

# Social Media Networking Literacy: Rebalancing Sharing, Privacy, and Legal Observance

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**Abstract.** Social media networking seems to have exploded as the next big wave after the proliferation of the World Wide Web's Internet interface. The numbers are astounding: for example, over 1 billion people are connected on Facebook, there are nearly as many Twitter accounts, WhatsApp has over half a billion users, and over 200 million people use Instagram. It is not a far-fetched statement to say that the majority of the users on these social media networks are young people, probably at the age where risk assessment is not very high on their priorities. Sharing is the norm, even of the most intimate and private details. However, some sharing can be harmful, as not only might it intrude into the privacy of the users themselves or those who are connected to them, but it may come back to haunt them later in life with devastating consequences. It is imperative that social media network users have some level of literacy, which allows them to estimate the proper balance between their sharing activities, the needs for their privacy as well as that of their contacts, and the need to respect the intellectual property of fellow netizens.

**Keywords:** Social media networking, information literacy, social media networking literacy, privacy, intellectual property, defamation, social media risks.

## 1 Introduction

Social media networking seems to have exploded as the next big wave after the proliferation of the World Wide Web's Internet interface. The numbers are astounding: for example, over 1 billion people are connected on Facebook [1], there are nearly as many Twitter accounts [2], WhatsApp has over half a billion users [3], and over 200 million people use Instagram [4]. In Sweden, for example, about 97 percent people ages 12-44 are regular Internet users [5]. It is not a far-fetched statement to say that the majority of the users on these social media networks are young people, probably at the age where risk assessment is not very high on their priorities [6]. Sharing is the norm, even of the most intimate and private details. However, some sharing can be harmful, as not only might it intrude into the privacy of the users themselves or those who are connected to them, but it may come back to haunt them later in life with devastating consequences. This has been referred to as the problem of "oversharing" [7]. It is imperative that social media network users have some level of literacy that allows them to estimate the proper balance between their sharing activities, the needs

for their privacy as well as that of their contacts, and the need to respect the intellectual property and reputation of fellow netizens [8]. Thus, we define social media literacy as the ability to appreciate the risks posed by social media and to make calculated decisions when dealing with such social media in order to make a careful balance between the needs for sharing, privacy, and legal compliance.

This paper is organized into four sections. In the first section, we briefly summarize the landscape of social media networking on the Internet, as well as selected user social media activities. The second part discusses some of the issues arising from sharing and other activity on social media networks that impact on individual and group privacy, both during and post-activity. The third part discusses some of the legal issues encountered on social media networking sites and the response of users to those issues, particularly intellectual property and defamation. Finally, part four argues that the balance between the need for sharing, privacy, and legal observance on social media networking sites needs to be revisited, with a view to re-calibrating it so that the severity of future consequences is reduced. The paper argues that the principal way of accomplishing this is to continuously encourage social media networking literacy among users from an early age.

## **2 Social Media Networking: An Overview**

Boyd and Ellison [9] characterize social media networks as a socially-bounded system provided by a social media networking service where users create public or semi-public profiles, define others with whom they wish to interact, actuate those connections in various ways, including posting or reacting to postings by people within the specified networks, the distinguishing feature of which is the “public display of connections” [10] in a quest to build “social capital” [11]. This public display of connections makes it possible for individuals to not only track other individuals with whom they share a connection, but to track those other individuals’ connections as well. Thus, one can in some cases click on the links of the friends of one’s friends, as well as the friends of those friends, ad infinitum. The users’ personal details are usually integrated in their profiles, thus diminishing any anonymity even further [10]. Among the motivations for social media networking are entertainment, trend tracking, sharing of information, and showing off [12]. Online, individuals are able to cultivate an image and self that they want to project to their defined “world” and engage in “profile management” and “self-promotional behavior” [13-14], but these self-representations may sometimes be misleading to others [15]. Worse, these activities may lead to serious invasions of individuals’ privacy, as well as those of their friends and acquaintances.

## 3 Social Sharing and Privacy Implications

### 3.1 Individual and Group Privacy

Bohnert and Ross [16] noted that an individual posting on a social platform is likely to lose full control of the posted content and has little control of postings made by friends or acquaintances. Often, such postings may come back to haunt them in later life, especially when they are applying for a job. It is now becoming a trend for employers to examine applicants' social media networks. One survey indicated that 37 percent of employers use social media to screen applicants and 34 percent of those screening employers have found content that led them not to offer a candidate the job. Such content included evidence of drug use or drinking, or inappropriate photos or posted information [17]. This is not to say, of course, that employers do not find something positive in the content that leads them to offer the applicant a job.

In addition to putting one's privacy at risk when using social media, often the privacy of one's circle of friends is also put at risk. When private information is shared even within a circle of friends, there is often nothing to prevent a member of this circle of friends from sharing that information with others outside the circle. In fact, the wider the circle of friends, the greater the risk. Once this information breaks out of that circle, it is fair game for everyone, including future employers. Additionally, the privacy of the entire circle of friends is compromised by the sharing of private information outside the circle.

In the United States and many other countries, the controlling issue in dealing with privacy is the notion of a "reasonable expectation of privacy." Courts have been inconsistent in finding the presence or absence of a "reasonable expectation of privacy." In one case, for example, a nurse posted some allegations on her Facebook page to which she invited some people and not others. Her supervisor had the nurse's colleague, who had access to the Facebook page, review the nurse's postings while the supervisor watched. The postings (among other issues) eventually led to the nurse's firing. Because only invitees could access the page, the court found that the nurse had a reasonable expectation of privacy in her Facebook postings [18]. On the contrary, another court held that a user posting on her Facebook page has no expectation of privacy, because her intent is that the information be seen, especially where this posting is on her Facebook wall [19]. *Romano v. Steelcase* [20] went even further to say that users who utilize social media networks such as Facebook have no reasonable expectation of privacy in such information since they have consented that their information will be shared by others, and have knowledge that the information may become publicly available. Additionally, some social media networks, such as Myspace, clearly express the possibility of disclosure of users' information, thus reducing or eliminating a reasonable expectation of privacy in such information.

### 3.2 Access for Legal Purposes

In many countries, citizens are protected in the constitution against unwarranted government intrusions in their lives and possessions. In the US, for example, the

government is limited by the 4<sup>th</sup> Amendment to the Constitution in its ability to search and seize personal property, including information. Here, again, the controlling issue is one of the expectation of privacy. Absent a search warrant, the degree of the reasonable expectation of privacy will determine whether or not the government violated the citizen's 4<sup>th</sup> Amendment rights. In the case of social network postings, again the jury is not clear. The court in *U.S. v. Meregildo* [21], for example, found that postings and information disseminated to the public enjoy no 4<sup>th</sup> Amendment protection and that the government may view a user's social media networking web site profile without probable cause. But the court also found that the use of high privacy settings might support the user's reasonable expectation of privacy. *Reid v. Ingerman Smith* [22], on the other hand, took a dim view of privacy settings, ruling that even where a user has set privacy settings to friends only, there is no guarantee that those friends will not share the information with others beyond the friendship circle, and therefore there is no reasonable expectation of privacy. This information can be subpoenaed for use in civil litigation, for example in personal injury cases. A cooperating witness Facebook friend, for example, can be used by the government to access a user's postings and other information without violating the user's reasonable expectation of privacy [21]. While communication such as email within a social network may be considered covered by a reasonable expectation of privacy, other forms of communication, such as twitter, may not be so covered, since a tweet may be better characterized as an email sent to a party with millions of copies sent around the world [23].

When it comes to litigation and discovery, social media information is not privileged and does not enjoy any particular privacy right; but requests for the information must be tailored in a way that is calculated to lead to discovery of evidence that can be admitted [24,25]. Such evidence may include, for example, Facebook postings that indicate recreational activities that are inconsistent with claims of workplace disability or personal injury. When a user's social media account is public, the information on that account can be freely accessed without court orders [19]. But even privacy settings that restrict access to only a few cannot protect the social media postings from discovery requests [26,27]. Courts have granted motions to compel discovery of online social media profiles, wall comments, causes joined, groups joined, postings, status updates, blog entries, photographs, or media clips on Facebook, LinkedIn, and MySpace [28]. Additionally, third party postings, such as friends, may equally be discoverable. Communications such as email through the social media networks held by electronic communications services providers (ECSPs) are protected from civil subpoena to ECSP by the Stored Communications Act (18 USCA 2702), which prohibits the production of such records.

A common misperception among young social media networkers is that they are protected if they post anonymously. Nothing could be further from the truth. While the process may sometimes be onerously lengthy for plaintiffs, courts have had little difficulty helping to unmask John Doe defendants. Additionally, people who "like" anonymous postings may themselves be identifiable.

## 4 Some Other Legal Issues

### 4.1 Defamation

Defamation generally means the publication of a defamatory statement that is false concerning an identifiable individual either negligently or with actual malice (for public figures or matters of public concern). Most of the postings on social media qualify as publication, because they are intended to reach third parties. Damage to the plaintiff is usually presumed. The issue often revolves around determining whether a statement should be considered fact or opinion. If it is merely an opinion, it is generally not actionable. Social media can sometimes encourage “venting” and the posting of quick, thoughtless statements that might cause an action for libel. Twitter, for example, has a structure (maximum 140 characters) that encourages such statements, leading to “twibel” actions. Even famous people (e.g. Courtney Love and Kim Kardashian) have been caught up in litigation arising out of social media postings. Britain seems to be particularly unforgiving on libel defendants, even in cases involving public figures. In one case, libel was found from a statement that simply asked why a certain public figure was “trending,” in a context that suggested that the plaintiff had years before sexually molested children who were government wards [29]. While the social media network may escape liability for defamation on the theory that readers understand that most of what is posted on social media sites should not be believed, the individual poster may not. In the UK, for example, the Defamation Act 2013 provides additional protection to social media networks such as Facebook from defamation liability for content posted on their sites, as do many other countries. Retweets and linking to defamatory material may not always lead to liability and in the US may enjoy the immunity provided by Section 230 of the Communication Decency Act that protects providers and “users” of an interactive computer service.

### 4.2 Intellectual Property

By its very nature, social media networking encourages wide and frequent sharing of information. Some of this information, especially “user-found” (as opposed to “user-generated”) may be copyrighted information, or protected by other aspects of intellectual property law. Although it is a common and accepted social media practice, sharing of such protected works may lead to copyright infringement liability. Furthermore, unlike in defamation that we discussed above, linking to infringing material attaches liability.

While some users may have a general idea that the content they generate may be protected by copyright, what they may not know is that they may have signed away some of the rights this copyright protection merely by clicking on the social media provider’s “Terms of Use” that purports to grant a broad use license of the copyrighted material from the user to the provider.

Social media postings may be subpoenaed to prove infringement, especially willful infringement, which carries a stiffer penalty. Also, copyright owners may apply for subpoenas to look into social media accounts for the purposes of discovering the identities of infringers, where it is not prohibited by the Stored Communications Act.

## 5 Towards a Social Media Networking Literacy

The issues we have discussed above lead us to consider whether we should make it a priority to ensure some level of social media network literacy, especially among young users, who are perhaps the majority of users, and also likely to be the most vulnerable to legal issues. Even at universities where there is robust social media activity, social media users seem to be blissfully unaware of the pitfalls of posting online. Drawing from examples from Australia and Sweden, Woodley and Silvestri [7] noted the insufficiency of discussion about social media and professional risks in universities, and pointed out the lack of inclusion of those topics in university curricula. Hopefully this situation is changing. The University of Lancashire, for example, has a course titled “Brand You” that helps students manage their online identities [30]. There is need for additional work in this area. Social media users need to learn quite early what inappropriate online behavior is, and what the risks of “oversharing” are. Woodley and Silvestri [7] note that social media demands a different set of skills in the employability debate, and suggest that university students in particular need to understand the legal context of their online environment, and that universities must embed web 2.0 media literacy skills in their courses. Social media networking literacy is distinguishable from digital literacy, which is the ability to use online resources, particularly the ability to select task-relevant sources and to synthesize and communicate messages coherently.

## 6 Conclusion

The discussion above has highlighted the problem that over-sharing of information on social media poses for both the poster and her acquaintances. We have noted the permanency on the Internet of mistakes made in one’s youth, that can come back to affect one’s life at a later date. We have seen that insufficient attention is being given to educating users about social media perils. This article suggests that increased efforts should be made to provide social media networking literacy as a crucial aspect of individual development, and to assist citizen 2.0 in maintaining a proper balance between sharing, the need for privacy, and legal compliance. Citizen 2.0 already has digital literacy, what she needs now is social medial networking literacy.

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