

Legal Issues of Web 2.0 and Social Media

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Chapter 1: Overview

THE INTERNET and the World Wide Web (there is a difference between the two) first began to come to real prominence in the mid-1990s. My own first experience of both was at Sheffield University and, in 14 years, it's probably fair to say that the online world is now a very different place. What was Web 1.0 (i.e. a collection of websites sending out a message to a small but dedicated audience) has evolved into, and already arguably beyond, Web 2.0 – a world where every user is connected and every message can be heard and commented upon, where content does not need to be created by the select few, and where reputations can be made and broken in much shorter amounts of time.

The main real change is that, following the dot.com boom and bust of the late 1990s, the business world is now firmly of the opinion that there really is money to be made online. That said, a great many do not appreciate the legal framework of how they can behave in the online world, which is also the case with many of its individual users. Although some areas of the law have developed as a specific response to our new connected culture, the majority of the rules which apply to social and commercial activity online are, in fact, long-standing legal principles which are being applied to new situations.

In terms of overarching themes, there are two main areas upon which this report focuses: opportunities and risks.

Opportunities will include the ability to create and exploit content on the web,

whereas the risk will lie in others doing so. Similarly, opportunities will include the ability to create a reputation and/or brand identity on the web, but the corresponding risk will be how other users interact with it.

Looking at one of those opportunities in detail, one of the major issues in the world of Web 2.0 is the creation of user-generated content (UGC). This can be referred to as the concept, to which we'll return on a number of occasions, of the 'audience as author'. A case in point is that of Facebook-copyright law dictates that the copyright of the photos which appear on many user profiles is owned by whoever actually took the photograph. Facebook's terms and conditions stated, until early 2009, that the copyright in those photographs would belong to the site after they were uploaded. After a concerted backlash against this approach, the site changed its position.

What the Facebook example (and there will be others throughout this report) confirms is that we have now moved on from a predictable world where risk is dealt with by contract law and where a small number of providers generate the majority of the web's content. Now that control is out of their hands, as is their ability to control risk.

The corresponding opportunity is that the wisdom of the Web 2.0 crowd has already produced and is producing material and knowledge of real value, through new concepts such as open source software and citizen journalism. What that crowd produces, however, leads to risks of its

own, such as the possible liability of an internet service provider (ISP) if and when it distributes a 'mashup' of existing content (for example, an MP3 of two existing songs mixed together). Without permission from the owners of copyright in both, this will constitute an infringement.

Consider the case of Wikipedia, an online encyclopaedia created by millions of users around the world. Considered one of the wisest crowds on the web, Wikipedia is now thought by some to be more accurate than the *Encyclopaedia Britannica*, a publication whose profitability has been seriously affected by the site's rise to prominence. Although it's fair to argue that the input of such a wide range of users will produce the best result (especially for subscribers to Socrates and John Stuart Mill's 'marketplace of ideas' approach), much of the criticism directed towards Wikipedia has centred on the issue of whether or not what its users contribute is either factually correct or unbiased. Its team of volunteer editors works around the clock to ensure as far as possible that it is, but given its sheer size and constant evolution, the task is to say the least a challenge.

Moving out of the world of IP law, we come to the opportunity of reputation now being used as a commodity, created by a brand through viral advertising campaigns, by an individual through social networks such as Twitter and LinkedIn, or via feedback on auction sites such as eBay following a purchase. Social media can be used to create new content and gain access to it continuously, either for financial gain or otherwise. The risk? If that reputation is not maintained or the brand fails to live up to its image, then word of mouth can spread very quickly, as we'll see in the cases of Paperchase and Dell, to name but two.

This report looks at the following areas and legal issues to create a general overview

of the risks and opportunities facing both businesses and individuals in the Web 2.0 and social media environment:

- Intellectual property:
 - The importance of intellectual property law in social media;
 - Copyright;
 - Brands (trade marks and passing-off); and
 - Data protection.
- Media:
 - Privacy; and
 - Defamation.
- Criminal law:
 - Harassment/stalking;
 - Obscenity;
 - Public order;
 - Incitement of racial hatred;
 - Misuse of a public electronic communications network;
 - Terrorism;
 - Contempt of court; and
 - Criminal sanctions for online 'advertorials'.