

→ In recent months it has been difficult to avoid noticing the number of reports concerning various celebrities or public figures who have managed to come a cropper over their use of social media. Whether it has been Dianne Abbot MP and her allegedly racist comments, Rupert Murdoch encouraging Britons to get back to work and stop taking so much time off at Christmas (whilst sunning himself in St Barts) or, indeed, even a Guernsey Deputy commenting on her fellow States members it seems that it has become extremely easy to take a public tumble over Twitter, Facebook and other forms of social media.

The advent of social media has changed dramatically the way that many of us approach business particularly in the field of public relations and advertising. Through Twitter, Facebook or corporate blogs social media is now being used as a useful and cheap way of getting information and news out to the world in a quick and accessible fashion. With the increased use of smart phones and reliance on internet based information reaching through businesses and into the home people have found the informality of social media appealing and approachable. Indeed, businesses are increasingly using social media presence to endeavour to differentiate themselves from their competitors' potentially more staid appearance. However, the various attractions of social media also present real challenges and dangers. It may only take a few seconds to Tweet 140 characters of information but that is more than enough time to cause real legal headaches.

I would not for one moment advocate a return to dull press releases or limiting your media presence to the pages of Contact magazine (great read that it is!) but here are a few points to note to make sure that you don't end up in hot water.

1 Illegal things remain illegal on the Twitter sphere. Just because you are using a new form of media it doesn't affect the nature of your actions at law. In the UK Paul Chambers was recently convicted of "menace" for having threatened to blow up Robin Hood Airport when it was faced with snow closures last winter. Similarly, a number of four year long jail terms were dished out for those convicted of inciting rioting on Facebook. The same applies for civil wrongs. Every business should be aware that it is civil wrong to publish libellous or false malicious comments about competitors in writing. Publication via the internet, whether by Twitter or otherwise, still counts. In March 2011, in the first case of its kind in the UK, Caerphilly County Councillor Colin Aylesbury was successfully sued for libel by another councillor for claims he made on Twitter. The court made it clear that the laws of libel and defamation still pertain to social media - statements may not be in ink but it is still in "print". The same applies in Guernsey.

2 Reputations – Lost in an instant? Building up a good reputation can take years of dedicated client service assisted by good PR and a lot of investment in relationships. Those of us over 35 will recall the damage done by Gerald Ratner's comments as to the quality of the products sold by his jewellery business when he described a product as "total crap" and noted that some earrings he sold were cheaper than an M&S sandwich "but wouldn't last as long". News of his comments took several weeks to unfold but now the same damage can be done in a matter of moments with social media. Generally speaking its good advice to remember that if you wouldn't put something down in a letter or printed article don't blog, Tweet or Facebook it either!

3 Whose line is it anyway? A fresh challenge posed by social media to companies is in the realm of intellectual property. Is a Twitter or Facebook account

company property? Who owns your followers? Many companies now have their own Facebook pages which they use to promote their business and inform clients/customers of new developments. However, if an employee is using his own Facebook or Twitter account to promote a business who owns the intellectual property of the information used on that account? In the United States there is ongoing litigation concerning this very issue. Noah Cravitz tweeted on behalf of a US mobile news website. This was part of his duties as an employee to promote the business. He subsequently left the company, kept his Twitter account and took over 17,000 followers with him. His former employer brought an action against him claiming that they had invested significant costs and resources into developing its awareness through social media and that required the Court's protection. The outcome is yet to be decided but should give businesses pause for thought about how they should go about protecting intellectual property in a social media context.

A business should give serious thought to the framework in which it deploys social media. A clear line should be drawn between an employee's personal interest and that of the business and a strategy should include staff use, compliance issues, roles and responsibilities. No doubt any framework may give rise to tensions – for example, if an employee is using "LinkedIn" to promote his or her business and network with prospective clients what happens to all those contacts should he leave? Companies have long fought to protect their financial information using restrictive covenants but how will that work with new social media?

4 Abuse by Employees As well as considering the threats to intellectual property, businesses also need to be alive to improper staff use of social media. This has become an increasing headache for many employers and is certainly not confined to work time being wasted on surfing the web. A recent survey published

by the Guardian in the UK showed that from 2008/2009 until October 2011 72 actions had been carried out by 16 National Health Trusts against their staff. The cases ranged from inappropriate comments being made about managers through to conversations on Facebook regarding confidential patient matters. At the end of last year the BBC reported that over 150 police officers had been warned over their Facebook use from 2008 to 2010 alone. In addition to the problems encountered in the public sector in the UK another noteworthy case concerned Goldman Sachs who fired a trader for simply spending far too much time during office hours on Facebook.

5 Litigation and Privacy don't get on very well It used to be said that today's news was tomorrow's chip paper. Frankly that simply does not remain the case. For even the simplest of Google searches it is possible to uncover pretty much everything that has been posted publicly using social media of any form. In addition, information of any nature may be believed to be private but the Courts are very willing to adapt old methods for securing and disclosing information to the new media forms. Whether it is ordering disclosure of electronic information and data in order to protect business interests through litigation or bringing contempt proceedings against those who have broken the terms of a privacy injunction through Twitter posts the mere fact that it concerns social media will not present

problems for the court. Litigators and judges have kept pace with the rapid development and use of IT. In suitable cases we frequently have electronic disclosure being made of archived records but also will use "E-Disclosure rooms" for the handling of vast quantities of data and material. Audit trails, data retrieval capabilities and proper archiving of backups are now essential in the modern legal and regulatory environment. Private e-mails and blogs are as susceptible to disclosure and retrieval as any corporate spreadsheet or client file.

An unusual example of how courts are adapting to the Facebook generation comes, perhaps unsurprisingly, from the United States. Recently a divorce judge in Connecticut ordered Steven and Courtney Gallian to exchange their Facebook and dating website passwords as part of the discovery process in their divorce. Whilst it is most unlikely that we will see the Bailiff make a similar order in the Royal Court anytime soon it does demonstrate that the law has no problem with dealing with the current forms of social media.

There is no need to worry unduly about social media use and businesses should embrace all that is good about it - I'll leave advice as to the best way to deploy social media to promote your business to marketers and PR agents. What is required, though, is careful thought as to the legal risks it may present to your business and some consideration as to how to manage those. For example, a

number of Premier League football clubs have employed consultants to advise their players on their use of Twitter and Facebook to ensure they don't open themselves up to disciplinary or legal trouble. In Guernsey's regulatory climate I believe that businesses should now consider their use of social media specifically in their corporate risk assessments. Finally, perhaps the best and simplest advice is simply to think twice before pressing the "send" key to ensure you avoid an "#epicfail".

By Alasdair Davidson, Partner,
Bedell Cristin, Guernsey



'Recently a divorce judge in Connecticut ordered Steven and Courtney Gallian to exchange their Facebook and dating website passwords as part of the discovery process in their divorce.'