



# KYSEN Social Media Update



Welcome to the Winter 2013-2014 edition of our Social Media Update. This e-update details the best of the last couple of months' press articles and online discussions about digital and social media as they apply to the professions.

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.

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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**This issue**

2013 was yet another milestone-filled year in the world of social media. By February 2013 the number of Facebook users had passed the 1.06 billion mark. In August, for the first time ever, US adults spent more time using mobile devices than watching TV. In November Twitter launched its IPO.

As the year drew to a close and 2014 dawned, social media continued to shake up every aspect of the law from libel and defamation to contempt of court and CPS; from copyright and data protection to privacy.

And 2014 will undoubtedly be another year of debate as law seeks to catch up with the rigorous demands put on it by an ever changing social media landscape.

## **2013 in social media - the year that was**

Professor Steven van Belleghem reviews the year. Here are some highlights. 1.1 million tweets were sent during the inauguration of president Obama in January. By February the number of Facebook users had passed the 1.06 billion mark. In May YouTube announced that 100 hours of video clips were being uploaded every single minute and Yahoo bought Tumblr for \$1.1 billion. In June NSA whistleblower Edward Snowden hit the headlines and shone the spotlight on privacy, data and the internet; and Instagram sought to compete with Vine by launching 15-second videos. In July Facebook launched TV commercials. In August, for the first time ever, US adults spent more time using mobile devices than watching TV. This was also the month we saw the \$17 billion tweet. When Carl Icahn posted his investment in Apple, on Twitter, Apple's market cap rallied by \$17 billion. In September, Twitter announced its IPO by tweet and when Twitter did go public in November the share price soared 73% driving up the company's value to \$25 billion. When Nelson Mandela sadly died on 5 December, many heard the news on Twitter before it hit the main news sites. 2013 also saw the introduction of virtual currency Bitcoin.

*Information source: The Daily Telegraph, 30 December 2013*

## **Twitter: the bête noire of journalism or is it?**

*The Australian* published an article about the "path to ruin" of the journalism profession due to journalists' use of Twitter. However, there are many arguments that run contrary to this and examples that show how Twitter and social media has played a vital role in newsgathering and dissemination during some recent historical events including during the 2011 uprisings in Egypt and the Middle East; the 2011 London riots and Bin Laden's death in May 2011.

*Information source: The Guardian, 13 November 2013*

## **Twitter and libel**

The advent of social media has seen libel law become hazy. Currently, broadcast and press outlets have responsibility for anything they broadcast or publish. However, responsibility for comments on Twitter lies with their author (the FT talks of a "constellation of one-person publishers") and any re-tweeters of the information, but not with Twitter. This was seen in the Bercow and McAlpine case. However, things could change when the Defamation Act 2013 comes into force in late 2014 making it harder for maligned parties to seek redress. Courts will require proof of "serious harm" to reputation before a case can go ahead. There will be a statutory defence of "publication on matter of public interest" and "truth and honest opinion".

*Information source: The Financial Times, 14 November 2013*

## **Twitter as a marketing tool**

Twitter has launched its self-service advertising platform to small businesses in the UK, Ireland and Canada. Ravi Narasimhan, product manager at Twitter, said the new Twitter service will allow companies to "amplify" their presence on the platform, while allowing users total control of their message. Twitter is partnering with O2 Business to help small

businesses engage with their audience and is launching a tool to support businesses to improve their social media engagement. Each SME that purchases the tool will receive a £50 Twitter advertising credit.

*Information source: Business Zone, 14 November 2013*

### **Twitter as evidence**

Police became aware of a collision between the motorist Emma Way and a cyclist on 19 May 2013 because Way, 22, from Norfolk, tweeted "definitely knocked a cyclist off his bike earlier. I have right of way - he doesn't even pay road tax!" using the hashtag #bloodycyclists. As a result Way was found guilty of failing to stop after a collision and failing to report an accident. She was later sacked from her accounting job. Way described her tweet as her "biggest regret" and rated it "11 out of 10" on the stupidity scale.

*Information source: bbc.co.uk, 20 November 2013*

### **Twitter and CPS**

Isabella Sorley and John Nimmo have now been sent to prison for improper use of a communications network under Section 127 of the Communications Act, in the case of offensive tweets (including rape threats) being sent to feminists Stella Creasy MP and journalist Caroline Criado-Perez in response to their campaign for Jane Austen to appear on the £10 bank note. James O'Flinn, partner at Mundays outlined the current legal position. Threats made via Twitter can be prosecuted under the Malicious Communication Act 1989 and the The Communications Act. However, because of the level of anonymity on the internet, tracing suspects needs internet service provider cooperation to actually track perpetrators down. Social media sites like Twitter need to take a greater role in dealing with online abuse.

*Information sources: The Independent, 24 January 2014, The Times, 7 January 2014, CPS online, 16 December 2013, The Lawyer, 14 January 2014*

### **Twitter - the role of employer and employee**

Steve Kuncewicz, social media lawyer at Bermans law firm provides guidelines on using a single Twitter account for both work and personal communications. Key advice includes treating "what you do online in the same way as it would offline."; "finding a balance between being professional and being interesting"; and considering employer-related issues such as avoiding bringing your employer into disrepute. Kuncewicz also flags up "human rights or data protection issues by posting a third party's personal information online or unwittingly disclosing confidential information." He suggests adding a disclaimer to your profile "making it clear that retweets do not equate to endorsements and that your views are not necessarily those of your employer is a good start, as is not using your employer's name in your user name." Though Jennifer Smith, associate at JMW Solicitors, says that a disclaimer alone will not be enough to protect against possible claims. She says that "such disclaimers do little to protect either an individual or their employer in the event of a controversial communication via social media. A Twitter disclaimer is not going to prevent an employer from dismissing an

employee who says something that reflects badly, and it's not going to prevent people from associating an employee's views with their employer."

A good example of this could be seen in the case of Justine Sacco, a US public relations executive who lost her job with the media company IAC, after tweeting the racist message: "Going to Africa. Hope I don't get AIDS. Just kidding. I'm white." Ms Sacco has now apologised for the tweet, saying: "Words cannot express how sorry I am." She lost her job with employer IAC as a result, who issued a statement saying, "The offensive comment does not reflect the views and values of IAC. We take this issue very seriously, and we have parted ways with the employee in question."

*Information sources: Financial Times, 20 November 2013, bbc.co.uk, 22 December 2013*

## **Twitter and the courts**

### - Attorney General advice

Users of Facebook and Twitter are to be warned about comments online that could threaten a fair trial and breach the Contempt of Court Act 1981. Such notices have previously only been sent to broadcast and print media journalists. Now they will be circulated much wider, including on social media platforms for all to see. They warn that any comments on high-profile cases need to comply with the Contempt of Court Act 1981. Attorney General Dominic Grieve said: "Blogs and social media sites like Twitter and Facebook mean that individuals can now reach thousands of people with a single tweet or post. In days gone by, it was only the mainstream media that had the opportunity to bring information relating to a court case to such a large group of people that it could put a court case at risk. That is no longer the case, and is why I have decided to publish the advisories that I have previously only issued to the media".

The warnings will not come soon enough for some. For example Peaches Geldof got caught out when she tweeted of the identities of the two mothers of the abused babies in the case involving Ian Watkins, former frontman of the Lostprophets.

### - Jurors and Internet use

Another key aspect of contempt of court comes with the use of social media and internet by jurors. Rules have been proposed that will see strict criminal liabilities on jurors; and would allow judges to remove jurors' internet-enabled devices. Jurors could face up to two years in prison if they search the internet for information about cases beyond the facts revealed in court. The report also suggests that the Attorney General could force the media to take previously published stories offline if they are deemed to jeopardise a fair trial. Backing the Law Commission recommendations, he said: "It is essential that juries are trusted to take decisions, with proper direction, even if very occasionally those decisions will not accord with the view that lawyers, judges or the crown may hold [...] It has always been necessary to direct jurors not to discuss the case with anyone, not to visit the scene of the crime, not to research the witness or defendant details. And now such directions extend to not researching the case on the internet." However, some criticise this Draconian approach to jurors. High profile cases of "online" contempt of court have been well publicised. Research from University College London found "only a

very small proportion of jurors used the internet in ways that could be legally problematic". Education would seem to be key. The UCL study found that a quarter of jurors were unclear about what they could and could not do on the internet.

*Information sources: Financial Times, 4 December 2013, The Times, 5 December 2013, The Guardian, 9 December 2013, The Guardian, 11 December 2013, Press Gazette, 16 January 2014*

### **Data protection, privacy and hacking**

Social network and internet providers in the US are facing a battle regarding data on two fronts - both trying to fight hackers that seek to mine the data of their users, but also regulations and claims that aim to curb their own use of customer data.

Facebook "misleads users into believing they have a secure, private mechanism for communication, when in fact Facebook... mines user data and profits from those data by sharing them with third parties". This is the claim being made against Facebook on behalf of Facebook users by Matthew Campbell and Michael Hurley, who are seeking a class action in the US.

Meanwhile, Peter Fleischer, global privacy counsel at Google, said the European Union's "flawed" attempt to change data-protection rules (to make sure digital content and social media platforms are covered by the law) is "dead". Jan Philipp Albrecht, a German Green Party politician who has driven the draft EU law through the European Parliament said in response that this is "another try of Fleischer to kill the data-protection regulation by calling it dead, [...] the EU would have already agreed if Google wouldn't fight every regulation".

In October EU leaders bowed to U.K. demands for a slowdown in the adoption of the data-protection law, relinquishing a 2014 deadline to consider the effect of the legislation on businesses in favour of a promise to introduce the plans in a "timely fashion".

However, the UK is fighting its own battle with Google. Google has faced a group legal action by British users of Apple's Safari browser when their online habits were purportedly tracked against their wishes in order to provide targeted advertising. The High Court ruled that Google can be sued by a group of Britons over this alleged breach of privacy, despite the company being based in the US. Google has vowed to fight the decision. However, if it stands, the ruling could set a precedent in regard to all US internet firms with UK customers.

Meanwhile, LinkedIn Corp. (LNKD), has said that hackers have been involved in a practice, known as data "scraping" - creating thousands of fake member accounts and taking data from member profile pages. The company has filed a complaint against the unknown hackers in federal court in San Francisco.

*Information sources: The Daily Telegraph, 2 & 16 January 2014, The Times, 3 January 2013, Bloomberg, 7 & 8 January 2014.*

### **Social media and copyright**

As regards the EU, in the 2009 *Infopaq* case the court found that "copyright may subsist in a text extract of 11 words and - more in general - it subsists whenever a work is its

author's own intellectual creation", so includes tweets. Since 2009 the EU standard of originality has been further defined and has to involve "creative freedom", a "personal touch" and "free and creative choices".

In relation to the US, a jury in a landmark case has ordered two agencies - Agence France-Presse (AFP) and Getty Images - to pay a total of \$1.2m (£740,000) to photographer Daniel Morel for photographs the agencies acquired through Twitter. Morel took pictures in the aftermath of the Haiti earthquake and created a Twitter account (@PhotoMorel) for them. The pictures were subsequently downloaded by an AFP and distributed to Getty without Morel's permission. Judge Alison Nathan ruled that the two companies were liable for infringement. Twitter has stated that "users maintain exclusive rights to any photographs featured on their site."

#### - Risk of infringement when modifying tweets

Another recent case shows the emergence of new questions around intellectual property and Twitter. On 4 January the *New York Times* featured an advert which included an edited tweet by US film critic Anthony Oliver Scott to promote the Coen brothers film "Llewyn Davis". Scott's original tweet read: "You all keep fighting about Wolf of Wall St. and Am Hustle. I'm gonna listen to the Llewyn Davis album again. Fare thee well, my honeys." The tweet published in the *New York Times ad* without Scott's authorisation read as follows: "I'm gonna listen to the Llewyn Davis album again. Fare thee well, my honies." This raises the question of whether Scott could claim copyright infringement of his tweet. Under EU standards, his tweet would like be sufficiently original to be protected under copyright, and the unauthorised editing may even constitute a violation of Scott's "moral right of integrity". However, it is unclear what would happen in a US court.

*Information sources: The Guardian, 26 November 2013, Legal Week, 10 January 2014, bbc.co.uk, 7 January 2014*



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