Social Media – the Legal Risks

Chris Holme
Partner at Clyde & Co LLP
What are social media?

• “...web-based and mobile technologies that turn communication into active dialogue. There are many different types of social media channels, which attract specific audiences for different purposes.”
  
  Law Society social media guidance note 2011

• “...interaction among people in which they create, share, and exchange information and ideas in virtual communities and networks”
  
  Wikipedia definition
What are social media?

- Social networks - websites which allow users to build personal web pages and then connect with other users to communicate and share content
  - Facebook and LinkedIn
- Forums - online discussion sites, usually focused on a specific topic or area
  - BIBA Broker Forum
- Video and photo sharing websites
  - Instagram
- Blogging - sites where users create and/or comment on site content
  - Wordpress
- Microblogging
  - Twitter
Who is using social media?

Facebook: 600m users

Twitter: 200m users

LinkedIn: 100m users
How social media is changing the world of brokers

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Shawbrook Banks Blog | 0 Comments

Insurance brokers' use of social media is on the rise

Posted On: Jun. 13, 2013 6:00 AM CST

Judy Greenwald (mailto:jgreenwald@BusinessInsurance.com)
Who is using social media?

- Griffin members
- Forums for brokers
- The Broker Forum on Insurance Age’s website

- BIBA on Twitter
  @BIBAbroker
- BIBA on LinkedIn
  http://www.linkedin.com/company/biba
Why use social media in business?

- Get positive image of business into public domain
  - increase brand awareness
  - instant access to information
  - improved customer communication and service

- Business opportunities

- Recruitment

- Information on prospective employees
Horror stories

• “Dell Hell”
HMV’s Twitter disaster

The Official hmv Twitter. The music, film, games and tech you love.
#WeAreEntertainment
UK • http://www.hmv.com

Tweets

hmv @hmvtweets
Just overheard our Marketing Director (he’s staying, folks) ask “How do I shut down Twitter?” #hmvXFiring

hmv @hmvtweets
Sorry we’ve been quiet for so long. Under contract, we’ve been unable to say a word, or -more importantly - tell the truth #hmvXFiring

hmv @hmvtweets
There are over 60 of us being fired at once! Mass execution, of loyal employees who love the brand. #hmvXFiring

hmv @hmvtweets
We’re tweeting live from HR where we’re all being fired! Exciting!! #hmvXFiring
Legal issues - content

- **Defamation**
  - Re-tweeting

- **Confidential information**
  - Contacts on LinkedIn, “friends” on Facebook - confidential client relationship?
  - Work details on Twitter etc
  - Easily disseminated by mistake (eg info on clients / pricing)

- **Data Protection**
  - Personal information is not easily removable
  - Traceable online

- **Intellectual Property**
  - Copyright material
  - Trademarks

- **Regulatory implications**
Legal Issues – third party content

- Responsibility for third party content
  - Website operators/ISPs
  - Blogs
  - Website terms and conditions
  - Notification and takedown notices
  - *Godfrey v Demon Internet* case
• BBC sacks two workers for misusing Twitter’ (Telegraph, Nov 2012)

• Eleven work and pensions civil servants sacked for using Twitter or Facebook (January 2013)

• Shop worker sacked by Nike for trying to sell his old trainers on Facebook (January 2013)

• Employee of the month sacked for calling her job a “joke” and her co-workers “fake and lazy” on Facebook (February 2013)
Legal Issues - employment

• Damage to reputation from employee comments on social media

• Risks to employer’s confidential information

• Risk of employer liability for employee actions

• Hiring policies

• Monitoring of employees’ social media use

• Use and misuse of social media sites at work:
  - excessive use
  - bullying and discrimination
  - public or private?
Public or private post?

facebook

Adrian Smith
an equality too far.
Gay church marriages get go-ahead
www.bbc.co.uk
Ministers are to set out plans to make changes to the law which could enable same-sex couples to “marry” in church, it has emerged.
13 February at 12:18 share

Does this mean you don’t approve?
13 February at 15:13

Adrian Smith no not really, I don’t understand why people who have no faith and don’t believe in Christ would want to get hitched in church the bible is quite specific that marriage is for men and women if the state wants to offer civil marriage to same sex then that is up to state; but they shouldn’t impose its rules on places of faith and conscience
Monday at 22:19
What can we do about it?

- **Internal risk management**
  - increase awareness of risks as well as benefits
  - use and increase privacy settings
  - have an internet/social media policy in place
  - make sure people are aware of it

- **External facing risk management**
  - website terms and conditions
  - act promptly on complaints and notifications
  - use the same media to deal with adverse content?
Final remarks

• Mistakes often do, and will happen!
• Ensure the right policies and procedures are in place
• We can’t beat the social media phenomenon - so may as well join it
• Treat electronic communication as you do anything else you write
• Remember – write everything as if it was to be read out in court
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Chris Holme

Partner at Clyde & Co LLP
SOCIAL MEDIA – RISKS AND REWARDS IN BUSINESS

Lisa Hansford-Smith
Senior Underwriter XL Insurance Co. Ltd.
Social Media

• Companies are far more complex than they used to be.

• There are many different routes to market – social media being one of them.

• Most companies take time to react but social media is ruthless in terms of time.
Risks – just to name a few

- Libel
- Reputational damage
- Intellectual Property breach
- Privacy breach
Several deadly sins

- Anything can leak out
- Do not become over reliant on social media
- Do not over post
- Keep negativity at bay
- Do not promote anything that you would not want your family to read
- Never fight with anyone else on social media
- Take legal action in private if necessary

Citation: Miriam Slozberg April 23 2013
Management of social media

• Need to take social media as seriously as the other exposures a company faces.
• Do not put someone in charge just because they know how to use facebook.
• This is a publishing exposure and needs to be treated as such.
Insurance perspective

• Can insure social media exposures but this depends upon the following:
  – Social media/media risk management strategy
  – Posting review
  – Education of staff re social media strategy and acceptable behaviour
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Introduction by CEO
Mairi Mallon
(aka @reinsurancegirl)
Risk and Rewards of Social Media for Business
There is no doubt social media can be confusing....
But actually, it is fairly simple...

**SOCIAL MEDIA EXPLAINED**

**TWITTER**  I'M EATING A #DONUT

**FACEBOOK**  I LIKE DONUTS

**FOURSQUARE**  THIS IS WHERE I EAT DONUTS

**INSTAGRAM**  HERE'S A VINTAGE PHOTO OF MY DONUT

**YOUTUBE**  HERE I AM EATING A DONUT

**LINKEDIN**  MY SKILLS INCLUDE DONUT EATING

**PINTEREST**  HERE'S A DONUT RECIPE

**LAST FM**  NOW LISTENING TO "DONUTS"

**G+**  I'M A GOOGLE EMPLOYEE WHO EATS DONUTS.
High-jacking of social media platforms

Who has your handle?
Live tweets
@HMVtweets to over 70,000 followers

We’re tweeting live from HR where we’re all being fired! Exciting!! #hmvXFactorFiring

Just overheard our Marketing Director (he’s staying, folks) ask “How do I shut down Twitter?”
Solution:
Lock down your channels, own the passwords and have CLEAR GUIDELINES
Social media amplifies a message.
So... what happens in a crisis?
THE IMPORTANCE OF TRAINING AND GUIDELINES
"On the Internet, nobody knows you’re a dog."
Do you understand this?
PLUSES

Rewards

• Show expertise
• Show a more “human” face of the company
• Increase coverage in newspapers and magazines
• Tell a story about the company
• Raise brand awareness
Rewards

- Celebrate yourself and your industry
- Assist recruitment
- Start campaigns that could give clout among regulators/ratings agencies
- Recognition among existing and potential clients.
- It is a relationship business – a great way to build relationships
It is not rocket science

- It is more dangerous not to know what is going on
- Watch and learn from others
- Get guidelines and training for your staff
- Use your younger members of staff who will already live and breathe social media