

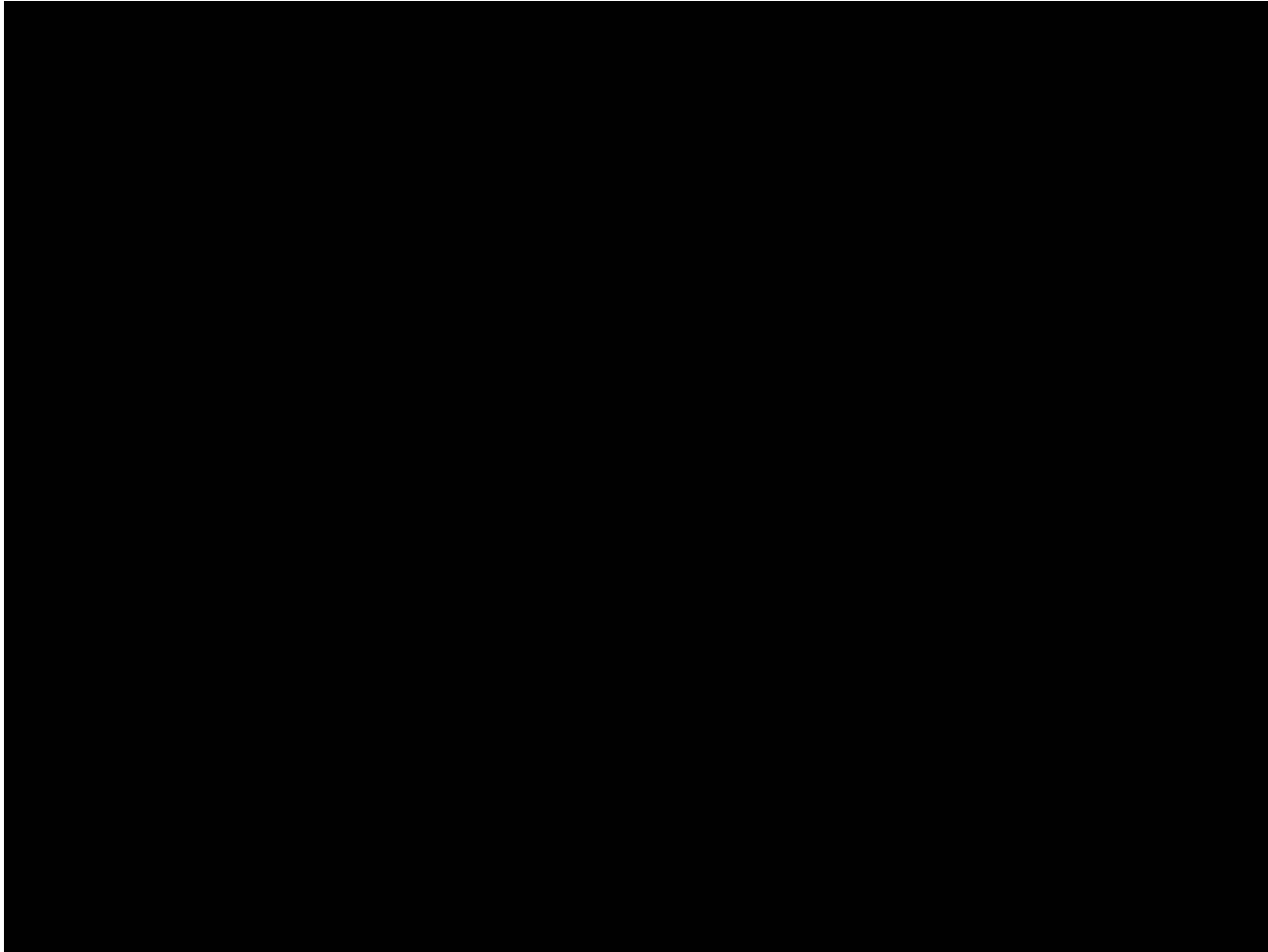


Employer Safeguards for Social Networking

Joshua R. Woodard
602.382.6281 | jwoodard@swlaw.com

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Social Media is More Than a Fad



Items for Today's Discussion

- Social Media
 - What Is It?
 - The Major Players
 - Statistics You Will Not Believe
- Legal Implications Related to Social Media in the Workplace
- Things to Consider When Creating a Social Media Policy

The Major Players

- Just some of the major social media sites:

Advogato; Amie Street; ANobii; aSmallWorld; Athlinks; The Auteurs; Avatars United; BabyCenter; Badoo; Bebo; Bigadda; BigTent; Biip; BlackPlanet; Blogster; Bolt.com; Books iRead; Buzznet; CafeMom; Cake Financial; Care2; Cellufun; Classmates.com; Clobber; CollegeBlender; CouchSurfing; DailyBooth; DailyStrength; Decayenne; deviantART; DigitalVerse.org; Disaboom; DoI2day; DontStayIn; Draugiem.lv; Elftown; Epernicus; Eons.com; Experience Project; Exploroo; Facebook; Faceparty; Faces.com; Fetlife; Fillos de Galicia; FilmAffinity; FledgeWing; Flixster; Flickr; Fotolog; Foursquare; Friends Reunited; Friendster; Frühstückstreff; ; Fubar; Gaia Online; GamerDNA; Gather.com; Gays.com; Geni.com; Gogoyoko; Goodreads; Google Buzz; Gossipreport.com; Grono.net; Habbo; hi5; Hospitality Club; Hyves; Ibibo; imeem; Indaba Music; IRC-Galleria; italki.com; InterNations; Itsmy; iWiW; Jaiku; JammerDirect.com; kaioo; Kaixin001; Kiwibox; Last.fm; LibraryThing; lifeknot; LinkedIn; Listography; LiveJournal; Livemocha; LunarStorm; MEETin; Meetup.com; Meettheboss; Mixi; mobikade; MocoSpace; MOG; MouthShut.com; Multiply; Muxlim; MyAnimeList; MyChurch; MyHeritage; MyLife; MyLOL; MyPraise; My Opera; MySpace; myYearbook; Nasza-klasa.pl; Netlog; Nettby; Nexopia; NGO Post; Ning; Odnoklassniki; OneClimate; OneWorldTV; Open Diary; Orkut; PartnerUp; Passportstamp; Pingsta; Plaxo; Playahead; Playboy U; Plurk; Present.ly; Qapacity; quarterlife; Qzone; Ravelry; Renren; ResearchGATE; ReverbNation.com; Ryze; ScienceStage; Scispace.net; ShareTheMusic; Shelfari; Skyrock; SocialVibe; Sonico.com; Stickam; StudiVZ; StumbleUpon; Tagged; TalentTrove; Talkbiznow; Taltopia; Taringa!; TeachStreet; TravBuddy.com; Travellerspoint; tribe.net; Trombi.com; Tuenti; Tumblr; Twitter; Vkontakte; Vampirefreaks.com; Viadeo; Vox; Wakoopa; Wasabi

The Major Players - Facebook®

- Mission is to give people the power to share and make the world more open and connected
- Over **500 million** active users

The image shows a screenshot of the Facebook website's login and sign-up interface. At the top left is the Facebook logo. To its right are links for "Remember Me" and "Forgotten your password?". Below these are input fields for "Email address" and "Password", followed by a "Log in" button. The main content area is split into two sections. On the left, a headline reads "Facebook helps you connect and share with the people in your life." Below this is a world map with several orange person icons connected by dashed lines, representing a global network. On the right, the "Sign Up" section is titled "Sign Up" with the subtext "It's free and anyone can join". This section contains several input fields: "First Name:", "Last Name:", "Your Email:", and "New Password:". Below these is a dropdown menu for "I am:" with "Select Gender:" as the current selection. The "Birthday:" field is split into "Day:", "Month:", and "Year:" dropdowns. A small link "Why do I need to provide this?" is located below the birthday fields. A green "Sign Up" button is positioned at the bottom of the form. At the very bottom of the page, there is a link that says "Create a Page for a celebrity, band or business."

The Major Players - YouTube®

- Video sharing website
 - Users can upload, view and share videos
- “World’s most popular online video community”
- 24 hours of video is uploaded every minute.



The Major Players - YouTube® (cont.)

www.davecarrollmusic.com

The Major Players - LinkedIn®

- Professional Networking
- Over 75 million members
- A new member joins LinkedIn® approximately every second
- Executives from all Fortune 500 companies are LinkedIn® members



The Major Players - LinkedIn® (cont.)

“If you don’t have a profile on LinkedIn, you’re nowhere.”

“If you’re serious about managing your career, the only social site that really matters is LinkedIn.”

- Fortune Magazine



PHOTO ILLUSTRATION: PHILLIP TOLEDANO

The Major Players - Twitter®

- Micro-blogging and social networking service,
- More than 190 million users.
- Allows users to send and read free messages known as “Tweets” (140 characters)
- 65 million Tweets/day
- The Library of Congress archives all Tweets



The Major Players - Twitter® (cont.)



☆ TerryMoran: Pres. Obama just called Kanye West a "jackass" for his outburst at VMAs when Taylor Swift won. Now THAT'S presidential.
from Terry Moran - 6:39 PM (1 hour ago)

The Major Players - Twitter® (cont.)



The Major Players - Twitter® (cont.)

VANITY FAIR

MEDIA

America's Tweethearts

By endlessly typing 140-character messages, Stefanie Michaels, Amy Jo Martin, Felicia Day, and others have gained millions of Twitter followers. It's a new kind of fame—twilebrity—with its own rules, risks, and pecking order.

BY VANESSA GRIGORIADIS

JANUARY 2010



From left to right: social strategist Julia Roy (31,000 followers), publicist Sarah Evans (33,000 followers), travel journalist Stefanie Michaels (1.4 million followers), actress Felicia Day (1.8 million followers), lifecaster Sarah Austin (24,000 followers), and marketer Amy Jo Martin (1.2 million followers). Photograph by Michael Halsband.

Whether you consider Twitter a worldwide experiment in extreme narcissism or a nifty tool for real-time reporting—a plane ditches in the Hudson, millions take to the streets in Tehran—it may not yet have dawned on your text-saturated brain that it's also a path to becoming famous. Not real fame, mind you, or even Internet-celebrity fame, but a special, new category of fame: twilebrity.

The Major Players - Twitter® (cont.)

“For tweeples, e-mail messages are sonnets, Facebook is practically Tolstoy.”

“Facebook is just way too slow,” says Stefanie Michaels, a twilebrity from Brentwood, California. “I can’t deal with that kind of deep engagement.”

The Major Players - Twitter® (cont.)

- This is NO Fairy Tale
- Once upon a Twitter time at Yahoo!
- Yahoo employee Emily West was one of 1,500 employees who lost her job.
- Emily updated her Twitter account throughout the whole ordeal.

The Major Players - Twitter® (cont.)

- Managers are in early and TV crews are outside. Commence bloodbath.
- I checked the employee directory and a couple of people are gone from the East coast that I know.
- They have pretty pre-printed signs on doors of the rooms where they are telling people unlike the red sharpie signs from the last round.

The Major Players - Twitter® (cont.)

- Five people I trained were cut in NY, none from Boston. One girl in NY that started at the same time as me also got the axe.
- Four months of severance is the rumor. Plus they're herding people to an employment service after they're told the news.

The Major Players - Twitter® (cont.)

- FUU%&**K, just saw my new hire trainee from October go into The Room with her manager. They are laying off an amazing employee 10 yards away.
- My work BFF Michelle who helped me get my training job and taught me so much is out. The tears are coming. I hate crying at work.

The Major Players - Twitter® (cont.)

- I'm kicking myself for not bringing some Bailey's for my coffee.
- The campus gym just sent an email offering 20 min. \$20 massages starting at 11. Doubt that's a coincidence. HAW!

The Major Players - Twitter® (cont.)

- Some haters say that bloggers are turning the layoffs into a sport. I think that's bullshit.
- I'm out.

Statistics You Will Not Believe

IT Manager estimate	% of IT that thought the app was being used	% of locations that showed app usage
Social networking	60%	100%
Instant Messaging (IM)	66%	100%
Web based IM	35%	97%
Streaming Audio/Video	80%	94%
P2P file share	54%	96%

The Collaborative Internet: Usage Trends, End User Attitudes and IT Impact,
FaceTime Communications, Inc., Fifth Annual Survey, March 2010
<http://info.facetime.com/Survey10Request.html>

Statistics You Will Not Believe (cont.)

- 74% of employees say it's easy to damage a company's reputation using social media
- Only 15% of executives consider these risks at the board level
- Only 17% have a risk mitigation policy/program

Social Networking and Reputational Risk in the Workplace, Deloitte LLP, 2009 Ethics & Workplace Survey Results
http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_2009_ethics_workplace_survey_220509.pdf

Statistics You Will Not Believe (cont.)

- 60% of business executives say they have the “right to know”
- 53% of employees said their social networking pages are none of their employers’ business

Social Networking and Reputational Risk in the Workplace, Deloitte LLP, 2009 Ethics & Workplace Survey Results
http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_2009_ethics_workplace_survey_220509.pdf

Statistics You Will Not Believe (cont.)

- Employee utilization:
 - 55% visit social networking sites at least once per week
 - 21% admit visiting social networking sites during work hours

Social Networking and Reputational Risk in the Workplace, Deloitte LLP,
2009 Ethics & Workplace Survey Results
http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_2009_ethics_workplace_survey_220509.pdf

Statistics You Will Not Believe (cont.)

- Executive utilization:
 - 31% of CEOs are on Facebook®
 - 30% use social networking as part of their business and operations strategy
 - 23% use social networking for recruiting purposes

Social Networking and Reputational Risk in the Workplace, Deloitte LLP, 2009
Ethics & Workplace Survey Results
http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_2009_ethics_workplace_survey_220509.pdf

Statistics You Will Not Believe (cont.)

- Social media and Web 2.0 applications have been adopted by 99% of end users to support business processes
- 53% of end users indicated that newer Web 2.0 tools are “better than those provided by my employer”

The Collaborative Internet: Usage Trends, End User Attitudes and IT Impact,
FaceTime Communications, Inc., Fifth Annual Survey, March 2010
<http://info.facetime.com/Survey10Request.html>

Legal Implications

- Fair Labor Standards Act
- National Labor Relations Act
- Discrimination/Harassment
- Defamation/Libel
- Safety
- Wrongful Termination
- Lifestyle Discrimination Statutes
- Intellectual Property
- Federal Trade Commission Guidelines
- Stored Communications Act

Fair Labor Standards Act

- FLSA
 - Requires employees to be paid a minimum wage and overtime premium
 - Federal minimum wage is \$7.25/hour
 - Requires overtime pay for hours worked over 40 per workweek (some states require daily overtime), at a rate not less than one and one-half times the regular rate of pay



National Labor Relations Act

- NLRA
 - Section 7 protects employees' right to form, join and assist labor organizations, engage in collective bargaining and engage in other concerted activities for mutual aid or protection

National Labor Relations Act

Cintas Corp., 344 NLRB 943 (June 30, 2006)

“”We honor confidentiality. We recognize and protect the confidentiality of any information concerning the company, its business plans, its partners [defined as employees], new business efforts, customers, accounting and financial matters.”

Discrimination/Harassment

- Title VII
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- USERRA

Discrimination/Harassment (cont.)

- Delta Airlines fired flight attendant for posting “revealing” pictures while wearing her uniform
- Self-dubbed “Queen of the Sky” discovered that Delta Airlines had not disciplined male employees who posted pictures engaged in “unsuitable conduct” while in uniform
- Sued for gender discrimination



Discrimination/Harassment (cont.)

- Sexual harassment complaints to the EEOC increased 11 % from 2007 to 2009
- Nothing to LOL about!



Defamation/Libel

- False negative statement
- Published/communicated to another
- Damages in social media scenario could be large

Safety

- Distraction from cell phone use while driving (hand held or hands free) extends a driver's reaction as much as having a blood alcohol concentration at the legal limit of .08 percent. (University of Utah)
- The No.1 source of driver inattention is use of a wireless device. (Virginia Tech/NHTSA)

Safety

- Drivers that use cell phones are four times as likely to get into crashes serious enough to injure themselves. (Insurance Institute for Highway Safety)

Safety

- Driving while distracted is a factor in 25 percent of police reported crashes.
- Driving while using a cell phone reduces the amount of brain activity associated with driving by 37 percent (Carnegie Mellon)

Safety

- Push to ban texting while driving
 - Federal employees prohibited
 - Federal contractors next?
 - Employees should be trained about the risks of use of cell phones / smart phones while engaged in driving or other dangerous activities

Wrongful Termination

- In “at-will” states, can hire or fire for any reason or no reason, so long as it is not an illegal reason
 - Can you terminate someone’s employment for something you learn about on a social media site?
 - Depends on what you learn



Bank intern busted by Facebook



Who says Facebook is the province of the young? Increasingly, the gosomething bosses of naive recent college grads are proving adept at turning the social network against its earliest adopters. Kevin Colvin, an intern at Anglo Irish Bank's North American arm, was busted when he told his manager, Paul Davis, that he'd miss work due to what colleagues took to be a "family emergency". Davis turned up the photo above, freshly posted to Facebook from the Halloween party Colvin apparently missed work to attend, and attached it to his reply, copying the rest of the office as he did it. The email thread is now

spreading around the net. After the jump, the entire exchange, and the incriminating photo.

-----Original Message-----
From: Kevin Colvin [mailto:kevin.colvin@angloirishbank.com]
Sent: Wednesday, November 01, 2007 4:54 PM
To: Ed Thompson (South America); Paul Davis (North America)
Subject: [REDACTED]

Paul/D -
I just wanted to let you know that I will not be able to come into work tomorrow. Something came up at home and I had to go to New York this morning for the next couple of days. I'm sorry for the delayed notice.

Kind regards,
Kevin

From: Paul Davis (North America)
Sent: Thursday, November 01, 2007 4:54 PM
To: Kevin Colvin; Ed Thompson (South America); Kevin Colvin (North America)
Subject: [REDACTED]

Kevin,
Thanks for letting us know--hope everything is ok in New York. (cool wand)

Cheers,
PCD



San Francisco, 6:50 PM
Wed Apr 21
70 posts in the last 24 hours

Get Gawker in your inbox:
email address

Tip your editors:
tips@valleywag.com | AIM

FAQ. Include # before tag:
#tips, #stalker, #crosstalk, #internalmemos, etc.

By Owen Thomas



11 retweet



Nov 12, 2007 05:06 PM 968,221 91

more about #kevincolvin



Bulldog pups only cure for week of crazies

read more: #yourprivacyisanillusion, #kevincolvin, #pauldavis, #top, #facebook, #gawker, #geeksgonewild, #valleywag

add #kevincolvin to my Fusion

This document was sent to the printer
Document name: 'http://valleywag.gawker.com/...'
Printer name: '\\phxprint01\1424'
Time sent: 3:51:29 PM 4/21/2010
Total pages: 1

Lifestyle Discrimination Statutes

- Be wary of “Lifestyle Discrimination Statutes,” which prohibit discrimination upon lawful, off-duty conduct
 - California
 - Colorado

Intellectual Property

- Trademark
- Copyright
- Confidential and Proprietary Information

Federal Trade Commission (“FTC”) Guidelines

- FTC Guidelines protect consumers from deceptive endorsements and advertising
 - Employees who comment on employer’s products or services
 - Requires use of disclaimers

FTC Guidelines (cont.)

- **Employer Liability Under FTC Endorsement Rules**
 - Companies may be liable where their endorsers fails to disclose material connections.
 - Employees endorsing their employer's products or services have a "duty to disclose" to their audience their relationship to the employer

FTC Guidelines (cont.)

- This disclosure duty may even apply when the employee's endorsement is posted on a site that is *not* maintained by the employer, and *without* the employer's request

Stored Communications Act (“SCA”)

- In general, the SCA provides a cause of action against any person or entity who:
- (1) intentionally and without authorization accesses a computer; or
- (2) exceeds the authorized access to that computer

SCA (cont.)

- **Konop v. Hawaiian Airlines, Inc.**

- A pilot posted website bulletins critical of his employer.
- The pilot controlled access to the site by limiting its use to certain individuals, mostly pilots and other employees of the airline.
- Two pilots included on the list of authorized users gave Hawaiian's vice president permission to login site.



SCA (cont.)

- Hawaiian Airlines violated the SCA
- There was no evidence that the authorized employees had ever accessed the site themselves, and thus were not “users” who could authorize Hawaiian Airlines’ access



SCA (cont.)

- **Van Alstyne v. Elec. Scriptorium Ltd.**

- Employer intentionally and without authorization accessed the employee's personal e-mail account

- **Pietrylo v. Hillstone Restaurant Group**

- Employer intentionally and without voluntary permission accessed group site critical of company

Things To Consider When Creating A Social Networking Policy

- Focus on the “do’s” versus the “do not’s”
- Must align with Code of Conduct
- Keep policy up to date

Things To Consider When Creating A Social Networking Policy (cont.)

- Hours of Work Policy
 - When may nonexempt personnel work?
 - How is time reported?
 - What happens when work not authorized?

Things To Consider When Creating A Social Networking Policy (cont.)

- E-mail Policy
 - Property of the Company
 - No expectation of Privacy – including personal email accounts accessed through company equipment
 - Must monitor and restrict without discrimination
 - Use caution when monitoring private e-mail accounts accessed from work

Things To Consider When Creating A Social Networking Policy (cont.)

- Confidentiality/Nondisclosure Policy
- Anti-Discrimination/ Harassment Policy
- Public Relations Policy

Things To Consider When Creating A Social Networking Policy (cont.)

- Educate employees regarding social media
 - Require use of disclaimers
 - Encourage employees to use their real name and identify themselves
 - Advise employees to tell the truth and not disparage
 - Advise employees not to identify customers, partners or clients without their consent
- Require training before posting on behalf of Company