

What you need to know about the Law and Social Networking Sites

If your social networking is done online, then you might be one of the millions of people who enjoy more constant “connectedness” than any previous generation or maybe you’re one of the growing numbers of people who have suffered cyber bullying or cringed at embarrassing content posted on a social networking site by a “friend”. While the growing popularity of social networking sites plainly demonstrates the enjoyment derived by users, there are traps and things you should do to protect yourself whilst using these sites.

1: Check your privacy settings

Via adjustable privacy settings, social networking sites allow users to determine the category of people to which their personal profiles may be made available. Can your profile be viewed by the world or have you confined access to friends to whom you have expressly approved?

There are regularly incidents reported in the media here and overseas where an employee has published something on Facebook which ultimately cost that employee his/her job. Ask yourself - Would you be happy for your colleagues/family members/future in-laws/potential employer/government agencies to view your Facebook profile page? Making sure you set appropriate privacy settings can save you embarrassment down the track.

Also consider that privacy settings are subject to the falability of the security measures taken by the site operator. Indeed, social networking sites warn users that content is posted at their own risk. In the interests of prudence, perhaps you should consider that all content posted on a social networking site is able to be viewed by the general public.

2. Be aware that a general “right to privacy” doesn’t exist

Many people disclose very sensitive personal information (including explicit photos and the like) about themselves or their friends online as they assume they have a general “right to privacy” that applies when using social networking sites. In fact, there is no such well defined legal right to privacy or protection of personal information in Australia as the Federal privacy legislation (Privacy Act 1988) has no application to individuals using social networking sites. As such, the onus is on users to protect their own information via privacy settings and by carefully limiting what you choose to disclose. Users also need to be very aware of the extent to which deleted information, such as photographs, remain on the internet.

3. Stop and think: Would you print it in a newspaper?

Never before has it been so easy to publish to a wide audience. Comments once confined to the school playground or the local bar, spoken in a moment of maliciousness, now can assume greater legitimacy and permanency and reach a far wider audience over the internet. The potential hurt suffered by a victim of bullying is magnified too by the huge scale of this new means of communication.

Arguably, the ease of publication means that the process of self-censoring is at risk of being skipped over altogether. In NSW, a person aggrieved by defamatory material must show:

- (i) the material has been published;

- (ii) the material allows identification of the aggrieved person; and
- (iii) the publication is defamatory in that it exposes the aggrieved person to hatred, ridicule or contempt or lowers them in the estimation of a reasonable member of society.

Be careful what you say on social networking sites. Realise that you are creating a publication to the world. Would you print it in the Sydney Morning Herald?

4, If you didn't create it, are you sure you can reproduce it?

Users of social networking sites often include in their profile pages reproductions of music, videos and photographs as a way of building their profile page. Often, such music, videos and photographs will be subject to copyright. Obviously, there are occasions where the copyright owner will not object to these reproductions, for instance where a friend has reproduced a photograph taken at a social event or where a music band takes the view that the promotion of their music, in any forum, is desirable.

However, there will be instances where the copyright owner will object – such as where s/he does not approve of the association between their work and the relevant page of the social networking site or where the copyright owner identifies a loss of royalty payments. Remember that the site's Terms of Use will almost certainly prohibit the unlawful reproduction of copyright material. To avoid copyright infringement, only upload material onto your profile page that has been created by you.

6. Follow the Rules

All social networking sites, such as Facebook, set out Terms of Use. By signing up as a member, you agree to abide by those Terms of Use. For example, you are not allowed to impersonate any person; you cannot post content that is defamatory or infringes copyright; and you can't use the site to abuse or harass anyone. Social networking sites retain the right to remove content and/or block you if you violate their Terms of Use.

Anecdotally, the Terms of Use are rarely read by users of social networking sites. It's a good idea to read them not only so that you abide by them but also so that you are armed with information about what is prohibited. If you are offended by content about you on a social networking site, you may lodge a complaint by email. Contact information and email addresses for the operators of the site are set out on their web site.

Tips to Protect yourself whilst Networking Online

1. Do not accept invitations from "friends" you do not know.
2. Do not give out personal contact details such as your home address or telephone number. Be aware that the more personal details you provide such as birth date and address, the easier it is for you to become victim of identity theft by a savvy hacker.
3. Check your privacy settings – who can access your personal information?

4. Read the terms of use and privacy policy set out on the social networking site you use.
5. Only upload material onto your profile page that has been created by you. Be aware that music and videos not created by you may be subject to copyright.
6. If you access social networking sites at work, remember to be aware of your employer's email and internet policy. Unprofessional behaviour may result in disciplinary action being taken against you by your employer.
7. Realise that there is no guarantee that social networking sites are private or secure. Before publishing, think: is this ok for my grandmother/teacher/employer/boyfriend etc to read?
8. If you have a complaint about content published on a social networking site (because, for example, you are subject to harassment or intimidation) speak up! Report it to the social networking site operator in writing. If the social networking site is run by your employer or by an association, speak to that employer or association.
9. Respect other people's privacy.

Disclaimer

This information is current as at December 2013 and is intended as a guide to the law as it applies to people who live in or are affected by the law as it applies in NSW. It does not constitute legal advice.