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Monday, January 14, 2008

New Software to Monitor Athletes' Web Sites Troubles Legal Experts

By [LIBBY SANDER](#)

Nashville

advertisement

A software program introduced here this weekend that searches for offensive content on college athletes' social-networking sites has drawn mixed reactions from legal experts, who say it could threaten athletes' constitutional rights.

"Do you know what your athletes are posting on Facebook and MySpace? We do!" says an ad for the program, YouDiligence, that shows a photo of a grinning male student holding a bottle of beer.

Billed as a "social-network monitoring service" and marketed exclusively to college athletics departments, YouDiligence was on display at a trade show here during the National Collegiate Athletic Association's annual convention.

The program is designed to conduct real-time searches of Facebook and MySpace for up to 500 objectionable words and phrases ranging from profanity to slang used to describe drugs. If it finds anything, it sends an e-mail alert to a designated athletics official containing a link to the offending page.

Though three experts in constitutional law told *The Chronicle* that the new software was most likely lawful, all three agreed that it raises some tricky legal and ethical questions for which there are no clear answers, and that athletics departments should think carefully about using it.

"This kind of proactive examination of college students' expression and associations and beliefs really gets you into very, very dangerous territory," said Lee Tien, a staff attorney with the Electronic Frontier Foundation, a digital-rights group based in San Francisco. Before using such a product, he said, athletics officials should consult university lawyers on whether it might violate students' constitutional rights.

Early Warnings

Many large athletics programs have coaches who monitor athletes' pages on such networking sites with varying degrees of regularity. They hope to catch any potentially embarrassing or incriminating material before it brings negative attention to the university.

The new software would automate that practice and make it more efficient, said Kevin Long, president of MVP Sports Media Training.

The product costs \$250 per month, plus a \$500 start-up fee. The software was developed by Mr. Long and Global NI, a company in Washington.

"A coach is hired to coach, not monitor Web sites," Mr. Long said, adding that the software does not search in the password-protected areas of the sites. YouDiligence, he said, is "an early warning or insurance program for the college to get something that could be potentially damaging to the school or the individual's reputation before it has the chance to gain momentum in the media."

John Lata is director of student services in the athletics department at Florida State University, which has one of the nation's largest athletics programs, with more than 500 athletes. Members of his staff occasionally look at athletes' social-networking sites, he said. But using technology to do that makes him wary.

"My first thought was of the First Amendment," he said. Before investing in the new technology, "I think I'd take a wait-and-see approach and see what I hear from other folks."

Legal experts said that searching students' Web sites is lawful. Once a student posts words or photos

"Politically correct?
Hardly.
Ahead of the curve?
Always."

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that the general public can access, it's fair game.

The key question is what athletics officials do with the information once they have it, the lawyers said.

"When we're talking about university students, these are adults," said Aaron Caplan, a staff attorney with the American Civil Liberties Union of Washington who focuses on student free-speech matters. "Adults have a First Amendment right to speak on all subjects, including sometimes obnoxious subjects, and if they want to say obnoxious things the university doesn't like, the university can respond with more speech."

Mr. Caplan added, "The reputation of the school is not enough of an interest to outweigh the First Amendment interest athletes have in saying what they want to say."

Mr. Lata sees it slightly differently.

"They still have free speech," he said. "But then we can decide how we want to react to their use of free speech."

Lingering Questions

The prospect of actively monitoring athletes' networking sites raises other questions that athletics departments should consider before using such a program, the lawyers said.

Among them are whether public institutions have less leeway than private institutions in probing their athletes' online escapades—and whether subjecting athletes' online behavior to greater scrutiny than their nonathlete peers is legal—or ethical.

Athletics officials often say that being an athlete is "a privilege, not a right," that athletes represent their institutions in a much more visible way than other students, and that they should behave accordingly.

But Greg Lukianoff, president of the Foundation for Individual Rights in Education, said the fact that universities can, and do, exert greater control over their athletes' behavior does not mean programs like YouDiligence could not be used in the future to monitor online activities among the broader student population.

"I think we'd be naïve to assume that this software is only going to be used to police student-athletes," Mr. Lukianoff said. Universities, he said, have a "nasty habit" of monitoring speech they find offensive. "And now they have a wonderful tool to police the Internet more efficiently."

'Better Things To Do'

At Florida State, coaches and administrators have taken a top-down approach to educating students about the risks of being too carefree on their Facebook and MySpace pages.

Mr. Lata and his staff have meetings with every team to talk about those risks. One coach requires all of her athletes to have her as a "friend" on Facebook, so that if they post questionable material, she will know about it.

As a result, Mr. Lata said he believes athletes at Florida State are less likely than other students to cross the line. And in the two or so years that his staff has been monitoring the sites, an athlete has never lost a scholarship for posting offensive material on his or her networking page.

"I don't think that the problems are as prevalent as perhaps a lot of people may envision," Mr. Lata said. "I've only come across one or two instances where student-athletes wrote something so provocative that I needed to say, 'Take this off today.'"

Betsy Mitchell, athletic director at Allegheny College, in Pennsylvania, which is in Division III, saw the booth for YouDiligence at the trade show here. Ms. Mitchell's department does not monitor the Facebook and MySpace pages of its athletes, and the thought of purchasing software to do so struck her as odd.

"I laughed. I smiled," she said, recalling her reaction when she first spotted the YouDiligence booth. "And I thought, We've got a lot of better things to do."

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