SHIFTING LANDSCAPES
The online challenge to traditional business models
A research study by DLA Piper

REPORT 5:
SOCIAL MEDIA – NEW LAWS FOR NEW ATTITUDES
In 2008, in conjunction with YouGov, we undertook a survey into bloggers’ liabilities. We wanted to try and gauge awareness levels amongst internet users of their legal rights and responsibilities when posting comment online, specifically on blogs. The results revealed a widespread lack of clarity, with just 5% of the internet users we interviewed stating that they were clear about their legal liabilities.

Three years on and social media has evolved dramatically. The rise of Twitter and the significant increase in use of outlets such as Facebook and LinkedIn have resulted in social media becoming a pervasive and important part of everyday life. This summer’s riots in UK cities served as a timely reminder as to the impact that new media can have on society.

With this in mind, we have sought to build on our findings from the 2008 survey to establish how internet user’s attitudes and understanding of their legal responsibilities have changed over the last few years. Once again, we asked YouGov to survey over 2,000 respondents, targeting a cross section of the British public online. The results provide a fascinating insight into the British public’s use of social media, as well as their views on how the law should apply to this increasingly ubiquitous medium.

The following report sets out the findings of this research, as well as some expert advice and opinion from experienced digital media experts in our Intellectual Property & Technology Group.

It should provide valuable intelligence for anyone operating within the world of social media and user-generated content.
SOCIAL MEDIA USAGE

Unsurprisingly, the number of people that have posted a comment on a social media outlet has risen over the last three years – from 54% in 2008, to 67% in 2011. This figure increases dramatically for younger people, the so-called ‘digital natives’ – those growing up during or after the general introduction of online technology in the last twenty years – 94% of students and 89% of 18-24 year olds having posted a comment on a social media website. Despite the success of Twitter since the previous data was collected, Facebook remains the most popular social media outlet – 61% (rising to 91% of students and 86% of 18-24 year olds) have posted comment on the site. Twitter comes in second place with 20% of online Brits engaging on this platform, and 48% of students and 41% of 18-24 year olds having tweeted. We discovered that 11% of respondents have blogged in comparison to 7% in 2008. This is a surprisingly small increase but one that is probably best explained by the rise of Facebook and Twitter during the period, indicating that people are choosing to ‘micro-blog’ rather than commit to the more formal, lengthier web log.

IMPACT OF THE LAW

That more people, particularly younger people, are using social media sites is both expected and unremarkable. However, responses about how the internet is currently being monitored and moderated compared to 2008 reveal a much more surprising picture. The decline from 2008 to 2011 in the number of people who have had a comment or post on a social media site removed – only 6% of respondees stated that they have had a comment taken down, compared to 14% in 2008 – deserves further analysis. The decline could indicate that the monitoring of social media is decreasing or that users’ awareness of the risks involved is greater.

Both scenarios are feasible. The online world is expanding at an incredible pace: more sites and increased usage mean more content, and more content means more moderators are required to monitor for inappropriate comments. Is it the case that it is just becoming harder to keep on top of?

As previously mentioned, an alternative view could be that the decrease is the result of increased self-moderation. Perhaps today’s users are simply more aware of what is appropriate and are amending their behaviour accordingly? If this is the case, our findings tell us that this is not a result of their actively having read the terms and conditions of websites, as these statistics have also decreased – only 18% claim to have read the terms and conditions for posting comment on a social media outlet, compared to 33% in 2008. Are we seeing users unconsciously self-moderate their comments?

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Could it be that the extensive media coverage regarding privacy claims, super-injunctions and the ‘outing’ of celebrities on Twitter, and where users of social media have been held to account for their online actions, has focussed people’s minds? There has certainly been a steady stream of disputes over tweets and blogs reported in recent years. Our law has long been argued to exert a “chilling effect” on traditional media and professional writers. Is it now having a similar impact on social media and citizen journalists?

Certainly, our survey highlights an increase in awareness of users’ legal rights and responsibilities – by a third from 5% in 2008 to 37% in 2011 – although this of course means that two thirds (63%) still claim to have little or no awareness of their legal rights and responsibilities when posting a comment on social media websites and, worryingly, over half of Twitter users (52%) do not consider if their tweet could be in breach of the law before they send it, rising to 65% with 18-24 year olds. It would appear that – just as with old media – even if some are choosing to self-censor, many are opting to “publish and be damned”. Recent research by Sweet & Maxwell (Defamation Law, Procedure and Practice, August 2011) suggested that the number of online defamation cases more than doubled in the last 12 months.

The legal downsides for unwary bloggers can be significant. Regardless of any uncertainties over the status of online intermediaries, the original author of unlawful material will be considered responsible for their posts. Defamatory comments in social media have led to pay-outs of many thousands of pounds. Anyone tweeting in breach of a privacy injunction could face up to two years in jail for contempt of court. Those users found recently to be inciting riots on Facebook, (even though in their case no riot ever took place) have had their appeals to overturn four year prison sentences rejected. The Court of Appeal recognised the power of social media stating: "the abuse of modern technology for criminal purposes extends to and includes incitement of very many people by a single step".

In summary, the situation remains that, regardless of the fact that people’s awareness of their legal rights and responsibilities has increased since 2008; in 2011 nearly two thirds of online Brits still don’t understand the law and how it applies to them, with young people particularly ambivalent about whether they are breaking the law, specifically when using Twitter.
ATTITUDES TO THE LAW

We were particularly interested to understand how users of social media thought rules and regulations should apply and, again, the results were insightful. A key concern and area of focus for us throughout our questioning was whether social media outlets should be treated with the formality and rules that journalists and other writers face when publishing material and commentary. For example, if you are posting a comment on Facebook or tweeting, should you be held to the same journalistic standards as if you were writing an article in the national or regional press? Should laws such as privacy and defamation apply in the same way?

When asked about a number of social media outlets, overall just over a third of respondents (37%) believe that users of social media sites should be held to the same standards as journalists. Even fewer 18-24 year olds hold this belief – just 20%. The breakdown for specific social media sites is below:

If you are posting a comment on Facebook or tweeting, should you be held to the same journalistic standards as if you were writing an article in the national or regional press?

<table>
<thead>
<tr>
<th>Social media outlet</th>
<th>% of general population who believe users of the outlet should be held to journalistic standards</th>
<th>% of 18-24 year olds who believe users of the outlet should be held to journalistic standards</th>
<th>% of students who believe users of the outlet should be held to journalistic standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twitter</td>
<td>38%</td>
<td>20%</td>
<td>14%</td>
</tr>
<tr>
<td>Blogs</td>
<td>41%</td>
<td>30%</td>
<td>28%</td>
</tr>
<tr>
<td>Facebook</td>
<td>35%</td>
<td>14%</td>
<td>13%</td>
</tr>
<tr>
<td>LinkedIn</td>
<td>37%</td>
<td>22%</td>
<td>13%</td>
</tr>
<tr>
<td>Google+</td>
<td>35%</td>
<td>16%</td>
<td>12%</td>
</tr>
<tr>
<td>Discussion forum</td>
<td>33%</td>
<td>19%</td>
<td>20%</td>
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Government and regulators have often acted in line with the principle that what is unlawful offline should be unlawful online, even though the technical realities of the internet can make a big difference in practice. In any event, our courts have always taken the context of publication into account when determining liability for defamation. Judges have so far resisted making broad statements about whether material in social media should be treated differently to material in traditional media. They have, however, recognised that in certain circumstances it might resemble the banter of the bar-room rather more than the considered view of the editorial leader – and be treated accordingly. Whether, by contrast, citizen journalists can and should be afforded the same protections as professional counterparts – from court reporting to privacy and interception orders – is a separate question.

Whilst the above data suggests that the majority believe that social media sites should be treated far more casually than formally published writing – and this is particularly true amongst younger respondents and students – when asked if there is a need for special legal guidelines for social media outlets, 69% of people agreed. Again, there is a difference of opinion between generations – the younger you are, the less likely you are to agree that social media outlets require special legal guidelines:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 55</td>
<td>79%</td>
</tr>
<tr>
<td>45-55 year olds</td>
<td>72%</td>
</tr>
<tr>
<td>35-44 year olds</td>
<td>66%</td>
</tr>
<tr>
<td>25-34 year olds</td>
<td>60%</td>
</tr>
<tr>
<td>18-24 year olds</td>
<td>52%</td>
</tr>
</tbody>
</table>

Does this mean that people believe that there should be increased legislation for the policing of the internet? Or is this simply a call for greater guidance as to how the law currently stands?
“It has long been accepted that online behaviour differs from the behaviour people would exhibit in the real world due, largely, to the anonymity it allows.”
RESPONDING TO THE CHALLENGES

In 2007, Tim O’Reilly, founder of O’Reilly Media and one of the web’s most influential thinkers, mooted the idea of a bloggers ‘code of conduct’, stating: “setting standards for acceptable behaviour in a forum you control is conducive to free speech, not damaging to it.” We found some support for the concept in our 2008 survey but overall the proposal was greeted with a mixed response with many claiming that the blogosphere needed less, not more, restrictions and to-date, no such code has been introduced. Of course, equivalent provisions are applied contractually through the terms and conditions of most online platforms but, as noted above, few users seem to bother to read them.

Arguably its impact in all sectors has yet to be felt. For example, the role of social media in the corporate sphere is only just emerging – something we addressed in our recent Shifting Landscapes report, “Knowing your tweet from your trend – keeping pace with social media in the workplace”, and its full application in television as traditional broadcast merges with online video remains to be developed. Elsewhere the die seems cast. As Robert Levine states in his book Free Ride “conventional wisdom says that journalism must be reinvented for a changing world – blogged, twittered, or somehow crowd-sourced”. Levine flags the key commercial questions that this raises but the legal issues will also need addressing.

It has long been accepted that online behaviour differs from the behaviour people would exhibit in the real world due, largely, to the anonymity it allows. Many have recognised the social benefits of that from whistle-blowing to health education. But have the “troll” prosecutions, Wiki-leaks exposures and Twitter scandals changed this view? Can we distinguish public and private spheres online? Is the online environment now more or less open to self-censorship? At the end of his recent BBC TV documentary Sex, Lies and Gagging Orders, editor of Heat magazine Sam Delaney was suggesting users should at least think before they “retweet that next purest nugget of gossip gold”; it was user responsibility rather than a change in the law that was needed. But is it time for an overhaul of those laws?

Some change has begun. Libel reform in this country, at least in part, reflects the impact of online realities that are technical but also territorial – though the US, with its very different rules, is no stranger to social media disputes. Much of the debate here, however, whether over phone hacking, privacy law or injunction notifications is still about balancing the rights and responsibilities of the individual against those of the publisher, broadcaster or other media business. Social media is ultimately about individuals. Can we be controlled online, as our public behaviour is offline, through unwritten norms and the general law if needed?

Whilst historically our media has become generally less not more regulated, the successful solution for new technology has often been to develop bespoke controls that side-step the courts. Ultimately it may be that social media will require something similar to police itself. Much may depend on how traditional media responds and reinvents itself and how, given the pace of online change, the social media platforms of today evolve into future services. Our survey strongly suggests, however, that one crucial determinant will be whether the laissez-faire attitudes of younger users will also change. Will they adopt a different stance as they mature with the technology? Another survey in 2014 will no doubt be revealing…
METHODOLOGY

This survey has been conducted using an online interview administered to members of the YouGov Plc GB panel of 350,000+ individuals who have agreed to take part in surveys. An email was sent to panelists selected at random from the base sample according to the sample definition, inviting them to take part in the survey and providing a link to the survey. (The sample definition could be “GB adult population” or a subset such as “GB adult females”). YouGov Plc normally achieves a response rate of between 35% and 50% to surveys however this does vary dependent upon the subject matter, complexity and length of the questionnaire. The responding sample is weighted to the profile of the sample definition to provide a representative reporting sample. The profile is normally derived from census data or, if not available from the census, from industry accepted data.

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2,095 adults. Fieldwork was undertaken between 22nd – 24th August 2011. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

FOR FURTHER INFORMATION

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End notes
1. All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2,095 adults. Fieldwork was undertaken between 22nd – 24th August 2011. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+).
2. The 2008 survey was undertaken between 18th – 21st April 2008. Total sample size was 2,006 adults. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+).
ABOUT DLA PIPER

DLA Piper is one of the world’s largest legal practices with 4,200 lawyers in more than 76 offices in Asia, Europe, the Middle East and the United States. We represent more clients in a broader range of geographies and practice disciplines than virtually any other law firm in the world. DLA Piper was built to serve clients wherever in the world they do business.

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