

Constitution Day 2010

Social Media and Privacy

What is "social media"?

Social media are technological platforms that allow users to engage in a dialogue. Social media allow users to connect and interact in a virtual environment. Facebook, LinkedIn, Twitter, MySpace, foursquare and Yelp are all examples of social media platforms. The chat rooms on websites are also examples of social media.

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Kraig is a partner with Davis Wright Tremaine LLP. He advises clients and assists with licensing transactions in media, entertainment, technology, advertising, privacy and Internet matters. In addition to his work with Davis Wright, Kraig teaches at the University of Washington's School of Communications Digital

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Media program and serves on the board of the Seattle International Film Festival. Follow along as we interview Kraig about social media and privacy.

How did you become interested in law?

I took a couple of classes in college that got me really excited about constitutional rights, the First Amendment and how you balance individual rights with society's needs. Protecting someone's right to say something you disagree with is a very profound idea.

What do you enjoy most about your job?

I like to help people, businesses and organizations solve their problems and move forward. I really try to be a trusted advisor for my clients — someone who understands the business and helps them think strategically. I think the most fun part of the law is when you get to be part of the decision-making process. There is something very satisfying about seeing a program air on TV or a product launch and feeling like you had a part in making it successful.

What do you find interesting or exciting about social media?

I think social media is interesting because it democratizes storytelling. It allows everyone to be a reporter and a storyteller, because anyone can be a creator of content.

Another fascinating thing about social media is that it has completely divorced us from one of the historic touchstones of society, geography. It used to be that anyone you were friends with, you worked with or you married would be local. With social media, if the person you think is most interesting lives in Houston, Texas, it doesn't matter — you can still be friends. And, of course, social media reminds us how deep our social connections are. I'm always amazed to discover all of the new ways people are connected.

What changes have occurred because of social media?

It has changed the way we interact with institutions, brands, TV shows, books and movies. A content producer can't just offer a linear experience anymore. Viewers expect that they shouldn't only be able to watch a show on TV, but also find a chat room and webisode online.

It has also changed the way we deal with our frustrations and complaints. It used to be that if you had a complaint, you had to formally file it with the company or maybe threaten to sue the company. Nowadays, everyone has a simple, non-legal remedy: a Twitter feed, Facebook page or Yelp review. That means companies don't only have to worry about lawsuits, but also about how social media is going to impact their brand.

I think social media has also changed our cultural expectations, especially about privacy. Between social media and reality TV, it seems that almost nothing is considered private anymore. Social media has also blurred the line between work life and non-work life.

What is privacy?

Everyone has a different view of privacy. For one person, it might mean being left alone by the government, while someone else could define it as having complete control of their personal information. Privacy is a really difficult topic to agree on, which is one of the reasons it has been so hard to enact laws governing it. For me, privacy is about who can access, control and manage information about you that isn't public.

What privacy laws exist right now in the United States?

In the United States, we tend to create privacy laws in reaction to particular events and cases. Some of the more prominent laws include HIPAA (healthcare privacy), the Gramm-Leach-Bliley Act (financial privacy), COPPA (children's online privacy) and FERPA (educational record privacy). Ultimately, most of the privacy law in the United States is governed by policies set by companies themselves, as well as unfair trade practice laws enforced by the Federal Trade Commission (and state attorneys general).

How much personal information are social media platforms allowed to share?

In the United States, social media platforms can more or less share anything they collect from you. Most people don't realize that websites don't have to get your consent to share information unless they state that in their privacy policy.

How can users monitor what is being shared?

The first thing is to read the privacy policies. Most people never read them — and if you try to read them, you'll find they can be difficult to get through. Once you find out what's in them, you have to figure out what you're comfortable sharing and what you're not. In most cases, you can change your privacy preferences. The thing to remember is that if you're using a free social media platform, that company will be trying to make money. That may mean advertising to you or selling your data to someone else that is going to advertise to you. If you want to avoid paying a subscription fee for access to social media, the people running the social media platform have to be compensated. Facebook, for example, is supporting the infrastructure for a half-billion users. That costs a lot of money.

Why should you keep some information private?

First, you want to avoid having someone else use your personal information inappropriately or use it in a way that will surprise you. People are always surprised when they post something on their Facebook page about how they called in sick for work but are really at a concert — and then their boss finds out where they were. When you post these things on social media platforms, you have to remember that you are essentially posting them in public. Even people who think they don't have anything to hide may not want the whole world to know everything!

The second thing is that the Internet is forever. There are ways you can try to manage your reputation and ways that you can minimize how easily search engines can find certain web pages, but the bottom line is that once information gets on a social media platform, it's "out there." If you don't want pictures of you to show up later (and I mean years later), don't post them. When you are posting information, you should think about whether you'll be embarrassed if your family, friends and coworkers see these in five, ten or even twenty years.

Posting to social media is no different than talking loudly in a restaurant. If you're saying things you would be embarrassed for the person at the next table to overhear, you should be embarrassed to put them on your social media account, too.

Constitution Day was created by the late senator Robert C. Byrd to commemorate the signing of the U.S. Constitution on September 17, 1787. This year we chose to highlight privacy rights for our theme. To learn more about Constitution Day visit constitutionday.com.

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