

# **SOCIAL MEDIA AND THE LAW**

**Your Top 15 Questions Answered**



For the majority of us, social media is knitted tightly into the fabric of our personal and corporate lives. These fast-paced and valuable channels of communication are an excellent way for companies to have direct access and impact on their target audience. Whilst a positive development for the PR industry, social media is in turn giving rise to new and often not fully understood legal challenges. Reputational risks are not something companies can choose to ignore.

We have pulled together and answered the top 15 most commonly asked questions to help the PR industry better understand the legal social media environment in which we now operate and protect clients and companies from the reputational risks they increasingly face.

If you have a social media legal question you would like answered and which is not addressed here please email [KorayC@cipr.co.uk](mailto:KorayC@cipr.co.uk) and we will answer your question in the next legal update.

### **// 1. What are the main areas of law and social media strategy?**

All laws apply equally online and offline. That said, the main laws to have at the back of your mind when advising clients or colleagues surround what you can publish and how you get material taken down if it infringes your rights or those of your client. In particular be aware of the laws surrounding defamation, privacy, confidence and copyright. Of increasing importance in recent times are issues of criminal liability (such as malicious communications) and harassment, and it is worth considering these if you or your clients face any sort of attack online.

### **// 2. What is the protocol for giving photo credits on social media? Will I get fined or sued if I don't acknowledge the source?**

The principal UK copyright legislation is the Copyright, Designs and Patents Act 1988. There are two issues. The first is that, apart from a few exemptions, you need to get permission to use copyrighted work, which could be for a fee. The second is that even if you can use the work, you should still give a credit to the photographer. The photographer or creator of the photograph has the right to be identified as such in most circumstances and has the right to sue.

### **// 3. If images are on Google and in the public domain, why can't I use those images? How can I use them if we really want to use an image and the source is unknown? Is the answer simply we can't?**

The copyright owner may still have control over the images so even if they are publically available it does not mean that they are free to use. Google has a 'usage rights' search which can be useful. Some sites (currently flickr) have an 'open licence' so photographs can be used, but it is worth checking the terms before use.

Also, be aware that most countries have similar copyright laws, although the penalties in some jurisdictions are higher than those in the UK.

There are some exemptions, such as if you are commenting on the copyrighted work and for the purpose of commentary or criticism, so if you do get a complaint from a copyright owner, it is worth considering whether there is a defence.

**// 4. If a false or defamatory comment is published about our firm/client on any of the social media platforms, can we get it removed? If yes, how? Does this apply to all platforms?**

Yes, but it will depend on the platform and what jurisdiction it is in. The poster of the information will often remove it voluntarily if you complain to them directly, especially when they realise that they have posted something defamatory and that you could take legal action against them.

In addition, under the Defamation (Operators of Website) Regulations 2013, there are consequences for the platform if it does not follow the procedure set out in the Regulations. The platform will often remove defamatory content or identify the author of the allegations so that you can contact them directly. Some platforms (such as Facebook) will also remove defamatory content because posting such content is a breach of its terms and conditions and so it is always useful to check these too.

**// 5. The lack of territorial boundaries makes it quite complicated when dealing with an issue. If legal action is taken, is it based on the location of the company or the person who posted the content on social media? If the location source is unknown, is the social media platform obliged to provide this information?**

The law in this area is complicated. It will depend on where a potential claimant has a reputation, where the defendant is based and where the words are published. There is no clear formula and each case will depend on the facts.

It is generally possible to get information from the platform about where a poster is based and who that poster is, but it will depend where the platform is based.

**// 6. If a newspaper prints incorrect information or makes a false accusation about a company, it often prints an apology or a correction. If someone on a social media platform tweets or posts content of a similar nature, can we force them to post an apology or correction too? Can the social media platform provider ensure the same audience who saw the defamatory post see the apology/correction too?**

The newspaper will often print an apology as part of a negotiated settlement to avoid or settle a defamation claim. The same applies for social media and in negotiating a correction you can also negotiate prominence.

**// 7. If a journalist contacts our firm/client regarding a false and/or defamatory issue and we know their publication and the reporter themselves are active on social media, can we threaten legal action on any posts they make? Can we block social media posts being made?**

It is difficult to stop publication of defamatory material before it is published. However, the threat of being sued after publication will often prevent a journalist or publication from publishing, or encourage publication in more neutral terms.

If the publication or the journalist is using social media to promote its story, then the posts can also be subject to legal action. In addition, it is likely that the posts will increase the amount of damages were you to sue and the journalist and publication will be aware of this.

**// 8. If a member of the public posts a false and/or defamatory remark about a firm/client and this remark starts to go viral and has a material impact on a company's reputation, can the person who posted the original post be sued? What about those who retweeted or reposted the defamatory remark?**

Yes, the author of the original remark is liable, as is everyone who retweeted or reposted. This is an important tool as the firm/ client may not be concerned about the original tweet, but could be concerned about a retweet if this is by an influencer. It is also useful because it can help to contain the spread of the allegations if those reposting and retweeting are aware that they could be liable. Rather than writing to everyone who retweets the firm/ client may consider putting out a strong statement to try to shut down the spread of the allegations online.

**// 9. Anyone can edit an unprotected page within Wikipedia. If someone maliciously changes a firm's/client's Wikipedia page, or creates a page with false and negative ramifications for the company, can the page be changed and can the person who did it be found and prosecuted?**

Wikipedia has tight guidelines on biographies of living people which help protect the platform and its editors from libel suits, along with processes which allow rapid deletion/correction of false and/or malicious content.

Pages about companies or their products or services do not have the same level of protection regarding defamatory statements, but changes which may be regarded as 'vandalism' and which have no authoritative independent sources to back them up, may be quickly reverted by other editors. It is permissible for people employed by or representing a company, who might otherwise have a conflict of interest, to correct obviously false or libellous assertions. Further guidance for PR practitioners on Wikipedia can be found here.

It can be difficult to ascertain the exact source of a malicious edit. Edits to Wikipedia can be traced to IP addresses, but they may not always be traced to particular named individuals (an IP address may be used by multiple users at that location). Also, for sometimes quite legitimate reasons, Wikipedia editors may use 'pen names' to shield themselves from personal attacks.

That said, if the author can be identified, then it is possible to take action against them.

**// 10. LinkedIn is increasingly a source for reporters seeking information on employees. Does a company have any sway in suggesting what content an individual does/ doesn't post on their LinkedIn page in respect of that company? Can inaccuracies be corrected? Is what an employee posts on LinkedIn representative of the company or the individual?**

This will depend on the employment agreement and it is important that a company has the ability, within reason, to ask an employee to remove content which could be damaging.

If the employee works in the press office or communication generally, then there could be circumstances where the company is liable for what is published even if it did not authorise publication. So it is important that the company retains as much control as possible, whilst still allowing the employee to operate effectively.

Another tricky area is making employees who have left an organisation amend their LinkedIn accounts to show that they no longer work there. Any database of contacts made through the course of employment is likely to be owned by the employer, but again this can cause practical problems in getting that information back to the company rather than remaining on the individual's LinkedIn.

**// 11. The European Court of Justice has ruled that Google must remove links to any content that is “inadequate, irrelevant or no longer relevant” or face a fine. If my firm/client insists that content found on Google search is removed, what steps must I take to try and achieve this?**

The European Court of Justice (ECJ) decision against Google in May 2014 now gives individuals the right to request that search engines remove content that is inaccurate, misleading or out of date in the absence of a public interest in keeping it available. It is important to remember though that the ruling only applies to Google and other search engines, not the publisher of the original news articles. So this means that the stories will still remain on the internet, but the ‘right to be forgotten’ ruling makes them tougher to find. And furthermore, they will only be deleted from EU-member country search engines, so can still be found on search engines based outside Europe. It cannot therefore be relied upon as a total eradication of information.

The process starts with a complaint to Google explaining why the information should be removed. Google will often remove information and if not then there is a right to appeal to the Information Commissioner's Office before proceedings are issued. CIPR members can access guidance on the right to be forgotten here.

**// 12. Can you take legal action against people who post factually inaccurate reviews and remarks of your company on a Google+ page or any other social sharing sites like Trip Adviser, Glassdoor (for example)? Where does the boundary lie between personal opinion and defamation?**

Yes, allegations which are expressed as reviews can still be defamatory. However, there is defence if the comment is expressed as an opinion and it is honestly held, the basis for the opinion is set out and it is an opinion which could be held by an honest person. It is often possible to show that factually inaccurate reviews cannot be honest opinions and this is particularly important if the review is being posted by a competitor or someone who has an axe to grind.

**// 13. Who is legally responsible for the content posted on a corporate Twitter account? Is it the company or the individual responsible for the posts?**

It can be both. Any person who contributes to a defamatory statement can be liable for its content. An employer will also be liable if the employee is acting in the course of their employment.

// 14. If an employee of the company is arrested or facing some form of criminal charges, what legal advice should we give to their colleagues regarding what they might say about the matter via their social media platforms? The PR team may have a “we don’t comment on individual employees” stance but in today’s age of social media, anyone could comment in public and be seen as a voice for the company. Colleagues of the impacted employee are often targeted by the media. Can we legally insist on tweets, posts being removed if anyone does post about a legal case?

In these circumstances it would be best to inform employees what has happened (insofar as you are able without risking a claim) and warn them against making comments to the press or directly on social media. It is possible that comments made about the case could attract legal action, both in terms of a privacy and defamation perspective, but also comments made on the case can be contempt of court which may result in a fine and criminal record.

// 15. Is there a chance I could get arrested if I make a mistake on social media and if yes, what types of posts/tweets would these be?

Yes, there are some criminal offences which attach to communications, including social media, such as sending material which is threatening, offensive or indecent. It is also possible to commit other crimes, which are not specific to social media such as harassment or involvement in terrorist acts.

This guide was produced in July 2015 by Louisa Bartoszek MCIPR (@LBartoszek), Director of Media Relations, BNY Mellon and Hanna Basha MCIPR (@hannabasha), Legal Director, Hill Dickinson Solicitors



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