

Social media for legal

Confidentiality, supervision and communication in the legal office all face challenges with information being exchanged in ways outside those contemplated by traditional regulatory frameworks.

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The contemporary dynamics of industry, technology, and trade liberalisation are having a fundamental effect on law firms and the legal services marketplace. In Australia we now have virtual law firms, law practices using social networking sites, choosing to outsource aspects of their legal work – including to operations in India – and overseas firms outsourcing legal work to Australian firms. These developments, which are changing the face of the business of law, also present an array of regulatory and ethical issues for lawyers within the traditional practice framework.

Confidentiality and security of client information is fundamental to the practice of law and pose the most apparent risks with these technologies, as does the ability to supervise outsourced services and the use by staff of social media. The regulation of legal service delivery also raises issues when services are provided virtually, and potentially anonymously, crossing state and national borders, with different cultural issues or requirements.

The Law Society of NSW in conjunction with the Office of the Legal Services Commissioner (OLSC) will soon publish information guidelines to assist the profession in using social media and cloud computing technology, outsourcing legal services and conducting virtual legal practices. By way of introduction to contextualise these guidelines, three short papers will be published to inform the profession of the relevance of these topics to legal services and to identify the professional conduct

issues to be dealt with in the guidelines. The guidelines will be based on the findings of a major research project by the OLSC. In this first paper we will look at social media.

What is social media?

Social media is an umbrella term generally used to describe a group of internet-based applications that allow the creation and exchange of user-generated content. In its most simple terms, social media is a category of online media that allows people to communicate, share their lives and network online.

There are many different types of social media sites today, including magazines, internet forums, weblogs, social blogs, microblogging, wikis, podcasts, photographs and video. Facebook, Twitter, Gmail, Windows Live Messenger, MSN, Google Talk, Yahoo Talk, Jabber, YouTube and MySpace are some well-known examples.

Social media networks offers both personal and professional benefits. They help us stay in touch with family and friends through shared photos, phone calls and videos. They allow us to embrace our passions and express our identity to a wide audience around the world. They also allow us to build our knowledge base and keep us up to date on best practices, resources and technology.

In the business world, we can connect, capture and share experiences, information and knowledge with clients, colleagues and peers. Commercially, social media allows us the ability to communicate

issues practice

information about products and materials and be used as marketing and advertising tools. In February 2011 the Harvard Business Review Analytics Services conducted a survey of 2,100 organisations and discovered that 79 per cent are currently using social media channels. Participants were also asked what they saw as the benefits of social media. Responses included increased awareness of the organisation, increased traffic to website, improved perceptions of the brand, ability to monitor conversations about the organisation, ability to develop targeted marketing activities, improved insights about their target market, identification of positive and negative comments, increase in new business, identification of new product or service opportunities, ability to measure the frequency of the discussion about the brand and early warning of potential product or service issues.¹

Social media and legal practice

The use of social media is now becoming increasingly common in legal practice. According to a recent study released by LexisNexis Martindale-Hubbell, which looked at how 110 global law firms used LinkedIn, Twitter, YouTube and other social media from April to mid-May of 2011; 77 per cent of firms surveyed had profiles on LinkedIn; 31 per cent used Twitter; and 29 per cent used Facebook.² The report also found that North American law firms have the highest registration of social media profiles and overall engagement, followed by Western Europe, although usage and depth of engagement across the continent varies greatly, with UK firms and Amsterdam-based firms having high levels of social media usage in contrast to the lower usage in Zurich, Paris and Moscow, and no usage in Istanbul. Social media usage among law firms in the Middle East and Asia Pacific, with the exception of English-speaking Sydney, is very low, with the Sydney firms surveyed appearing on both LinkedIn and Twitter, as well as being open to using Facebook, blogging and integrating their

social media platforms into their websites.

The use of social media tools, applications and strategies can have a great impact on both the internal and external communications of a law firm. Social media today play an important role in a legal practice's efforts to attract new clients and disseminate information about their legal services. Social and professional networking services such as Facebook, LinkedIn and Twitter are being used by legal practitioners both in Australia and overseas to create online profiles that contain personal information and legal opinions, which can be made available to anyone with an internet connection or who is a member of the networking site. For example, a legal practitioner may create a Facebook profile that is accessible to family, friends and prospective clients at the same time. The legal practitioner may then post professional announcements that are shared with all of those people.

Social networking services are also being used by law firms as a marketing tool to attract new clients or recruit staff. In May 2011, Mallesons Stephen Jaques launched a Facebook page to lure graduates and summer clerks.³ The impetus for using social media to lure graduates emanated from the desire to communicate with law students via a channel which research shows they actively use and source information from. Mallesons also wanted to try and generate a two-way conversation with law students. In order to make the site a success the firm engaged a specialist online brand agency which interviewed a sample of Mallesons' graduate intake from the previous year as well as their recruitment partners and law students.

Social networking services are additionally being used to deliver legal services online. The Twitter feed *@thelegaloracle* was the first 'Twitter law firm' in the world to offer free legal advice in 140 characters on questions that have been tweeted. The

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Twitter feed is being staffed by a law firm in the UK, Loyalty Law Solicitors. According to the founder of the Twitter account, the use of Twitter is aimed at providing legal advice and guidance.

The question-and-answer style of legal advice online has also gained prominence with the establishment of several websites which allow people to post questions to a panel of legal practitioners about legal issues. The websites stipulate that no client relationship is created and that "the answers given are for information purposes only and are not a substitute for specific professional advice". For example, www.justanswer.com/australianlaw allows anyone accessing their website to ask a legal question of an "online solicitor" about debt or bankruptcy issues, divorce, custody or child support issues. Questions can also be asked of the online solicitor about employment, criminal, or property issues. JustAnswer will customise answers to your Australian legal questions.

Blogging, otherwise known as weblogs, is another social media practice now being used by the legal profession. Blogging provides a running commentary, or diary, of a topic by the blog author. Some blogs

Ethics advice

For practical and confidential advice to resolve ethical dilemmas and help avoid complaints from clients or colleagues, contact a Law Society Ethics Solicitor.



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ETHICS

are focused on specific practice areas or types of law while others are more general and cover current affairs, legal career advice or personal experiences in training or their hunt for law jobs.

A successful social media program can impact a firm's brand and reputation, generate clients, and build and strengthen client relationships, attract new employees and retain staff, build corporate culture, just to name a few. For lawyers, the use of social media can also pose a range of regulatory, ethical and practical problems.

The issues

The greatest concerns in the use of these new technologies are the potential breaches of confidentiality or security

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that can take place with regard to client information. Social media operates via cloud computing where the information is hosted outside the law firm by a third party. Storing information offsite and out of the direct physical control of the legal practitioner is potentially problematic as a legal practitioner's account would be at risk of hacking. Lawyer-operated blogs and lawyer-operated discussion forums (and discussion boards) pose similar security concerns.

The use of social media by lawyers also raises concerns about supervision. At present in NSW, supervision by senior practitioners over junior and non-legal staff often presents major difficulties for legal regulators. This is primarily due to the regulatory concept that misconduct is personal to the legal practitioner. The concept of vicarious liability of a legal practitioner for the work of another, and particularly a non-lawyer, is not well developed and may well be significantly exacerbated where social media is being used.

The new technologies also pose a risk of creating unintended practitioner/client relationships. There are three common scenarios in which the use of social media can create such inadvertent professional relationships. First, a law firm may have a website that contains a 'contact us' page and invites web browsers (potential clients) to complete a form or send an email via the website, whereby an inadvertent relationship with that person may be created. The act of contacting the law

firm, may create a belief that a relationship has been formed with the law firm. While some law firms attempt to dispel such beliefs through a disclaimer, many other firms do not. The second scenario that might give rise to an inadvertent lawyer-client relationship is where a legal practitioner creates a Facebook or other social media profile that is accessible to family, friends and prospective clients simultaneously. The legal practitioner may then post professional announcements that are shared with all these people. The third possible scenario involves answering questions posed by a non-client on a social media platform (particularly legal-focused forums) and thereby creating an unintended lawyer-client relationship.

Many of the professional indemnity claims made against lawyers stem from communication issues. LawCover provides risk management support focusing on better communication in order to seek to reduce its claims liabilities in this area. The use of social networking sites involves a fundamental change in

the way legal practitioners communicate with their clients and consequently poses a greater risk of miscommunication. Although these approaches may involve more timely and better direct communication between client and practitioner, the nature of that communication also has the potential to create confusion, misunderstanding and unrealistic expectations, particularly where the service delivery crosses national and language barriers.

Another challenge facing the legal profession is the potential loss of work to organisations offering online question-and-answer legal advice by staff who may not be lawyers. Perhaps the challenge will be for law firms to think creatively about the use of social media to both provide competent ethical information and advice while marketing and positioning their legal practice in a world increasingly being defined as cross-border cross-locality and cross-jurisdictional. □

ENDNOTES

1. Harvard Business Review Analytical Services, "The New Conversation: Taking Social Media From Talk to Action", February 2011 available at www.sas.com/events/pbls/2010/las-vegas/documents/TheNewConversation.pdf.
2. LexisNexis Martindale-Hubbell, "Global Social media Check Up, A global audit of law firm engagement in social media methods", December 2011 available at www.martindale-hubbell.co.uk/socialmedia.
3. "Mallesons Stephen Jaques launches Facebook page to lure graduates", 12 May 2011, available at www.production.lawyersweekly.com.au/lawyer2b/mallesons-stephen-jaques-launches-facebook-page-to. □