Social Media: Worth the Legal Risks?

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Outline:

- What is social media?
- Why use social media?
- Legal risks in using social media
- Content issues
- Employment law issues
- Managing risk
- Questions
What is social media?

- Online social and business networking (e.g. Facebook/LinkedIn/Yammer)
- Online blogs (e.g. Twitter/Blogger.com)
- Online forums (e.g. Mumsnet)
- Online digital media sharing (e.g. YouTube/Vimeo/Flickr)
- Online reference texts (e.g. Wikipedia)
- User generated content (e.g. competitions/postings/crowd-sourcing)
- Online games and applications (e.g. Second Life/Blendr)
Why use social media?

- Promote brand:
  - generate more sales
  - increase brand loyalty
  - reach wider audience
  - engage directly with consumers
  - gather data (e.g. statistics and customer feedback)
  - target advertising/marketing
  - public relations

- Share information more efficiently

- Networking

- Recruitment
Legal risks in using social media – dangers

- What are the inherent dangers with using social media?
  - Global communication → jurisdictional issues
  - Instant nature → lack of planning or foresight
  - Ease of dissemination → permanence/‘on the record’
  - Novelty → lack of policies/understanding of legal consequences
  - ‘social’ nature → blurring of official/personal communications
What happens if social media goes wrong?

- Litigation
- Brand damage
- Loss of control
- Widespread consumer criticism
Most common legal risks in social media

- Copyright/trade mark infringement
- Defamation/malicious falsehood
- Privacy, data and confidentiality
- Child protection
- Disclosure in legal proceedings
- CPRs/ASA
- Contempt of court
- Breach of legislation (e.g. obscenity, inciting religious/racial hatred)
- Competition and prize draw promotions
- Employee misconduct
• Outline:
  ➢ What is social media?
  ➢ Why use social media?
  ➢ Who owns user generated content?
  ➢ Legal risks in using social media – illustrative examples
  ➢ Managing risk
  ➢ Questions
Who owns user generated content?

- Depends on where the user sourced the material:
  - original content
  - copied content
  - adapted content
- Also depends on how the user shares the material:
  - Facebook T&Cs
  - Twitter T&Cs
  - YouTube T&Cs
  - competition T&Cs
- Why does it matter who owns UGC?
Examples of risks in using social media

- Copyright infringement
  - Google image searches
  - Nicola Kirkbride
  - Competitions e.g. Star Wars play dough
  - Crowdsourcing
Nicola Kirkbride
Star Wars
Examples of risks in using social media

• Trade mark infringement
  ➢ McDonalds
  ➢ naming social media
  ➢ referencing competitors
Examples of risks in using social media

• Defamation:
  
  ➢ “lowering the claimant in the estimation of right thinking people generally”
  
  ➢ companies can sue (if business reputation damaged) as well as individuals
  
  ➢ sizeable damages and costs awards
  
  ➢ gaps in insurance cover
  
  ➢ meaning depends on context and contemporary standards
Defamation

- Crowdsourcing:
  - McDonalds Twitter campaign #McDStories
  - Waitrose Twitter campaign
  - Shell posters
TURN THE POWER ON. IT'S TIME TO MELT SOME ICE!
LET'S GO.
OUR MONEY IS WORTH MORE THAN ANY ANIMALS THAT USED TO LIVE HERE
LET'S GO.
Defamation - defences

• Defence of “innocent dissemination”:
  ➢ (1) not the “author”, “editor” or “publisher”
  ➢ (2) took reasonable care in the publication of statement; and
  ➢ (3) did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement

• Defence under Electronic Commerce (EC Directive) Regulations 2002
  • *Tamiz v Google* (2012)
  • Moderation dilemma
  • Malicious falsehood
Examples of risks in using social media

- Privacy – Human Rights Act 1998
- Data protection – Data Protection Act 1998
- Confidentiality
  - Facebook case: Mathew Firsht v Grant Raphael (2008)
  - Nine West
- Child protection
  - Safeguarding of Vulnerable Groups Act 2006
  - Habbo
Examples of risks in using social media

- Disclosure in legal proceedings – CPR 31.6
- Consumer Protection from Unfair Trading Regulations 2008/Advertising Standards Authority CAP Code
  - Rio Ferdinand - Snickers
- Contempt of court
  - Sir Alan Sugar
- Breach of legislation:
  - Connor Brown
  - obscenity
  - inciting religious/racial hatred
- Competitions and prize draw promotions
  - compliance with T&Cs
  - local law e.g. language translations
Managing risk

• Assess risk
• Social media usage policy
• Moderation
• Terms and conditions and privacy policy
• Transparency in ‘official’ communications
• Respect intellectual property rights
• Train staff
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