



# KYSEN Social Media Watch



Welcome to the Summer 2016 edition of our Social Media Watch. As you know, this e-update aims to summarise the best of the last couple of months' press articles and online discussions about digital and social media as they apply to the professions to help you keep a watching brief.

Some of the topics discussed here are specific to the professions; some detail developments in other sectors, included because they have a particular relevance to the professions.

As always, we hope you find this summary helpful in keeping track of a fast-changing area of communications. As ever, we welcome your feedback.

Best regards,  
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Looking at photos of cute kittens on social media or checking a professional contact's profile update, you could easily forget that social media has become big business. The photo-sharing app Instagram, set up in 2010 and bought by Facebook for \$1bn in 2012, now has [500 million users](#). And if Facebook's acquisition of WhatsApp last year for \$19bn seemed huge, it was topped last month by Microsoft's purchase of LinkedIn for a [whopping £26bn](#).

But as they come of age, social media companies must deal with existential challenges. Many could face a [growing number of claims](#), especially in Ireland where a lot of US tech companies have based their European operations. As businesses, they are also actively seeking to [protect their trademark rights](#) even in controversial jurisdictions such as China, while deploying vast efforts to comply with new internet-specific obligations such as the [right to be forgotten](#). And as their number of users grows, so too does the risk of major [data leaks or theft](#).

Meanwhile, mainstream businesses are beginning to object more vocally that the new networks have an unfair advantage. Music labels, for instance, now want [better licensing terms](#) with YouTube, which represents 40 per cent of online music consumption but only generates 6 per cent of the sector's revenues. And news organisations are not entirely satisfied about the way tech companies are turning to [news curation](#) and unsettling the traditional [journalism funding model](#).

Social media has affected the news ecosystem in other ways too, allowing information to bypass traditional media outlets. One main impact is on [current privacy rules](#), forcing Twitter, for instance, to remind users to [comply with court rulings](#) and raising concerns over the use of social media by companies such as letting agencies to [vet prospective tenants](#).

Even the justice system itself has been affected on many levels. Astonishingly, some jurors continue to remain oblivious to warnings by judges not to research cases on the internet. Now offenders even boast online about getting away with lenient sentences. Judges [don't like this](#). What's more, the warped vision of a world seen through social media has been criticised not just by [media figures](#) but also by judges. The horrific murder of Angela Wrightson by so-called "Snapchat killers" has led the Court of Appeal to [call for guidance](#) on online abuse and harassment in criminal cases. This has now resulted in draft proposals to regard this as [aggravating circumstances](#).

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## TECHNOLOGY – GAMING - APPS

### **Pokémon Go – Who owns virtual space?**

The new augmented reality game Pokémon Go is now available to download onto smartphones in the UK, enabling users to catch virtual Pokémon whilst walking around their actual neighbourhood. However, the game's use of 'Pokéstops' and 'gyms' has been causing unforeseen legal ramifications across the globe, with trespassing disputes arising as people turn up at Pokéstops situated on private properties. This begs the question: who owns virtual space?

Lawyers have been saying that people will be within their right to call the police if someone enters their home in search of a Pokémon, or if they feel threatened by people loitering outside their property, and that it is Nintendo's responsibility to be "savvy enough to make sure that the Pokémon or gyms are in public places".

However public Pokéstops are also causing problems. The communications director at Washington DC's Holocaust Museum was forced to ask people to not play the game whilst inside the museum, reminding the public how inappropriate it is to play a game whilst visiting the memorial.

Initially Nintendo said it would only remove a Pokémon Go location if it was considered dangerous e.g. in the middle of a railway track, but has since declared that it will consider removal for a wider range of reasons, including being located on private property.

The game has also thrown up some privacy issues, with the need for an enabled GPS tracking system meaning that in a couple of cases partners have been able to pin down their spouses' unfaithful acts. Spyrou warns users to treat this new game as any other form social media and to be wary of who they are playing with and talking to.

*Source: [Telegraph](#), 14 July 2016; [The Guardian](#), 13 July 2016*

## TECHNOLOGY – BUSINESS – APPS

### **Instagram tops 500m users**

Instagram, the photo-sharing app launched in 2010 and bought by Facebook in 2012 for \$1bn, now has more than 500 million users, with 300 million using it every day and 95 million posting a photo or video daily.

Instagram's growth hasn't been without hiccups though. In 2012, a change in terms of service that could have allowed the app to sell users' pictures to advertisers was rolled back following an online backlash. More recently, an announcement that photos would be ordered by an algorithm, rather than

chronologically, made users fear that this would result in more ads creeping into their timelines, something that the company has refuted.

Instagram has also been criticised for fuelling the selfie culture and our views of body images and lifestyle. Co-founder Kevin Systrom says this is just a modern equivalent of portrait painting. “That sense of identity when you’re growing up, remembering where you were and what you were doing, is nothing new. I think Instagram just makes it very easy,” Systrom told the BBC. “At the same time, we see lots of very impactful images being taken.”

Source: [BBC News](#), 21 June 2016

## TECHNOLOGY – BUSINESS - ACQUISITIONS

### Microsoft buys LinkedIn for record \$26bn

Microsoft has agreed to buy LinkedIn for \$26bn in a move signaling the software giant’s intention to become an integrated mobile computing operation. The acquisition tops Facebook’s \$19bn purchase of WhatsApp last year and it will allow Microsoft to tap into LinkedIn’s professional network of 430 million members.

“We are trying to ride the wave of the new technologies,” Microsoft chief executive Satya Nadella told the BBC. “It’s about AI, it’s about mobile, it’s about cloud and we’re trying to bring those things together.”

The acquisition price represents a 50 per cent premium on the previous day’s listing and amounts to a \$250 price tag for every active LinkedIn user. Shares in LinkedIn soared 47 per cent following news of the acquisition, but sent Microsoft’s own down 2.6 per cent.

Microsoft’s first acquisition goes back to 1987, when it acquired PowerPoint for £14m and successfully integrated the presentation software into its own product suite. Other notable acquisitions include Skype, bought for \$8.5bn in 2011, and videogame Minecraft, bought for \$2.5bn in 2014. But the acquisition of Nokia’s mobile phone business for \$7.2bn in 2013 was written off just a year later. The LinkedIn deal still has to be approved by antitrust regulators in the US, EU, Canada and Brazil.

Source: [BBC News](#), 13 June 2016

## INTELLECTUAL PROPERTY - TRADEMARKS

### Facebook wins trademark battle in China

A company that had trademarked the terms ‘face book’ had “violated moral principles” with “obvious intention to duplicate and copy from another high-profile trademark”, a Chinese court has ruled.

Facebook’s victory against the Zhongshan Pearl River company, which had registered the words in 2014, is a rare outcome in a country where foreign businesses are struggling to protect their intellectual property rights.

Facebook is banned in China and local media have speculated that the ruling could reflect a softening on the part of the authorities. A month earlier, founder Mark Zuckerberg was in China, meeting China's propaganda chief Liu Yunshan.

Source: [BBC News](#), 9 May 2016

## **LIBEL**

### **Rise in claims against tech and social media companies**

Internet giants such as Google, Facebook and Twitter should prepare for a rise in claims in Ireland as a result of choosing the country as a base, a leading libel lawyer has said.

Paul Tweed, whose clients have included Britney Spears and Harrison Ford, said his firm has seen a “steady” rise in the number of claims against tech companies, including breaches of privacy, libel and harassment.

According to the lawyer, this trend is due both to the use of social media in a vindictive way and to the realisation that sanctions could be imposed under Irish law.

However, he said, social media platforms were more likely to cooperate on the basis of voluntary takedown procedures rather than face the prospect of court proceedings.

Source: [Guardian](#), 2 June 2016

## **PRIVACY – RIGHT TO BE FORGOTTEN**

### **Google fights worldwide ‘right to be forgotten’ order**

Google has filed an appeal with France’s highest administrative court against a decision by the French data protection authority to extend the right-to-be-forgotten principle to all its domains worldwide.

Following negotiations with a number of European regulators, the search engine has been delisting search results in the EU where they appear “inadequate or irrelevant ... or excessive ... in the light of the time that has elapsed”, in compliance with the European Court of Justice’s 2014 ruling on the right to be forgotten.

However, the French national council for online freedoms has requested that the delisting should extend to “all extensions of the search engine and that the service provided by Google search constitutes a single processing”.

Google’s general counsel argues that to do so would create a precedent allowing other, less democratic countries, to make similar demands. Resisting the French authorities’ request, however, could be inconsistent with principles applicable to copyright laws: under US law, URLs removed as a result of takedown requests are carried out globally.

Source: [Guardian](#), 19 May 2016

## SECURITY – PRIVACY – DATA THEFT

### Twitter freezes millions of accounts after password leak

Twitter locked millions of accounts last month and urged users to reset their passwords after Russian hackers put Twitter passwords up for sale on the dark web on two occasions.

Facebook founder Mark Zuckerberg, Katty Perry and Lana del Rey were among those affected, but the micro-blogging site said there had been no security breach of its systems.

Many users have the same password across various online platforms and the Twitter leak is believed to have started with the theft of millions of LinkedIn and MySpace accounts, which were also put up for sale by hackers.

“In each of the recent password disclosures, we cross-checked the data with our records. As a result, a number of Twitter accounts were identified for extra protection. Accounts with direct password exposure were locked and require a password reset by the account owner,” Twitter said.

Source: [Telegraph](#), 10 June 2016

## TECHNOLOGY – DISTRIBUTION

### Music majors want better terms from YouTube

The world’s three biggest music labels are preparing for battle with YouTube over licensing rights in a bid to get a chunkier slice of the platform’s revenues generated from streaming music videos.

In the coming months, music giants Universal, Sony and Warner are each due to renegotiate their licensing arrangements with the Google-owned site and are expected to press for more favourable terms from a service that has benefited from their content without paying much in return.

YouTube accounts for 40 per cent of all music streamed on the internet but only generate six per cent of the industry’s revenue. Music executives are now saying it’s time YouTube’s success was reflected in their licensing deals. They favour paid-for subscription streaming, the model for Spotify or Apple Music, which generates better returns than ad-supported formats. Commentators say it is unlikely YouTube will alter its approach, saying it generates income from casual users who would not pay for a subscription. So the question is whether the music labels have enough leverage to make YouTube change its mind.

Source: [Financial Times](#), 10 April 2016

## TECHNOLOGY – NEWS

### How neutral is news curation by social media platforms?

In the competition to attract ever-growing numbers of users, social media platforms and technology companies have turned to news curation. But selling phones and developing apps isn't quite the same as journalism, argues *Guardian* reporter Danny Yadron.

Tech companies are keen to keep a neutral stance so they can reach users of all political persuasions. The challenge, Yadron says, is that curating news carries political judgement. In order to determine the 'best' stories or 'trending' topics, some have resorted to algorithms while others have employed teams of former journalists.

Google News, for instance, says its homepage is "100 per cent algorithms". On the other hand, Twitter's Moments service employs journalists working, it says, under bias-free guidelines.

Facebook also says its news curation service is neutral but last May, US senators grilled CEO Mark Zuckerberg about allegations that the social network had misled users over its objectivity. The tech companies mentioned in Yadron's article either declined to comment or didn't return his calls.

Source: [Guardian](#), 12 May 2016

## TECHNOLOGY – JOURNALISM

### Journalism needs new funding model for the internet age

How journalism should be funded in the age of internet is a question nobody in the industry has been able to answer convincingly despite its increasing urgency, argues *Guardian* columnist Roy Greenslade.

Reviewing US journalist Jeff Jarvis's latest book, 'Death to the Mass', Greenslade acknowledges that the traditional funding model – advertising, subscriptions, and newsstand sales – has been shunted sideways by the arrival of search engines and social media platforms acting as new gateways to information. He argues "treating the public as 'a mass' and giving them a one-way, one-size-fits-all product" simply doesn't work anymore. But media groups looking at alternative revenue sources are yet to come up with a realistic long-term solution,

As journalism is turning into 'churnalism', a new protocol must be agreed with internet organisations, he says. "[G]iven that Google and Facebook are now the largest distributors of journalistic content, we journalists - providers of the raw material from which they benefit - need to reach an accommodation with them."

Source: [Guardian](#), 31 May 2016

## PRIVACY - INJUNCTIONS

### Lifting gagging order would be giving in to 'the rule of the press'

"The court needs to consider whether we are living in a country under the rule of the law or under the rule of the press," counsel for an entertainment celebrity told the Supreme Court in April as he sought to prevent the identification of his client in a story about the man's extramarital encounters.

The case started when the celebrity's lawyers secured an injunction against the *Sun on Sunday*. The newspaper applied for the lifting of the order, saying that the story had been widely circulated in the media outside the UK.

In May, the Supreme Court kept the injunction in place, preventing the newspapers from disclosing the identity of PJS. Giving the court's ruling, Lord Mance said publication would amount to a breach of privacy and would be detrimental to the claimant and his children.

The ruling, the first in which the Supreme Court had to consider privacy issues, has been seen as creating the first privacy rights in the UK, with some commentators saying it could spell the end of kiss and tell stories. The case is currently going through full trial.

Source: [Guardian](#), 21 April 2016; [Telegraph](#), 20 May 2016 – this second ref added but is story up to date?

## PRIVACY – INJUNCTIONS – COMPLIANCE

### Twitter reminds users to comply with court rulings

Twitter has reminded UK account holders to comply with local laws after several users circulated the name of a celebrity involved in a threesome despite a Supreme Court judgment banning his identification.

The social network sent out emails to a number of users the day after the court's ruling (see [above](#)), which keeps in place an injunction preventing the *Sun on Sunday* from revealing the man's identity.

Twitter's email appears to have been sent following a complaint by the claimant's lawyers and read: "The complainant requests that the following tweet, allegedly in violation of local law in the UK, be removed immediately from your account. Please confirm whether you will voluntarily comply with the request."

The newspaper argued that other news media outside England and Wales had named the claimant, including in Scotland, and that the injunction should therefore be lifted. The case is currently pending.

Source: [Telegraph](#), 20 May 2016

## PRIVACY

### Landlords check out prospective tenants on social media

Landlords and letting agencies have started paying for 'personality reports' on prospective tenants and assessing their credit-worthiness based on their social media activity, the *Telegraph* reports.

The service is provided by specialist search business Tenant Assured, cited in the story, who – with the tenant's agreement – collate information based on Facebook, LinkedIn or Twitter profiles.

Searches aim to pick up on areas of potential concern, such as whether the tenants have pets, whether they are likely to party, and their employment history.

Tenant Assured said a lot of landlords and agents already carry out their own internet searches.

Source: [Telegraph](#), 8 June 2016

## COURTS – CRIMINAL PROCEEDINGS

### Involved in a case? Keep off social media

Judges have repeatedly ordered individuals off juries for researching or discussing the case on social media but it appears the lessons are still being learnt. Recently, a juror in a child abduction case turned to Facebook to ask which way she should find. Unsurprisingly, she was removed from the jury when the judge found out.

But such incidents are not limited to jurors. Two offenders who were handed down suspended prison sentences boasted about it online and made some comments about the judge. They were called back to court a few days later. "Each of the posts indicates [the defendants] have not changed at all. They have not taken on board anything or learned any responsibility," Lunt J, in Burnley Crown Court, said as she ordered immediate imprisonment.

In a similar case in New Zealand, a man convicted for failing to pay a number of fines commented about the judge on Facebook. He was made to read out the comments in court and sentenced to 300 hours' community service, reduced to 200 on appeal.

Source: [ABC News](#), 2 June 2016

## ONLINE RISKS

### **Beware of social media, Tatler editor tells teenagers**

Tatler editor Kate Reardon has warned pupils at Stowe School to approach social media more carefully but also to take themselves less seriously.

“You are a generation that are picky about what you put into your bodies, be picky about what you put into your brain,” she told students at her former school. In particular, she said, teenagers should avoid watching porn at an age when what they find online is likely to have a lasting influence on them.

She also told them to laugh a bit more about life in general and themselves in particular, and to include their parents in their jokes. Enthusiasm, she said, was also essential for success, both in life and in love.

Source: [Telegraph](#), 10 June 2016

## COURT PROCEEDINGS – CRIMINAL TRIALS

### **Court of Appeal calls for government guidance on social media in crime**

The Court of Appeal has urged the attorney general to launch a consultation on the impact of social media on the conduct of criminal trials and to issue appropriate guidance.

The court made the call while ruling in the appeal against a reporting ban on the retrial of two schoolgirls who were prosecuted – and eventually convicted – for the murder of Angela Wrightson, a vulnerable woman they had tortured and beaten to death. While carrying out their attack, the two had posted live photos and comments on their social media accounts.

The original trial was scrapped because the judge, Globe J, who was a junior prosecutor in the James Bulger’s murder case, feared the girls had been subjected to such ferocious attacks on social media that they would not get a fair hearing.

Lifting the ban but ordering strict restrictions, the Court of Appeal said the case “for the first time, raises the issue of how critical fair trial protections can be extended to prevent or control communications on social media”.

Source: [BBC News](#), 7 April 2016

## CRIME – SENTENCING

### **Sentencing council proposes ‘aggravating’ social media factors**

Young offenders who film their crimes to post them on social media could face tougher sentences under draft guidelines put out for consultation in May.

The proposed rules follow on from the conviction in April of two teenage girls for the murder of vulnerable adult Angela Wrightson (see [above](#)). The two were dubbed 'the SnapChat killers' after posting pictures of themselves torturing the victim on the photo-sharing app.

The guidance considers a number of aggravating factors including “deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating [accounts] of the offence on social media or within peer groups”.

The draft guidance is part of a wider consultation on the sentencing of young offenders and closes on 3 August.

Source: [Telegraph](#), 12 May 2016; [Sentencing Council](#), 12 May 2016

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