



# KYSEN Social Media Update



Welcome to the Autumn 2015 edition of our Social Media Update. 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,  
Clare Rodway  
Managing Director  
0207 323 3230  
[clare.rodway@kysen.com](mailto:clare.rodway@kysen.com)

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## **This issue**

The legal Twittersphere started the new term with an almighty bang. Senior solicitor Alexander Carter-Silk inadvertently planted a bomb when he complimented 27-year-old barrister Charlotte Proudman over her good looks after she contacted him on LinkedIn. Proudman pressed the detonator when she [took to Twitter](#) calling him 'sexist' and asking for a public apology. Mind you, it's not as if summer had been quiet in the world of social media.

The influence of Facebook and other virtual networks on our personal lives is sometimes difficult to ascertain clearly, but researchers at Boston University appear to have made worrying findings in one particular field: social media users are [more likely to have marriage problems](#) potentially leading to divorce.

Right or wrong, such concerns are no obstacle to the speed at which technology and social media are evolving. For instance, some developers have created a Twitter bot that [corrects 'illegal immigrant' tweets](#). Meanwhile, Twitter itself has upped the ante in the war to capture the growing number of instant private messaging users by [removing the 140-character limit for DMs](#). And Facebook is about to [trial an internet drone](#) that would bring the internet to billions of people in remote parts of the world.

In comparison, the law is developing at a much slower pace. Twitter jokes could maybe be [eligible for copyright protection](#), and Facebook has taken steps to fill the legal vacuum surrounding the management of digital assets of deceased users by setting up its own ['online executor' function](#). But a clutch of cases, which could herald a tighter data protection regime more favourable to users, have been [hit by delays](#).

But there are areas where the law, in small increments, is getting clearer. One of these is employment, with staff being increasingly held accountable [even when off duty](#) or when using their [private social media account](#).

Another area is criminal law and enforcement. There was little trouble prosecuting an insurer fraudster who [used his Facebook page](#) to hire cars insured at a discounted premium obtained after lying about his no-claims bonus. In the US, however, prosecutors had to take Facebook to court to force the internet giant to hand over information about public services employees [suspected of social security fraud](#).

One particular crime – harassment – has flourished on social networks. A recent high-profile victim was Lord Sugar, harassed by a 17-year-old Twitter troll who was eventually [referred to a youth offender panel](#). But the rise in online bullying raises a bigger question: should social networks show less concern about free speech and instead [do more to combat hate speech?](#)

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## Apple's ad blocking device threatens value of online advertising

*Apple's* controversial plans are underway for its new iOS 9 phone to include a software which will enable ad-blocking, in turn undermining arch rival Google Inc, which currently dominates the \$120 billion online advertising market.

*Apple* is encouraging app developers to optimise the content in their apps to make it discoverable through Spotlight search and Siri, which will be delivered ahead of web contact. Apple is encouraging big brands to shift spending to apps, rather than traditional online ads where Google leads.

Ad blocking software has been growing rapidly, with over 30% of individuals in Germany and Poland using such services in 2014. German broadcaster *ProSieben* and *RTL*, as well as newspaper publisher Axel Springer have been unsuccessful in their bid to win a case against German firm *Eyeo*, the most popular adblocker for desktops. Appeals are pending.

If Apple is successful in providing its customers with their own personal web on their device it could evoke a cultural shift in the way people search. Google could face its biggest challenge yet given its heavy reliance on advertising revenues.

Although *Goldman Sachs* analysis claims that 75% of Google's mobile search revenues came from iOS devices, the search giant still needs to address this issue to avoid potential problems down the line.

*Source: Reuters, 16 September 2015*

<http://www.reuters.com/article/2015/09/16/apple-advertising-idUSL5N10U2I420150916>

*City am, 10 September 2015*

<http://www.cityam.com/224030/apples-ios-9-spotlight-update-new-ad-blocking-functionality-not-only-threat-google>

## Female barrister shames 'sexist' senior solicitor via Twitter

A young female barrister has taken to Twitter to publicly shame a senior male solicitor who complimented her on her "stunning" profile picture, following her request to connect on LinkedIn.

Alexander Carter-Silk, a partner with Brown Rudnick, responded to 27-year-old Charlotte Proudman saying: "delighted to connect. I appreciate this is probably horrendously politically incorrect but that is a stunning picture!!!".

Proudman, of Mansfield Chambers, replied that she found Carter-Silk's message "offensive" and his behaviour "unacceptable and misogynistic", then proceeded to name and shame him publicly on social media.

The barrister, who specialises in violence against women and girls, publicised their exchange on Twitter with screengrabs of the LinkedIn messages. Her move

caused a Twitterstorm which was followed up in the traditional media, leading to dozens of articles for and against her. Had she gone too far in publicly humiliating another person, when a firm but private word back to him on Linked In might have been enough? Was she right to “out” behaviour that crossed a professional line? Whichever your view, it’s certainly a salutary tale in keeping comments strictly professional and appropriate on social media.

*Source: The Guardian, 8 September 2015,*  
<http://www.theguardian.com/law/2015/sep/08/charlotte-proudman-alexander-carter-silk-linkedin-photo-comment-law-firms>

*BBC Newsbeat, 10 September 2015*  
<http://www6.bbc.co.uk/newsbeat/article/34206080/linkedin-sexism-row-charlotte-proudman-says-lawyer-used-site-like-tinder>

### Is social media to blame for the rise in divorces?

Social media users should pay greater attention to what they post online, Weightmans lawyer Emma Collins has warned, as recent research by Boston University has revealed that they are 32 per cent more likely to think about leaving their spouses.

The research also showed a link between social media use, marriage problems and divorce, the family law solicitor says, urging users to consider the possible consequences of their actions before posting.

Facebook posts in particular are frequently used in evidence when filing for divorce. She cites the example of a wife who found out her husband was committing bigamy when he posted online photos of his wedding to another woman.

The problem, Collins says, is that the casual environment of networks such as Facebook or Twitter makes users feel more relaxed about what they say, even though, once published, information posted on these sites is permanent. This, Collins comments, can lead to inconsistencies between online posts and real-life information.

*Source: On Balance, Spring/Summer 2015* <http://bit.ly/1L262JP>

### Twitter bot corrects ‘illegal immigrant’ tweets

A Twitter bot developed by two American journalists, which suggests alternatives to the words ‘illegal immigrant’ has had a mixed response from around the Twittersphere.

“We see the phrases ‘illegal immigrant’ and ‘illegal alien’ thrown around a lot in policy debates,” Patrick Hogan told *BBC Trending*. “It struck us as a very dehumanising way of referring to someone.”

The bot – a small computer programme which automatically composes and publishes messages – sends a tweet to people using the term ‘illegal’ in relation to migrants, suggesting they use ‘undocumented’ or ‘unauthorised’ instead.

While some users have welcomed the approach, others have responded angrily, with some saying that migrants who have entered the country illegally are by definition 'illegal' migrants.

Campaigners have been arguing that the term is unnecessarily loaded, and some news organisations have now issued guidance for their journalists not to use the phrase.

Source: BBC Trending, 3 August 2015 <http://www.bbc.com/news/blogs-trending-33735177>

## Twitter removes 140-character limit for direct messages

Twitter has removed its long-standing 140-character limit for direct messages in a bid to keep users interested in the service.

As of July, DMs can be up to 10,000 characters, but public tweets remain capped at 140.

The new limit is still less than Facebook's Messenger, which allows up to 20,000 characters, but it is a sign that the microblogging site is now taking DM functionality more seriously, according to *The Guardian*.

Twitter's move to improve its private messaging feature comes in response to the rise in popularity of WhatsApp, the instant private chat application bought by Facebook in February 2014, which claims 500m users.

It is the latest in a number of recent improvements to Twitter's direct messaging feature, which includes the ability to receive DMs from users who are not followers, the possibility of sending pictures or links in DMs, and creating group DMs.

Source: *The Guardian*, 12 June 2015  
<http://www.theguardian.com/technology/2015/jun/12/twitter-character-limit-direct-messages-tweets>

## Facebook internet drone in regulatory limbo

Aquila, the internet drone developed by Facebook which promises to connect billions of people to the internet in remote parts of the world, has unexpectedly fallen into regulatory limbo.

Despite 30 governments expressing interest in Aquila, a fibre-glass drone with the wingspan of a Boeing 737, the project cannot yet be tested because the lack of specific regulation in the US means it cannot be authorised.

The drone would beam a laser from up to 90,000 feet in the stratosphere and is now ready for its first flight test. However, neither of the two US bodies regulating air control and communications have the appropriate rules in place to proceed with authorisation.

The Federal Communications Commission (FCC) has no provisions dealing with laser-carrying objects flying at altitude, and the Federal Aviation Authority (FAA)

has not yet decided how commercial drones should be regulated. Only last week (17 August) did the FAA finally authorise the first drone flight over New York. Facebook nevertheless plans to trial the first drone in late 2015 or early 2016.

Source: *sUAS News*, 14 August 2015 [www.suasnews.com](http://www.suasnews.com)

*Wired*, 31 July 2015 <http://www.wired.com/2015/07/facebook-poses-test-737-sized-solar-powered-drone/>;

*Newsy*, 31 July 2015 <http://www.newsy.com/videos/facebook-s-internet-drone-is-already-set-for-flight-testing-1/>;

*Global Legal Post*, 3 August 2015 <http://www.globallegalpost.com/big-stories/facebook-in-talks-with-30-governments-on-drones-but-awaits-rulebook-28500375/>

## Twitter jokes protected by copyright

Microblogging platform Twitter has been taking down tweets allegedly in breach of intellectual property laws for lifting content from another user's tweet without citing the source.

The practice came to light following a successful request by freelance writer Olga Lexell who tweeted a joke which, she said, had been re-tweeted without attribution to her as the author, in breach of the US's Digital Millennium Copyright Act (DMCA).

Twitter has since been complying with requests from users complaining their content, mostly jokes, has been stolen by others, referring to the users as 'copyright holders'.

According to *The IPKat*, writing in *Legal Week*, it appears possible that a 140-character tweet could be considered sufficiently original to benefit from copyright protection in the EU as well as in the US. In both legal systems, there could also be a defence, such as the 'fair use' doctrine, although how this would operate is yet unclear.

Source: *Legal Week*, 30 July 2015 <http://www.legalweek.com/legal-week/blog-post/2419997/no-laughing-matter-are-twitter-jokes-protected-by-copyright>

## Facebook launches limited 'online executor' feature

UK-based Facebook users will be able to appoint a third party to take partial control of their profile after their death.

The so-called 'online executor' will have access to a limited number of tools, such as making a final post, replying to new friend requests and changing the profile picture, but they will not be able to publish new posts.

The functionality, available to US users since February 2015, has been extended to Britain amid calls for greater clarity in the management of deceased users' digital assets.

Digital assets range from email addresses and online banking details, to Twitter accounts and LinkedIn profiles, but there is no standard practice among online platforms with regards to how these should be handled following the death of their owner.

Emma Myers, head of wills, probate and lifetime planning at Saga Legal Services, who lobbied for the feature to be available in the UK, said other online providers and social media sites should “follow Facebook’s move and put procedures in place to protect someone’s digital legacy”.

*Source: Solicitors Journal, 30 July 2015*

<http://www.solicitorsjournal.com/news/management/technology/23529/facebook-k-launches-'online-executor'-function>

## European claims against Facebook on hold

Data protection claims in three separate actions against Facebook, started in the Belgian, Austrian and Irish courts respectively, have been hit by procedural setbacks and delays.

In one case, the Belgian Privacy Commission brought a claim against the social network’s EU subsidiary, based in Ireland, claiming it should be held to account in Belgium for alleged breaches of Belgian and EU laws on privacy in respect of its Belgian users. The case was due to be heard on 18 June and no judgment has been released yet.

Meanwhile, a class action started in Austria by Facebook user Max Schrems has stalled in the Vienna Regional Court, which held on 1 July that it didn’t have jurisdiction to hear the claim because Schrems was not a “consumer”. Schrems has said he would appeal. ([The Guardian, 9 April 2015](#))

The third case, also brought by Schrems, this time in the Irish High Court, challenges the transfer of personal data under the EU-US safe harbour agreement. This has been referred to the Court of Justice of the European Union. Advocate General Bot was due to give his opinion on 24 June but that has been delayed.

However, whether Facebook and other US online giants with EU subsidiaries should be governed solely by the laws of their member state of establishment could soon be a moot point. EU ministers have reached agreement on what they say are tougher data protection rules which will be discussed with the European Parliament after the summer break.

*Source: Collyer Bristow briefing, The Lawyer,*

<http://www.thelawyer.com/download.aspx?ac=81770>

<http://www.wsj.com/articles/austrian-court-rejects-max-schrems-facebook-privacy-case-1435749157>

## Employees no longer have private lives

A bar brawl involving two employees from New Zealand’s Work and Income Department has led to renewed warnings that private moments can end up in the public eye, with negative consequences.

The altercation, between the employees and staff at an Irish pub, escalated into alleged racist slurs and found its way on to social media, leading to their suspension from work pending investigation.

In response lawyers have said conduct outside work which can adversely affect an employer's reputation can be grounds for disciplinary action and dismissal. One key question is whether an event is confined to a very small situation or viewed by the wider public.

*Source: Stuff.co.nz, 21 July 2015 <http://www.stuff.co.nz/business/better-business/70404832/employees-private-lives-no-longer-exist-lawyer-says>;*

*Global Legal Post, 23 July 2015 <http://www.globallegalpost.com/big-stories/lawyer-declares-the-end-of-private-lives-for-employees-61374321/>*

## Employee sacked for offensive tweets not unfairly dismissed

An employee sacked for posting offensive tweets on his personal account was not unfairly dismissed, the Employment Appeal Tribunal (EAT) has ruled.

Mr Laws was a manager at Games Retail, with responsibility for more than 100 stores, which he followed from his own Twitter account to monitor their activity. The account did not associate him with his employer and on several occasions he tweeted offensive comments. These were reported to the company and led to his dismissal for gross misconduct.

Mr Laws challenged the decision before the employment tribunal, where the judge initially found that the former manager had set up his Twitter account for private use and had therefore been unfairly dismissed.

On appeal from Games Retail, the EAT said 65 stores had followed Mr Laws back and that they would have seen the offensive tweets, as would customers also following him. Mr Laws' dismissal was therefore not unfair.

*Source: Employment Cases Update*

<http://www.employmentcasesupdate.co.uk/site.aspx?i=ed24867>

## Facebook insurance fraudster sentenced to community service

An insurance fraudster who used his Facebook page to advertise car hire services has been sentenced to 12 months' community service and ordered to undertake 150 hours of unpaid work.

Waseem Akhtar obtained insurance for high-value cars, which he then hired to young drivers at the weekend via his Facebook page. The fraudster deleted and added additional drivers on his policy multiple times. This prompted his insurer, Aviva, to investigate. It emerged that Akhtar also lied about his no-claims history.

Akhtar pleaded guilty in Bradford Crown Court to three counts of false no-claims discount submissions and one of possession of articles for use in fraud.

Aviva said the scam was worth thousands of pounds.

Source: Post Online, 24 July 2015

<http://www.postonline.co.uk/post/news/2419256/facebook-fraudster-given-community-order>

## Facebook hands over user information to New York prosecutors

Facebook cannot object to search warrants requesting information on hundreds of users suspected of social security fraud, a New York state appeals court has ruled.

Earlier this summer, the court upheld an earlier decision rejecting Facebook's defence that the request breached users' rights under the Fourth Amendment. Only the users themselves could challenge the warrants, it said.

The social network handed over the information last year. This helped convict dozens of suspects including police officers and firefighters feigning illness after the 11<sup>th</sup> September attacks.

New York prosecutors say they have recovered nearly \$25m from public employees whose Facebook pages showed them practising sport, in contradiction with claims that they were disabled.

Facebook said it disagreed with the outcome of the case and has received the support of other large internet businesses. The company said the ruling could cause "a troubling precedent" giving prosecutors unjustified access to digital information.

Source: Reuters, 21 July 2015

<http://uk.reuters.com/article/2015/07/21/facebook-privacy-warrants-idUKL1N10116220150721>

## Racist Twitter troll to pay Lord Sugar £100

A 17-year-old Twitter troll has been ordered to pay Lord Sugar £100 for racist abuse and has been referred to a youth offender panel.

The teenager, from Preston, Lancashire, pleaded guilty to sending racially aggravated communications and was also told to pay £85 costs and a £15 victim surcharge.

In a series of tweets, the peer, who lives in Chigwell, thanked Essex Police for tracking down the abuser and said the level of abuse had been so great that he had to "ask for help".

In 2013 Lord Sugar himself was investigated following claims that he had posted racist tweets but the police said "no criminal offences" had taken place.

Source: BBC News, 30 July 2015 <http://www.bbc.com/news/blogs-trending-33735177>

## Should social networks actively combat hate speech?

The publication on Reddit of extreme racist comments in the wake of the Charleston church shooting in June, which the discussion site refused to take down, has reignited the debate of whether online platforms should do more to combat hate speech.

Reddit has come under fire before for upholding a strict free-speech stance and refusing to ban users who had posted extreme comments. Offensive as such comments may be, they are legal under US law, according to a *BBC Trending* blog. Equally, Reddit is at liberty not to allow them.

And so, a month later, Reddit banned a number of racist and anti-gay discussion groups – known as subreddits – saying it was “banning behaviours, not ideas”, to help prevent harassment.

Some observers say this doesn't go far enough and that the site has become a home for extreme racist and white supremacist organisations. Others, however, suggest that social networks are not best placed to censor hate speech, and that they should instead think of means that allow the users themselves to police the online forums.

Source: *BBC Trending*, 29 June 2015 <http://www.bbc.com/news/blogs-trending-33288367>