

# *Private Eyes Are Blogging You: Social Media And The Law*

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Anchorage  
Bellevue  
Los Angeles

New York  
Portland  
San Francisco

Seattle  
Shanghai  
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# What is Social Networking?

- **Broad range of internet activities**
  - **Texting**
  - **Chat rooms**
  - **Emails**
  - **Blogging**
  - **Videos**
- **Easily accessible**
  - **Work computers**
  - **Home computers**
  - **Mobile smartphones and other devices**
- **Inherent risks**
  - **Immediacy**
  - **Global reach**
  - **Searchable**
  - **“Email is Forever”**

# Online Social Networking Exploding

- **LinkedIn**
  - Facebook for professionals
  - Over 50 million registered users
- **myspace.**
  - Similar to Facebook
  - Less than half the users at over 100 million
- YouTube
  - Online videos
- Blogs
  - The original social networking tool

# Online Social Networking Exploding



## facebook.

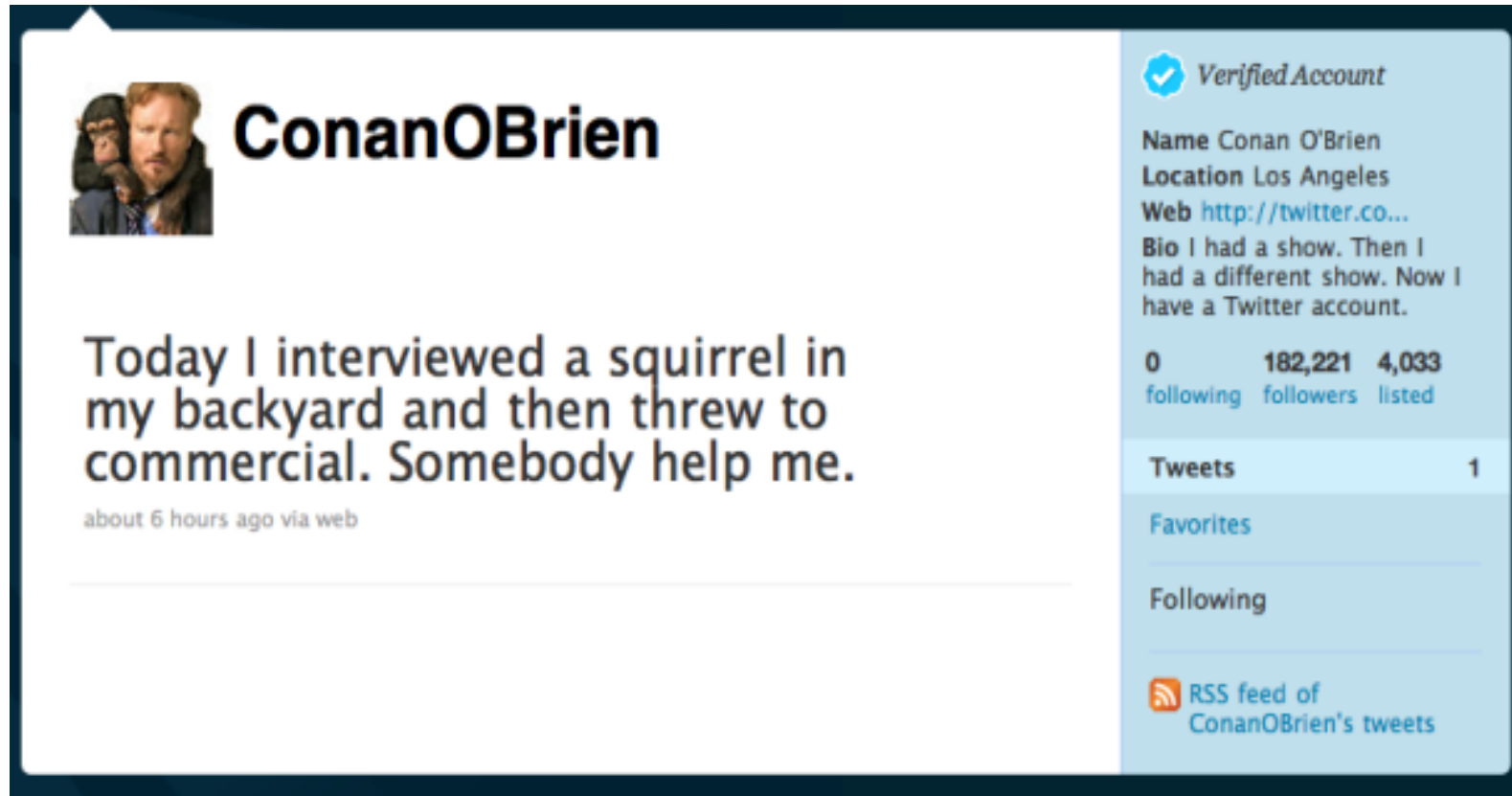
- >350 million users worldwide
- 2008 revenue: >\$300 million
- 6 billion minutes spent on Facebook each day
- Increasing corporate marketing use



## twitter

- “Tweets” – max. of 140 characters (sort of...)
- Celebrity usage – Ashton Kutcher (“APlusK”), Kevin Smith
- Corporate use growing exponentially
- Over 50 million tweets per day...and growing

# Conan's First Tweet



The image is a screenshot of Conan O'Brien's Twitter profile page. On the left, there is a profile picture of Conan with a monkey on his shoulder, followed by the name "ConanOBrien" in bold. Below the name is a tweet that reads: "Today I interviewed a squirrel in my backyard and then threw to commercial. Somebody help me." The tweet is timestamped "about 6 hours ago via web". To the right of the profile picture and name, there is a blue checkmark icon and the text "Verified Account". Below this, the profile information is listed: "Name Conan O'Brien", "Location Los Angeles", "Web <http://twitter.co...>", and "Bio I had a show. Then I had a different show. Now I have a Twitter account." Below the bio, the statistics are shown: "0 following", "182,221 followers", and "4,033 listed". Further down, there are links for "Tweets" (showing 1), "Favorites", and "Following". At the bottom, there is an RSS feed icon and the text "RSS feed of ConanOBrien's tweets".

**ConanOBrien**

Today I interviewed a squirrel in my backyard and then threw to commercial. Somebody help me.

about 6 hours ago via web

**Verified Account**

Name Conan O'Brien  
Location Los Angeles  
Web <http://twitter.co...>  
Bio I had a show. Then I had a different show. Now I have a Twitter account.

0 following 182,221 followers 4,033 listed

Tweets 1

Favorites

Following

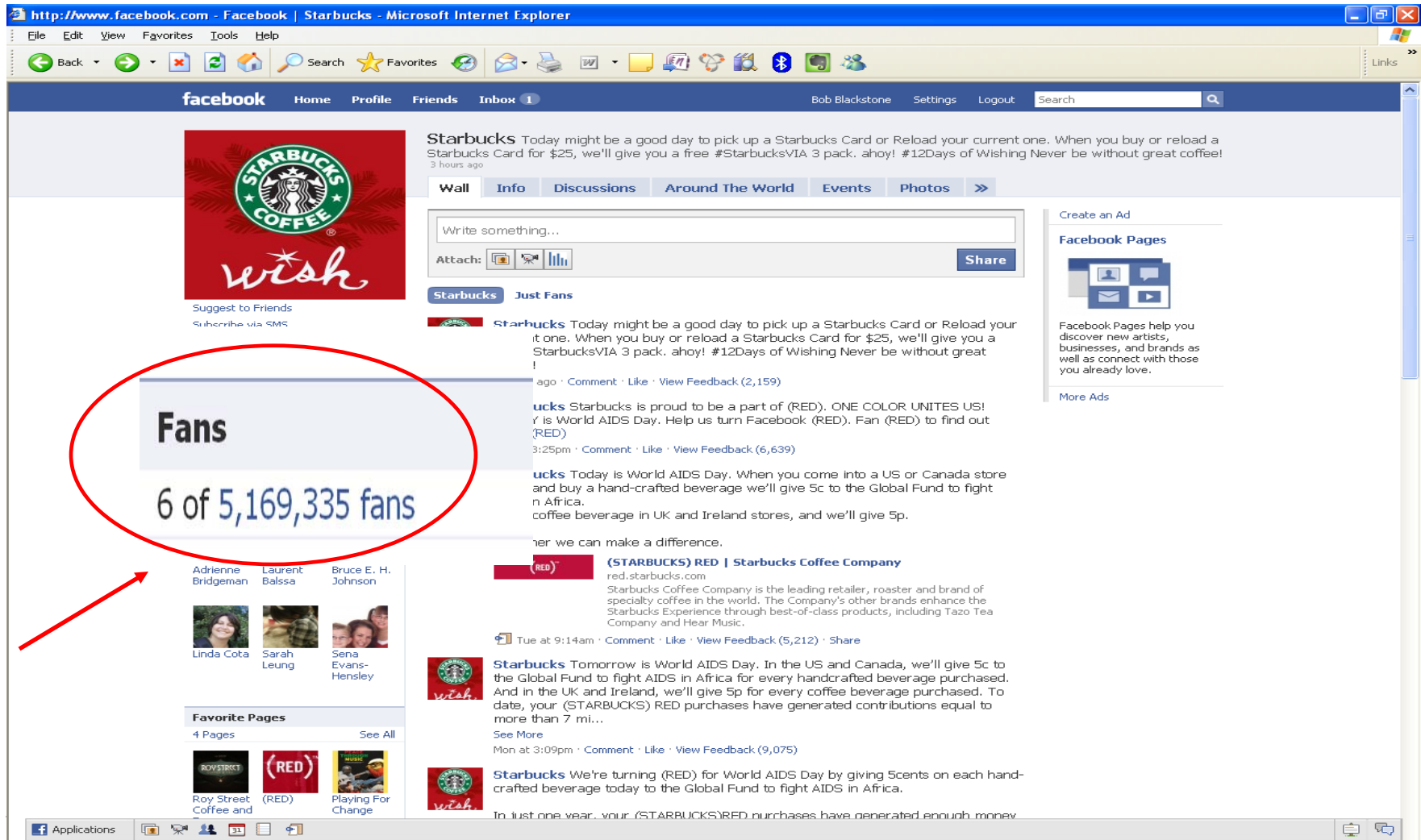
RSS feed of ConanOBrien's tweets

# Online Social Networking Exploding



- The newest entrant in social networking (Feb. 9, 2010)
- Uses G-mail to connect with friends and friends of friends (one step beyond Facebook)
- Communicating with people you do not know

# Facebook for Companies



# Twitter for Companies

Alaska Airlines (AlaskaAir) on Twitter - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites

**AlaskaAir**

**Following**

**@everywhereist** Shop for 'upgrade fares' (U space). On your confirmation letter, click 'request upgrade' link <http://bit.ly/6LlaEO>  
12 minutes ago from CoTweet in reply to everywhereist

Need a break from work? Help us caption this photo of **@ApoloOhno** - <http://bit.ly/5u2Xrr> :)  
18 minutes ago from CoTweet

**@blueboxjesse** We only have 1 aircraft equipped. Unfortunately none of our transcon flights have Wi-Fi yet. <http://bit.ly/WiFi>  
about 6 hours ago from CoTweet in reply to blueboxjesse

**ApoloOhno** In a meeting and this pic was sent to me--very cool...in Seattle! **@AlaskaAir** Sweet! <http://yfrog.com/1yvht2j>  
about 20 hours ago from Tweetie  
Retweeted by **AlaskaAir** and 2 others

We'll see everyone that grabbed a ticket on Sunday. :) Look forward to meeting everyone.  
12:19 PM Dec 2nd from CoTweet

**@wchrisburcham** Just want to make sure there's not a misunderstanding. We're giving tickets away to 1st flight. It doesn't \*occur\* this wknd.  
12:08 PM Dec 2nd from CoTweet in reply to wchrisburcham

**Name** Alaska Airlines  
**Location** Seattle, WA  
**Web** <http://www.alaska.com>  
**Bio** Tweets powered by the genuine and caring service of Alaska Airlines and its employees. Currently listening: **@elliottp**

**6,697** **13,855** **453**  
following followers listed

**Tweets** **1,022**

**Favorites**



# US Military Accepts Social Media

- As of February 26, soldiers can use Twitter, Facebook and blogs



# Even the FCC Has an “Official Blog”

FEDERAL COMMUNICATIONS COMMISSION



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Enter search term

SEARCH

HOME ABOUT REBOOT EVENTS INITIATIVES REFORM FCC LEADERSHIP **BLOG** FCC.GOV/DATA

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THE OFFICIAL BLOG *of the*  
FEDERAL COMMUNICATIONS COMMISSION

**The World Radiocommunication Conference**

Posted February 26th, 2010 by [Alexander Roytblat](#)

The World Radiocommunication Conference (or WRC) is an international treaty-level forum held by the [International Telecommunication Union](#) (or ITU) (a United Nations agency) about every four years. At the WRC countries decide on the

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# Employee Use/Misuse of Social Networks

- At work, for business purposes
  - Monitoring comments on station
  - Answering viewer/listener questions
  - Promoting station
  - Research
- For personal purposes, at work
- For personal purposes, impacting work
  - Bad-mouthing the company
  - Trade secrets theft
  - Harassment

# Employer Use/Misuse of Social Networks

- Hiring and firing staff
  - Use as screening tool?
    - “Googling” job candidates
  - Risk of uncovering information not relevant to the hiring decision
    - Possible discrimination claims
- Station communications and marketing
  - Internally with employees
  - Externally with viewers/listeners

# What Employees Think

- 61% of employees say that even if employers were monitoring their social networking activities, they would not change behavior
- 74% of employees believe it is easy to damage a brand's reputation via social networking sites
- 53% of employees say “social networking pages are none of an employer's business.”

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*\*Per Deloitte's 2009 Ethics & Workplace Survey*

# Why Employers Should Care

- You will be sued if unlawful act of employee is arguably within scope of employment (e.g. blogged on station's website)
- Only 22% of employers have formal social networking policies

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*\*Per Deloitte's 2009 Ethics & Workplace Survey*

# Employer Injury

...by consumers, for consumers

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File a Report | Update Report | Latest Reports | Consumer Resources | Corporate Advocacy | Consumers Say Thank You | Legal Directory

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Approximately **6** Reports Found  
Showing 1 - 6

Legend: NEW New UPDATE Updated REBUTTAL Rebuttal PHOTOS Photos

There may be more reports for "Search Results:  
[Follow this link to perform an advanced search of the complete text of all reports for "Search Results:](#)

Wondering if a report is missing from this search? **We DO NOT remove reports from our database.** However, as the leading consumer advocacy website, our technology is being continually upgraded to handle the volume of searches from consumers, the media, the authorities and millions of others from around the world. While we are always in the process of upgrading, our search results may not return all reports. This is only temporary and intermittent. If you are an attorney helping victims, the media, or law-enforcement, please contact us to have us run a complete database search.

Date	Title	City, State
1 9/12/2009 10:44 AM <span>NEW</span>	<a href="#">Mitch Smith - AIA - Inc. Unethical, Poor Performers, Poor Design, Overbillers Internet Business Consulting</a> : Mitch Smith - AIA - Internet	<a href="#">Poor Design Architecture, Overbilling Architecture</a> <b>Author:</b> Beverly Hills, California
2 9/12/2009 10:26 AM <span>NEW</span>	<a href="#">Jim Hillier - AIA Jim dumb as rocks Hillier Architecture, anti-green architects Unethical practice, overcharging Irvine, California Business Consulting</a> : - Jim Hillier - AIA California	<a href="#">Hillier Architects, Engle and Hillier</a> <b>Author:</b> Beverly Hills, California
3 9/11/2009 5:00 AM		

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# Laws That May Impact What You Can Do

- **Stored Communications Act**
  - 4<sup>th</sup> Amendment-type protection for electronic communications
  - *Pietrylo v. Hillstone Restaurant Group*
    - Managers accessing private MySpace page of employee group
- **Securities law** issues for public companies
  - SEC Guidance on Regulation FD (“Fair Disclosure”)
  - Disclosure of material nonpublic info
- **First Amendment?**
  - Primarily for public employers
  - Possibly state constitutional issues for private employers
  - Wrongful termination



# Laws That May Impact What You Can Do

- **National Labor Relations Act** issues
  - Can be “protected, concerted activity”
  - Blogging about unfair employer policies
  - Applies to all employees, not just unionized workers
  
- **State laws** protecting off-duty conduct
  - May impact employer ability to discipline for social media postings
  - e.g. Privacy laws, Whistle-blower statutes

# Employer Liability

- **FTC “Revised Endorsement and Testimonial Guides”**
  - Requires disclosure of relationships to advertisers and free samples/products given to online product reviewers
  - Disclosure required if public not likely to know that it is a paid advertisement, e.g. during interview
  - Similar to FCC Sponsorship ID rules
  - Endorsements must reflect actual use by and belief of endorser (and not be false or misleading claims)
  - “Results not typical” disclaimer no longer permitted
  - Applicable to bloggers, Twitter, Facebook and other online postings which endorse products or services

# Employer Protections for User-Generated/Third Party Content

- **DMCA** (Digital Millennium Copyright Act) can protect against copyright infringement
  - Need registered agent at Copyright Office website
  - Compliance with notice and takedown process
- **CDA** (Communications Decency Act) may protect against liability for non-IP content
- Develop Social Media Policy

# Special Consideration for Kids

- **COPPA—Children’s Online Privacy Protection Act**

- Applies to children under age 13
- Verifiable Parental Consent generally needed if Personally Identifiable Information (PII) obtained
- Ask for age info in neutral terms (i.e. not likely to generate false response)
- Guidelines established by Children’s Advertising Review Unit (CARU) [www.caru.bbb.org](http://www.caru.bbb.org)

# Contests and Promotions

- Facebook contests must comply with Facebook Guidelines
  - OK to publicize station contest on Facebook
  - Contest *on* Facebook requires consent
- Twitter should only be used for links to contest and rules

# Social Media Policy Considerations

- What is your station's culture?
  - Allow or block access to social media websites?
  - Distinguish between company use and personal use?
  - Extent to which company equipment and networks can be used for social media?
- What are your station's needs?
  - Use of social networking to generate business?
  - Use of social networking in hiring / firing process?

# “Common Sense” Policy Components

- **HR ISSUES:**

- No discriminatory or harassing conduct
- Provide source for questions about policy interpretation
- No oral modification of policy

- **IP PROTECTION:**

- Respect copyright/trademark/trade secret laws
- Rights of Privacy and Publicity

- **THIRD PARTY LIABILITY:**

- Require truthful statements
- Prohibit defamatory or derogatory comments
- Prohibit disclosure of confidential information

# Station Responsibilities

- Educate employees about what they can and cannot do
- Monitor blogs for compliance with law and station policies
- Arrange for improper blog posts to be taken down ASAP



# Conclusion

- Who knows what issues will arise as more forms of new media enter the marketplace?

