BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

ZOOMING WITH CARE: A GUIDE TO PRIVACY AND PRIVILEGE ISSUES

April 16, 2020

By: Heidi Howard Tandy

Online videoconferences have become a sudden staple in most professional industries. While some companies are primarily using intranets and FaceTime for internal communications, given the sudden acceptance of Zoom, most businesses have migrated to using this new platform for both internal and external work-related communication. There are various security, privacy, privilege and copyright issues that clients should be aware of. At Berger Singerman, we have created model policies and procedures that can be customized for client's employee handbooks and Best Practices regarding internal videoconferences, client meetings, in communications with third parties and even informal networking events.

The Electronic Frontier Foundation has listed some privacy and security steps that we can all do take to protect our video chats and side conversations over direct messenger services:

- Use a virtual background when conversing externally and with third parties, to prevent public displays of your family, home, hobbies and other identifying details that may be in the background.
- Turn off Attention Tracking.
- Be careful when sharing your screen as confidential information could be inadvertently shared, and privilege could be compromised. Settings can be set so that only the host can share a screen. If your screen must be shared, mute notifications so privileged or confidential information does not pop up onto your screen during a Chat.
- If you use Zoom's iOS app, your information will not be shared with Facebook at this time, but it is possible that a future version of the app will interface with Facebook and its Instagram app.
- Use a meeting password to prevent interlopers from getting into your video conference, and/or have people enter a virtual waiting room before the Host admits them into the conference. It's been reported that a program called zWarDial uses random number generation to guess Zoom meeting identification numbers so miscreants can join calls uninvited. Using passwords and/or waiting rooms can help prevent them from doing so.

From a legal ethics perspective, the ability of a Zoom meeting host to record and archive the conference is a major concern. In a statement in March of 2020, Zoom stated that "if a host chooses to record a Zoom meeting locally, then chats sent publicly, as well as any private chat exchanges that the host who chose to record the meeting participated in during session, are saved." Therefore, it's important to avoid using Zoom's private chat feature to converse with clients or coworkers in meetings hosted third parties; doing so might compromise privilege.

Companies that have contracts that bar the use of services like DropBox, Google Drive, Gmail and/or Facebook for communication between the entities' representatives, should avoid using Zoom unless explicitly permitted. Zoom's government and enterprise versions have additional levels of privacy. As it remains unclear what levels of privacy each entity is utilizing, it's vital for each attorney to be concerned whether all of the audio

and video in a Zoom chat is being recorded.

As for intellectual property, it is unclear who holds the copyright in conversations that are held via video conference; Zoom's Terms of Use policy clearly states that you, the Zoom user, retain "copyright and any other rights" that you have in content that you submit, post or display on or through the services, so Zoom is not claiming copyright in any of your conversations or attendant video content. However, if you are involved in a webinar or Zoomcast, either as a participant, host or coordinator, it is valuable to obtain licenses from all participants, or at least all speakers, confirming that you can use the content generated by their participation for any purpose, or at least for certain specific purposes.

Even businesses that already have internal policies on remote work and use of videoconferencing services likely don't have specific policies that pertain to the suddenly widespread use of Zoom throughout businesses and industries, in formal and informal situations. Even entities that don't want their employees and contractors using Zoom for internal communications will find that some want to – or need to – it to attend networking or alumni events, or to participate in continuing education programs.

Every business and nonprofit should consider developing a customized policy regarding use of Zoom and other videoconferencing platforms to inform employees and contractors of its expected best practices. An attorney can assist in integrating those policies in current employee manuals, handbooks and guidelines.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this blog is issued. We therefore encourage you to monitor our website, review our future blogs and generally remain alert for additional updates or modifications to laws and regulations

Related Practices

Intellectual Property

Copyrights

Data Privacy

Internet and Social Media

Related Practice Teams

Dispute Resolution

Related Team Member(s)

Heidi Howard Tandy

Topics

Videoconferencing

Copyright

Privilege

Coronavirus Pandemic

Zoom