

# **Social Media: A Primer**

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*Social Media in the Courts*

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## **SOCIAL MEDIA: A PRIMER**

### **INTRODUCTION**

Social media is a relatively new form of electronic communication that brings fascinating challenges in the social, culture and legal dimensions. It is used by an estimated two billion people worldwide and is also becoming an important tool for businesses, governments, and media outlets. Social media evidence has been introduced in civil and criminal cases ranging from defamation to cyberbullying to hate speech. Ill-considered social media postings have caused the downfall of many public figures. Information derived from social media is also a significant investigative tool for law enforcement, private investigators, journalists, and a source of endless entertainment for the merely curious.

The goal of this paper is to lay the groundwork for an informed discussion of the technical and legal aspects of social media. It should be read in conjunction with other materials which cover the introduction of digital evidence and relevant case law. A further purpose of this paper is to address the evolving and future technologies that will impact the use of social media in the legal context in the future, and to identify key emerging issues.

### **MOTIVATION: SOME THORNY QUESTIONS THAT MIGHT COME YOUR WAY**

- Can publicly posted wakeboarding photos be used to curtail disability benefits?
- Is it OK for a University admissions officer to consider an applicant's public postings?
- If a lawyer has access to a potential juror's LinkedIn profile should she or he look at it?
- Should you accept a retainer to "help erase" someone's presence from the web?
- What would you do if you saw a photo of your boss on mugshots.com?
- Somebody is impersonating my deceased father on Facebook. What should I do?
- Should attorneys use social media for business communication? Are there risks?
- Can a company give an employee a social media linked fitness monitor and require that it be worn 24/7?

Learning about the intersection of social media and the law will not give you all the answers to these questions. It will help provide a framework to use what you already know in this context.

## **WHAT IS SOCIAL MEDIA?**

While the term “social media” includes many platforms, as discussed below, social media communications usually have at least some of these characteristics:

- User-generated content (“Web 2.0”)
- Point to multipoint (intended for more than one recipient)
- May be anonymous, pseudonymous, even fraudulent with respect to identity
- May contain text, graphics, photos, sound, and/or videos
- Frequently presented in a chronological “threaded” format
- Hosted on a provider (Facebook, Twitter, Tumblr, Pinterest, etc.)
- May be “deleted” – though often not effectively or completely
- Increasingly “location aware” through phone GPS or cell phone towers
- Significant use by minors
- Content tends to be informal, “on the fly”, unedited, personal
- There can be role confusion/ambiguity, e.g., “city bylaw officer tweeting about dogs”
- Content can sometimes “go viral” through “likes”, “retweets”, “reposting”, or “reblogging”, thereby reaching vast numbers of people

## **HISTORY OF SOCIAL MEDIA**

It is difficult to pinpoint the earliest origins of Social Media, though many experts cite the 1978 e-mail sent by Digital Equipment Corporation salespeople that was sent to all ARPANET (the predecessor to the Internet) addresses on the West Coast of the United States. As noted by Templeton,<sup>i</sup> the senders “were chastised for breaking the ARPANET appropriate use policy, and a notice was sent out reminding others of the rule.”

While not exhibiting all of the characteristics of modern social media, this DEC message and others like it broke the paradigm of “single sender to single (or a few) recipients” that characterized email communication up to that point. Significantly, it was a pair of U.S. lawyers who launched the word “spam” into the popular vocabulary. In April, 1994, writes Templeton, “two lawyers from Phoenix named Canter and Siegel posted a message advertising their fairly useless services in an upcoming