



**INTERNET SECURITY AND PROTECTION FOR SOCIAL MEDIA FROM A LEGAL PERSPECTIVE
AN OVERVIEW OF THE LEGAL ASPECTS STEMMING FROM THE USE OF SOCIAL MEDIA**

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Introduction

Introduction to Social Media

Social media has been defined by marketing professors Andreas Kaplan and Michael Haenlein as "a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content."¹ Social media has drastically altered the way organisations, communities and individuals communicate by interacting through web-based and mobile technologies.

Kaplan and Haenlein have created a classification scheme for Social media. According to them, there are six different types of social media:

1. Collaborative Projects
2. Blogs and Microblogs
3. Content Communities
4. Social Networking Sites
5. Virtual Games Worlds
6. Virtual Social Worlds

These different types of social media use technologies such as blogs, picture-sharing, email, instant messaging, music sharing and voice over IP.

Recent Historical Impact of Social Media

Social media has played an integral role in some of the major worldwide events that happened last year.

The Arab Spring is a series of revolutionary protests and demonstrations across North Africa and the Middle East throughout 2011 and is still going on. Social media played a major role within these protests and demonstrations. Social media was used as an invaluable tool to organise such demonstrations and communicate between fellow participants, and most importantly to raise awareness and consciousness amongst the rest of the worldwide community in the face of state attempts at internet censorship and suppression. As one Egyptian tweeted during the protests in his country, "We use Facebook to schedule protests, Twitter to coordinate, and YouTube to tell the world."²

Twitter, Facebook and other social networking sites were used by millions of people caught up in the aftermath of the Japan earthquake of 2011. Mobile phone networks and telephone lines collapsed so Twitter and Facebook proved to be the easiest, quickest and most reliable way to keep in touch with relatives and provide emergency numbers and information to victims in stricken areas. Skype and Google also proved to be an invaluable resource for families searching for their missing relatives.

As the news started leaking in May 2011 that Osama Bin Laden was found and killed in his compound by the United States, reactions over Twitter, Facebook, YouTube and other news blog spread like wildfire. From the beginning to the end of President Obama's presidential address, as many as 5,000 tweets per second were sent over Twitter. The breaking of the news via Twitter has largely been attributed to a man in Pakistan who tweeted the details of the U.S. military raid on Bin Laden's compound as the events unfolded next to his home. Within moments, this man gained over 14,000 followers. Millions of Americans received the historic news through social media rather than by President Obama's televised address. During this event, digital outlets such as text messaging, emails, and Twitter and Facebook alerts proved to be the preferred source of news by the general public.

Statistics

Some recent statistics concerning social media reveal the popularity it is increasingly gaining at an astronomical rate:

- Social media has overtaken porn as the number one activity on the internet.³
- If Facebook was a country, it would be the world's third largest and twice the size of the population of the United States.⁴
- Facebook currently has over 845 million active users of which over 425 million are mobile users.⁵
- 250 million photos are uploaded on Facebook daily.⁶
- Google+ was the fastest social network to reach 10 million users at 16 days. (Twitter 780 days and Facebook 852)⁷
- Wikipedia hosts over 17 million articles and has over 91,000 contributors.⁸
- 35 hours of video is uploaded every minute on YouTube.⁹
- Over 4 billion videos are viewed on YouTube every day.¹⁰
- 60 hours of video is uploaded to YouTube every minute.¹¹
- LinkedIn has over 150 million members.¹²
- Twitter has over 100 million active users.¹³

¹ "Users of the world, unite! The challenges and opportunities of Social Media", Kaplan, Andreas M.; Michael Haenlein (2010). *Business Horizons* 53 (1): 59-68. doi: 10.1016/j.bushor.2009.09.003. ISSN 0007-6813

² "The Arab Uprising's Cascading Effects.", Miller-McCune, 23 February 2011

³ "39 Social Media Statistics to Start 2012", Erik Qualman, 4 January 2012, (<http://www.socialnomics.net/2012/01/04/39-social-media-statistics-to-start-2012>)

⁴ Ibid.

⁵ "Facebook User Statistics 2012 [Infographic]", Anson Alexander, 20 February 2012, (<http://ansonalex.com/infographics/facebook-user-statistics-2012-infographic>)

⁶ Ibid.

⁷ "100 Social Media Statistics for 2012", Cara Ping, 11 January 2012, (<http://thesocialskinny.com/100-social-media-statistics-for-2012>)

⁸ Ibid.

⁹ Ibid.

¹⁰ YouTube.com (http://www.youtube.com/t/press_statistics)

¹¹ Ibid.

¹² LinkedIn.com (<http://press.linkedin.com/about>)



- Twitter is adding nearly 500,000 new users per day while Google+ is adding 625,000 new users per day.¹⁴

The Importance of Legal Implications Stemming from Social Media

As millions of internet users everyday interact via social media sites, legal implications concerning the security and protection of its users are brought to the foreground. Social media has, more than ever in the history of technology, leap frogged over current rules and procedures leaving legislators and practitioners struggling to catch up.

At first, only few people actually used the privacy settings. Lately this trend is changing and social media users are becoming more aware about what they want to be accessible to the public and what should be 'private', so to speak. Terms of service have been under the spotlight lately with some high profile court cases including information accessed by Facebook applications.

Awareness about the information contained in the terms of service and the settings in the privacy controls is highly important for site owners as well as users. Social media users are starting to take notice of what these boring and never ending clauses, conditions, disclaimers, etc. contain. Let's face it; do lawyers even actually read all of this before registering with Facebook?

Privacy

It is important for internet users to read the privacy policy and terms of use of social media sites that they subscribe to. Keeping up with the privacy policies can seem like a daunting task, in particular since social networking sites seem to change the extensive policies every so often. Nevertheless, in the long run this painstaking exercise will not only result in protecting your online privacy, but also steer you away from possible liability.

Social media users, whether they are an organisation or an individual, are also advised to secure online privacy by meticulously controlling what they are sharing, how they are sharing it and with whom. With the onset of various court cases globally, awareness seems to be setting in even in the individual user. In fact, in 2011 a greater percentage of social networking site users untagged photos, deleted comments and unfriended people than in 2009.¹⁵ Additionally, most social media users report that they do not find it difficult to manage their profile's privacy. This shows that more users are taking control of their online privacy settings.

In the United States, the Federal Trade Commission works to ensure that consumers are not being misled by social networking sites about how their personal information is being used. The FTC recently filed complaints against Facebook and Google alleging that they used user's data in ways that was contrary to what they were telling their users. It is advisable for all companies to ensure that their privacy policy, terms of use and other legal agreements reflect their current practices. After all, the vast majority of consumers simply click through legal agreements to get to the applications of a website.

Copyright and Intellectual Property Rights

Intellectual property issues, in particular copyright law, are prevalent within the social media sphere. Intellectual property laws relevant to social media refer to laws governing trademarks, copyrights and trade secrets.

Copying and pasting pictures, songs, videos, documents or webpages onto personal or professional webpages and shared via social media is very easy. At the click of a button, literally, and many social media users are doing it. However, sharing original content created by others without the explicit permission by the author to do so is in violation of copyright laws. Organisations, intentionally or otherwise, associating their business with trademarks or another can leave them liable for infringement.

Actions Taken by Different Countries Against Digital Media Theft and Piracy

The French Government instituted the HADOPI law. This is an anti-piracy law directed at users who illegally download music and other copyrighted material. It is a three strike law and the ultimate penalty is cutting the user from access to the internet.

The United States have sought to cut off access to foreign abusive websites and cut off their revenues. The introduction of SOPA (Stop Online Piracy Act) and PIPA (Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act) aim to curb foreign websites from infringing copyrighted material. SOPA and PIPA allow rights holders to seek court orders requiring payment providers, advertisers and search engines to stop carrying out business with an infringing site. The main opposition against these bills is that they do not do enough against false accusations and thus have a high potential for abuse.

ACTA (Anti-Counterfeiting Trade Agreement) is an international trade agreement which aims to enforce copyright and tackle counterfeited goods. Signature of this agreement is open until May 2013. It has already been signed by most members of the European Union, the United States, Japan, Australia, etc. The agreement still needs to be ratified by the European Parliament and this is expected by June 2012. One of the main arguments against ACTA is that it makes internet service and access providers legally responsible for what their users do online and turns them into private copyright police and judges. There is also the potential danger that the entertainment industry, through ACTA, uses piracy as an excuse to control what is distributed over the internet and what can be viewed and heard online. On the other hand, the European Commission has reassured the public that the aim of ACTA is to tackle large scale illegal activity pursued by criminal organisations. It emphasised that, unlike the proposals discussed in the United States, ACTA will not limit how people use the internet in their everyday lives.

Employment

Social media users have realised that in order to use social media to its full potential it cannot be restricted solely to socialising. Job seekers are recognising the resources these kind of media offer in relation to finding jobs, research possible employers and keep abreast with possible career opportunities.

When it comes to the employment industry, a balanced approach has to be taken with regards to social media usage. The employee's right to privacy has to be balanced with the employer's expectations regarding worker conduct and safeguarding of the business's interests. Social media has also changed the hiring process. As many as 80% of companies use social media for recruitment, 95% of which use LinkedIn.¹⁶

¹³ "Twitter on Track for 500 Million Total Users By March, 250 Million Active Users By End of 2012", Shea Bennett, 13 January 2012, (http://www.mediabistro.com/alltwitter/twitter-active-total-users_b17655)

¹⁴ "Researcher: Google Plus Growth Accelerating, Passes 62 Million Users", Jay Alabaster, 1 January 2012, (<http://www.pcworld.in/news/researcher-google-plus-growth-accelerating-passes-62-million-users-60702012>)

¹⁵ "Social Media Management: Protect Your Privacy", ZoneAlarm, 13 March 2012 (<http://blog.zonealarm.com/2012/03/social-media-management-protect-your-privacy.html?view=infographic>)

¹⁶ "Using Social Networking for Recruitment and Training", Ray B. Williams, 11 August 2009 (<http://www.psychologytoday.com/blog/wired-success/200908/using-social-networking-recruitment-and-training>)



Legal Implications in the Employment Sector

Personal content, not available on a job application form, may be involuntarily disclosed to the world at large including an applicant's prospective employer. Information can influence the prospective employer's decision both negatively (such as photo showing alcohol or drug use, provocative photos, poor communication skills, lying about qualifications or experience) and positively (such as professionalism, good communication skills). It is illegal to refuse to employ a person based on his race, gender, sexual orientation, religion, nationality or other protected characteristic. Employers also use information posted on social networking sites to keep up-to-date with what their employees are doing in their personal life, for example if they post photos or text that they were out partying while they were on sick leave.

Employees should be aware of the dangers of unconsciously exposing themselves to civil or criminal liability as a consequence of their online actions. It is generally accepted in various legislations that discussing or revealing privileged and confidential client information or trade secrets are grounds for immediate termination of employment. In such cases, the employee breaches the duty of loyalty, contractual confidentiality and non-disclosure agreements as well as having misappropriated the trade secrets.

A steady stream of cases has emerged where employees have damaged the employer or his business' reputation through their use of social media. Employees badmouthing the company on personal blogs or social networking websites, or using social media to harass or bully fellow employees, can have implications on their employment relationship even though they were carried out on 'private' time. Additionally, it is of critical importance for employers to make it clear that after-work activities which are to the detriment of the employer's reputation will result in disciplinary action. Again, the key for employers is to strike the right balance between respecting employees' privacy online (even on office computers), and protecting their business.

Who Owns Social Media Accounts When They Are Used For Business? The Employer or The Employee?

As many as 84% of the Fortune 100 companies are using at least one of these four social media channels: Facebook, Twitter, YouTube and Blogs. Moreover, 25% of companies worldwide use all four of these channels.¹⁷ The whole world, in particular the social media community, is patiently waiting for the outcome of the lawsuit PhoneDog v. Noah Kravitz. PhoneDog, a mobile news and reviews resource company, is suing a former employee Noah Kravitz over the ownership of a Twitter account. This account was started in association with PhoneDog and is now being used by Kravitz personally. This lawsuit has brought about various questions with regards to who owns a social media account: the employee who posts on the account or the employer on behalf of whom such posts are being submitted? Is a social media account such as Twitter, and by extension its followers, part of the company owned intellectual property?

The PhoneDog lawsuit has brought to the fore the importance for companies to have written agreements with their employees concerning the use of the company's social media accounts. In addition, companies should take various measures in order to ensure control over its social media accounts:

- a) Requiring access to user names and passwords.
- b) Monitor employee's access and use of information.
- c) Immediately terminate access when the employee no longer requires the need to access the account in question or when employment is terminated.
- d) Change passwords frequently, in particular after a user's access has been terminated.
- e) Register, where possible, social media accounts in the company's own name.
- f) Take advantage of the option available with certain accounts, such as Facebook, to have more than one administrator.

Every Business Should Have a Social Media Policy

Social media posts can have legal and economic consequences for a business. The employee's posts can have a negative impact on the business and can damage the brand or the public perception of the company. Legal consequences as a result of employee posts can include loss of trade secret protection, deceptive advertising and unfair competition. For these reasons,

- A social media policy can protect the brand name the business has worked so hard for. Octavia Nasr, a CNN reporter, was fired in 2010 after she posted on Twitter her respect for a recently deceased Hezbollah leader. The reporter included in her profile, details about her position with CNN, and this turned her personal opinion into a reflection on the news agency.
- A social media policy shows the company's good intentions in complying with recent legal trends and trade guidelines.
- A social media policy should include: a privacy policy, a disclaimer and terms and conditions.

Employees: Think Before You Act!

Employees need to understand the risks they face every time they post or click, whether they are at home or at work. One mistake on social media can cost you your job. Employees should consider:

- Think about how that post or click will reflect on the company, its clients or potential clients.
- Before you click, make sure you trust the source. Pornography or inappropriate content can lead to dismissal if found on an office computer.
- Use the privacy settings but assume that your posts may become public even if the settings are restrictive.
- Clearly state that the opinions expressed are strictly personal and are not endorsed by the company. You should never associate your position at the company with your opinion.
- Never post anything concerning the business you work with which could be even remotely confidential such as prospective deals, contracts, products and clients.
- Do not post discriminatory, harassing or defamatory posts.
- Do not share photos or personal information of other people without their prior consent.

The Protection of Minors Online

Privacy concerns when a minor's information is at stake take on a graver aspect. Minors tend to be more careless and trusting when using social media. Sharing private information such as names, addresses, phone numbers or email addresses are common amongst youngsters, even with people whom they have never met in person. The extent to which this information is made accessible to the public depends on the restrictions imposed by the social networking site. Access to such personal information can lead to the location of the underage users by criminals or result in identity theft.

Cyber criminals are using social media, and in particular social networking sites, as a minefield for their criminal activities. Despite terms of service that prohibit illegal content and illegal activities, sexual predators still continuously use social media for posting pornographic images and videos and to solicit innocent minors. This poses serious legal and moral issues on the site owners and the

¹⁷ "How Fortune 100 Companies are Engaging on Twitter and Facebook", Ragy Thomas, 16 March 2012, (<http://socialmediatoday.com/ragythomas/470104/interactive-stats-how-fortune-100-companies-are-engaging-twitter-and-facebook>)



obligations and duties it owes its users. Legal roadblocks protect social networks from liability for a third party's criminal and tortuous acts, making it more and more difficult for legislators to protect minors and prevent the offence from happening. Most countries have set in place legislation that holds the offender liable for his actions offline as well as online, however we lack the tools when it comes to protecting minors from a criminal offence.

Lately we have seen social networking sites taking action and brushing up on privacy terms and settings. After all, if it is left only up to the parents and guardians to protect their minors from cyber criminals, and they resort to the most effective form of prevention and that is prohibition, this will result in less traffic to these sites and consequently drives down financial profits. Some countries, such as the state of Louisiana in the United States, have banned registered sexual offenders from using social networking sites. A step in the right direction when it comes to child protection, however a tad difficult to enforce if you ask me. Will the next step be to force social media to increase and enforce their minimum age requirements?

Liability

Internet users log on to social networking sites to record their personal and professional lives for everyone to see. This creates a golden opportunity for anyone looking for free access into the personal details of a person's life and has huge potential legal liability.

Social media content has not only created new avenues for legal liability, but it has also become in itself of significant evidentiary value in the courtroom. Prosecutors in the Casey Anthony litigation successfully established that a potential juror's Facebook post, "cops in Florida are idiots", is a bias against police officers. In another case, Jessica Binkerd was found guilty of causing the death of her passenger after getting into a crash whilst driving under the influence of alcohol. Photos posted on her MySpace page showed her partying and promoting alcohol. The judge felt that these pictures showed that she had showed no remorse and sentenced her to prison instead of the anticipated probation.

Obviously, the precautionary measures mentioned earlier in this presentation in relation to employee behaviour are very much applicable to all individual users. In particular, all social media users should keep in mind that whatever they post, whether it is text or pictures, and wherever they post it, is public domain. Taking all the necessary preventive steps against liability will only protect you so far. At the end of the day, even if your Facebook is set to 'Friends Only', one of your 'Friends' can copy or share your post wherever they choose. The same principle applies to text messages and emails. One of the most common blunders email users make and which can result into serious legal liability, is sending emails to a group wherein all the members email addresses are in full view. This is a great opportunity for spammers and hackers to harvest email addresses.

Identity Theft

With social media becoming an integral part of our daily life, every day we surrender private information online when conducting transactions and registering for services. Ethical business practice requires the protection of the privacy of the customers. Nevertheless, private information can be abused both directly and indirectly. In the wrong hands, this information can be used for fraud or impersonation. Every year, a large number of people around the world become the victims of identity theft.

A complete Facebook profile contains a wealth of personal information including: full name, birthday, political and religious convictions, online and offline contact information, gender, sexual preference, relationship status, favourite books and movies, educational and employment history, people you know and of course photos. The list of features and applications available for social media keeps on growing every day.

The ease and frequency with which these virtual thieves are able to steal proprietary or sensitive information is alarming. One of the most popular avenues for virtual thieves seeking personal information are Facebook applications since it allows the thief to access personal information sent to the application itself.

Defamation

Social media has empowered every person with internet access to publish online. However, one must not fall into a secure sense of being that such posts are not liable for defamation. Social media users are at the risk of being held liable for defamation without even being aware. In actual fact, the damage sustained by social media defamation can be much higher than other more traditional mediums like magazines and newspapers. When it comes to social media, the medium is instantaneous and can even become viral.

One of the world's first lawsuits to be filed over social media activity concerned the singer Courtney Love. She was sued for defamation by her former designer regarding alleged libellous statements posted by the singer on her Twitter account in full view of her 40,000 followers.

There are three basic rules for publishing online and steering clear from potential defamation lawsuits: i) verify the facts and sources prior to posting; ii) criticise, comment and review all you want but do not be offensive in your tone and direction to anyone or any company in particular; and iii) do not distort facts and truths. The secret is to respect your audience, whoever and wherever they are.

Conclusion

Technology, and in particular the onset of social media, has changed the world as we know it. One of the most amazing things about law (no it is not the opportunity to have a go at lawyers the next time you want to crack a joke) is that it is dynamic. The electronic world has offered legislators and lawyers serious challenges, with more undoubtedly yet to come. This exciting era has offered us both benefits and dangers. The only legal advice I can give you, without charging you, is to embrace it without falling into the pitfalls with reckless abandon. Treat it with common sense. In most cases, there is no need for special technology or new legislation. Online actions are analogous to offline actions. Technology does not offer a special protection shield for actions that otherwise would be illegal or immoral.

About the Author

Dr. Abela Briffa is a Maltese lawyer in general practice specialising in litigation. She obtained a B.A. in Legal and Humanistic Studies (2004), a Diploma in Notarial Studies (2005) and Doctorate of Laws Degree (2008) from the University of Malta after submitting her thesis entitled "Safeguarding the Minor in the Criminal Code". She was admitted to the bar in the beginning of 2009 and immediately started private practice. In 2008, she also obtained a Diploma in Canonical Marriage Cases, Jurisprudence and Procedure and has practiced in the Maltese Ecclesiastical Tribunals. Dr. Abela Briffa has been a member of the Chamber of Advocates of Malta since 2008. She is fluent in Maltese, English and Italian.