



Selected Legal Issues Affecting Community Websites/Online Social Networks

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Social Networks

- Platform for variety of communications tools
- Worldwide reach
- Relatively low cost communication
- User-generated content, including disclosures of personal information
- User-generated data sharing
- 3d-party applications?

U.S. Law

- No comprehensive federal law on social networks/community sites
 - Specific federal laws may apply to aspects of site operations
 - State contract law
- Different situation in European Union, Canada, Asia
 - Recent CIPPIC complaint v. Facebook under PIPEDA
 - EU

Liability Questions?

- For what is the site at risk?
 - Terms of Use for site is contract that governs relationship between users and site
 - Privacy Policy – contract or promotional?
- For what is site sponsor at risk?
 - Contract between sponsor and hosting company apportions rights, risks, and liabilities
 - Terms of Use

Liability for Content

- General rule: site operator is responsible for what it posts, but not for what others post

What about postings by community members?

- Two layers of legal protection
- Website terms of use:
 - Contract between site and community members
 - Commonly contain “acceptable use” policies that prohibit certain types of postings
 - If properly drafted, these give site some protection
 - Adhesion contract?
- Section 230 of Communications Decency Act (47 USC section 230)

Section 230

- What it says:
 - “no provider . . . of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”
- What it means:
 - Website does not have “publisher” liability for postings by others
 - Unless site contributes “in whole or in part, to the creation or development” of the content.
 - Good Samaritan protection for detecting and editing objectionable content

Section 230 is a powerful defense

- Successfully used as defense against claims arising from:
 - Defamation
 - Incorrect statements of fact
 - Opinions
 - Online harassment
 - Illegal advertisements
 - Providing “gripe tags”
 - Refusals to remove posts
- *But* not applicable to intellectual property claims

Abusive postings

- Section 230 applies
- Terms of Use usually prohibit
- *U.S. v. Drew* criminal indictment for violation of Computer Fraud & Abuse Act in connection with death of Megan Meier
 - Charge is that Mrs. Drew accessed MySpace “without authorization” by providing false registration information and by harassing other users in violation of TOU

Exceptions: sites have been found liable in certain situations. . .

- What the Site should NOT do
 - Edit so as alter meaning of the posting
 - Shape profiles in illegal directions. *Fair Housing Counsel v. Roommates.com* (Sec. 230 not available for site that “developed, at least in part” illegal real estate listings); but see *Chicago Lawyers Committee for Civil Rights v. Craigslist* (Sec. 230 available for site that hosts listings for alleged violations of Fair Housing Act)

Copyright Issues

- Many posters are generally unaware or willfully unconcerned with niceties of copyright law
- Digital Millennium Copyright Act
 - Defense for website
 - “notice and take down” process
 - Specific requirements
 - TOU language
 - Contact
 - Copyright Office registry

Privacy Issues

- No general U.S. law governing Internet privacy
- California law requires commercial websites to post privacy policies clearly and conspicuously
- Privacy policies must describe accurately the site's practices regarding collection, use, and disclosure of personal information
- A note on HIPAA, PHR, HER
- SSNs – don't even ask

Special rules for teens and kids

- Children's Online Privacy Protection Act of 1998 (COPPA) regulates collection, use, and disclosure of personally identifiable information of children under 13.
- Teens:
 - MySpace & Facebook settlements with state attorneys general led by Connecticut and New York

Privacy & Advertising

- Online social networks often advertising-supported
- Ads come in different flavors: contextual, behavioral, networks, and types (popups, display, beacon, email)
- Targeted advertising more valuable, but requires more information about site users
- Know audience; enforce TOU; best practices
- Consider context
- Ads/networks need right privacy match

Importance of Privacy Policy

- Legal effect
- Sets minimum standards
- Site should consider default settings, use of opt-in or opt-out
- Abuse-reporting mechanism
- User controls

Things to be careful about or avoid

- Third-party sharing. Facebook/Beacon
 - CIPPIC PIPEDA complaint re Facebook sharing of more information than necessary with 3d-party developers
- Don't spam the members. *MySpace litigation v. TheGlobe.com.*
- Account deletion – Facebook
- Hot topic now in Washington

Security

- 44 states plus D.C. have enacted breach notification laws applicable to breaches of data security.
- Health information generally is not protected by these laws (at least until recently in California)
- HIPAA information security rules

Conclusion

- Questions?