

SOCIAL MEDIA LAW

PAPER 2.1

Death by Facebook—The Importance of Reputation Management

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DEATH BY FACEBOOK—THE IMPORTANCE OF REPUTATION MANAGEMENT

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I. An Overview

I actually didn't give a damn about Facebook, LinkedIn, Twitter and other social network platforms until around April 27, 2009, when my niece in Calgary posted my mother's untimely death as a very surprising status update on her Facebook page, having just heard about it from her sister in Victoria milliseconds before.

My own daughter in New Westminster read my niece's status update on her Facebook page, and rushed me all the way home from my son's lacrosse game in Surrey to show me the post and give me the bad news.

It was Death by Facebook; a phrase so catchy, I use it all the time to illustrate how the use of social media without having one's brain switched on can be embarrassing, inappropriate, and career limiting.

My niece's short-lived career as a "one time online obituary writer" peaked (and ended) with that shocking pronouncement, because the rest of the family (who you'd think might have wanted the news conveyed a tad more "gently" than on Facebook), had no idea my mother was even sick.

Or for that matter, dead.

I've certainly heard the comment more than once, "*How could your niece be so insensitive to post your mom's death on Facebook before the rest of the family knew?*" In terms of family dynamics, one could say posting my mom's demise on Facebook may not have earned my niece many brownie points for good "online reputation management." In fairness to her, I don't think my niece was trying to be insensitive. My mom raised my two nieces from the time they were babies, so my Mom (their grandmother) was the only "mother" they had ever really known. Losing her was like losing a "real" mother. My two nieces were in shock and grief, but rather than telephoning her friends (and one would have hoped, her uncle) to share the news and grieve "one on one," my niece in Calgary did what many people younger than 30 might well have done in the same circumstances. She shared the news with her "online family"; as insensitive as that might appear to her off-line family. In a twist of irony, only a few weeks before my mother's untimely death, I had been in Victoria, where my mother lived, and stopped in to see her on the way to the Vancouver ferry after a long lunch with an old friend. And wouldn't you know it, my Mom's last words to me that day were about her wanting to get on Facebook.

I tell this story because it's illustrative of a few things:

1. On social media, everyone can communicate anything within their network of friends, no matter how inappropriate or insensitive it may be. Even obituaries.
2. What people say and do on Social Media (including the photographs and videos they post) are "somewhere" forever. Even if my niece had removed her post about my mother's death an hour after she posted it, I still saw it and could have saved the page by a mere screen shot.
3. There are distinct generational differences between what the under 30 set are comfortable sharing online and what the over 40 crowd would share.
4. Facebook and other social media platforms aren't going away any time soon.

Five months and four days after my "Death by Facebook" moment, I was asked to write a book about On-Line Reputation Management, and the importance of protecting yourself from yourself when using social media.

It's not for lawyers per se. It's really aimed at parents, teachers, and small business people who don't have much experience with social media, so that they can get an introductory sense of it.

So without trampling on the presentations of my co-presenters, I want to tell you what I've learned, to give you an overview of Social Media from the Reputation Management angle.

II. The Revolution Starts with a Tweet (Or a post. Or a text. Or on YouTube.)

Facebook—In July 2010, Facebook reported that it had over 500 million registered users; if it were a country, it would be the third largest nation in the world after China and India. (By 2015, it may surpass both!)

Facebook states that the average user had 130 friends, and that people spend more than 700 billion minutes per month on Facebook. Its users share more than 30 billion pieces of content each month. The average user is connected to 80 pages, groups, and events, and *creates* 90 pieces of content monthly. Fifty percent of Facebook's active users log on every day.

Interestingly enough, only 30% of Facebook's users are in the US. There are more than 150 million active users currently accessing Facebook through their mobile devices such as BlackBerry, iPhone, and other mobile telephones. Facebook's own statistics show that people who use Facebook on their mobile devices are twice as active on Facebook as laptop or desktop users. You wonder why Television is dying? Everyone's eyes seem to be on their computers accessing Facebook and other social networking sites.

And it's important to know that Facebook and Twitter have been crucial to communications between demonstrators in the 2011 Egyptian revolt. Social media platforms were so important, the Egyptian Government shut off all Internet service in Egypt to try to prevent demonstrators from organizing using social media.

Twitter—According to Twitter's website: "Twitter is a real-time information network powered by people all around the world that lets you share and discover what's happening now." Twitter enables users to send and read other user's messages (called "tweets"), which are text-based posts of no more than 140 characters to a mass audience of "followers." Tweets are visible publicly, being the very intention of Twitter. Users may subscribe to other authors' tweets.

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San Antonio-based market research firm Pear Analytics analyzed 2,000 tweets which were sent in English from the US over a two-week period in August 2009 and categorized the tweets as the following:

- Pointless babble (what one might also call “small talk”): 41%
- Conversational: 38%
- Pass-along value: 9%
- Self-promotion: 6%
- Spam: 4%
- News: 4%

This study did not canvas “starting revolutions.”

There were more than 100 million registered Twitter users as of May 2010. The US Library of Congress stated that it will be acquiring, and permanently storing, the entire archive of public Twitter posts since 2006.

A. Egyptian Revolution

Mohammed El-Madany, “If it wasn’t for technology the revolution in Egypt would not have taken place—it is Facebook and Twitter that started all of this.”

Ghonim in Cairo



Wael Ghonim’s popularity in Egypt is growing as he joined anti-government protests on Tuesday for the second day in a row.

Ghonim, Google’s head of marketing for the Middle East and North Africa, took part in the protests on [Jan. 25 when they began](#), but was taken into government custody on Jan. 27 and held [until Monday](#).

The Cairo native, who was living in Dubai before the demonstrations began, was kept blindfolded during his 12-day captivity, he said.

[Once freed](#), Ghonim sent out a couple of messages on Twitter, gave a quick interview, returned to Tahrir Square in Cairo, which has been the center of the protests that Tuesday entered their 15th day.

The protests have called for many government reforms, but most of all, the removal of President Hosni Mubarak, who has been in power for about three decades.

As reported by Alexandra Zavis on The Times’ [Babylon & Beyond](#) blog, Ghonim took an opportunity on Tuesday, before a crowd of thousands and with a microphone in hand, to call for Mubarak’s ouster.

Many in the crowd said they were inspired by Wael Ghonim, who gave [an emotional television interview](#) Monday night in which he sobbed over those who have been killed in two weeks of clashes between protesters and security forces.

Ghonim, Google’s head of marketing for the Middle East and North Africa, administered a Facebook page that helped spark the uprising against President Hosni Mubarak’s oppressive regime.

The Associated Press reports that Ghonim spoke briefly to the crowd, telling them, “We will not abandon our demand and that is the departure of the regime.”

When he finished speaking, the crowd erupted in cheering, whistling and deafening applause, the AP said.

Google officials were unavailable for comment Tuesday morning.

LinkedIn—Whereas Facebook seems to be for friends connecting with other friends (and branding for businesses in search of “fans”), LinkedIn is for businesspeople connecting with other businesspeople, whether for jobs, business opportunities, profile upgrading, information, or other networking where one knows that other businesspeople will be looking. It had 75 million registered users in 2010.

Others—Facebook and LinkedIn aren’t the only social networking sites that people belong to and use. Depending on where you are in the world, and what you’re looking for in a social networking site (i.e., business, pleasure, music, dating, shopping), your age, your occupation, your first language, the “market niche” of the site, and what network your other friends and contacts are on, there’s Bebo, MySpace, Friendster, Hi5, Orkut, PerfSpot, Yahoo 360, Zorpia, Netlog, SalesSpider, Stumbleupon, del.icio.us, digg, Classmates, Xanga and many more, especially if you include all the “dating” sites.

YouTube—YouTube, the online video-sharing platform, announced in 2010, that 2 billion YouTube videos were viewed per day. In 2010, it celebrated only five years of existence. YouTube has made it possible for anyone with a video camera (or a camera, or a cell phone that can shoot video) to post a video on the Internet that can be seen by hundreds of millions of people almost immediately.

YouTube is not without criticism. It relies on its users to highlight videos or content that is arguably pornographic, that contains copyrighted or trademarked property owned by others, or otherwise contains questionable content that might be deemed defamatory or a breach of YouTube’s terms of service that all who upload must agree to.

Clean Cut Media, a website studying the influences of media and pop culture, states that YouTube is the fourth largest destination on the Internet, and the largest video-sharing site. It has 300 million worldwide visitors per month allowing in excess of 5 billion video streams per month. Every day, close to 3.5 million people visit YouTube. The number of videos posted on YouTube in 2008 was estimated to be 83.4 million, although other sources believe the number to be closer to 150 million in 2010.

YouTube has created its own celebrity culture whereby so-called “ordinary people” become famous for no other reason than having appeared on YouTube. Or they shot a YouTube video that becomes popular and goes viral.

YouTube also has an interesting business model, at least for the “pirated” clips you can see on Youtube if you look for them. Pirated clips of movies, TV shows and other copyrighted productions posted by third parties that you’d think would be pulled off of YouTube by the legal departments of Paramount, 20th Century or other copyright owners, are often allowed to remain on YouTube as long as YouTube and the copyright holder split the ad revenue generated from the page the clips are on.

And whether you like it or not, YouPorn (the pornographic website modeled on YouTube but which is in no way related to YouTube), is the largest free pornographic site in the world and has been ranked among the top 50 most accessed websites in the world.

III. Cell Phones and Texting

The very first mobile telephones were put into New York City police cars in 1924, although cell phones or mobile phones didn’t become prevalent until the early 1990s (when some of them looked like, and were as heavy as, bricks). The adoption of this technology has been astounding and transformative, especially in the developing world, where some countries in Asia and Africa, the finance and development of land lines has taken a backseat to the adoption of mobile telephone infrastructure.

By the end of 2009, there were an estimated 4.6 billion mobile phones in use throughout the world. China has a staggering 786,000,000 mobile phone subscribers. India has more than 600,000,000 mobile phone subscribers and the US has more than 285,000,000. Even less developed countries such as Pakistan (97,000,000 subscribers) and Nigeria (64,000,000 subscribers) have growing mobile phone markets.

Most cell phones manufactured since 2005 have the ability to Short Message Service (SMS) or text message if the subscriber pays for it. Although anyone older than 50 might find the idea of texting with one's cell phone ridiculous when one could just as easily phone the person directly, texting short messages is often used when it's inconvenient or impractical to have a telephone conversation, such as during a meeting, when the surrounding noise (or company) makes a telephone conversation problematic, or if you're a student, while in class. If you're a parent and your kids don't pick up their cell phones or check their voicemail, the kids will certainly check their text messages. So remember, you're more likely to reach them with a text these days than a mere phone call.

Of all mobile or cell phones 75% have text capabilities. SMS text messaging, where the sender is limited to 140 characters, may well be the most utilized text data application in the world today, even more prevalent than email, given its widespread usage in China, India, and other parts of Asia. In China, it's estimated that 700 billion text messages were sent in 2007. In the Philippines, more than 400 million text messages a day are sent (being 142 billion text messages a year). Text messaging is so prevalent in India, service providers text transit alerts, cricket scores, and allow for mobile billing, and banking services to be performed via text messaging. Over the years, text messaging has expanded to include digital images, sounds, and video sent via Multimedia Messaging Service (MMS).

There have been unfortunate social side effects of the use of texting on mobile phones. Driving while texting is one obvious example and many jurisdictions have banned all use of mobile devices while driving given that automobile accidents are more likely to happen when the driver is texting a message and not watching the road. Another is the misuse of "language" that has evolved through the use of texting shorthand (e.g., lol, 2day, lmao, b4, gr8); changing English and other languages as well (e.g., in China, the numbers 520 sound like the Mandarin words for "I love you").

Perhaps the worst social side effect from texting, and one that relates to reputation management, involves "sexting," where teenagers try to impress (or entice) each other by sending either sexual content within a text message, or sexual images they have taken of themselves with their cell phones. What's worse is when these private communications are re-sent to others; the sender (often being a teenage boy who received the "sext") is potentially in possession of child pornography and subject to criminal prosecution. If re-texted to others, these sexts could well lead to convictions for distribution of child pornography.

We can't forget Tiger Woods' exploits that were exposed after his wife Elin, found sexually charged text messages on Tiger's cell phone. A few of Tiger's girlfriends actually kept these text messages, eventually publishing them on websites and releasing them to the media. (Texts aren't private, Tiger!)

IV. Social Media and Online Learning Lessons (in no particular order)

1. Tiger Woods—Don't SMS any of your 121 girlfriends without expecting one of them won't try to sell the transcript to the tabloids.
2. PR Man and FedEx—A public relations executive tweeted to his followers as soon as he got off a plane in Memphis, "I would die if I had to live here." The PR executive didn't realize that Memphis was the Head Office of FedEx, which was one of his company's largest clients. And FedEx found out about the tweet.
3. Don't post your army unit's location—The Israeli army called off an incursion into a West Bank village because a soldier revealed on Facebook his combat unit, the location of the operation, and when the operation was to begin! He said "On Wednesday we clean up Katana and on Thursday, God willing, we go home." His Facebook post was discovered by other members of his unit. The soldier was court-martialed and sentenced to 10 days in jail.
4. Note to all terrorists—Lady Shelley Sawers, the wife of the Director of M16, Britain's Secret Intelligence Service, made postings to Facebook about her husband, their family, and their social and professional circle, which exposed potentially compromising details about where they lived

and worked, who their “friends” were, and where they went on holiday. Lady Sawers put no privacy protection on the account, and any of Facebook’s then 200 million users could see all her posts, no matter what terrorist organization the users belonged to.

5. Screen your candidates or the other side will for you—Former NDP candidate Ray Lam had to abandon his candidacy during the last BC election when the press discovered sexually provocative pictures of him on his Facebook page.
6. How could anyone have prevented this? Dominoes Pizza on YouTube.
7. Every cell phone is a camera.
 - a. Winnipeg school teachers filmed while doing a suggestive lap dance. Robert Dziekański, filmed while the RCMP taser and kill him, and the video is put on the news and Youtube.
 - b. TTC employee’s picture taken while he was asleep (at the switch).
 - c. Phelps snapped with a cell phone camera while using a bong.
 - d. The new paparazzi are everywhere.
8. Stupid Posts/Stupid Tweets/Stupid Photographs/Stupid People
 - a. Defamatory posts about one’s co-workers or employers “published” to Facebook etc., and are discovered and re-circulated.
 - b. Employee claiming disability “outed” for posting pictures of her dancing up a storm the night before.
 - c. Inappropriate photographs (sexual/drunken/drugs).
 - d. Employees discussing their employer by name on line and tarnishing brand.
 - e. Photos/posts savable on a third party computer before removal.
9. Teens and sexting. The teen (boy) in receipt of the sexual photograph on cell from the teen (girl) can be convicted of possession/distribution of child pornography.
10. Tagging and Geotags—metadata embedded in photographs taken from GPS equipped smartphones and digital cameras which, if activated on the phone or camera, will identify the longitude and latitude of where the photograph was taken by the use of the device’s GPS function. So if you take a picture of your house, your car, or your kids, the geotag metadata can reveal the latitude and longitude of where the photo was taken, potentially revealing your residence and other personal information about where you live and work. When latitude and longitude co-ordinates are inserted into search engines such as Google Street View, anyone (including thieves and stalkers) can identify your address. In addition to this information being embedded within metadata on photographs sent by email, geotagged images can be uploaded to sites like Twitter, YouTube, Flickr and Craigslist without the uploader having any idea that his or her location is contained (and traceable) in the image.

This actually happened to Adam Savage, host of the popular “Mythbusters” television program, who posted a photograph of his Toyota Land Cruiser on Twitter, allowing two of his fans to find his residential address by the latitude and longitude unknowingly embedded in the image’s metadata. They inserted that information in Google Street view, and found exactly where he lived.

Or do it on Facebook Places, and everyone knows where you are.
11. You Can Only Have 150 Friends—So why have 850?—A study by Oxford University Professor of Anthropology, Robin Dunbar, indicates that, notwithstanding the propensity to collect several hundred (or even thousands) of friends on Facebook and other social networking sites,

the human mind is only capable of handling no more than 150 relationships at a time. This has been coined in anthropological circles as “Dunbar’s number.” Dunbar believes the upper limit of names we can put to faces is between 1,500 to 2,000, meaning that if you have 2,500 friends on your Facebook site, you probably can’t name 500 of them.

12. YouTube Revenge—Alexi Dymovsky was a Russian policeman and oversaw crimes related to drug trafficking. Upset with the bribery and corruption all around him, and quotas which lead to arrests of innocent people to satisfy the quota, he aired his grievances on YouTube in a series of videos he recorded in 2009. “I am not afraid,” he explains, “I am telling my name ... But I cannot stand detecting the nonexistent crimes, imprisoning people who are not guilty. I can’t stand it anymore.” His videos were viewed by millions of people in Russia. The lessons here? First, aggrieved employees and “whistleblowers” now have a digital soapbox to stand on to tell a worldwide audience about your organization and its shortcomings, whether those shortcomings are true or inflated. And if your organization has embarrassing secrets or skeletons in its closet (even wrongdoings or “crimes”), a disgruntled employee armed with this information may well expose it all on YouTube, to take revenge. Dymovsky was fired, then arrested, held in prison for months, and charged with fraud and abuse of office, which carries a prison sentence of up to 10 years. Drugs were planted in his apartment to frame him. He was beaten up by his former co-workers.
13. Social Media Policy—If you don’t have one yet for your employees, you’d better get one soon.

In summary, the adage for lawyers “all you have is your reputation,” is not just for lawyers anymore. It’s for everyone, no matter how old and no matter what his or her occupation is.

There’s no better way to ruin it than participate in social media without realizing that one’s posts, photos, videos, and tweets can be seen and retained by almost anyone.

V. Social Media is Here to Stay

Digital communications are here to stay, and communication through social media will only get more prevalent until something else supplants it. Online forums, blogs, and social networking sites such as Facebook have revolutionized the way people communicate with each other and share their day-to-day experiences, their opinions (thoughtful, bad, ridiculous, poorly informed, or just plain dull), their photographs, and their videos. It’s never been so easy to “publish” something, and have it read by dozens, hundreds, or even millions of people, almost instantaneously. It could be about a particular product or service offered by a business, a meal at a restaurant, the quality of rooms in a hotel, a high school teacher or university professor or what time the demonstration starts at Tahrir Square in Cairo.

And yes, you can read a death announcement before anyone else in the family hears about it.