dialogue consulting

Social Media Risk Management

A report on the regulatory guidelines and recent developments

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1 INTRODUCTION

Social media is now a core part of how we do business, and engage with our stakeholders: whether customers, media, internal staff or investors. Companies are rapidly adopting social media platforms such as Facebook or Twitter to engage with these stakeholders in two-way communication for customer service, sales or marketing purposes.

Given the nature of social media's vast reach and capacity for rapid dissemination of key company information, it is vital for executives of companies to familiarise themselves with the platforms' risks and opportunities. In order to capitalise on the benefits of social media, both internal and external risk need to be appropriately managed and considered as part of all communications activities: particularly around market-sensitive information.

This report brings together information from a range of recent rulings and case studies. It provides a background to social media for today's board members and executives, along with key information about the latest information on risk management practices and potential issues to avoid. It is based on Dialogue Consulting's extensive social media risk management experience and research into the latest developments in the sector.

It is worth noting that this report will intentionally not discuss the potential benefits or applications of social media in detail, and instead focus on risk management and regulatory issues. This is not to suggest at all that social media has no application or that the risks outweigh the benefits, but aims to provide executives with a practical perspective of risk management necessities for social media.

2 ABOUT SOCIAL MEDIA

Brian Solis provides a great definition of Social Media in his blog post[1] based on conversations and consultations with many of the 'big names' in the online sphere.

> *Short Version*
> Any tool or service that uses the internet to facilitate conversations.
> *Long Version*
> Social Media is the democratization of information, transforming people from content readers into publishers. It is the shift from a broadcast mechanism, one-to-many, to a many-to-many model, rooted in conversations between authors, people, and peers.

1 Available: http://dlgcns.lt/13oRNX8

Social media has been called a place for marketers, communicators, recruiters, community managers, consultants and more -- even recently, to be a core part of a CEO's role. Ultimately there is no one 'owner' of social media: who manages and takes responsibility for social media within an organisation varies widely depending on size, structure and who got there first. But all activities should point toward collaboration. Organisation-wide participation in social media will yield the most dividends, and collaboration between all business units will lead to the greatest development, implementation and returns from any social media presence.

3 SOCIAL MEDIA RISK MANAGEMENT PRINCIPLES

There is a core set of principles for managing your social media risk. These stem from legal decisions (see Linfox case study, 3.1.1) through to best practice in areas such as change management and employee culture. Given the increasingly blurred boundary between personal and professional social media 'presences', organisations should prepare in advance and ensure that their risk management activities are up-to-date with the latest trends in both the platforms available and the culture of social media use.

3.1 Social media policy

Few organisations these days do not have a social media policy in some format. Some, such as Telstra's 3 Rs of Social Media Engagement[2] are quite simple: in this case Representation, Responsibility and Respect. Others are more prescriptive and provide general guidance on the legal issues employees may experience (see the Victorian Department of Justice Social Media Policy[3]). Regardless, it is a basic principle that organisations should have a policy in place to clarify its expectations on employees -- even if the concept of professionalism in social media is simply an extension of your employee Code of Conduct.

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2 Available: http://dlgcns.lt/13oRSKw
3 Available: http://dlgcns.lt/15lHCqH

3.1.1 Case study: Fair Work Australia & Linfox

In a 2012 case, Fair Work Australia upheld that an employee was unfairly dismissed by Linfox after he made some derogatory comments about a company executive.

The staff member in case had made these comments on his private Facebook Profile (not a public account) and were directed toward his superior and the company's Transport Manager. The comments were made by both the staff member and some of his other Facebook friends, and named both the superior and Transport Manager. After its discovery, an investigation found that the comments amounted to discrimination of a sexual and racial nature and the employee was terminated.

Fair Work Australia Commissioner Michael Roberts commented[4]:

> *The chains of comments have very much the favour of a group of friends letting off steam and trying to outdo one another in being outrageous. Indeed it has much of the favour of a conversation in a pub or cafe, although conducted in an electronic format. The fact that some of the material is not complimentary towards (the company's) managers is unsurprising. This always has been, and always will be the fate of those holding managerial positions.*

At another point Commissioner Roberts commented further:

> *The Applicant's Facebook page was not a web blog, intended to be on public display. It was not a public forum.*

It was ultimately considered inappropriate for the employer to not have a social media policy, and instead rely on its induction training and company handbook (e.g. code of conduct) to terminate the employee. The comment:

> *In the current electronic age, this is not sufficient and many large companies have published detailed social media policies and taken pains to acquaint their employees with those policies.*

While the case did not provide significant guidance on how the courts would distinguish between comments made online in "public" spaces compared to "private" spaces (which exists on a scale, and is not binary in nature), it suggests that the onus is on employers to have policy in place and educate staff about appropriate social media use in order to manage risk.

4 Stutsel v Linfox Australia Pty Ltd [2011] FWA 8444

3.2 Procedure for authorised staff

More and more, employees are using 'personal' accounts (i.e. those in their name) for professional purposes -- for example, a PR employee using Twitter to engage with journalists. One challenge for companies is about what happens to these accounts when the employee departs the organisation. Given that they may be a core part of their work (and many paid hours are spent building these presences), should the account be ultimately owned by the employer, or employee? As with discussion in the above section, it is important for companies to clarify expectations upfront through the use of policy.

3.2.1 Case Study: Phonedog and Noah Kravitz[5]

Noah Kravitz, an employee of online technology news company Phonedog (US) had the Twitter account @Phonedog_Noah, amassing over 17,000 followers during his employment, and used the account to tweet about work and non-work content as part of the company wanting to 'better engage with fans' through expanding its 'personality driven brand'.

After Kravitz's departure, he changed the account name to @NoahKravitz, and continued to send some tweets about the company's promotions when requested. Unfortunately, the relationship soured over alleged back pay owed to Kravitz and Phonedog filed a countersuit, claiming that Kravitz took the accounts, valued at $2.50 per follower (total $340,000).

While such a case is unlikely to occur in most companies, it is important to consider how employees' public social media accounts relate to your brand: how closely associated are they with the brand? Should stakeholders direct enquiries directly to these 'personal' accounts rather than other channels? This may be a place for disclaimers, but a consistent approach is key to effective risk management.

3.3 Education is more important than documentation

It is important to remember that any risk management activity is not merely a policy or guideline document, and employers should ensure that they educate staff about social media use and the frameworks supplied to ensure compliance. This training may be in the form of a simple 30 minute interactive eLearning component on the intranet, or be formally part of employee induction processes. Indeed, many companies now are educating employees about best practice social media use to increase the profile and public standing of their employees as representatives of their

5 Available: http://dlgcns.lt/129gsPi

brand. This training will be significantly more extensive for those speaking 'on behalf of' the company compared to employees using social media as individuals. For more, see section 5.3.

4 SOCIAL MEDIA AND FINANCIAL MARKETS

Social media is now having an increasingly meaningful impact on financial markets and stock prices. Consumers' and traders' increased access to near-instantaneous company news (whether published through 'official' or 'unofficial' channels) provides more data for investors to understand the current goings-on in a company. This has some very significant ramifications on the management of regulatory and financial issues, such as the disclosure obligations of listed companies (discussed further in the ASX case study 4.3). In this section, three case studies are provided demonstrating the financial impact that social media can have on the market, guidance from the SEC (US) on social media investor relations and our local ASX guidance from a recently published Guidance Note.

4.1 Case Study: Rogue Tweet erases US$136 billion in equity market value

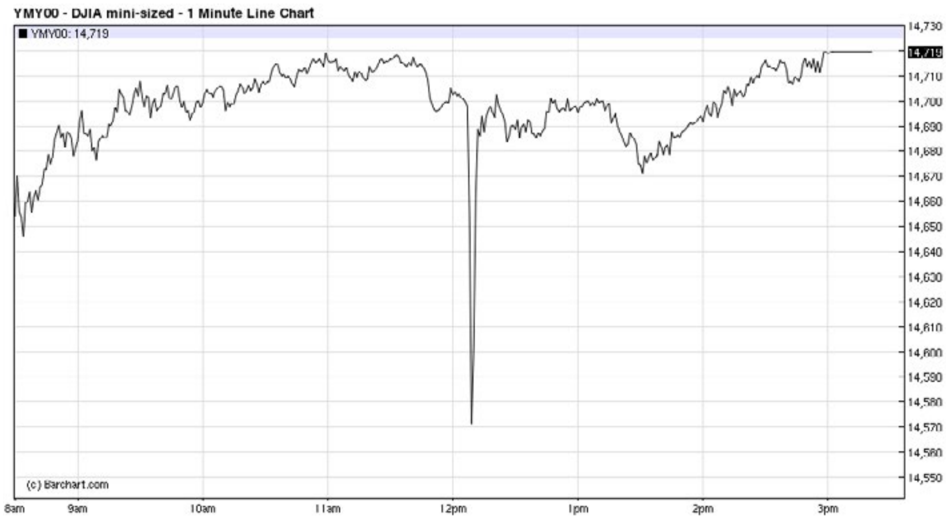

Chart source: barchart.com

On 23 April 2013, the Associated Press Twitter account (@AP) was compromised, and a tweet was published stating "Breaking: Two Explosions in the White House and Barack Obama is injured" was sent at approximately 1:15pm local time. Within minutes, the Dow Jones

Industrial Average lost some 150 points, representing a loss in market value of US$136 billion.

While the market rapidly recovered, the rise of high-frequency trading platforms has resulted in common use of these 'realtime' news sources as a way to trigger trades based on content and sentiment changing about a brand within seconds. Indeed, the Tweet was also sent out to traders via a new feature in Bloomberg's financial data terminals delivering Twitter posts to users.

4.2 Case study: SEC (US) allows use of social media for material disclosures

After a Tweet from Netflix CEO Reed Hastings announcing the company had streamed one billion hours in a month for the first time caused a significant increase in share prices, the SEC investigated the role of social media in material disclosures to the market[6].

Fair disclosure rules (ASX rules discussed below, 4.3) are a key way to ensure equitable access to market-sensitive information, and the SEC has previously allowed (in 2008) companies to use their website to disclose this information. After an investigation, the agency ruled that social media sites would suffice as a platform to announce materially sensitive information: but noted that a company Facebook Page was a more appropriate channel than an executive's personal Facebook Page to announce such information.

While many companies have indicated that they plan to take advantage of this ruling, we are yet to see how some of the challenges of this change in policy will impact investors[7]. Do investors need to follow every single social media channel a company has in order to receive material information, or will it be syndicated across every channel? How can you disclose sensitive information within the limits of a social network platform (such as Twitter's 140 character limit)?

6 Available: http://dlgcns.lt/10j03cA
7 Available: http://dlgcns.lt/107A8Ts

4.3 Case Study: ASX Guidance for disclosing information

After the SEC ruling (4.2) the ASX and ASIC indicated that they were not planning to follow suit, and that the ASX will remain the primary outlet for announcing market-sensitive information[8]. This is in line with findings that 54 per cent of Australian retail investors considered social media to deliver 'no real benefits'. 36 per cent suggested online business media (such as a corporate website) has increased in importance, but most continued to see more value in annual reports, ASX filings and press releases[9].

In Guidance Note 8 (updated 1 May 2013[10]), the ASX recently provided guidance to companies' use of social media as part of the continuous disclosure process. The process is to ensure that there is a central source of market-sensitive information (i.e. information that is 'likely to have a material effect on the price or value of an entity's securities') -- through ASX filings. ASX Listing Rule 3 provides an obligation for companies to disclose this information promptly and without delay after becoming aware of the information.

The Guidance Note discusses in multiple sections the role of social media monitoring when potentially market sensitive information may be released through channels other than the ASX. This has traditionally included sources such as market price, newspapers, news wire services and enquiries from analysts or journalists, but now also includes:

> *any investor blogs, chat-sites or social media it is aware of that* ***regularly post comments about the entity*** *[...] for example the 'shareholder action' blogs that exist for some listed entities. (emphasis added)*

In a footnote, the ASX notes that the role of social media monitoring is unlikely to have this as a primary goal:

> *Some (generally larger) listed entities would also be monitoring certain investor blogs, chat-sites and other social media sites through their investor relations function, again for the purposes of understanding what is being said about them on those sites. Where a market sensitive announcement is pending, ASX considers that the entity should also be monitoring these sites for signs that the information in the pending announcement may have leaked.*

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8 Available: http://dlgcns.lt/16PJg3i
9 Available: http://dlgcns.lt/10D7OEk
10 Available: http://dlgcns.lt/12ctytK

As such, it is important to have a social media monitoring strategy in place as part of 'everyday business', regardless of whether your company is actively involved in that channel. As noted by the ASX, blogs or news sources that are directly about your company should take precedence, but it is not unreasonable that any publicly available content that might contain leaked information, particularly if it mentions your brand by name. This may become a challenge for some companies to ascertain if and when they may be operating in a 'false market' (Listing Rule 3.1B) when rumours circulating via blogs or social media sites may materially impact share price or value. Listing Rule 3.1B outlines further guidance about if and when a company should correct any market misperceptions (usually only when the rumour or report appears to be having a material effect on the market price or traded volumes of the entity's securities) -- and further notes that this should only be via an ASX announcement, and not returning via social media.

As a result, companies should be especially weary when important announcements are imminent[11] -- for example, during merger talks, or prior to announcing changes to earnings guidance. Social media risk management for staff internally (and education) should teach employees the importance of disclosing only through official channels, and the 'social media sphere' should be closely monitored for any unusual posts or rumours about the announcement. This may require the involvement of additional resources to manage this information, or be part of day-to-day social media operations and monitoring practices.

5 SOCIAL MEDIA LIABILITY OF USER-GENERATED CONTENT

Recent judgements in 2011 and August 2012 have found brands to be variably liable for comments or content generated by users that may be illegal or against trade practices or codes of conduct.

5.1 Case Study: Allergy Pathway & Testimonials

In 2011, the Federal Court held that health company Allergy Pathway was liable for posts by third parties on its social media accounts, as it knew that misleading testimonials about their products had been posted but did not take steps to remove them[12]. They grouped breaches into four categories:

1. Statements or links to statements published by Allergy Pathway
2. Testimonials written by clients and posted by Allergy Pathway
3. Testimonials written by clients and posted by clients
4. Allergy Pathway's replies to queries on its Facebook Wall

11 Available: http://dlgcns.lt/13oUEPZ
12 Australian Competition and Consumer Commission v Allergy Pathway Pty Ltd (No 2) [2011] FCA 74

It is obvious that categories 1, 2 and 4 are likely to be considered as the brand 'publishing' the comment, and validating or supporting the users' comments. Ultimately, the Federal Court found that Allergy Pathway was also liable for the posts in category 3, as it knew of the posts and did not remove them.

5.2 Advertising Standards Bureau / ACCC & advertising content

In 2012 the Advertising Standards Bureau (ASB) determined that the requirements set out in the Advertiser Code of Ethics apply to the content written by users on Facebook Pages (specifically)[13]. This was in response to complaints about the VB and Smirnoff Australia Facebook Pages, which contained many comments which were claimed to be "obscene, promoted excessive drinking and 'connected alcohol consumption with sexual or social prowess'"[14].

At the time, the ruling was quite controversial, with many advertisers claiming an affront to 'freedom of speech' or that on some networks such moderation is impossible (for example, a user sending a Tweet)[15]. But as per the Allergy Pathways decision, it serves to remind brands that they are liable for the channels that they have control over: whether they provide a platform for just the brand to post (e.g. official Twitter accounts versus other users mentioning the brand) or that provide a platform for users to also post and interact with each other (e.g. Facebook Pages).

The ASB and ACCC suggested that for large brands such as VB or Smirnoff, it was expected that inappropriate comments must be *removed within 24 hours*. For smaller brands, it has been suggested that there is more leeway for timing. Dialogue Consulting recommends that all brands (large or small) have a monitoring strategy in place to oversee content throughout business hours, whether by a dedicated resource (social media manager) or by a shared group of staff members (such as sending email notifications to staff members who may identify whether a comment requires immediate action at the time of receiving the email).

5.3 Recommendations for brands with user-generated content

The above cases provide a clear regulatory framework about the liability that brands hold for user-generated content. It would appear that brands are liable for all social media content that they control, whether posted by themselves or by their users.

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13 http://122.99.94.111/cases/0272-12.pdf
14 http://mumbrella.com.au/asb-rules-brands-are-responsible-for-all-fan-comments-on-facebook-108037
15 ibid

Further, it is important for brands to have clear guidelines (or 'House Rules') for users, so that there is a clear indication of what content is appropriate to be posted to the Page by users. This should occur on all platforms where brands have control over users' posts. Further, it is important to have a clear response strategy in place for your social media moderation team to identify whether a post breaches the requirements set out in the House Rules, and what to do if this occurs.

Additional guidelines and training are also required for staff members posting on behalf of a brand about the legal or regulatory framework that the brand operates within: for example the Advertiser Code of Ethics, Therapeutic Goods Administration advertising guidelines, or restrictions on public communications such as those discussed in section 4.3. As a result, social media managers should be **senior staff members with experience in managing online communities and conducting external communications**. Allowing a junior staff member (or even intern) to post on behalf of your brand, moderate your content or otherwise control social media content without significant oversight may leave you open to liability as a result of their limited knowledge. For brands who have social media activities managed by an external body (such as a media agency, either all the time or merely during campaign periods), it is important to ensure that these external organisations have similar levels of education and knowledge about the frameworks that they must operate within.

Ongoing training and ensuring that team members stay up-to-date with the latest decisions in the space or clarifications to guidelines is another important part of social media risk management activities.

We are yet to see any decisions or judgements about a brand's liability for the actions of its community on each other: for example, one member of a forum bullying another. While it could be argued that the brand's Facebook Page (or forum, or Pinterest profile...) facilitates this to occur, it will be interesting to see where and how the responsibility may fall onto the platform itself (e.g. Facebook) compared to an advertiser in such circumstances.

6 SOCIAL MEDIA AND RETURN ON INVESTMENT

The final (and potentially most important) area of social media that should be discussed is that of ensuring return on investment (ROI). This is perhaps the most significant risk of them all, as it has the potential to occur without obvious signs.

It is notoriously difficult to quantitatively determine the return on investment from social media channels. While 'investment' is easy to measure (in terms of advertising costs and staff hours required to monitor and manage), the 'return' is highly difficult to calculate.

Part of this difficulty is that social media usually fulfils multiple business purposes: a combination of a marketing, sales, customer service, market intelligence and HR/organisational culture communication channel. As a result, the return needs to be measured in terms of multiple objectives. Individual measures such as the number of leads produced by social media, or the cost per customer interaction on social media may miss the broader picture. However, if the primary goal of a social media presence is for lead generation or customer service, then perhaps these measures may be sufficiently indicative of the whole to be all that is required.

There has been ongoing academic research (and extensive commentary in the media) about the impact social media has on brand equity[16]: does a billboard contribute more than the Facebook Post to a customer's intent to purchase a product? And does the Facebook post from a friend contribute more than a company's post? This document will not go into detail on the measurement of brand or customer equity, which is a complex topic all to itself. Those in charge of evaluating social media would be well-advised to familiarise themselves with the latest academic research and practices in:

- Multichannel marketing evaluation and value assignment,
- Social networking analysis, and
- Decision theory

Through knowledge about the latest developments and methods in these sectors, marketing spends (across multiple channels, but also within one, for example within Facebook or Twitter) can be better optimised, resulting in lower costs to achieve goals.

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16 See (among others):
Manfred Bruhn, Verena Schoenmueller, Daniela B. Schäfer, (2012) "Are social media replacing traditional media in terms of brand equity creation?", Management Research Review, Vol. 35 Iss: 9, pp.770 - 790,
Norman Booth, Julie Ann Matic, (2011) "Mapping and leveraging influencers in social media to shape corporate brand perceptions", Corporate Communications: An International Journal, Vol. 16 Iss: 3, pp.184 - 191,
Angella J. Kim, Eunju Ko, (2012) "Do social media marketing activities enhance customer equity? An empirical study of luxury fashion brand", Journal of Business Research, Vol. 65, Iss: 10, pp 1480-1486

7 CONCLUSIONS

Social media can be a powerful tool for engaging with internal and external stakeholders and producing meaningful business results. But as with all innovations, it also presents a series of risks that executives should ensure are adequately managed.

It is no longer sufficient to simply produce social media policy or guidelines for staff, with companies now being required to take measures to educate staff in the expectations that they have. User-generated content should be considered just as serious in terms of liability as brand-generated content, and social media managers should be educated in the specific guidelines or frameworks applicable to your company's products or services. Further, the capacity for social media to have an impact on financial markets results in regulatory and compliance issues that are likely to exist beyond the 'social media team' and should be part of organisational strategy considerations.

While these risks vary in complexity and applicability to everyday social media management or use, there are areas of importance to boards, executives, management and individual employees.

8 HOW DIALOGUE CONSULTING CAN HELP

As specialists in social media risk management, we can provide advice, audit or review services to determine whether your organisational risk is being appropriately managed. Additionally, we can provide:

- Executive training in social media, including risk management or use of particular platform(s) for communication
- Staff social media risk management training, including face-to-face or eLearning initiatives
- Social media monitoring services during times when additional monitoring is required or peak traffic periods
- Analytic strategy or multi-channel analysis in order to optimise marketing spend and determine financial ROI from social media.

We are based in Melbourne but work nationally across many sectors.

Please get in touch with us for more information, including a free initial discussion and proposal.

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ABOUT DIALOGUE CONSULTING

Dialogue Consulting assists our clients through one or more of the stages of what we call the *Social Transformation* process. Each client is at a different stage, has different needs or desires and requires a different approach – but through each of these five stages an organisation can become successful in initial and ongoing social media use.

Analyse
A key step to starting any social media process is the analysis of the conversations that are already occurring. This stage involves analysing both existing presences (if any) but also external presences, including international examples, competitors or similar organisations, community-driven presences and more. The focus of the Analyse phase is to get an overview of where conversations are occurring, who is talking, and why.

Consult
Key to the successful implementation of any new process or presence is consultation, both internal and external. The consultation process should be as broad as possible. Usually, this includes consultation with departments such as sales, legal and HR (especially for policy development), communications/marketing, customer service, community engagement and your executive team.

Develop
Every successful presence requires the development of supporting materials. This might include social media policy, social media strategy, risk management processes, training materials and more. Ideally all of these are developed in collaboration with key stakeholders (internal and external) through an open, transparent and inclusive process A key part of this is identifying the tools, budgets, resources and process involved in using social media effectively within your context.

Train
Often forgotten is the training required to implement your social transformation. This might include training about day-to-day use of social media; training about online professionalism; basic training for executives to understand social media and how it can impact your organisation; training in specialised areas such as evaluating social media or running online consultations and market research; or content development and planning.

Implement
Dialogue Consulting provides both implementation services (for your whole social media presence on an ongoing basis or just for a campaign), and support services for organisations currently implementing social media channels. This includes our 24/7 emergency support line, formal reviews with your social media team and ongoing advice on the best content or strategy to use to engage with your target audiences.

For more details, have a look on our website at http://www.dialogueconsulting.com.au/social-media-services/

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