
a presentation by
HILL DICKINSON



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**DEFAMATION
AND INTELLECTUAL PROPERTY
RISKS IN THE CYBER WORLD**

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WE ARE ALL CYBER PUBLISHERS NOW



11 years old

277 million users

3 million business pages

8,000 new group pages created weekly



10 years old

1.23 billion monthly active users

24 million Britons log on to Facebook every day



8 years old

500 million tweets sent per day

The time it took from the first Tweet to the billionth tweet was 3 years, 2 months and 1 day



7 years old

More than 1 billion unique users visit YouTube each month

Over 6 billion hours of video are watched each month on YouTube—that's almost an hour for every person on Earth

100 hours of video are uploaded to YouTube every minute

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Case Study 1

A CEO has been advised that, as the 'face of the company' he must engage with the media to raise the profile of that company.

The CEO agrees to be interviewed on television as a commentator about a recent news item.

In the course of his interview he mistakenly refers to another corporate figurehead having left his last role under a cloud.

The CEO is subsequently sued in libel for his allegation.



Case Study 2

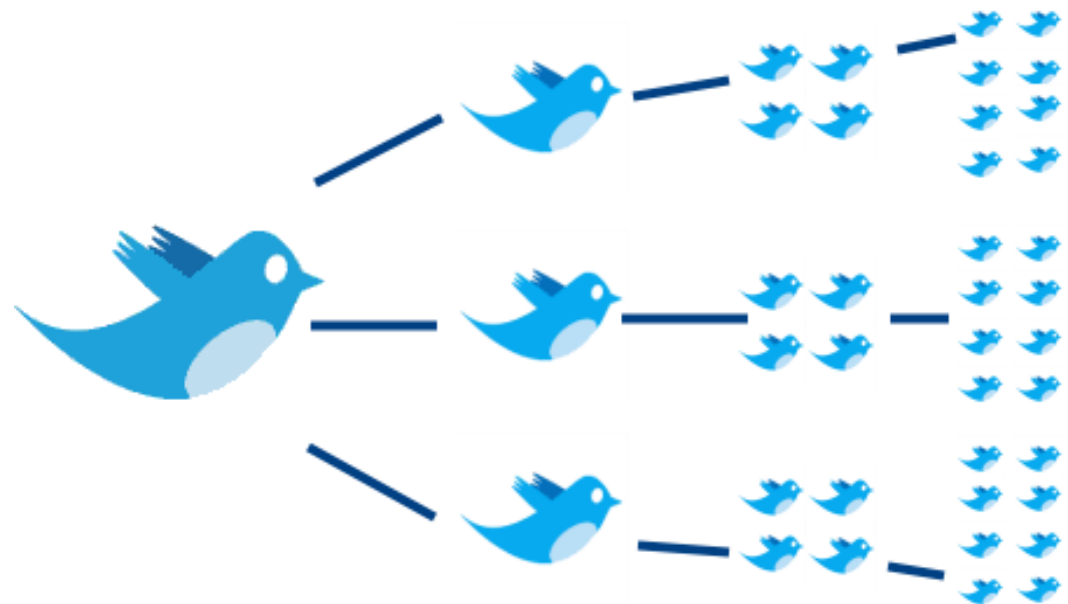
The same beleaguered CEO has been told that he needs to 'humanise' the company and that the best way to do that is to tweet 2-3 times per week on matters of interest to the company's customers.

The CEO feels that his time may possibly be better spent running the company and so the PR department is tasked with sending tweets in the name of the CEO.

One Friday afternoon the PR team receive a tweet about a competitor company going into receivership.

Unsure as to whether the tweet is accurate they retweet it with a question mark attached.

The allegation turns out to be false and the CEO is sued for republishing the false allegation.



Case Study 3

An employee on a break in the course of his duties spots a uniformed contractor asleep on the job and takes a video on his smartphone for a laugh.

He posts the video on YouTube with the caption, '*No wonder we can't complete when this is what we have to work with*'.

By the end of the day the video has been viewed 3,837 times. The subcontracting company are suing *the employee's company* in libel for the allegation that the company is incompetently managed.



Case Study 4

A Harley Street Plastic Surgeon sends out some marketing brochures to his list of patients about all the services that he can offer.

In his brochure he compares his low complication rates with other surgeons in the same field.

He also includes testimonials from patients in the brochure with one describing him as the 'Rolls Royce of Rhinoplasty'.

Another Harley Street Surgeon has seen one of the brochures and is now suing for the defamatory implication that he is incompetent. The same surgeon sent a copy of the brochure to Rolls Royce who are threatening to sue for the breach of trademark.



Case Study 5

Branded journalism is the future of corporate marketing.

This practice of a business covering its industry like a news outlet — and hiring journalists to write the stories — goes beyond case studies and best practices blog posts. Instead, companies are becoming a media outlet.

Corporates are increasingly seeing the need for changing the way they engage with their customers, and are transforming themselves into social enterprises and radically altering the way they manage their businesses.

GE Reports launched in 2008 with a fully functioning newsroom incorporating corporate storytelling. Most of the content could well be press releases. However, instead of sending such press releases to journalists and hoping they will get turned into stories GE has taken control of the whole process and is writing and publishing content for its own readers.

The screenshot displays the GE Reports website. At the top, there is a blue header with the GE logo and the text "GE Reports". To the right of the header are social media icons and a search bar. Below the header, the main content area features a "FEATURED" section with a large article titled "The Road to Rio Stops in Sochi: GE to Help Russia's Sochi and Brazil's Rio Stage the Next Olympics". The article includes a sub-headline "Brazil's 'Marvelous City,' Rio de Janeiro, is next up as the host of the 2016 Summer Olympics..." and a "READ MORE" button. To the right of the main article are two smaller featured images with captions: "Brighten Up, Shutterbug! Win a Trip to London and a Lighting Makeover for Your Home in a GE Photo Contest on Facebook" and "Built to Last: How the Olympics Are Transforming London". Below the featured section is a navigation bar with buttons for "Powering", "Building", "Curing", and "Moving". The bottom section of the page is divided into three columns: "WE RECOMMEND" featuring a graphic of the United States and a link to "GE's American Jobs Map: 15,500 New Jobs Announced Since 2009"; "GE ON TWITTER" with three tweets from @ge_reports; and "SUBSCRIBE TO GE REPORTS" with a "SUBSCRIBE" button. Below the subscription button is a "GE IN THE NEWS" section with two news items: "GE's Bentley Nevada Introduces Portable Plant Condition Monitoring Solution Series" and "Tetra® LED Lighting Systems Outshine Fluorescent Tubes in Cabinet Signs Offering 90 Percent Energy Savings".

WHY WE NEED PROTECTION


- The online environment allows more people to publish and republish more material faster and further than ever before.
- More people have more platforms from which to publish material.
- It can be no surprise that mistakes happen – people get defamed, privacy gets invaded and intellectual property rights get breached.

"The trouble with Twitter, the instantness of it... too many tweets might make a twat."


David Cameron



WHERE CAN WE FIND PROTECTION?


- Insurance for media risks
 - Media liability insurance
 - Professional Indemnity Insurance
 - Communications Liability Insurance
 - A multimedia liability insuring clause in a cyber or technology policy
- An increasing number of people require policy protection against claims arising out of the dissemination and communication of information.
 - Such policies provide valuable coverage in the event that an organisation or a person faces a claim because they have;
 - Defamed a person or an organisation
 - Invaded the privacy of a person
 - Misused confidential information
 - Breached someone's copyright
 - Infringed someone's trademark
 - It may have been the case that such policies were only ever required for mainstream publishers and broadcasters but not any more.
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WHAT DOES A POLICY COVER?

- Statements made by or on behalf of senior management in the course of their employment
 - Statements made by or on behalf of an organisation
 - Statements made by employees in the course of their employment
 - The republication of other peoples' statements by any of the above
 - Media content or user generated content for which you may be liable on the basis that you have provided access to it.
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WHAT DOES A POLICY PAY FOR?

It will depend on the precise policy wording but is likely to cover:

- Your legal costs and disbursements
 - The Claimant's legal costs and disbursements should you be ordered to pay them
 - Any damages or compensation that a Court may award the Claimant and order you to pay.
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HOW ARE DAMAGES ASSESSED?

- The seriousness of the allegations
- The level to which the allegations attack the person's integrity and core attributes
- The readership and circulation
- The amount of hurt and distress caused by the publication
- Vindication
- Defendant's conduct



CAIRNS v MODI

- Allegations of Match Fixing
- Tweeted to 65 followers, further potential publication of around 1,000
- Damages of £90,000
- £1,385 per tweet in libel damages.

“we recognise that as a consequence of modern technology and communication systems any such stories will have the capacity to “go viral” more widely and more quickly than ever before. Indeed it is obvious that today, with the ready availability of the world wide web and of social networking sites, the scale of this problem has been immeasurably enhanced, especially for libel claimants.... In our judgment... this percolation phenomenon is a legitimate factor to be taken into account in the assessment of damages.



CRUDDAS v ADAMS

- Publication via 9 blogs and 12 tweets
- Damages of £45,000
- Equivalent of £2,000 per publication



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TRACKSUITDAVE1

- Tweet to a dozen followers
- Damages of £7,500
- £625 per follower



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McAlpine v Bercow

Sally Bercow tweeted to 56,000 followers: *"Why is Lord McAlpine trending?"*

Court found this meant: Lord McAlpine *"was a paedophile who was guilty of sexually abusing boys living in care"*

McAlpine's solicitor Andrew Reid said: *"The judgment is one of great public interest and provides both a warning to and guidance for people who use social media."*

Joshua Rozenberg noted: *"The law of defamation is well known to those who write for a living. One hopes Twitter users are beginning to learn what a powerful and potentially dangerous weapon they have at their fingertips. A tweet is more like a broadcast than an email and is subject to the law of libel in the same way."*

Sally Bercow said: *"The High Court found that my tweet constituted a serious libel, both in its natural meaning and as an innuendo. Today's ruling should be seen as a warning to all social media users."*



REDUCING THE RISKS

Policy Holders need to -

Check their facts

- Not re-tweet or forward other peoples' statements if they are unsure as to their veracity
- Take responsibility for and control what goes out in their name
- Understand that posing a question, hinting at or suggesting an allegation or adding 'allegedly' after it will let them off the hook.
- Have a clear written social media policy in their employees' contracts
- Train Staff how to use the defences to libel



USING THE DEFENCES

**IN
THE PUBLIC
INTEREST**


- Truth is a complete defence
- If clients are offering an opinion they must make sure that it is a genuine opinion based on facts that they know to be true at the time of writing
- Clients need to make sure that what they are writing about is in 'The Public Interest' and not just interesting to the public.
- There has to be 'serious harm'

RESPONDING TO A COMPLAINT

- Speed of response is critical – Clients need to contact their insurer as soon as possible and prior to any response to the complainant.
- If a client is going to apologise they should do it quickly and sincerely and with sufficient prominence to reflect the scale of the readership of the defamatory statement.
- Consider what else a client might do to mitigate the harm caused.
- The Offer of Amends procedure.



EXEMPTIONS

- Limited to statements published in digital media
 - Limited to statements published in the last year
 - Limited to statements published in this jurisdiction
 - Only for statements made in the course of employment or in a person's duties as a Director
 - Patent Misuse not covered
 - Not applicable to Local Authorities of other 'Emanations of Government'
 - Not applicable to statements that were known to be false at the time of publication.
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CONCLUSION

Selling the Policy

- Remind clients of how many different platforms they are currently publishing from.
- Remind clients how many people in their organisation are using social media as part of their jobs.

Assessing the risks

- Consider the credibility of those making the allegations and their importance to the organisation
- Consider the audience for the initial publication
- Consider the likelihood that the material will spread online
- Assess the public's appetite for the information
- How serious are the likely allegations being made



“When lawyers talk about the law normal human beings begin to think about something else.”
Richard Ingrams

Questions?



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