tom Fox, the *Compliance Evangelist*

# Use of Social Media In a Best Practices Compliance Program

Why should you integrate social media into your compliance program? In a compliance program, a large portion of your consumers/customers are your employees. Social media presents some excellent mechanisms to communicate the message of compliance going forward. Many of the applications that we use in our personal communication are free or available at very low cost. So why not take advantage of them and use those same communication tools in your internal compliance marketing efforts going forward.

## ***Introduction***

On the Social Media Examiner site, which brands itself as "Your Guide to the Social Media Jungle", is a podcast entitled "*Social Sharing: How to Inspire Fans to Share Your Stories*", hosted by Michael Stelzner, Chief Executive Officer (CEO) and Founder of the site. In the podcast Stelzner interviews Simon Mainwaring, author of "*We First: How Brands and Consumers Use Social Media to Build a Better World*", who said that to allow them to market successfully there are three key components, (1) Let your employees know what you stand for; (2) Celebrate their efforts; and (3) Give them a tool kit of different ways to participate. I think each of these concepts can play a key role for the compliance practitioner in internally marketing their compliance program.

- ***Let Your Employees Know What You Stand For***
- ***Celebrate Their Efforts***
- ***Give Your Employees a Tool Kit For Compliance***

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In the FCPA Guidance, the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) said that the basis of any anti-corruption compliance program is the Code of Conduct as it is “often the foundation upon which an effective compliance program is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company’s behalf.” That well known @CodeMavenc, Catherine Choe, has said that she believes “Two of the primary goals of any Code are first, to document and clarify minimum expectations of acceptable behavior at a company, and second, to encourage employees to speak up when they have questions or witness misconduct.”

But more than the Code of Conduct, does your company really communicate that it stands for compliance? Obviously formal anti-corruption training important but I think that more is required to reinforce that your company has a culture of compliance throughout the organization. In other words, are you communicating what you stand for and not simply the rules and regulations of a compliance program?

Once again the FCPA Guidance speaks to the need to incentivize employees in the company realm. The Guidance states, “DOJ and SEC recognize that positive incentives can also drive compliant behavior. These incentives can take many Guiding Principles of Enforcement forms such as personnel evaluations and promotions, rewards for improving and developing a company’s compliance program, and rewards for ethics and compliance leadership. Some organizations, for example, have made adherence to compliance a significant metric for management’s bonuses so that compliance becomes an integral part of management’s everyday concern.” But more than simply incentives, it is important to “[M]ake integrity, ethics and compliance part of the promotion, compensation and evaluation processes as well.”

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Mainwaring's concept means going beyond incentivizing. To me his word 'celebrate' means a more public display of success. Financial rewards may be given in private, such as a portion of an employee's discretionary bonus credited to doing business ethically and in compliance. While it is certainly true those employees who are promoted for doing business ethically and in compliance are very visible and are public displays of an effective compliance program. I think that a company can take this concept even further through a celebration to help create, foster and acknowledge the culture of compliance for its day-to-day operations. Bobby Butler, at Universal Weather and Aviation, Inc., has spoken about how his company celebrated compliance through the event of Compliance Week. He said that he and his team attended this event and used it as a springboard to internally publicize their compliance program. Their efforts included three separate prongs: they were hosting inter-company events to highlight the company's compliance program; providing employees with a Brochure highlighting the company's compliance philosophy and circulating a Booklet which provided information on the company's compliance hotline and Compliance Department personnel.

Obviously a key component of any effective compliance program is an internal reporting mechanism. The FCPA Guidance states, "An effective compliance program should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation." The Guidance goes on to also discuss the use of an ombudsman to address employee concerns about compliance and ethics. I do not think that many companies have fully explored the use of an ombudsman but it is certainly one way to help employees with their compliance concerns. Interestingly, in an interview in the Wall Street Journal (WSJ) with Sean McKessy, Chief of the SEC's Office of the Whistleblower, he stated, "What I hear is that companies are generally investing more in internal compliance as a result of our whistleblower program so that if they have an employee who sees something, they'll feel incentivized to report it internally and not necessarily come to us."

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One tool a Chief Compliance Officer (CCO) or compliance practitioner can utilize in the realm of social media is *Periscope*. It allow you to tell a compliance story in real time, throughout your organization and beyond. It is a live streaming apps that enable you to create a video and open the portal to anyone who wants to use it. Anybody in your Twitter community can click on that link and watch whatever you're showing on your phone. The big piece is the mobile aspect. It's as simple as a basic tweet and hitting the "stream" button.

However, there are a wide variety of social media tools available that you can incorporate into your compliance program. Apps like Pinterest, Snapchat, Instagram and others may seem like tools that are solely suited to personal use. However their application is much broader. Over the next week, I will be exploring some of these apps and tools and how they might be used in *doing compliance*. As with many ideas in the compliance space, a CCO or compliance practitioner is only limited by their imagination. For these apps, they can be most useful when you tell the story of compliance in your company. Hootsuite did a campaign called "Follow the Sun" using Periscope. They decided to let their employees showcase what they called #HootsuiteLife. They gave access to different people in every company office around the globe. Throughout the day, it would "Follow the Sun," and people in different offices would log into the Hootsuite account and walk around and show off their culture, interviewing their friends, etc. They talk about the importance of culture and now they are proving it. The number of inbound applications drastically increased after people got that sneak peek into their company.

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Yet there are other tools available, at no cost, and can be downloaded onto a mobile device such as a smartphone or iPad. These include the O'Melveny & Myers LLP *Foreign Corrupt Practices Act Handbook*; which concentrates solely on the FCPA and is primarily a new vehicle to distribute content it already makes available upon request. This content includes O'Melveny's *FCPA Handbook* and *In-House Counsel's Guide to Conducting Internal Investigations*. In addition, the app features five resource sections that serve as an interactive, illustrative directory with titles ranging from 'O'Melveny Authored Client Alerts' to 'DOJ Opinion Releases'.

Another approach is found in the Latham & Watkins LLP's *AB&C Laws* app which takes an international approach to anti-corruption and anti-bribery laws, with the content focused on organizing and easing access to statutes and regulatory guidance according to specific fields of interest, from legislative frameworks to extra-territorial application to enforcement and potential penalties. It also includes official guidance such as steps (where available) that can be taken to reduce the risk of liability for bribery and corruption.

There is much to be learned by the CCO and compliance practitioner from the disciplines of marketing and social media. These concepts are useful to companies in getting their sales pitches out and can be of great help to you, the CCO or compliance practitioner, in collaborating and marketing throughout your company. I hope you will follow this week's Use of Social Media series as I will endeavor to provide to you not only with a discussion of some new tools which you can incorporate into your compliance program going forward but also a different way to think about who your customers are and how you are reaching them with your message of doing compliance.

## ***Part II - Sharing in the Compliance Function***

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How can a CCO use of social media as a tool of *doing compliance* for the *sharing* of information. In a podcast on Social Media Examiner, entitled “*Sharing: The Art and Science of Social Sharing*”, podcast host Michael Stelzner interviewed Bryan Kramer, a social strategist and author of the book “*Shareology: How Sharing is Powering the Human Economy*”. Kramer talked about several concepts that I found particularly useful for a CCO or compliance practitioner to think through when considering the use of a social media strategy in a *best practices* anti-corruption compliance program, under the Foreign Corrupt Practices Act, UK Bribery Act or some other compliance regime.

Kramer’s book *Shareology* is a study of how, what, where, when and why people and brands share. For this book, Kramer conducted more than 250 interviews with executives, marketers and social media people, as well as professors of linguistics, psychology, sociology and so on, with the question “why people share” in mind.

The answer came down to one thing: connection. He found that “People all have the desire to reach out and connect with other people, whether it’s through sharing content and having someone reply back or by sharing other people’s content and helping them out.” From this research, Kramer identified six types of people who share:

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- Altruist: Someone who shares something specific about one topic all the time.
- Careerist: Someone who wants to become a thought leader in their own industry, so they can see their career grow.
- Hipster: Someone who likes to try things for the first time and share it faster than everyone else.
- Boomerang: Someone who asks a question so they can receive a comment only to reply.
- Connector: Someone who likes to connect one or more persons to each other.
- Selective: This is the observer.

I find all of these categories to be relevant to a CCO or compliance practitioner in considering the use of social media in their compliance program. All of these can describe not only the reasons to use social media but they can also help you to identify who in your organization might be inclined to use social media and how it can facilitate your compliance program going forward.

The Altruist, Hipster and Careerist speak to how a CCO or compliance practitioner can be seen in getting out the message of compliance throughout your organization. Whichever category you might fall into, it is still about the message or content going forward. I find nothing negative in being seen as one or the other if your message is useful. Even if you are my age, there is nothing wrong with incorporating a little *Hipster* into your communication skills. As my daughter often reminds me, *Dad you are so uncool that you are retro, but that is cool too*. Applying that maxim to your compliance regime, if you can communicate in a manner your workforce sees as interesting or even hip, it may well help facilitate incorporation of that message into their corporate DNA.

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I found the Boomerang, Connector and Selective categories as good ways to think about how your customer base in compliance (i.e. your employees) might well use social media tools to communicate with the compliance function. The use of social media is certainly a two-way street and you, as the compliance practitioner, need to be ready to accept those communications back to you. Indeed some comments by your customer base could be the most important interactions that you have with employees as their comments or questions could lead you to uncovering issues which may have arisen before they become Code of Conduct or other violations. More importantly, it could allow you to introduce a proscriptive solution which moves your program beyond even the prevent phase.

Kramer also has some insights about the substance of your social media message. Adapting his insights to the compliance field, I found a key message to be that the problem is that companies do not write the way they speak, and don't speak the language of their employee base. In many ways, compliance is a brand and Kramer believes that "brands and the people representing those brands need to change their language. If they focus on the title and the quality of the content, among other things, it'll resonate more with their audience." He also advocates using the social media tools and apps available to you. He specifically mentions Meerkat, Snapchat, memes and/or videos to raise the value of the content. He was quoted as saying, "If you have a blog and there are no visuals, you might as well shut it down."

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It would seem the thesis of Kramer's work is that sharing is a primary method to communicate and connect. In any far-flung international corporation this is always a challenge, particularly for discipline which can be viewed as home office overhead at best; the Land of No populated by Dr. No at worst. Kramer says that you should work to hone your message through social media. Part of this is based on experimenting on what message to send and how to send it. Yet another aspect was based upon the Wave (of all things) where he discussed its development and coming to fruition in the early 1980s. It took some time for it to become popular but once it was communicated to enough disparate communications, it took off, literally. Kramer noted, "It's the same thing with social media. On social media, we think something will go viral because the art is beautiful or the science is full of deep analytics, but at the end of the day it really takes time to build the community."

This means that you will need to work to hone your message but also continue to plug away to send that message out. I think the Morgan Stanley Declination will always be instructional as one of the stated reasons the Department of Justice (DOJ) did not prosecute the company as they sent out 35 compliance reminders to its workforce, over 7 years. Social media can be used in the same cost effective way, to not only get the message of compliance out but also to receive information and communications back from your customer base, the company employees.

## ***Part III - Twitter and Innovation in Your Compliance Program***

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One of the ways that Chief Compliance Officers (CCOs) and compliance practitioners can communicate about their compliance programs is through the use of the social media tool Twitter. In an article in the Summer 2015 issue of the MIT Sloan Management Review, entitled “*How Twitter Users Can Generate Better Ideas*”, authors Salvatore Parise, Eoin Whelan and Steve Todd postulated that “New research suggests that employees with a diverse Twitter network – one that exposes them to people and ideas they don’t already know – tend to generate better ideas.” Their research led them to three interesting findings: (1) “Overall, employees who used Twitter had better ideas than those who didn’t.”; (2) In particular, there was a link between the amount of diversity in employees’ “Twitter networks and the quality of their ideas.”; and (3) Twitter users who combined idea scouting and idea connecting were the most innovative.

I do not think the first point is too controversial or even insightful as it simply confirms that persons who tend to have greater curiosity tend to be more innovative. The logic is fairly straightforward, as the authors note, “Good ideas emerge when new information received is combined with what a person already knows.” In today’s digitally connected world, the amount of information in almost any area is significant. What the authors were able to conclude is that through the use of Twitter, “the potential for accessing a divergent set of ideas is greater.”

However it was the third finding that I thought could positively impact the compliance profession, the role of the *Idea Scout* and the *Idea Connector*. An idea scout is “an employee who looks outside the organization to bring in new ideas. An idea connector, meanwhile, is someone who can assimilate the external ideas and find opportunities within the organization to implement these new concepts.” For the compliance practitioner, the ability to “identify, assimilate and exploit new [compliance] ideas” is the key takeaway. However to improve your compliance innovation, “you need to maintain a diverse network while also developing your assimilation and exploitation skills.”

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For the compliance practitioner, Twitter can be “described as a ‘gateway to solution options’ and a way to obtain different perspectives and to challenge one’s current thinking.” Interestingly the authors found that “It’s not the number of people you follow on Twitter that matters; it’s the diversity within your Twitter network.” The authors go on to state, “Diversity of employee’s Twitter network is conducive to innovation.” Typically an *Idea Scout* will “identify external ideas from experts and resources on Twitter.” Clearly the compliance practitioner can take advantage of experts with the anti-corruption compliance field but there is perhaps an equally rich source of innovation from those outside this arena.

An interesting approach was what the authors called the “breadcrumb” approach to finding innovation leaders and thought-provokers. It entailed a “period of “listening” to colleagues and industry leaders who are on the platform - including what they are tweeting about, who they are following and replying to on the platform, who is being retweeted often”. So with most good leadership techniques the first key is to listen.

Equally important to this *Idea Scout* is the *Idea Connector*, who is putting the disparate strands from Twitter’s 140 character tweets together. For the compliance function, this will be someone who identifies compliance *best practices* or other information from Twitter ideas, can then put them together and direct the information to the relevant company stakeholders. Finally, such a person can “Curate Twitter ideas and matches them with company resources needed to implement them.”

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Here the authors listed a variety of ways an *Idea Connector* can use Twitter. One user said, "I try to sift through all the Twitter content from my network and look for trends and relationships between topics. I put my analysis and interpretation on it. I feel that's where my value-add is." Another method is to focus on analytics and one user "filtered specific subsets of the topic for different stakeholders" at his company. Another method was to create "social dashboards or company blogs based on the insight" received through Twitter. Interesting, one of the key requirements for successfully mining Twitter was in finding ways to share its content "since many employees, especially baby-boomers don't use the platform themselves." Conversely by mining information from Twitter and presenting it, this can allow these 'technologically challenged' older employees to ascertain how they can target millennials.

But as much as these concepts can move a CCO or compliance practitioner to innovation in a compliance program, it can also foster additional information through the following of your own employees. It is well known that Twitter can facilitate greater communication to and between the compliance function and its customer base, aka the company employees. However, the authors also point to the use of Twitter to enable this same type of innovation because it "is different than email and other forms of information sources in that it enables continuous engagement".

Twitter was created to allow people to connect with one another and communicate about their activities. However the marketing potential was immediately seen and used by many companies. Now a deeper understanding of its use and benefits has developed. For the compliance practitioner one thing you want to consider is to align your Twitter and great social media strategy with your compliance strategy; match your Twitter strategy to your compliance strategy.

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Twitter can be powerful tool for the compliance practitioner. It is one of the only tools that can work both inbound for you to obtain information and insight and in an outbound manner as well; where you are able to communicate with your compliance customer base, your employees. You should work to incorporate one or more of the techniques listed herein to help you burn compliance into the DNA fabric of your organization.

## ***Part IV - Telling a Story About Honey***

I continue my exploration of the use of social media in *doing compliance* by taking a look at a very innovative social media solution to a difficult compliance issue around, of all things, honey. This example shows how creative thinking by a lawyer, in the field of import compliance, led to the development of a software application, using some of the concepts that I discussed earlier in the week around social media. Once again demonstrating the maxim that lawyers (and compliance practitioners) are only limited by their imagination, the use of this software tool demonstrates the power of what social media can bring to your compliance program.

This innovation contrasts with a reader's comment earlier this week when I began my series on the use of social media in *doing compliance*. The comment was that this reader's company, while actively using social media to reach, communicate with and receive information back from its customer base; did not allow employees to access Facebook, Twitter, Pinterest, Snapchat and a whole host of other social media sites on company purchased computers. While the company's stated reason was security, the true reason is that they simply did not trust their employees not to "waste time" by accessing such sites during work hours.

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Such corporate attitudes, while clearly from the time of the dinosaurs, unfortunately still exist. Companies need to understand that social media is a tool which can and should be used affirmatively. Like any tool, it can be abused but if you cannot trust your employees not to goof off (1) they probably should not be your employees and (2) the company is a lousy manager; so there is lots of opportunity for growth. It reminds of when I was working for a corporation back in 2004 and they did not want employees to have company issued cell phones, because you know they might use them for *personal use*. The bottom line is that social media is here to stay. Millennials and others are only going to communicate through that medium so if companies want to stay relevant, not only with products and services but also with their employee base, they need to understand that social media is an important and significant tool of the future.

Gar Hurst, from the law firm of Givens and Johnston PLLC in Houston, faced an issue around US anti-dumping laws for honey that originated in China. The US Government applies anti-dumping trade sanctions to goods from a particular country. They do this when a domestic interest group alleges and proves, at least theoretically, that the producers in a foreign country are selling their goods into the US market at below fair-market value. By doing this, they are harming the US domestic industry. The dumping duties, which can result from this, can easily be 100, 200, even up to 500 % of import duties. To get around the anti-dumping laws, importers would ship Chinese originated honey to Indonesia, Vietnam or some other country and pass it off as originating from one of those locations.

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The problem that Hurst's client faced was how to prove the honey did not originate from China. In an interview, Hurst said, "We were working with a Southeast Asian honey producer. They were in this situation where Customs was essentially treating them as though they were a Chinese producer. We've provided them documents. We've provided them invoices. We've provided them production docs. We've provided them all sorts of documents but there was nothing that we could give them documentary that they didn't believe could be fake. That was the problem, documents on their face are just a form of testimonial evidence. Meaning, somebody somewhere said, this stuff is actually from the Philippines. It's only as good as the word of the person who wrote it on. We needed something that would get beyond that problem."

So using awareness around communications through a smart phone, Hurst and his team came up with an idea "that with the explosion of smartphone technology which is in the hands of basically everybody in the United States and soon to be everyone in the world, these devices basically allow a person to take a picture that is geo-tagged and time and date stamped and then upload that picture to a database in the cloud. Effectively, that's what we did." As Hurst explained the process which they came up with it was amazingly simple, "We basically created an app that resided on Android phone that they could then go around and document the collection of all these various barrels of honey and its processing. Every time they take a picture, it would be time and date stamped with geo-tagging as well. You know when and where a picture of a particular barrel of honey which we would label with some special labels so you could identify it when and where that was taken." The product they came up with is called **CoVouch**.

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From there the information is uploaded into a secure database that Hurst and his team created in the cloud. His firm then took all of the evidence they had documented that the honey originated in Indonesia, not China, and presented it to the US Customs service to show his client had not sourced its honey in China. In version 2.0 Hurst and his development team are creating a searchable database which US Customs can use to make spot checks and other determinations.

Recognizing the level of technical sophistication of honey farmers in Asia, **CoVouch** is amazingly simply to use. It takes pictures, puts time stamps on them and puts geo-tags that show the location where the picture was taken and with glued or pasted on bar codes, you can trace the shipment of honey throughout its journey. But it does so in a way that tells a story. Hurst said, “you’re telling the story but the provenance, if you will, of one imported barrel of honey and how did it get to where it’s at. It’s different. Yeah, that’s right. That’s exactly what we’re trying to do and trying to do it in a way that is easy enough so that, as you put it, a fairly, uneducated farmer in Indonesia can do it and a busy Customs agent in the United States can review it.”

Such a software system uses the concepts around social media to make a honey farmer a provider of documents evidence, through photographs, to meet US anti-dumping laws. But I see the application as a much broader tool that could be used by anyone who needs to verify information on delivery, delivery amounts, delivery times and delivery locations. This could be a field hand who is delivering chemicals even West Africa and does not know how to speak English. Hurst pointed to uses around whether something might be eligible for special import or export regulations due to NAFTA, whether restricted trade goods, such as those used in the oilfield industry, worked their way into Iran and even applicability under the Buy American Act around the US content in goods.

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For the anti-corruption compliance practitioner, you could use such a tool to not only receive information, and more importantly photographic evidence, but you could also deliver information. But the key is that you are only limited by your imagination. *CoVouch* could be a tool that you use internally for delivery of information and receipt of information inside your company.

## ***Part V - Tools and Apps for the Compliance Practitioner***

What are some of the more prevalent social media tools, explain what they are and how you might use them in a compliance program? You need to remember that your compliance customer base are your employees. The younger the work force, the more tech savvy they will be and the more adapted to communicating through social media. According to Social Media Examiner's 2015 Social Media Marketing Industry Report, the top two social networks for marketing are *Facebook* and *LinkedIn*. The three social media tools that hold the top spot for social media planning are *LinkedIn*, *YouTube* and *Twitter*. Marketers report that video streaming is becoming increasingly important tools for markets and that is currently encompassed in *Periscope*. Finally, I would add that Pinterest is another hot social media app.

### ***Facebook***

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If you do not know what Facebook is at this point, you may have just transported down from a Borg Cube or perhaps you are a Vulcan looking for First Contact. This is the world's most ubiquitous social media tool. It combines both personal and business applications. For the compliance practitioner, think about the business uses of Facebook. You can open a Facebook page for your compliance function and share an unlimited amount of information. Equally importantly, you can be responsive when employees comment on your posts, it allows you to interact with them and demonstrate that compliance is listening and responsive. The more regularly you post, the more opportunity you have for connecting with your employee base and building trust.

## ***YouTube***

Much like Facebook, YouTube is one of the most ubiquitous social media tools around. It allows you to upload video and audio recordings for unlimited play. For the compliance practitioner, why not consider creating a YouTube channel for your company's compliance program. You can put together full training on specific issues or you can create short videos. For an example of short videos, you can check out the training videos I have on my website *Advanced Compliance Solutions*. If there is any information that you wish to put into a visual format, YouTube is one of the best solutions available to you.

## ***LinkedIn***

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LinkedIn is almost as ubiquitous as Facebook and YouTube. As with Facebook, you can set up a business site or even a private compliance group for your organization. Your employees are the best place to start adding followers, as they are not only your target audience but they are also your biggest advocates. You can encourage employees to add their compliance profile to their personal profiles. By doing so, they automatically become followers and can like, comment on, and share your company updates to help expand your viral reach. As with Facebook, LinkedIn provides you a platform to communicate with your employee base. It has a chat function that can be used to solicit feedback and comments going forward. You can also tie in with or 'link to' other groups and people that can facilitate not only creating but also expanding your culture of compliance.

## ***Twitter***

I previously noted the use Twitter to capture information from the marketplace of ideas. However, Twitter can also be used for communicating with your employee base. Tweets are publicly visible by default, but senders can restrict message delivery to just their followers. Users can tweet via the Twitter website, compatible external applications or by Short Message Service (SMS) available in certain countries. Retweeting is when users forward a tweet via Twitter. Both tweets and retweets can be tracked to see which ones are most popular. Finally, through the use of hashtags (#) users can group posts to Twitter together by topic.

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I believe that Twitter is one of the most powerful tools (and completely underused tools) that is available to the compliance function. If employees follow their company's name through a hashtag, they can see what trending topics other employees are discussing. Compliance practitioners can help lead that internal discussion through the same technique. Moreover, if the Chief Compliance Officer (CCO) or compliance function regularly monitors Twitter they can keep abreast of any communications and those can be used as a backup communication channel, in case the company hotline or other reporting system is not immediately available or even convenient.

## ***Periscope***

The tool allows you to tell a compliance story in real time, throughout your organization and beyond through the capture and broadcast of video, live through your smartphone. It is a live streaming apps that enable you to create a video and open the portal to anyone who wants to use it. Anybody in your Twitter community can click on that link and watch whatever you are showing on your phone. The big piece is the mobile aspect. It is as simple as a basic tweet and hitting the "stream" button.

This is one of the more exciting new social media tools I see for the compliance practitioner. You could start a compliance campaign along the lines a campaign that the company Hootsuite initiated called "Follow the Sun" using Periscope. They decided to let their employees showcase what they called #HootsuiteLife. They gave access to different people in every company office around the globe. Throughout the day, it would "Follow the Sun," and people in different offices would log into the Hootsuite account and walk around and show off their culture, interviewing their friends, etc. They talk about the importance of culture and now they are proving it. The number of inbound applications drastically increased after people got that sneak peek into their company. You could do the same for your worldwide compliance team.

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You can live stream video training around the globe. Moreover, if you use either of these tools in conjunction with internal podcasting or other messaging you can create those all-important “Compliance Reminders” which were so prominently mentioned in the Morgan Stanley Foreign Corrupt Practices Act Declination. The videos that you create with both of these tools can be saved and stored so a record of what you have created can be documented going forward.

## ***Pinterest***

According to *Pinterest for Dummies*, this tool is an online bulletin board, a visual take on the social bookmarking site, where the content shared is driven entirely by visuals. In fact, you cannot share something on Pinterest unless an image is involved. When you share something on Pinterest, each bookmark is called a pin. When you share someone else’s pin, it’s called a repin. Your group pins together by topic onto various boards, aka pinboards, in your profile. Each board mimics a real-life pinboard. You can share images you find online, or you can directly upload images. Using the “Pin It” button, you can share directly in your browser from any web page. You can also share your pins on Twitter and Facebook.

Although a relatively new social media tool, it to be one of the more interesting ones for use by the compliance function as it compliments many of the other tools I discussed above. You can set up your compliance account for your organization and pin items, lists, or other visual information that can be viewed and used by employees. In addition to the enumerated items, you can pin such things as a link, a website, graphics or other forms of information. If you think of it as an online bulletin board, you can consider all of the compliance information that you can post for your customer base and the interactions they can have back with you. All of these tools can help you as CCO or a compliance practitioner to engage with your customer base.

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## ***Part VI – Social Media and CCO 3.0***

Why is the compliance function uniquely suited to using social media tools? Long gone are the days when Chief Compliance Officers or compliance practitioners were lawyers housed in the Legal Department or the General Counsel's office writing policies and procedures and then putting on eight-hour training programs on same. Donna Boehme has written passionately about CCO 2.0 and the structural change to separate the CCO role from that of the GC because of the differences in focus of a CCO and GC. Simply put, a GC and legal department is there to protect the company while the CCO and compliance function exists to solve problems before the company needs protections from them.

Freed of the constraints to write policies and procedures by lawyers for lawyers, the profession has moved to integrating compliance directly into the fabric of the company. I often say that a compliance program is a business solution to a legal problem. The problem is how to comply with the anti-corruption regimes. The solution is to burn compliance into the DNA of your company so that it is not only owned by the business unit but also acted on by the business unit in its day-to-day operations.

I think this means that we are now moving to CCO 3.0 where a CCO or compliance practitioner is putting compliance into the forefront of how a company does business. The example of safety comes to mind when every corporation I ever worked at made clear that safety was everyone's responsibility, literally from the shop floor to top of the company. I once heard of a Executive Vice President (EVP) of a major oil and gas operating company, while touring a contractor's facility, stop the tour to point out that a contractor carry two bags of trash down a set of stairs was an unsafe practice and required the employee to carry one bag at a time so she could hold the handrail while descending the stairs. That is the level of the awareness of safety now.

# Use of Social Media In a Best Practices Compliance Program

The evolution of compliance is just as dramatic. Moreover, the compliance function should be on the cutting edge of moving it forward within your company. The important thing to remember about social media tools is precisely that; they are tools that a CCO, compliance practitioner or any company can use to communicate with their employee base. Put another way, social media is but one part of the communication ecosystem which can be used to market the message of compliance.

Unfortunately, there are still many companies who do not allow their employees access to the most popular and useful social media tools at work or even on company computers. While these companies always claim it is due to security issues, the reality is that they simply do not trust or even respect their employees. In such a company, management is much more concerned about what employees might say about an organization than trusting that they not only want to do the right thing but will execute such a strategy when provided the opportunity to do so, through the mechanism of social media. This means that companies which trust and respect their employees do not have to worry about employees releasing confidential data through social media channels because there are plenty of other ways that employees can release confidential information if they were so inclined. Indeed think of the Dodd-Frank Whistleblower provision and how many employees who report to the Securities and Exchange Commission (SEC) reported or tried to report internally before going to the SEC. Simply put if a company does not trust and respect its employee base, communicating the message of compliance throughout an organization will be more difficult but that is clearly not the signal senior management is sending to its employees.

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The compliance function must engage with its customer base, AKA the employees in a company. Charlene Li, in her recent work "*The Engaged Leader*", said in the introduction "*In order to be truly effective today, leaders in business and society must change how they engage, and in particular how they establish and maintain relationships with their followers via digital channels.*" The same is true for the compliance function. She believes that technology has changed the dynamic between leaders and their followers. In *The Engaged Leader* she explains:

- •Why leaders need to master a new way of developing relationships, which begins by stepping out of traditional hierarchies;
- •How to listen at scale, share to shape, and engage to transform;
- •The art of making this transformative mind shift; and
- •The science of applying the right tools to meet your strategic goals.

Li believes that "This transformation is not optional. Those who choose not to make this change will be abandoned for those who inspire people to follow them." In an interview for the podcast HBR Ideacast, entitled ""*Social Media Savvy CEO*" is no Oxymoron", Li further expounded on these views. She asked why a leader would be afraid to engage with those in his or her corporation? But more than simply engagement, she asked why would a leader want to cut themselves off from the best source of information for them and available to them; their employee base, through social media. After all, every company strives to have an active engagement with their customer base so why not have it with employees.

Now change out Li's language from 'leaders' and insert 'CCOs or compliance practitioners'. I think it is even more critical for the CCO or compliance practitioner because *doing compliance* is something that should occur in the business units. Yes, a CCO can put those policies and procedures in place but it is the folks in the field who must implement them going forward. If social media can be a tool to help facilitate *doing compliance* why not embrace it for communications, training, input, problem identification or resolution?

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Yet there is another reason for the compliance function to embrace social media going forward. One of my favorite thought leaders around innovation in the legal arena is Professor David Orozco. In a blog post, entitled "*Innovation in the Legal Sector*", he said, "Innovation is a big deal. It's been a big deal ever since customers rewarded differentiation and punished companies that failed to maintain their creative edge." The same is equally, if not more so, applicable to the compliance arena. The Department of Justice (DOJ) has consistently made clear that compliance programs should be evolving and using the newest and best tools available. That sounds suspiciously like social media to me. So if these tools are available to you and at a very reasonable cost (i.e. free) why not consider using them. If you are afraid of information getting out of your company, why not consider using the social media concepts behind your firewall in your company intranet system?

Finally, even if you cannot use some of the publicly available tools discussed earlier, there is no reason that you cannot incorporate the concepts into your compliance program. By that I mean you can use the communication ideas inside of your company for your compliance program. You can create the equivalent of a Tweet-Up where the CCO or others answer questions that employees submit. Similarly, you can live stream a Q&A session using the concepts articulated by Meerkat and Periscope for social media live streaming. Pinning compliance reminders or other information in some type of internal company bulletin board is using the basic concept of Pinterest. I am sure that you can accomplish the same by using SharePoint. Why not create an internal compliance reminder video series using the same tools that a millennial would use to create a Facebook post?

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Think all of this sounds far-fetched? Think again. In this month's issue of the Compliance Week magazine, Guest Columnist Raphael Richmond, the CCO at Ford Motor Company, in an article entitled "*Compliance? There Should Be an App for That!*", detailed how the company has created an app for iPhone and Android devices that "allows users to access compliance information quickly, including brief, easy-to-understand policy summaries and answers to frequently asked questions (FAQs). The app also has a "*Can I ... ?*" tab that acts as a quick decision tree for finding specific answers to commonly asked questions. Topics in our app address a range of compliance issues, from anti-bribery guidance to Ford's approach to gifts and favors, meals, travel, and social events. Individuals can also report a suspected violation directly from the app to the Corporate Compliance Office." It will certainly be exciting to see how Ford develops this tool going forward.

I often say that as a CCO or compliance practitioner you are only limited by your imagination. The use of social media in your compliance function is one that is crying out for imaginative usages. As we move to CCO 3.0, the compliance function will need to avail itself of all the tools it can to communicate the message of compliance. The DOJ currently requires companies that enter into Deferred Prosecution Agreements (DPAs) to keep abreast of technological innovations in compliance. How long do you think it will take for the DOJ to start asking how much compliance communication you have both up and down the chain? If you are not using a social media tool or even a social media technique you may already be behind the 8-ball and you certainly will be left behind in the marketplace of ideas going forward.

***Part IV: Incorporation of Social Media into Your Compliance Program-the D&B Experience***

# Use of Social Media In a Best Practices Compliance Program

Next, I want to explore how one company and one Chief Compliance Officer (CCO) actively uses social media to make more effective the company's compliance regime. The company is the venerable Dun & Bradstreet (D&B) and its CCO, Louis Sapirman, whom I visited with about his company's integration of social media into compliance.

Initially Sapirman emphasized the tech savvy nature of the company's work force. It is not simply about having a younger work force. If your company is in the services business it probably means an employee base using technological tools to deliver solutions. He also pointed to the data driven nature of the D&B business so using technological tools to deliver products and solutions is something the company has been doing for quite a while. This use of technological tools led the company to consider how such techniques could be used internally in disciplines which may not have incorporated them into their repertoires previously.

Not surprisingly, with most any successful corporate initiative, Sapirman said it began at the top of the organization, literally with the company's Chief Executive Officer (CEO), Robert Carrigan. Sapirman noted that the CEO saw the advantage of using social media internally and challenged many in his organization to take a new look at the manner in which their functions were using social media. From there Sapirman and his team saw the advantages of using social media for facilitating a two-way communication. Moreover, Sapirman comprehended the possibility for use of social media for compliance with those external to the company as well.

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Internally Sapirman pointed to a tool called Chatter, which he uses similarly to those in Twitter engaging in a Tweet-up. He has created an internal company brand in the compliance space, using the moniker #dotherightthing, which trends in the company's Chatter environment. He also uses this hashtag when he facilitates a Chatter Jam, which is a real-time social media discussion. He puts his compliance team into the event and they hold it at various times during the day so it can be accessed by D&B employees anywhere in the world.

He said that he 'seeds' Chatter Jam so that employees are aware of the expectations and to engage in the discussion respectfully of others. When they began these sessions he also reminded employees that if they had specific or individual concerns they should bring them to Sapirman directly or through the hotline. However, he does not have to make this admonition any more, as everyone seems to understand the ground rules. Now this seeding only relates to the topics that each Chatter Jam begins with going forward.

One of the concerns lawyers tend to have about the use of social media is with general and specific topics coming up on social media and the ill it may cause the organization. Sapirman believes that while such untoward situations can arise, if you make clear the ground rules about such discussions, these types of issues do not usually arise. That has certainly been the D&B experience.

Each employee uses their own names during these Chatter Jams so there is employee accountability and transparency as well. Sapirman said they further define each communication through a hashtag so that it cannot only immediately be defined but also searched in the archives going forward. He provided the examples of specific regulatory issues and privacy. This branding also enhances the process going forward.

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I asked Sapirman if he could point to any specific compliance initiatives that arose during or from these Chatter Jams. Sapirman emphasized that these events allow employees the opportunity to express their opinions about the compliance function and what compliance means to them in their organization. One of these discussions was around the company's Code of Conduct. He said that employees wanted to see the words "***Do The Right Thing***" as the name of the Code of Conduct.

I inquired about D&B's use of social media in connection with their third parties. Sapirman said that the company allows some of them access to its internal Chatter tools to facilitate direct communications. Further, these external contractors can connect with both Sapirman and the company through Twitter. He said that he is consistently communicating to the greater body of customers about the compliance initiatives or compliance reminders on what the D&B compliance function is doing and how it is going about doing them. He believes it is an important communications tool to make sure that he and his team are getting their compliance messages out there.

Sapirman also described using Chatter in a manner that sounded almost like Facebook and its new live video function. He said they can deliver short video vignettes about compliance to employees. The compliance function or the employee base can develop these.

All of the initiatives Sapirman described drove home to me three key insights. The first is how compliance, like society, is evolving, in many ways ever faster. As more millennials move into the workforce, the more your employee base will have used social media all their lives. Once upon a time, email was a revelatory innovation. Now if you are not communicating, you are falling behind the 8-ball. Employees expect their employers to act like and treat them as if this is the present day, not 1994 or even 2004.

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The second is that these tools can go a long way towards enhancing your compliance program going forward. Recall the declination to prosecute that Morgan Stanley received from the Department of Justice (DOJ), back in 2012, when one of its Managing Directors had engaged in anti-corruption violations? One of the reasons cited by the DOJ was 35 email compliance reminders sent over 7 years, which served to bolster the annual compliance training the recalcitrant Managing Director received. You can use your archived social media communications as evidence that you have continually communicated your company's expectations around compliance. It is equally important that these expectations are documented (Read – Document, Document, and Document).

Finally, never forget the *social* part of social media. Social media is a two-way communication. Not only are you setting out expectations but also these tools allow you receive back communications from your employees. The D&B experience around the name change for its Code of Conduct is but one example. You can also see that if you have several concerns expressed it could alert you earlier to begin some detection and move towards prevention in your compliance program.

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