

McGrady on Social Media 2012

Paul D. McGrady, Jr.



LexisNexis

McGrady on Social Media

PAUL D. MCGRADY, Jr.



LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call:

Mia Smith, J.D. at 1-800-227-9597

Email: mia.smith@lexisnexus.com

Neil Myers, J.D. at 1-800-424-0651 Ext. 3247

Email: neil.myers@lexisnexus.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844

Outside the United States and Canada, please call (518) 487-3000

Fax Number (518) 487-3584

Customer Service Website <http://www.lexisnexus.com/custserv/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940

Outside the United States and Canada, please call (518) 487-3000

ISSN: 2168-4359 (print)

ISSN: 2168-4367 (online)

LCCN: 2011921450

ISBN: 978-0-7698-5828-9 (print)

ISBN: 978-0-3271-7704-3 (eBook)

Cite this publication as:

Paul D. McGrady, Jr., McGrady on Social Media § [sec. no.] (Matthew Bender [date])

Example:

Paul D. McGrady, Jr., McGrady on Social Media § 2.02[1] (Matthew Bender 2012)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2012 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Offices
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexus.com

MATTHEW  BENDER

PUBLICATION UPDATE

Route to:

☐ _____
☐ _____☐ _____
☐ _____☐ _____
☐ _____☐ _____
☐ _____

McGrady on Social Media

Publication 1661

Release 2012

August 2012

HIGHLIGHTS

Social Media as Evidence

- New chapter analyzes evidentiary considerations.

Understanding Google+

- New chapter examines Google's social media site.

Understanding Pinterest

- New chapter explains this virtual pinboard.

Social Media as Evidence. This release adds a new chapter on the use of social media as evidence. The chapter examines cases in which social media have been at issue, considerations in the discoverability of social media, admissibility, and advice for clients and counsel. *See* Ch. 11, "Social Media as Evidence."

Understanding Google+. Google+ is a group of online tools with a wide range of social functionality gathered under one umbrella name. On top of Google's preexisting services, Google+ layers new areas of

social features, including Circles, the +1 button, the Stream, Hangouts, and more. The common purpose of all these services is communication, entertainment, and content sharing across the web. Chapter 24 takes a detailed look at this dynamic new social media phenomenon. *See* Ch. 24, "Understanding Google+."

Understanding Pinterest. Pinterest is a virtual pinboard that allows users to organize and share images, or "pins," on a public online bulletin board. Users can then browse the pinboards of other users, and "re-pin" that content. Users can also post comment pins of their own or pins of others. Chapter 34 analyzes this relatively new social medium. *See* Ch. 34, "Understanding Pinterest."

Recent Developments. The author discusses recent developments in case law involving social media sites Orkut and YouTube. *See* Ch. 33, "Understanding Orkut" and Ch. 38, "Understanding YouTube."

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).
- Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
- Toll-free ordering (1-800-223-1940).



www.lexis.com

**Copyright © 2012 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 1661, Release 2012, August 2012**

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

Preface

Who can deny the power of social media? We have seen elections turn and regimes collapse due, in part, to the connections formed between interested parties via social media. And who can deny that it feels like it has come out of nowhere? A few years ago, MySpace was the cutting edge. Now it has to compete with a very crowded field of later entries.

With all new technology, social media has brought with it new legal challenges. There was a day, not too long ago, when branding messages were strictly within the purview of the brand owner. The impressions that a consumer had about a brand were controlled and distributed from the brand owner to the consumer. Now, with the inclusion of the radical effects of user generated content, social media delivers branding experiences that are partly from the brand owner and partly from the consumers familiar with the brand.

Social media also drives group purchasing experiences in a way that makes the old grocery store coupon look as outdated as the poodle skirt. User-generated content, the hallmark of social media, triggers copyright concerns, privacy concerns, and even concerns about the leaking of trade secrets by employees who get too chatty while online.

This book is designed to give the reader an appreciation for the various issues raised by social media and then a look at the specific way that certain platforms address those concerns when raised. Not every issue and every platform could be addressed. However, I am hopeful that the fairly broad scope of issues and platforms will serve as a starting point for research and also for the “quick answers” to recurring questions raised by clients (Someone is pretending to be my CEO on Twitter!).

I hope that it proves useful and that you “Like” it.

Kind regards,
Paul McGrady
Chicago, Illinois

Dedication

To my Parents.

To Paul McGrady, who models generosity.

To Barbara McGrady, the embodiment of love and fierceness.

To Rich Davidson, the definition of consistency.

To Martha Davidson, the maker of molehills out of mountains.

Table of Contents

Preface

Dedication

CHAPTER 1 Introduction to Social Media

- § 1.01 Social Media Defined
- § 1.02 Social Media Compared to Traditional Media
- § 1.03 Legal Harms Arising from Abuse of Social Media
- § 1.04 Primary Forms of Social Media

CHAPTER 2 Copyright Issues and Social Media

- § 2.01 The Digital Millennium Copyright Act (DMCA)
- § 2.02 Takedown Notices: The Statutory Scheme
- § 2.03 DMCA Policies
- § 2.04 DMCA Implementation Procedures

CHAPTER 3 Free Speech, The Communications Decency Act, and Social Media

- § 3.01 Introduction to the Communications Decency Act (“CDA”)
- § 3.02 The § 230 Safe Harbor Defined
- § 3.03 Practical Applications of the Safe Harbor in the Social Media Context

CHAPTER 4 Computer Fraud and Abuse Act and Social Media

- § 4.01 Overview of the Computer Fraud and Abuse Act
- § 4.02 Unauthorized Access: A Moving Target
- § 4.03 Damages and Loss under the Act: More than Meets the Eye

CHAPTER 5 Privacy and Social Media

- § 5.01 Introduction
- § 5.02 FTC Privacy Principles for the Collection and Use of Personal Data
- § 5.03 Privacy Laws
- § 5.04 Self Regulatory Organizations
- § 5.05 Behavioral Advertising Self Regulatory Organizations
- § 5.06 Payment Card Industry Data Security Standard
- § 5.07 Potential Legislation
- § 5.08 Categories of Information Users Provide to Social Media Providers
- § 5.09 Privacy Policies
- § 5.10 Special State Considerations
- § 5.11 Behavioral and Target Advertising

Table of Contents

§ 5.12	Other Considerations Regarding Privacy and Social Media: Advertising, Conversion Tracking, Metadata and Profile Settings
§ 5.13	Sample Privacy Statement
§ 5.14	Sample Terms of Service Statement

CHAPTER 6 Employment Law and Social Media

§ 6.01	Introduction
§ 6.02	The National Labor Relations Board and Social Media
§ 6.03	The Prevalence of Adverse Employment Actions Resulting from Social Networking Sites
§ 6.04	Additional Decisions Addressing the Consequences of Social Networking At Work
§ 6.05	Recommendations for Employers
§ 6.06	Sample Internet Based Public Discourse Policy and Guidelines

CHAPTER 7 CAN-SPAM Act, Stored Communications Act

§ 7.01	Introduction
§ 7.02	Social Media and the CAN-SPAM Act
§ 7.03	Social Media and the Electronic Communications Privacy Act of 1986
§ 7.04	Social Media and the Stored Communications Act

CHAPTER 8 State Law Survey of Cyberbullying, Cyberharassment, and Cyberstalking Laws

§ 8.01	Introduction
§ 8.02	Alabama
§ 8.03	Alaska
§ 8.04	Arizona
§ 8.05	Arkansas
§ 8.06	California
§ 8.07	Colorado
§ 8.08	Connecticut
§ 8.09	Delaware
§ 8.10	Florida
§ 8.11	Georgia
§ 8.12	Hawaii
§ 8.13	Idaho
§ 8.14	Illinois
§ 8.15	Indiana
§ 8.16	Iowa
§ 8.17	Kansas
§ 8.18	Kentucky

Table of Contents

§ 8.19	Louisiana
§ 8.20	Maine
§ 8.21	Maryland
§ 8.22	Massachusetts
§ 8.23	Michigan
§ 8.24	Minnesota
§ 8.25	Mississippi
§ 8.26	Missouri
§ 8.27	Montana
§ 8.28	Nebraska
§ 8.29	Nevada
§ 8.30	New Hampshire
§ 8.31	New Jersey
§ 8.32	New Mexico
§ 8.33	New York
§ 8.34	North Carolina
§ 8.35	North Dakota
§ 8.36	Ohio
§ 8.37	Oklahoma
§ 8.38	Oregon
§ 8.39	Pennsylvania
§ 8.40	Rhode Island
§ 8.41	South Carolina
§ 8.42	South Dakota
§ 8.43	Tennessee
§ 8.44	Texas
§ 8.45	Utah
§ 8.46	Vermont
§ 8.47	Virginia
§ 8.48	Washington
§ 8.49	West Virginia
§ 8.50	Wisconsin
§ 8.51	Wyoming

CHAPTER 9 Trademark and Domain Name Issues and Social Media

§ 9.01	Introduction
§ 9.02	Trademarks: The Lanham Act
§ 9.03	Domain Names

Table of Contents

CHAPTER 10 Social Media and Political Change

- § 10.01 Social Media in Revolutions
- § 10.02 Social Media and Local Elections
- § 10.03 Social Media and Local Political Issues
- § 10.04 Social Media in Federal or National Elections

CHAPTER 11 Social Media as Evidence

- § 11.01 Introduction: What Are Social Media?
- § 11.02 Examples of Cases in Which Social Media Have Been at Issue
- § 11.03 Considerations in the Discoverability of Social Media
- § 11.04 Admissibility of Social Media
- § 11.05 Advice for Clients
- § 11.06 Advice for Counsel

CHAPTER 12-20 Reserved

CHAPTER 21 Understanding Answerbag

- § 21.01 Introduction to Answerbag
- § 21.02 Answerbag's Target Audience
- § 21.03 Limitations on Identity of Users
- § 21.04 Users and Other Content Posters
- § 21.05 Ownership of User-Generated Content
- § 21.06 Revenue Model
- § 21.07 Access or Use Restrictions
- § 21.08 Copyright Policy
- § 21.09 Copyright Reporting Mechanism
- § 21.10 Trademark Policy
- § 21.11 Trademark Reporting Mechanism
- § 21.12 Abuse Policy
- § 21.13 Anti-Harassment
- § 21.14 Abuse Reporting Mechanism

CHAPTER 22 Understanding Digg

- § 22.01 Summary of Digg's Functions
- § 22.02 Digg's Target Audience
- § 22.03 Limitations on the Identity Users
- § 22.04 Users and Other Content Posters
- § 22.05 Ownership of Content
- § 22.06 Revenue Model
- § 22.07 Use Restrictions

Table of Contents

§ 22.08	Copyright Policy
§ 22.09	Copyright Violation Reporting
§ 22.10	Use of the Digg Trademark
§ 22.11	Digg's Abuse Policy and Reporting Mechanism
§ 22.12	Open Source Platform
§ 22.13	Privacy Policy

CHAPTER 23 Understanding Facebook

§ 23.01	Summary of Facebook's Function
§ 23.02	Facebook's Target Audience
§ 23.03	Limitations on Identity of Users
§ 23.04	Users and Other Content Posters
§ 23.05	Ownership of User-Generated Content
§ 23.06	Revenue Model
§ 23.07	Use or Access Restrictions
§ 23.08	Copyright Policy
§ 23.09	Copyright Violation Reporting / Take Down Mechanism
§ 23.10	Trademark Policy
§ 23.11	Trademark Violations Reporting Mechanism
§ 23.12	Abuse Policy
§ 23.13	Privacy Policy
§ 23.14	Privacy Settings

CHAPTER 24 Understanding Google+

§ 24.01	Summary of Google+ Function
§ 24.02	Google+ Target Audience
§ 24.03	Google Policies Overview
§ 24.04	Qualifications for Users
§ 24.05	Ownership of User Generated Content
§ 24.06	Revenue Model
§ 24.07	Use or Access Restrictions
§ 24.08	Copyright Policy
§ 24.09	Copyright Violation Reporting/Take Down Mechanism
§ 24.10	Trademark Policy and Violations Reporting Mechanism
§ 24.11	User Content and Conduct Policy
§ 24.12	Reporting Abuse
§ 24.13	Privacy Policy
§ 24.14	Privacy Settings
§ 24.15	Summary of Case Law to Date Involving Google+

Table of Contents

CHAPTER 25 Understanding Itsasickness

§ 25.01	Summary of Itsasickness's Function
§ 25.02	Itsasickness's Target Audience
§ 25.03	Limitations of Identity of Users
§ 25.04	Users and Other Content Posters
§ 25.05	Ownership of Generated Content
§ 25.06	Revenue Model
§ 25.07	Use Restrictions
§ 25.08	Access Restrictions
§ 25.09	Copyright Policy
§ 25.10	Copyright Violation Reporting/Take Down Mechanism
§ 25.11	Trademark Policy
§ 25.12	Trademark Violations Reporting Mechanism
§ 25.13	Abuse Policy
§ 25.14	Abuse Reporting Mechanism
§ 25.15	Privacy Policy

CHAPTER 26 Understanding LinkedIn

§ 26.01	Introduction to LinkedIn's Functionality
§ 26.02	LinkedIn's Target Audience
§ 26.03	Limitations on Identity of Users
§ 26.04	Users and Other Content Posters
§ 26.05	Ownership of User-Generated Content
§ 26.06	Revenue Models
§ 26.07	Use Restrictions
§ 26.08	Access Restrictions
§ 26.09	Copyright Policy
§ 26.10	Copyright Violation Reporting Mechanism
§ 26.11	Policy Against Abuse of Trademarks or Other Intellectual Property Rights
§ 26.12	Trademark and Other Unlawful Content Reporting Mechanism
§ 26.13	Abuse Policy
§ 26.14	Privacy Policy
§ 26.15	Treatment of Deceased End Users
§ 26.16	Mobile Access
§ 26.17	Mobile Applications

CHAPTER 27 Understanding LiveJournal

§ 27.01	Summary of LiveJournal's Function
§ 27.02	LiveJournal's Target Audience

Table of Contents

§ 27.03	Limitation on Identity of Users
§ 27.04	Users and Other Content Posters
§ 27.05	Ownership of User Generated Content
§ 27.06	LiveJournal's Advertising Model
§ 27.07	Use Restrictions
§ 27.08	Copyright Policy
§ 27.09	Copyright Violation Reporting/Take Down Mechanism
§ 27.10	Trademark Policy
§ 27.11	Trademark Violations Reporting Mechanism
§ 27.12	Abuse Policy
§ 27.13	Privacy Policy
§ 27.14	Privacy Settings

CHAPTER 28 Understanding Martindale.com

§ 28.01	Martindale.com's Functionality
§ 28.02	Martindale.com's Target Audience
§ 28.03	Excluded Users
§ 28.04	Origination of Content
§ 28.05	Content Ownership
§ 28.06	Revenue Model
§ 28.07	Use Restrictions
§ 28.08	Access Restrictions
§ 28.09	Copyright Policy
§ 28.10	Copyright Reporting Mechanism
§ 28.11	Trademark Policy
§ 28.12	Trademark Violation Reporting Mechanism
§ 28.13	Abuse Policy
§ 28.14	Anti-harassment Position
§ 28.15	Abuse Reporting Mechanism
§ 28.16	Privacy Policy
§ 28.17	Treatment of Content Related to Deceased Members
§ 28.18	Mobile Access
§ 28.19	Mobile Applications

CHAPTER 29 Understanding Multiply

§ 29.01	Summary of Multiply's Function
§ 29.02	Multiply's Target Audience
§ 29.03	Limitations on Identity of Users
§ 29.04	Content
§ 29.05	Ownership of User Generated Content
§ 29.06	Revenue Model

Table of Contents

§ 29.07	Use or Access Restrictions
§ 29.08	Copyright Policy
§ 29.09	Copyright Violation Reporting/Take Down Mechanism
§ 29.10	Trademark Policy
§ 29.11	Trademark Violations Reporting Mechanism
§ 29.12	Abuse Policy
§ 29.13	Privacy Policy
§ 29.14	Privacy Settings

CHAPTER 30 Understanding MySpace

§ 30.01	Summary of MySpace's Function
§ 30.02	MySpace's Target Audience
§ 30.03	Users and Other Content Posters
§ 30.04	Ownership of User Generated Content
§ 30.05	Advertising and Revenue Model
§ 30.06	Use Restrictions
§ 30.07	Access Restrictions
§ 30.08	Intellectual Property Policy
§ 30.09	Intellectual Property Violation Reporting/Take Down Mechanism
§ 30.10	Abuse Policy
§ 30.11	Summary of Case Law Involving MySpace

CHAPTER 31 Understanding Ning

§ 31.01	Summary of Ning's Functions
§ 31.02	Ning's Target Audience
§ 31.03	Limitations on Identity of Users
§ 31.04	Users and Other Content Posters
§ 31.05	Ownership of User Generated Content
§ 31.06	Revenue Model
§ 31.07	License Restrictions
§ 31.08	Use and Conduct Restrictions
§ 31.09	Copyright Policy
§ 31.10	Copyright Violation Reporting/Take Down Mechanism
§ 31.11	Trademark Policy
§ 31.12	Abuse Policy
§ 31.13	Abuse Reporting Mechanism
§ 31.14	Lack of Anti-Harassment Language
§ 31.15	Privacy Policy

Table of Contents

CHAPTER 32 Understanding omg!

§ 32.01	Summary of omg!'s Function
§ 32.02	omg!'s Target Audience
§ 32.03	Limitations on Identity of Users
§ 32.04	Users and Other Content Posters
§ 32.05	Ownership of User-Generated Content
§ 32.06	Revenue Model
§ 32.07	Use or Access Restrictions
§ 32.08	Copyright Policy
§ 32.09	Copyright Violation Reporting/Take Down Mechanism
§ 32.10	Abuse Policy
§ 32.11	Abuse Reporting Mechanism

CHAPTER 33 Understanding Orkut

§ 33.01	Summary of Orkut's Function
§ 33.02	Google Policies Govern
§ 33.03	Orkut's Target Audience
§ 33.04	Limitations on Identity of Users
§ 33.05	Users and Other Content Posters
§ 33.06	Ownership of User-Generated Content
§ 33.07	Revenue Model
§ 33.08	Use or Access Restrictions
§ 33.09	Copyright Policy
§ 33.10	Copyright Violation Reporting/Take Down Mechanism
§ 33.11	Trademark Policy and Violations Reporting Mechanism
§ 33.12	Abuse Policy
§ 33.13	Privacy Policy
§ 33.14	Privacy Settings

CHAPTER 34 Understanding Pinterest

§ 34.01	Summary of Pinterest's Function
§ 34.02	Pinterest's Target Audience
§ 34.03	Limitations on Identity of Users
§ 34.04	Users and Other Content Posters
§ 34.05	Ownership of User-Generated Content
§ 34.06	Revenue Model
§ 34.07	Use or Access Restrictions
§ 34.08	Copyright Policy
§ 34.09	Copyright Violation Reporting/Take Down Mechanism
§ 34.10	Trademark Policy

Table of Contents

§ 34.11	Trademark Violations Reporting Mechanism
§ 34.12	Privacy Policy
§ 34.13	Privacy Settings
§ 34.14	Summary of Case Law to Date Involving Pinterest

CHAPTER 35 Understanding Quepasa.com

§ 35.01	Summary of Quepasa's Function
§ 35.02	Quepasa's Target Audience
§ 35.03	Limitations on Identity of Users
§ 35.04	Users and Other Content Posters
§ 35.05	Ownership of User-Generated Content
§ 35.06	Revenue Model
§ 35.07	Use Restrictions
§ 35.08	Access Restrictions
§ 35.09	Copyright Policy
§ 35.10	Copyright Violation Reporting/Take Down Mechanism
§ 35.11	Trademark Policy
§ 35.12	Trademark Violations Reporting Mechanism
§ 35.13	Abuse Policy
§ 35.14	Privacy Policy

CHAPTER 36 Understanding Sulekha.com

§ 36.01	Summary of Sulekha's Function
§ 36.02	Sulekha's Target Audience
§ 36.03	Limitations on Identity of Users
§ 36.04	Users and Other Content Posters
§ 36.05	Ownership of User Generated Content
§ 36.06	Revenue Model
§ 36.07	Use or Access Restrictions
§ 36.08	Copyright Policy
§ 36.09	Copyright Violation Reporting/Take Down Mechanism
§ 36.10	Trademark Policy
§ 36.11	Trademark Violation Reporting Mechanism
§ 36.12	Abuse Policy
§ 36.13	Privacy Policy
§ 36.14	Privacy Settings

CHAPTER 37 Understanding Twitter

§ 37.01	Summary of Twitter's Function
§ 37.02	Twitter's Target Audience