Social Media: A Privacy Perspective and Survey

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Abstract—Social Media has changed the way we communicated and interact with our peers and society in whole. From updating our Facebook profile to “Tweeting” the latest trends, social media has influenced many aspects of society. Despite the increased social influence of social media, many individuals fail to understand potential consequences or disadvantages of social media, especially public social media sites. Recently, many employers and educational institutions have been using social media sites to evaluate new potential candidates for acceptance into their institutions. The information collected from sites often can tell a life story or determine the morals or ethics of the candidate. Unfortunately, many of these candidates, particularly young candidates, are exercising poor judgment when using social media networks. From posting their daily routines or making disparaging comments about other to showing off drugs or alcohol in pictures or their statuses, many individuals do not the long terms complications with such risky behaviors. For some individuals, the lessons are emerging and detrimental to future success. From losing job offers and university acceptance to being reprimanded or even dismissed from an employment or education institution. What privacy can individuals expect from potential or current employers? How can employees respond to protect their privacy and integrity from potential hostile employers?

In response to social media trends and concerns from security and privacy advocates, local and state governments enacting laws that limit employer access to confidential data. Recently, New Jersey governor Chris Christie enacted new legislation that limits employer access to Personal Identifiable Information (PII) found on social media sites. Similar measures have been enacted in eleven other states. How effective are these laws in protecting employees from unwanted privacy intrusions from their employers? In addition, do these laws increase awareness or significance of social media behavior?

Social media use and the privacy implications have continued to arise in the recent years. The concern is shared by many including employees. Data security and privacy regulations need to be in place to protect user’s data; however, it is important that individuals themselves understand the responsibility of social media and use it appropriately.

Keywords—social media, social networking, privacy, employment law

I. INTRODUCTION

Social networking began to emerge during the growth of the World Wide Web between 1992 and 1995. Emailing, instant messaging, and small social networking services were emerging as the primary ways of communicating online. An early example of social networking was Classates.com. Founded in 1995 by Randy Conrads, this service was designed to assist it users in finding former classmates and graduates all the way from kindergarten to college [1]. Even search for current and former military servicemen were possible. It was only until the beginning of the new millennium that social networking sites began to expand. Popular social networking site Friendster was launched in 2002. Myspace soon followed and in 2005 reached significant popularity. Facebook was also introduced and in 2009, it became the largest social networking site in the world with close to 500 million users in December [2].
II. OVERVIEW OF SOCIAL MEDIA PRACTICES BY INDIVIDUALS AND EMPLOYEES

A. User Trends On and Offsite the Worksite

There have been many surveys and studies that have focused on user trends and behaviors of social networking sites. A particular concern for researchers and sociologists is the risky behaviors committed by young adults and employees. This most obvious concern is the disclosure of inappropriate content or behaviors through posting comments and visuals. For many young people, it is not uncommon to see images of parties with alcohol or boosting of a particular event. Some social networking users also engage in destructive behaviors or harass other users.

B. The Employer Perspective

While there is no explicit right or amendment that addresses privacy in the U.S. Constitution, there have been many interpretations of certain amendments that address some privacy aspects. However, privacy in the workplace continues to be a grey area of law. Many individuals have the understanding that privacy in the workplace does not exist, with the exception to areas where there is a reasonable expectation (e.g. restrooms). The privacy perspective between employers and employees can differ greatly.

While the low expectation of privacy hasn’t changed much in the last decade, privacy researchers have noted that employers taking advantage of the Internet and using it as an open source intelligence platform to search the backgrounds of its employees. Even before the explosion of social networking, employers tended to rely on online background check providers to learn the backgrounds of potential job candidates and the current employees. However, with the growth of social networking, employers are using social networking sites as a second form of background and character checks of its employees. The consequences that employees face for inappropriate use are the increased likelihood of being terminated or disciplined by human resources. These consequences are often seen as being worse for a potential candidate. Not only will they not be considered for the position, but they will also not get the reason why they were selected. Rather, companies send a generic email or letter acknowledging that the position was filled or another more qualified candidate was chosen. This can affect individuals who may have inappropriate social networking profiles or those who have been defamed by others.

C. The Employee Perspective

The expectation of privacy amongst employees differs significantly. Some critics argue that an individual will waive their right to privacy when they use social media and networking sites. Their reasoning is on the basis that individuals are publishing their content to the public or they are providing consent for the release of that information. Others have argued that social media is rather a place for individuals to communicate and establish their personal character. Thus, according to this theory, there is a reasonable expectation of privacy as users self-disclosing their personal lives to family and friends in contrast to self-presentation. An example of social networking self-presentation is using sites and service providers that present the individual in a professional and public matter. LinkedIn is an example of self-presentation as users clearly understand that their content with be there for all to see [3].

Researchers suggest that the expectation of privacy varies by age. For example, older individuals are more likely to perceive that anything on the Internet is public. However, younger generations of adults and minors have a greater expectation of privacy while on the Internet and social networking sites. For example, many young users tend to apply privacy settings and accept only family or close friends to view their content [4]. Others use a professional profile as a front while using a pseudo name for their actual profile to obtain complete privacy. Facebook, in recent times, have added more privacy controls to limit the access to user’s content. Users can now apply privacy settings to individual posts; thus preventing employers and even parents from accessing a particular comment or piece of information [5].

While employee expectation of privacy regarding social networking is undefined and challenging at time, employees can breathe a bit a relief in other aspects. Several laws were enacted to help protect some employee...
privacy aspects. The Privacy Act of 1974 requires employee consent before disseminating personal records and prohibits the disclosure of information about federal employees unless such information is requested or required under the Freedom of Information Act. In addition, the Privacy Act of 1974 also prohibits federal agencies from disclosing any records held in federal record systems. Other indirect laws also protect employee privacy; for example, the American Disabilities Act requires employers to keep medical information or records relating to the employee separate from job applications or employment records.

Video surveillance is a common security tactic by employers to protect their assets and monitor their employees. Many businesses have policies regarding video surveillance of employers and often inform them of this use.

The monitoring of corporate email or employer issued laptop is normally expected by employees. Although the Federal Wiretapping Act generally prohibits and criminalizes the unlawful interception of oral and electronic communication, two major exceptions have been written to allow employers to monitor employee communications. The first exception allows an employer to monitor its employee telephone as “an ordinary course of business.” The second exception refers to prior consent of the employee [6].

D. Social Listening

Social Listening is the aggregation and analysis of social media comments, posts, tweets, and other commentary made by a user. Used by many large firms and corporations, social listening has been proven to provide sense of understanding how customers perceive the product and the brand [7]. Users from a corporate aspect include customers, employees, and corporate partners and suppliers. Corporations have utilized tools that analyze social media content and determine its effects on the brand. Social Listening can be an effective tool in brand management and reputation assurance.

Companies have realized that social media allows the user to be control of the content [8]. This control can be either contributing or damaging to a brand's image and reputation. Corporations and enterprises have responded by joining social media in the attempt to help promote their brand or to assist frustrated customers [9]. In the same retrospect, employees also use social media to communicate their thoughts and ideas, especially thoughts towards their employer. Initially, employers attempted to avoid social media altogether employees previously risked disciplinary action if they used social media networks [10]. That has changed; employers now recognize the need and interaction within social media communities. Many employers, including IBM, have created extensive documentation and employee policies for the employees to help reduce the potential negative impact of social media. To assist employer attempts to understand the data collected, social listening has provided employers new tools to help mitigate potential serious problems. An example of a social listening tool is Hootsuite or IBM’s proprietary application programming interface (API), “IBMers Who Tweet.” These programs monitor and create a central feed of incoming social network posts which then can be analyzed to ensure that they are conforming to policy guidelines and not leaking sensitive proprietary company information. Social listening can help identify negative aspects about a company's product, workspace, or brand.

E. Consequences of Social Media Use

The consequences of inappropriate use of social media and networking sites can be detrimental to one’s career. In many case, employers often terminate an employee once inappropriate content is discovered and negatively reflects that employee’s character. This termination and embarrassment is heightened for employees who are held to high standard because of their public service or association to a religious or conservative organization. In fact, many employers often inform their prospective employees of these consequences in an employee handbook or guidelines policies. In the following case below Stacy Snyder, an education candidate at Millersville, was terminated at the high school she interned to meet the Pennsylvania Department of Education teachers certification. She later filed suit against suit against the university citing that she was wrongfully denied her PSE certification due to a Myspace picture.
III. CASE STUDY: STACY SNYDER V. MILLERVILLE UNIVERSITY

A. Statement of Facts

Stacy Snyder, aged 25, enrolled as a full time student at Millersville University (MU) and studied in education and biology; she sought to seek recommendation for the Pennsylvania State Education certification. Snyder then changed from biology to English. Over the course of the degree participation, academic work, and responsibilities increased. Snyder acknowledged to the court that she did review the student guide to teaching and attended the mandatory student teacher orientation. As stated in the student guide to teacher, candidates are required to uphold professional expectation and conduct while employed at public schools. As a student teacher they are considered guests are expected to fulfill as effectively as possible the conduct and role of a teacher. In late January of 2006, Snyder was assigned to Conestoga Valley (CV) high school where she would be employed as a student teacher. Snyder was to receive a full time faculty teacher as a mentor from CV. Nicole Reinking was assigned as the faculty mentor. She and Snyder discussed in depth the requirements and responsibilities required for the semester. Reinking also provided Snyder with a copy of CV’s teacher handbook, course book, and copy of the final exam for the primary course she would teach. At the time of her student teacher assignment, she attended no further classes at MU and taught two courses at CV where she was the sole teacher responsible for the students. In addition, she was responsible for the curriculum and lesson plans for the course she taught. At mid-placement evaluations were approaching, her supervisor and mentor noticed that Snyder experienced great difficulty in course competency, could not control or discipline the class, and could not hold a timely class needed to teach the students effectively. While her evaluations determined that her professionalism was exception her performance was unsatisfactory. Later throughout her student teachings, Reinking criticized her knowledge of English and stated that she had a poor understanding of the material. Reinking also had the belief that students were aware of her incompetence. Snyder was once again informed that her performance was unsatisfactory and could jeopardize her PSE certification. Reinking then had additional concerns that Snyder was too personal with her students and often shared them her personal comments including reciting an inappropriate Valentine’s Day story. According to court records, it was apparent to the plaintiff’s dislike Reinking and believed that her criticism was unfair. During January’s orientation, Snyder and other student teachers were warned about the dangers of posting or acknowledging their student teacher assignments on social networking sites. According to university officials, such postings could result in student teacher assignment termination. Contrary to the warning, Snyder continued to communicate with students on Myspace and discuss her personal matters. In addition, she also informed students that she had a Myspace page. Throughout her assignment, Snyder continued to have incidents at the school that revolved around her Myspace page. On May 4, 2006, another CV teacher discovered her Myspace and found Snyder’s comment that criticized Reinking and stated that she was the cause of Snyder’s student teacher problems. In addition, the CV teacher noticed a picture showing Snyder at a party wearing a pirate hat and held a red cup (possibly containing alcohol) at a party. CV High School removed Snyder from the campus and would not allow her to complete her practicum. Understanding that Snyder was no longer able to seek recommendation for the PSE certification, the university compromised with Snyder and offered her a major in English alone. Snyder filed suit.

B. Procedural History

On April 25, 2007, Stacy Snyder (Plaintiff) filed a complaint in the United States District Court for Eastern District of Pennsylvania against Millersville University (MU), university and faculty members of MU, and against her supervisor in MU’s Student Teaching Program. On May 7, 2008, District court ruled in favor of the defendant in all counts.

C. Judgment and Reasoning: Was she a Drunken Pirate?

The judge ruled against Snyder and determined his decision on the following reasons. On the first count, the
trial determined that her conduct (performance) prior to the Myspace incident was unsatisfactory. On the second count, the judge determined that no one has the right to a PSE certification. In addition, the judge determined that Snyder was a public employee, by de facto, therefore did not receive the protection of the 1st Amendment in regards to the Myspace picture. Therefore, CV had the right to bar her from the campus. Finally, the judge held and reasoned that Snyder failed to meet the state and university requirements for the teaching degree and certification. In conclusion, the judge ruled in favor of the defendants for all counts.

**D. Personal Comments**

While it is clear that Snyder’s behavior and performance were unsatisfactory and inappropriate from the start, her Myspace posting and picture was the final factor that contributed to her dismissal. See Excerpt 1 extract amended after the article [11].

**IV. SOCIAL MEDIA USE: EMPLOYMENT DISCRIMINATION?**

There has been increasing concerns that employers are using social media as means to discriminate against prospective job seekers. A recent study, conducted at Carnegie Mellon University, found that 10% and a third U.S. firms search for job seekers social networking profiles in an effort to obtain information during the initial hiring process. For example, researchers found that job seekers who appeared to be Muslim on their profiles were less likely to be called back for a second interview. Interestingly enough, sexual orientation of the job seeker had no impact on the employer. This is increasingly alarming as employment discrimination, over the years, has increased. With this in mind, there has been increased public scrutiny and demand for companies and HR offices to create appropriate social networking policies regarding employment [12].

**V. NEW LAW REGARDING SOCIAL MEDIA**

On August 28, 2013, Assembly Bill No. 2878 was approved and signed into law by New Jersey Governor Chris Christie and will be effective on December 1, 2013. This new law increases employee privacy protections regarding access to user’s website credentials. This law is significant to protecting employee’s privacy in the social networking space. While employers may still use publicly accessible information accessed from the Internet or through public records, the laws prohibits employers from forcing their employees or job applicants to disclose personal information for accessing personal websites, accounts, and services. This personal information extends to usernames, passwords, and other login credentials. In addition, employers are prohibited from retaliating against new employees or job applicants who refuse to disclose such information. The law does not extend nor protect employees from their employer implementing similar requires to company-issued electronic devices or social media accounts used strictly for business purposes. For employees, this new protection ensures that they have a reasonable expectation of privacy for websites, social networks, and services that are not available to the public. Eleven other states have implemented a similar law that protects employee’s social network accounts and other personal user credentials. At this point, it is too early to determine whether this new law will be effective, however, privacy advocates have applauded the state of New Jersey for its active role in protecting employee privacy rights [13].

**VI. CONCLUSIONS**

While there is no explicit right to privacy, the United States is gradually implementing laws that protect individual privacy rights, including employees. However, the United States is far behind when compared to the rest of the world. Many nations, especially the European Union have implemented strict guidelines and laws that protect everyone’s right to privacy, regardless of employment status. However, the issue of privacy requires responsibility on both sides. Employers need to implement proper social media guidelines when addressing HR concerns. Employees, on the other hand, must use social media wisely and understand that their risky behaviors can cause consequences in the future. In the end, we all need to do our part to protect and respect each other’s privacy.
VII. FURTHER READING AND RESOURCES

For additional information and review of the Stacy Snyder Case, please refer to the court opinion provided by the United States District Court for the Eastern District of Pennsylvania. Please see Reference number 11 for full citation and link.

REFERENCES


[5] [3].


