

Blogs, Facebook pages have potential for libel

Be sure writers understand danger

Some of you probably saw the movie “The Social Network” about the founding of Facebook over the holidays.

None of us would argue that Facebook isn’t a modern phenomenon. Time Magazine, naming Facebook founder Mark Zuckerberg its “Person of the Year,” claims that Facebook now has 550 million members, creating a “country” that is the third-largest in the world, ranking right behind China and India.

One of the most amazing things about it to me is how it has changed the discussion of privacy issues. Personal privacy is a value most folks hold dear.

Lawsuits for invasion of privacy are a concern for all in the media. But on Facebook, privacy sometimes takes a back seat to connections and to telling folks what is happening in one’s life. For many on Facebook, privacy is forgotten amid the desire to show and tell everyone about what happened last night.

And it’s not just Facebook. Folks are “tweeting” about their every activity, whether it’s going to the dentist for a root canal a few weeks ago (Mo. Rep. Jason Kander) to what music is playing at the moment (Jason Rosenbaum).

CNN.com recently noted, “Virtually any information posted online can become public in an instant. An info-thief easily could take a screen grab of a private Facebook message and post it on a public blog. Private twitter feeds ... can be retweeted.” One tech expert a few years ago opined that privacy was dead and that “social media hold the smoking gun.”

In 2009, a political consultant accused of taking bribes not only raised a defense

and commented in traditional media about the unfairness of the charges, but he began using Twitter and Facebook to comment about his case.

Eventually, the judge became angered over his comments and urged his attorneys to tell him to “keep his fingers off the keyboard as well as his mouth closed.” The judge was unsuccessful in accomplishing this task, however. Even a protective order was unsuccessful in shutting him down.

It creates interesting issues. Lawyers involved in litigation are finding that sometimes they can find out a lot about opposing parties in lawsuits by looking at their Facebook pages. But then, at the same time, lawyers realized they could find out about potential jurors on jury panels by hunting them up on Facebook.

That has concerned some judges. It has broadened the inquiry about potential jurors beyond the courtroom, although the truth is that lawyers have been searching out every detail about potential jurors for a long time, and I assume most judges don’t really believe they can contain this process to the courtroom voir dire activity.

And in truth, I am not certain that this is a valid concern. If a person chooses to put that information out on the web, then I think it’s fair game. But this clearly is a developing area of the law, and we haven’t seen the end of litigation over it.

Reporters also realize that they can find out about people they are writing about by checking Facebook for their pages. Granted, the information gleaned there is not necessarily reliable as source material.

The reporter needs to realize the person’s page they are looking at may or may not be the person they are writing about and may or may not contain truthful statements. Caution needs to be exercised.

However, it’s the first angle that I want to talk to you a little about in this column.

As I mentioned, lawyers realize that there may be a world of information to be gained from Facebook. And it’s not just plaintiffs that lawyers seek to find on Facebook. Lawyers thinking about filing libel suits or similar media torts are going to be checking the Facebook sites of journalists, too.

If you have a reporter working for you who is a big Facebook fan, you probably need to talk to that reporter about concerns over what they write about their job.

A reporter who chooses to write about how she sourced a story, about what she wanted to accomplish in writing a story, or who makes fun about the person who is the subject of a story as part of her Facebook wall may find that very material coming back to haunt her if she is sued for libel.

While employers all over are realizing that Facebook references can be a problem, it’s perhaps even a bigger problem for publishers, because the folks we hire tend to like to write, and having a detailed Facebook page comes naturally to folks at newspapers.

We’ve been warned about the potential for emails being harmful in the past. But tweets and Facebook postings are no different and need to be watched, too, because of the potential for harm they can cause.

Finally, before I close, let me add a quick note. Last summer I talked about web content and comments on websites for a media group. I wrote about it for you last September (see the September law column on MPA’s website at http://www.mopress.com/_lib/files/Man-Law_1009.pdf).

By the time you read this, I’ll have presented that talk to the folks at the Northwest Press Association meeting in St. Joseph. I’m hoping to have a chance to present it at other meetings in coming months. Give me a call if you are interested.



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