

## Treading carefully in Stalk Space: Social Media and Risk

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Universities are enthused by the capacity of social media to engage students, encourage creativity, support collaboration and connect students, teaching staff and industry globally. Without dismissing the very real capacity for social media to contribute to a connected, informed, critical digital citizenry, it is timely to consider some of the risks that social media in a university setting brings. It is a commonplace assumption that, not only are all students 'on' Facebook, but that universities must also engage with students there. This paper does not consider whether to use social media or not for teaching; rather, this paper introduces some legal and ethical themes about the use of external social media for the formal teaching of enrolled students.

Keywords: social media; university; risk.

### Introduction

This paper draws on draft guidelines developed to provide general advice about legal risks and teaching with social media. While it was unclear how many staff in the Faculty of Business and Law at Victoria University (VU) use social media in formal teaching, it was clear that staff were devising their own rules: some think it is fine to be 'friends' on Facebook with current students, some think it is only alright to be 'friends' with Alumni. Some staff have Facebook sites to provide a social support space for students. Some staff do not use Facebook at all. Students also have diverse views about using Facebook for formal study: some students use Facebook for team work as well as extracurricular information; other students are frustrated by the fact that Facebook seems to be the only place where their questions are answered. A recent survey indicates that students are polarised about using Facebook for teaching with some describing it as 'brilliant' and others simply as 'a bad idea' (Woodley, Meredith and Murray, 2012). With mixed attitudes to social media from staff and students as well as eclectic teaching using social media, draft guidelines were developed to raise awareness about legal risks connected with social media.

Part of the ambiguity about using Facebook for teaching comes from a lack of clarity in the purpose of using social network technology in the educational context. In universities, social networks often take the place of previous media to send messages, distribute content, facilitate discussion or post calendar events, which are all features of online learning systems. Teaching staff need to consider the question: why use an external social media site if internal tools can achieve the same results? While some university-supported learning management systems (LMS) have social media capacity with wikis, blogs and networking functions, this paper concerns social media that is *not* supported by the university, does *not* require a university-issued password to access, which requires a student to register with an external company and which could be open to the public. LMS 'safe havens' are not the focus.

### Background

A range of VU university policies and state and federal legislation is examined in this social media discussion. In this discussion, we do not conflate the terms social media, Web 2.0 and user-generated content; rather, Web 2.0 is "the platform for the evolution of Social Media"; social media "is a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0"; social media allows for the creation and exchange of User Generated Content" (Kaplan & Haenlein, 2011: 61).

The need for existing policies and laws to be reasserted as a part of social media discussion is highlighted by eminent cases in mainstream media. Stalking and harassment laws have particular relevance online. More parochially, the popularity of a student-supported Facebook site called VU Stalk Space creates a cause for concern. While technology is ahead of the law in respect of social media, technological newness “does not compel new laws, but it does mean existing laws need to be applied” (Short, 2012).

While most Australian universities are associated with unofficial Facebook sites that follow the ‘Stalker Space’ model, the culture and tone of each site can be drastically different. ‘Stalker Spaces’ are student-run Facebook groups where students share unofficial information. The whole social gamut of student-to-student interactions is publicly visible: from swapping books through to harassment and bullying. Stalker Space sites are associated with official universities through the appropriation of the university logo or a parody thereof, references to university clubs, campus references and campus photos and student activities. The extent to which a university can control activity on a Stalk Space is interesting: too aggressive an attempt at control would create a social media back lash; whereas ignoring the space might amount to a dereliction of duty. Buchanan (2011) labelled Australian universities’ Stalker Space Facebook sites as sinister, citing the ANU site’s motto: “Stalk, prey, love” as evidence enough (Buchanan, 2011). It seems that universities have some duty of care to both its students and staff who could be described, named or threatened on these sites.

General participation on social media sites can expose staff, students and the university to a range of legal risks but using social media for teaching raises specific risks. In flagging risks, the benefits of using social media might be more apparent and the risks reduced. Teaching staff must be supported to better manage social media risks and to prepare students to be digital citizens. In developing students’ Web 2.0 literacies, teachers must also understand their own duty of care. Recent legal decisions have seen “that website owners can owe a duty of care to their users... profile pages of individuals can be used as evidence... and that ...legal risk is growing just as fast as the ever emerging technology” (Dundas Lawyers, 2011). Users need some guidance to consider the risks of using social media.

## **Web 2.0 technologies**

The appeal of social media to educators is obvious. Students Facebook through tutorials, Tweet through lectures or blog an assessment task. Student propensity for social media usage, however, does not of itself make a pedagogical case for using social media. Various research has demonstrated social media’s capacity for peer supported learning (Dabbagh & Reo, 2010), support for students in transition (Woodley & Meredith, 2012), enhanced internationalised curriculum and increased avenues for communication, connection and learning. The possibilities of social media and collaborative learning are considerable (Minocha et al, 2009). What is known about considered use of social media for teaching and learning is invariably encouraging. However, teaching staff also need to be aware of the legal context of their practice and that ill-considered social media usage could put themselves, their students and the university at risk.

## **Externally hosted social media networks**

University-supported social media has several advantages over externally hosted sites both legally speaking and as far as support is concerned. Information Technologies Services (ITS) can assist with support issues, students can be enrolled and passwords issued from central student administration, the university can control the longevity of the site and, importantly as far as the *Privacy Act* is concerned, sites are password protected. Password-protected sites do not guarantee students’ privacy as that depends on what material other online participants make available. However, the password-protected status of university-supported sites should be emulated in using social media for teaching as public learning can be a daunting prospect.

It is the public – or potentially public – nature of social media that creates concern. Arguably, students should not have to participate, be assessed or be identified in any way on a publicly visible site in order to undertake a subject. Students might have the option of making their work public after the assessment is complete – but assessment or learning activities should not become public beyond the community of learners in the class. Before adopting a social media product for a particular teaching and learning

approach, it is advisable to check whether the institutional Learning Management System or other supported platforms such as PebblePad can provide those Web 2.0 tools that meet particular teaching needs.

Social media encourages interactive communication, enables posting of messages through a simple interface and allows the sharing of messages across a broad network of contacts. Online messages can open up discussions with other contacts and other private networks. A piece of media can spread from private network to private network and take on a public character. This allows messages to be spread virally. The speed and ease at which content can be disseminated creates risk if user-generated comments are offensive, discriminatory, incorrect or violate Copyright, Privacy or Intellectual Property legislation. The ephemera of the class room discussion are replaced by texts with a different legal status and those texts can be easily distributed. This can be positive and negative but the negative possibilities create real and actual legal risk.

## **Public, Private and Confidential**

If an institution expects enrolled students to register with Facebook or other products, then everyone involved must understand the Privacy implications of that product. This is an educative step that demands more of participants than a clicked agreement on a screen. While some platforms allow a degree of control over privacy settings, it is by no means assured that students know how to do this. Privacy settings must be explicitly worked through with students. Developing students' understanding of privacy will help to mitigate risk that can arise from the deceptively social nature of social media: social situations can be private but the media permits the accidental creation of a posting that can become a global publication.

The confidential qualities of class discussion can also become public posts that are easily distributed to an online global audience. The private student can find themselves under very public scrutiny. Confidentiality and a sense of privacy are crucial for some learners. While teaching has public aspects and sometimes requires public learning activities, the relationship between teacher and student is a private one based on confidentiality and trust. Learning might have public aspects but assessment of learning and feedback on learning are essentially private undertakings. The privacy inherent in feedback on learning is supported by VU's Student Assessment and Progress Policy and by the *Privacy Act* which regulates the way in which organisations (such as a university) can use private information of individuals, here meaning students and staff and others who might be involved in university activities.

As well as university-supported sites, students may have multiple sites of social media engagement. This raises the issue of security. If students must register with an external social media platform, teaching staff need to consider not only how many passwords students might have in the course of their study but also the fact that students will often use the same password across platforms. This can create a potential security hazard as if one platform is breached, they could all be breached. A whole-of-course approach to social media usage might limit on the number of passwords a student should have and students should be encouraged to have different passwords for different platforms.

It is important to distinguish between open and closed networks. Open networks like Facebook have a mass audience and anyone can join. There are also closed networks which are limited to members chosen by an administrator. Closed networks help maintain the confidential learner/teacher environment, open networks allow more interaction with the outside world and allow networks to be persistent over time and to extend beyond the life of a class. Closed networks typically depend on a single group of students during a certain semester and have a limited life. For this reason, some educators prefer a platform that allows a whole-of-course approach to learning activities, communication and presentation such as PebblePad. Armatas et al (2012) highlight that PebblePad provides students with a flexible, safe system to upload their own content and provides them with a means of interacting safely with industry experts.

## **Other Relevant Policies**

Whatever the teaching mode, teaching in Australian universities operates in a highly regulated legal and policy context. Workplaces provide complex legal contexts and social media is a somewhat uncharted workplace territory. Social media postings could lead to cases of wrongful dismissal, the exposure of

confidential information or reputational risk. Legal risks include legislation and common law concerns such as trade mark infringement, defamation or negligent misstatements (Dundas Lawyers, 2012). Social media sites are regulated by anti-discrimination laws, the *Privacy Act 1988* and the *Copyright Act 1968* (Cth). Duty of care, negligence and the *Occupational Health and Safety Act 2004* are all relevant to staff and student behaviour on social media sites: from students taking photographs of themselves ‘planking’ on campus to students unwittingly letting predators know that they are alone in the university library at night.

Current VU policies need to be applied to a social media context. The Privacy Policy already makes it clear that student information needs to be kept private. The Academic Honesty and Preventing Plagiarism Policy applies equally to an online medium. The Equity and Diversity Policy for Staff might become relevant if staff were friends only with some students online. Similarly, the Discrimination, Harassment and Bullying Policies and State and Commonwealth Anti-Discrimination Legislation apply to online activity. The recent amendment to the *Victoria Crimes Act 1958*, with the introduction of the Crimes Amendment (Bullying) Bill 2011, extends the existing offence of stalking to cover ‘serious bullying’, including online bullying. VU’s Staff Code of Conduct applies to the online behaviour of staff just as VU’s Student Charter applies to students’ behaviour online. It is really a matter of staff understanding the social media context, the university taking responsibility for not only what students do on VU-controlled social media sites but sites associated with the university. Universities must educate students about responsible use of social media.

## Conclusion

Social media highlights the need for a different set of knowledge and skills in the employability debate. Students need both legal literacy and media literacy. They need an awareness of the legal obligations, rights, systems and the legal discourse inherent in everyday contexts in online environments. These literacy skills are important in terms of employability, citizenship and being online. Some universities embed Web 2.0 media literacy skills in subjects or resources on line. Put simply, “University courses need to take more responsibility in facilitating citizen 2.0 competencies” (Alam & McLoughlin, 2010).

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