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ETHICAL AND LEGAL FUNDAMENTALS IN SOCIAL MEDIA

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LEARNING OBJECTIVES

After reading this chapter, you will be able to

- Identify key concepts that are important to social media ethics and law
- Define ethics and construct your own ethical standards for social media
- Recognize the consequences and challenges social media raises for legal and ethical purposes
- Explain key ethical and legal principles for establishing a social media policy
- Understand the current ethical and legal landscape for working in social media

HUMANS OF SOCIAL MEDIA

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Introduction

If there were a modern definition of *nomad*, I seriously might be it. I spent more than 15 years in college athletics at six NCAA (National Collegiate Athletic Association) Division I institutions: Southern Miss, Louisiana–Lafayette, Marshall, Baylor, Miami, and Georgia Tech. During the later part of Career 1.0, I had one foot in academia and the other foot in college

athletics. It was my time at both Baylor and later Kennesaw State where I realized my calling might be in the classroom. After being accepted into the PhD program at Mercer, I was let go from my job at Georgia Tech, effectively ending my college athletics career. Now, I have a normal 9–5 job as the Twitter/Facebook/video/photo guy for St. Tammany Parish Public Schools in Louisiana, and it has been the most rewarding thing I've done in a very long time.

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How did you get your start in social media?

During the advent of Twitter and the immersion of Facebook (when anyone was allowed to join and you no longer needed a .edu email), social media became an extension of the necessary PR functions of our job. I think it was the 2008 football season when our office at Baylor started to notice this digital shift in presenting a narrative. Our digital media coordinator was the one who spearheaded our journey into the digital frontier. To be honest, I reluctantly signed up for a Twitter account. I didn't know what it was. Really, the majority of my time at Baylor was spent trying to figure this "social media thing" out. I don't know where the narrative started that I ran social media at Baylor, but it didn't come from me. I happened to be the most visible on social media because it was easy for me to communicate there. By nature, I am an insecure introvert who has a hard time expressing his thoughts and feelings orally (yet I can teach in an auditorium, no sweat). However, I think social media lends itself to the creativity of introverts as an easy medium to communicate. That's why I still am immersed in it.

What is your favorite part of working in your social media area of expertise?

My favorite part of working in social media is definitely the creative and planning process. Many people don't like planning in social media, and their idea is to post when things come up. I like looking two, three, even four weeks in advance and planning for content so that we can be flexible in curating spontaneous content or sharing immediate stories that don't require days of video editing. Planning content allows us to be more "in the moment" than most people realize.

What is one thing you can't live without while working in social media?

Aside from an endless supply of iPhone cords or extended batteries, my answer is buy-in—buy-in from the top and other outward-facing departments that social/digital media touches. You can have the greatest content and a closet full of phone batteries, but if the powers that be don't "get it" or "buy your why," then what's the point? I assure you many people will disagree with me, but I don't 100% believe that social media is a necessity for

everyone. For example, only a handful of public school districts in Louisiana are active on social media. What does that say? It says not only do these districts not have the people resources, the time resources, or the financial resources, but it's not a necessity for them. Your *why* cannot be "because everyone else is doing it and they have 10 people posting social media content all day." That's not a strategy, nor is it a reason to do something.

What is your favorite social media account (person, brand, etc.) to follow, and why?

My feet and interests overlap into so many areas that I don't have one person above all to follow, but I have a favorite in different areas:

- **Overall Branding/Thought Processes.** A tie between Gary Vaynerchuk (@garyvee), Jon Acuff (@jonacuff), and Simon Sinek (@simonsinek). Gary provides a refreshing view of things I believe or don't understand. Jon and Simon's ideas of knowing your *why* helped me get to where I am today, and will continue to help me as I look toward the future.
- **Sports Media.** My friend Jessica Smith (@warjesseagle) on Twitter. Her thoughts transcend sports. What she offers is applicable to other industries across the country, in a similar vein as Gary Vaynerchuk.
- **Higher Ed Academia.** (Aside from this book's author, of course) Dr. B. David Ridpath (@drridpath) and a nonacademic, ESPN's Jay Bilas (@jaybilas), both on Twitter. Really and selfishly for me, I mention these two because they will play such a vital role in my PhD dissertation on the "student athlete and amateurism" myth in college athletics.
- **Leadership.** Kevin DeShazo (@kevindeshazo) on Twitter. He gets "it." I had the opportunity to meet Kevin when he was launching his social media education firm, Fieldhouse Media, and we've since become good friends. He was in the corporate world, and what he learned there has been applied to his new venture, Fieldhouse Leadership.
- **General.** The Dogist (@thedogist) on Instagram. My reason is simple: I have two dogs, and I am a dog lover. Most days, this account makes me smile and changes the course of my day.

What is the most challenging part of working in social media?

During my time in college athletics, there were two really challenging aspects for me: time and not taking things personally. For time, social media in college athletics—and really sports, period—is a 24/7 job. You're always on the clock, and that caught up to me eventually. I was always worried about what was being said, how we needed to respond, and what people in our building would think. It was a completely reactive mentality—and an unhealthy one at that. As far as the “taking things personally” aspect, I believe most of the people on Twitter and Facebook either think that an intern runs social media accounts for a team or don't think there is an actual human on the other side of that exchange. You aren't shouting into a vacuum: There are individuals answering your posts and incendiary comments with feelings. It can be a tough pill to swallow now that it's so much easier for people to spout hateful things to others so quickly.

What is your take on your area of expertise and the social media industry?

The biggest thing I notice is that we are in the throes of a serious nuclear arms race in the sports digital space. College teams are trying to one-up each other with graphics, video presentations, and content because it all ties back to recruiting kids. It's not necessarily about the fans anymore, and the media are a distant afterthought on social media for many schools. Schools are losing sight of what's important and instead are looking to be the next viral sensation. With that said, I'm all for schools and teams showing personality online as a way to personify them. It's great. What I don't like about the direction is everyone's insistence

on delivering that next tweet or post that “throws shade” at another school. How does doing that better your university, its brand, or the team's perception? It doesn't. It gets you on TV, and you're the cool kid for 24 hours. Does that make you sleep better at night? It's the “tortoise and hare” strategy. I'd rather be the tortoise and be methodical and intentional with what I'm doing than be the hare and race out to a fast start so people can talk about me.

Again, maybe I'm sounding like that old guy shouting “Get off my lawn!” at the neighborhood kids, but I feel, for some in the business, social media is all about getting clicks and clickbait headlines. There's more to life than retweets, new followers, and mentions. There is a bigger picture—bigger than us—that we should focus on, and we should use social media as the avenue to achieve those big-picture ideals.

What do you wish you had known when you were starting out?

Control social media; don't let social media control you. We have an amazing power in our hands with our phones. We are creators and inventors. We have the power to build people up or tear people down. It's a power that many don't know how to use *effectively*. Use social media for the common good and to make a positive difference in the world. Don't let the faceless and nameless egg avatars control how you feel. That's been my biggest struggle, and it continues to affect me today because I let it.

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INTRODUCTION

Understanding the different platforms, tools, and communities that involve social media is one thing. However, we also need to be aware of the underlying legal and ethical implications that help guide our practices, communication efforts, and behaviors online. You may be asking yourself, “Do I really have to understand the law when it comes to social media?”

Ethics falls into these circumstances as well. You will want to ask yourself a few questions to really capture the importance of understanding not only what ethical practices cover on social media, but the overall importance of applying them to your day-to-day interactions online:

- Do I care if people search previous updates (pictures, messages, blog posts, etc.) to use for job interviews?
- Am I aware that while I have my account settings set to “private,” they really are not?
- Do I care if I send out a tweet or snap that may look “cool” online with my friends, but could reflect poorly on the organization or company I represent?
- Do I know what I need to do in case someone uses my profile picture to create a fake account?
- Am I aware that an update made in a spark of emotion or outrage could cause me to get suspended from my job, miss out on a job opportunity, or even get fired?
- Do I understand the impact of sharing my opinion online for the world to see, and the community, professional, and global implications toward my personal brand?
- Am I aware of the power (and risks) associated with saying something online and the effects it may have on another person?

These are just a few questions you may want to ask yourself when it comes to ethics on social media. Many professionals have had to face these questions in a variety of different situations in their professional and personal circles. Yet others may ask you these questions at any time, so make sure you are prepared and know how you will answer.

You may be wondering how this all pertains to social media and being online. The answer is simple: Social media is not only about building an online brand, establishing paid ads or sponsored posts to generate buzz online, or even setting up a place to tell your own story. All of these are important, but fundamentally, social media is about being “social.” Being social means establishing and maintaining relationships. It’s an art form in itself since users have to be skilled at navigating their various relationships with colleagues, friends, peers, community members, and others. Each relationship has layers (like onions from the movie *Shrek*), and these layers are complex and constantly evolving with experiences and exchanges. People always have certain expectations when it comes to social media from a communication standpoint and how we should behave, operate, and present ourselves. Essentially, what we say and stand for online has to be followed by our actions. A common phrase tied to social media is “Actions speak louder than words.” When it comes to social media ethics, it is very easy to speak about being professional, but it’s entirely another area to act ethically on a consistent basis. This is where trust comes from, but it is earned over time.

Ultimately, the issue that arises in social media occurs when users’ expectations for the brand, profession, or organization are violated online. A lot of ethical issues could be addressed if people were aware of how their actions and behaviors might be perceived.

One incident can change someone’s opinion of you as a person, which at times may be a hard lesson to follow. Ethics and professionalism have been at the forefront within both the profession and the curriculum across various disciplines, but we are still facing an uphill challenge when it comes to teaching how to be a proactive member of society on social media. The use of social media ranges from how your friends use it to how professionals use it for their business activities.

WHAT IS ETHICS?

Ethics are a set of moral guidelines and principles that influence our behaviors and interactions. Having a set ethical code of conduct is essential when exploring how to react and respond to various situations that may emerge when we are working in social media. These guidelines help us tell the difference between what is wrong and what is right. Most of the time, people have a set of values that they hold dear and feel are important for them to follow. These ethical principles can be personal behaviors and actions, but also translate into professional circles. All professional organizations (advertising, public relations, marketing, journalism, communications, and additional disciplines) have a professional code of ethics for members to follow when they are working and practicing in the field.

Social media professionals may face a variety of different situations while they are employed for a large corporation, media outlet, agency, or consulting firm, or even when they are part of an organization (e.g., student athletes). Access to information pertaining to personal accounts on social media sites has been discussed in the online community as well as in the court of law.

Certain behaviors are not universally accepted when it comes to social media professionals. Steph Parker (2013) discussed some of these “new deadly sins of social media”:

Misappropriation. This particular sin focuses on the timing and appropriateness of jumping into a conversation that is not entirely relevant or necessary for a brand. It really comes into play when brands try to jump on board with a trend (**trendjacking**) on social media. The trends can be viral like Running Man and Crying Michael Jordan, among others, but there is a time and place for brands and professionals to promote themselves. This is especially true when the trending topic focuses on an emotional situation (e.g., insensitive tweets by Gap during Hurricane Sandy or by Epicurious during the Boston Marathon bombing).

Abandonment. As mentioned earlier, social media is about the conversation, and you can't have success with a community if you are not a part of it. Social media communities need to be built as well as maintained. Brands, organizations, and professionals must decide which platforms to be on and how invested in these platforms their communities should be. The worst thing that can happen is to jump on board a platform and then leave it before it can really be embraced. Abandonment is an extreme case, but the point is to make sure you are using a particular platform for the conversation and community. As they say, if you build it, they will come. However, if you leave, so will your community.

Manipulation. There is a time and place to ask your community to take action to support a cause, share a post or update, or even help another member of the community. Yet social media is not the place to ask your community to reach a certain number of followers so you can get paid more for speaking opportunities, which is sometimes seen in the professional social media circuit. The ultimate goal is to be yourself and present your brand in the most authentic way, and that comes from not using cheap tricks and measures to generate a false view of who you are. Be willing to share content that is relevant with your community, but respect the fact that people may or may not be influenced by what you ask them to do. That comes with trust, credibility, and a relationship.

On the flip side, you do not want to manipulate or present a false sense of community or success by using services to make it appear like your account or

campaign is successful when, in reality, it is not. For example, some businesses set up click-through sign-ups for a charity or donation or falsely promise to take action if you get a certain number of likes or comments/views.

Ignorance. This comes with a lot of components to address, and it's important to highlight the ones most at risk of being committed by social media professionals. There is the ignorance of basic terms and practices in social media. Be aware of the main terms, jargon, and legal obligations for social media practices (e.g., asking permission to use a tweet or image for a story, or to live stream a college football game knowing you are in violation of TV rights). This goes back to knowing the Federal Trade Commission (FTC) guidelines as well as terms of service for each platform you are using for your social media practices. Then, there is the ignorance of not seeing what your community members are sharing and thus failing to respond to them. With no engagement or interaction from both sides, there is a risk to the overall health of the community on social media. If people feel ignored, they will go somewhere else. View exchanges and questions not as threats but as opportunities to learn how to improve.

Monotony. Passion is a great element to connect audiences on social media, but social media professionals do not want to push the same content over and over again. Content needs to be fresh, relevant, and tied to the audience's needs and expectations. These needs and expectations grow over time, and keeping a constant pulse on what is happening in the community and among the different audience groups is critical. Audiences do not want to receive updates sharing "Like our page" or "Tag three people to win this contest" in 2018 and beyond because businesses and brands have been using these tactics on social media since the beginning of time. They want to be entertained, inspired, and motivated to share because the content they see connects with them on an emotional level. Although it can be challenging for brands to recognize, this is how audiences are presently operating, and it is going to take more time (and investment) to bring forth creative and fresh new pieces of content online. Pushing the same content to audiences like a brand has done before is no longer going to cut it in the digital first world.

Narcissism. Since social media is public, what you share with the world is for everyone to see. Essentially, you are what you share, so make sure to keep that in mind. I am holding the mirror up to some of the popular influencers such as Kylie Jenner and Kim Kardashian West. There is a time to personalize your brand, but you do not want to spam people with your logo, YouTube videos, and every piece of content you have ever created. This applies to following practices as well. Do not worry about how many people are following you or your ratio between follows and followers. Social media professionals have been guilty of following, and then unfollowing, a lot of people so their numbers stay up but others go down. You do not need to share your own content all the time or quote it on Twitter.

The cardinal sin for social media is buying followers. *Do not do this.* Quality is always better than quantity when it comes to your community. While high numbers get a lot of excitement and praise from people, qualifying you for some of those "must-follow lists" you see getting published, it's not worth it. Plus, it is very easy to find out who has real followers and who has **bots** (automated accounts to share and comment on posts) across these various platforms. A number of fake accounts and services do this, but you do not want to create a fake image for yourself—it will only damage your reputation.

Uniformity. Having a consistent image is one thing, but having the same content on every platform is another. While on some platforms repurposed content is appropriate (e.g., Facebook and Instagram), this does not mean you share the exact same content all at once or in the same format. Consider the differences between Snapchat videos and Instagram videos, or the different algorithm characteristics you need to be aware of on Facebook versus LinkedIn. Plus, each platform has its own communities and expectations, so make sure to personalize these experiences across the board.

Additional Deadly Sins of Social Media

Since Steph Parker discussed these sins back in 2013, social media has come a long way in addressing them, but there are others of which we have to be aware as well that can influence how we conduct our business, communication, and storytelling practices:

Bullying. This will be discussed in more detail later on in this chapter, but essentially, you want to treat others how you would like to be treated. It is very easy to hide behind the screen and vent on someone, or even try to make people feel different based on what you share with them. Establishing fake accounts, saying negative false things about people, being aggressive with hurtful messages, and sharing private information for the public to see are just some examples of bullying behavior.

Not giving credit where credit is due. Everyone wants to be acknowledged and praised for bringing a useful point to the discussion, sharing a great article, or even providing a great example of a campaign to a community. You want to give credit to the person who came up with the original idea—similar to citing a source in a research paper. No one likes it when someone else gets the praise and shout-outs when he or she was not the one who came up with the idea. That's not good manners. Giving praise and thanks does not cost anyone anything. In fact, it can actually be valuable and help contribute to your personal brand.

Sharing too much. You want to be transparent, of course, on social media, but you don't want to appear to be spamming everyone. There is a right amount of content to present across the different platforms. Yet keep in mind that not everyone may want to know what you had for breakfast or what you experienced at dinner last night at the latest new restaurant. In addition, remember that some people use social media to have conversations and a positive experience, but not to be bombarded with negativity all the time. Consider the balance between sharing your voice and point of view and how others may be responding to it.

Flame war outrage. Hell hath no fury like a social media user scorned by something he or she does not like. Have you ever been outraged by something online? Often, we vent or sometimes even try to strike up a **flame war** (a campaign to spark negativity toward the other party involved) online. We have to maintain our cool and take a moment away from our keyboard before we start engaging. It is important to collect ourselves and evaluate the consequences or different situations that may arise if a particular post, update, tweet, or snap is shared with others.

Automation. You can't really call in social media. While many tools allow you to schedule updates ahead of time, most businesses and social media professionals know of the dreaded "automated direct messages" that frequently emerge if you follow a new account online. These automated responses are impersonal and not really about connecting on a relationship basis with another person. Automation can also pose a challenge and risk if a business or professional sends automated updates when others may not want to see them (like during a natural disaster incident or breaking news). With automation, you lose the personal exchanges and conversations that make social media a great place to network and communicate. People follow you not because you are a robot, but because there is a human side to your personal or professional brand.

Going rogue. Social media is about representing yourself truthfully online, and posting opinions without permission or out of context while still representing the agency or organization of record (otherwise known as **going rogue**) can lead to a misinterpretation of the information shared on the platform. This can range from actual employees of an organization or business taking control of its online account without permission (e.g., HMV in 2013, discussed below) or alternative accounts being made on Twitter for government agencies (e.g., @RogueNASA or #AltNationalParkService) in 2017.

HMV, an agency based in the United Kingdom, got into hot water when it fired its marketing team in 2013 (Holmes, 2013). The HMV marketing employees were the only ones with access to the company's social media accounts, so they locked the senior managers out of their accounts and started live tweeting their firings using #hmvXFactorFiring.

"We're tweeting live from HR where we're all being fired! Exciting!! #hmvXFactorFiring," read the initial message from @HMVtweets, sent to the company's more than 70,000 Twitter followers around the globe. Earlier that morning, some 60 employees at the 91-year-old company had been sacked in a round of downsizing. One of them had hijacked the official Twitter account to vent her frustrations. A difficult day was about to get worse. (Holmes, 2013)



HMV Twitter Storm of Employee Firings

Another type of account that comes up on social media and pushes the envelope a little bit for brands and individuals is the alternative account. Alternative accounts serve as a notion to resist the official voice and stories they represent (Coffee, 2015; Leetaru, 2017). Essentially, these accounts have tried to place themselves in a position to interconnect with the official ones, but they provide an alternative perspective and offer to spark dialogue with others who may or may not agree with the official voice. A lot of risk is associated with these rogue accounts that touches on the ethical and legal lines of social media.

First, we do not know who is behind these accounts and whether or not they are who they say they are. Some individuals on these accounts have claimed they are employees (or former employees) of these organizations, but we do not know for sure.

Second, we are not aware of the ultimate goal for these accounts and if there is an alternative motive connecting these specific social media accounts to another task at hand (cybersecurity, hacking, etc.). While some of these accounts have large followings, we do not know if they are “real” or authentic, which brings forth the importance of having an official stamp of approval from the platform itself. For example, Facebook, Instagram, Twitter, and even LinkedIn offer verification checks to let others know this is the official account. Yet there is no guarantee who is hiding behind the screen even for these official accounts.

LEGAL FUNDAMENTALS

Terms of service agreements. Before you sign up for a social media account, be sure to review the terms of service (TOS). A TOS agreement is common for all social media accounts and platforms and is known to outline the terms and uses (or rules) dictated by the parent company (Facebook, Twitter, Instagram, etc.) for its platform. In each TOS, the platform states clearly what a user (or business) can and cannot do on the respective social media site (see Table 2.1).

In order to create an account or profile, the user has to agree to these terms. Some TOS agreements range from what users are able to own and create on the site to basic requirements (e.g., Instagram states you have to be 13 years or older to use the site). In addition, some platforms (e.g., Instagram and Snapchat) state

TABLE 2.1 ■ Current Listings of the Main Platforms’ Terms of Service (TOS)

Platform	Terms of Service	Link
Facebook	2015	www.facebook.com/terms
Twitter	2017	twitter.com/tos?lang=en
Instagram	2013	help.instagram.com/478745558852511
Snapchat	2017	www.snap.com/en-US/terms/
LinkedIn	2017	www.linkedin.com/legal/user-agreement
Pinterest	2016	policy.pinterest.com/en/terms-of-service
YouTube	2010	www.youtube.com/static?template=terms

the content that is shared and created on these sites is technically owned by the platform, whereas others (e.g., LinkedIn) state that the users own the content they share and create on social media. Other listings can be viewed on the DigitalGov website (www.digitalgov.gov) for other platforms as well as third-party applications frequently used on social media. Keep in mind, for all social media platforms, that TOS agreements may evolve and expand as new cases, legal rulings, and situations arise online.

Issue of free speech. Of course, traditional legal terms need to be discussed not only in relation to social media, but in how they are translated for use on each different platform. For example, tweeting a rumor about another person could result in a lawsuit (Gunkel, 2015). This is an ongoing topic of conversation when it comes to what employees share on social media related to their employers and job, what student athletes share relative to their athletic teams, and even what is shared during political campaigns. Whether or not people should share their opinions online in a public forum is one part of the equation, but the other is whether or not people's content should be censored or only allowed on certain social media platforms. Twitter, Facebook, and others are dealing with extreme cases of people abusing their platforms (trolling, cyberbullying, making online threats, etc.). Protection and respect for free speech is necessary in a free democracy, yet while social media has become more mainstream and established as both a field and a communication channel, brands, companies, and individuals still face challenges in this particular area.

Disclosure of consent. Facebook as a platform and company got into trouble over the amount of data it was collecting on users, but it also conducted an experiment that manipulated information posted. This experiment focused on 689,000 users and whether or not people were feeling positive or negative about what they were viewing on their timeline (Booth, 2014). In essence, Facebook was able to manipulate and filter information, comments, pictures, and videos in users' networks to test whether or not seeing positive or negative items on their timeline had an effect on their overall state (Booth, 2014). The news of this case study sparked outrage in the public on both ethical and legal grounds since the social network did not disclose this practice or ask users if it could do this for their timelines. Universities and research firms go through the ethical process of disclosing the nature of the study (via institutional review boards, or IRBs) for all studies involving human subjects, as well as require participants to fill out an informed consent form for the study, both of which Facebook did not do (Booth, 2014).

Employees and Personal Branding Mishaps

Online threats and cyberbullying. What you post online can become evidence even in a court of law. This happened in the case of Anthony Elonis and his Facebook posts involving his significant other. This case focused on addressing the issue of whether or not a post on Facebook constituted a real threat. Elonis's posts were used for evidence in court, and the case actually went up to the Supreme Court (Barnes, 2014). Many other cases have followed suit over the years, focusing on issues of cyberbullying, using profile pictures to create fake accounts (Jackson, 2018), and even posting content that could lead to termination of your job.



Source: Twitter/@JustineSacco

Justine Sacco Case Study

In fact, the most common elements that get individuals into trouble are mishaps on social media. A post that may be viewed as inappropriate, insensitive, or egregious can also result in firings and other long-term consequences. Public shaming has become one of the most negatively impactful events individuals experience today on social media.

The case involving Justine Sacco is a warning for all who believe social media privacy is still a thing. Sacco, a former PR professional, used her Twitter account to share various personal opinions and views on all types of experiences, as well as exchanges she had with individuals.

It was not until December 2013 when she was boarding a plane from London to Cape Town (an 11-hour flight) that her world turned upside down and she became the number-one trending topic on Twitter (Waterlow, 2015). As shown in the photo above, Sacco posted an update that sparked outrage online and immediately went viral, and she got thousands of new followers and people reaching out to her about this. In fact, an organic hashtag, #HasJustineLandedYet, began trending (Waterlow, 2015). Even though Sacco deleted her account and tried to get rid of the evidence, her reputation was already ruined, and the professional damage was already done. What stands out about this case is the fact Sacco is still reliving the incident and has not been able to escape it.

Public shaming is not just for the moment in which a tweet, video, or update is uncovered, but it also follows the unrelenting culture of an entire community of people searching online and sharing updates (even writing posts, articles, and books) about the incident. Jon Ronson, author of the best-selling book *So You've Been Publicly Shamed* (2015), met up with Sacco for an interview and noted the impact this experience had on her as well as those who felt it was their responsibility to take her down on social media.

These are the types of incidents that the Internet (and society) does not allow people to forget about. However, the need for an understanding of what we can learn from this experience and when it is time to move on as a society must be addressed. The consequences of these public incidents on someone's personal and professional life are significant. We need to have a better approach to educating others about the consequences and risks before they fall into a similar situation.

Britt McHenry, an ESPN reporter, also found this to be true, although it was not a social media update that got her in hot water, but a video. McHenry's car was towed, and a security video surfaced of her being rude and ranting to the female employee at the tow truck business ("Blown to Britts," 2016). This video surfaced online well after the encounter occurred, but McHenry became a viral trend, like Sacco, overnight, with media, friends, and family asking her to comment about the situation (Pesta, 2016). The tweets, posts, articles, and calls for ESPN to dismiss McHenry from its programs emerged online. Not only was McHenry a trending topic, but more than 30,000 people followed her on Twitter, and their comments made her fear for her safety (Pesta, 2016). While McHenry is still a reporter for ESPN, she does share a cautionary tale about the power of social media. While it is key to note mistakes we have made in the public eye and on social media, it is also key to note that sometimes, no matter what, some people out there will take advantage of the situation and transform it into a negative public shaming experience. In 2016, McHenry told *Marie Claire's* Abigail Pesta some lessons she has learned from the process:

The most difficult speech will be the one I have to give to my future children someday. Every parent wants their kids to be proud of them, and unfortunately, I'll have to use myself as an example of how not to behave, a hard truth I think about daily. But I can advise them on how to cope if you get shamed online or bombarded by hateful posts, because at the end of the day, none of that vitriol matters. For me, the key has been to focus on the present and on how to make myself a better person every day.

I know now that as soon as you feel an empowering moment of success, you can experience a moment of utter failure just as fast. It's what you do *after* those moments that defines you. None of us should be judged solely by our worst mistakes. And, when you get the opportunity, you should work as hard as you can to prove that.

(ESPN's Britt McHenry. "I Blame Myself, but the Video Is Not Who I Am," (2016); Retrieved from <http://www.marieclaire.com/culture/news/a24045/espn-britt-mchenry-viral-video-apology/>.)

Social media managers can get into trouble as well, sometimes interjecting humor into a situation that not many people feel is funny. Consider the case of Houston Rockets social media professional Chad Shanks. Shanks tweeted out on the official Houston Rockets account during a game in 2013 against the Dallas Mavericks (the Rockets won 103–94), but the tweet included two emojis (one was a horse, and the other was a gun) and said, "Shhhhh. Just close your eyes. It will all be over soon" (Gaines, 2015).

The Dallas Mavericks account responded, saying that was not "classy," and Shanks immediately got fired from his position since the Houston Rockets did not want to be associated with him after the incident (Harris, 2015). Shanks responded to the firing and used his own social media platform to explain the situation.

In each of these three different cases, posting on social media resulted in a firing. Each individual involved experienced a different outcome, and while it is important to note that not all social media posting fails are equal, they all share the experience of a negative impact on a reputation or personal brand, as well as a professional brand.

Privacy. This is one of the growing areas of focus when it comes to social media. Before 2013, regulation agencies appeared to be more attuned to the data being collected than to the protection of individual users (Claypoole, 2014). Social media can bring about a lot of positive opportunities, yet it also affects the concept of privacy. Every person has access to viewing and even going after others to attack

them directly (cyberbullying). You never know who will review, read, and respond to the content you post online, whether it is updates on your vacation or your latest accomplishment at work.

Several agencies and regulatory bodies are actively involved in looking specifically at privacy, including the Federal Trade Commission. The FTC oversees a variety of elements, but when it comes to social media and privacy, it looks at whether or not the sites (Facebook, Instagram, etc.) publish how they work and what they do in terms of privacy and collecting information about individual users (Claypoole, 2014). Another big concern related to privacy and access to information arises when employers ask potential employees (and, in some cases, when universities ask student athletes) for access to their accounts. Twelve states (Arkansas, California, Colorado, Illinois, Maryland, Michigan, New Jersey, New Mexico, Nevada, Oregon, Utah, and Washington) have passed laws on this issue preventing an employer from gaining access to employees' personal accounts (Claypoole, 2014).

There are people who publish a lot online, and then there are people who present a false view of themselves. This violation of expectations (**reputation dissonance**) makes an impact on our brands. Yet sometimes the information being shared is false, and the victim can be a business, organization, or institution. Another element to take into consideration is the rise of a new type of user on social media: the **prosumer**.

Prosumers write reviews, post comments, and share content within their network of friends and followers. . . . Because the bar for participation in social media is set so low, a teenager not only can have more followers on Twitter and friends on Facebook than an established corporate brand, but her opinions can often have greater impact and influence than a carefully crafted advertising campaign. (Gunkel, 2015)

This means that the barrier of entry to get access to these tools and platforms is minimal, but still anyone can write and engage in dialogue in positive or negative circumstances.

Copyright infringement. Copyright infringement may involve the author of a work, a photographer, a videographer, a musician who created the music used in a video, TV footage, the creator of artwork, or a visual content creator. This has become a big issue related to content that is shared, created, and accessed online. Artists have brought their concerns to Pinterest, ranging from their copyrighted work being shared without attribution to other media outlets creating new content based on original content without permission, such as in the National Football League (NFL) and Deadspin case. In 2016, the NFL asked Twitter to suspend Deadspin's account for creating GIFs (animated images) from NFL game content (Brodkin, 2015; Panzironi, 2016). The Digital Millennium Copyright Act (DMCA), which took effect in 2000, focuses on two sections:

- The “anti-circumvention” provisions (sections 1201 *et seq.* of the Copyright Act) bar circumvention of access controls and technical protection measures.
- The “safe harbour” provisions (section 512) protect service providers who meet certain conditions from monetary damages for the infringing activities of their users and other third parties on the net. (Electronic Frontier Foundation, 2018)

Essentially, the main issue involving the NFL and Deadspin was the fact that if a user (or another media outlet) creates content from original footage without

permission or attribution, it may bring about concern from the impacted party (Panzironi, 2016). In essence, the number of shares and views of the GIFs, coverage of their use, and frequency of conversation shares on Deadspin were just some of the reasons why the NFL voiced its concern. Twitter suspended Deadspin's account for a short period of time, but it led to a transformation within the NFL on the rules for content shared on social media. This case also impacted the 2016 Summer Olympics in Rio, where there were strict policies on what could and could not be shared, created, or disseminated from the global athletic event.

There are, of course, various things to keep in mind when you are signing up to join a social media platform. It is important to know the terms you are signing into, how much control you have over the content you create, and if any changes are made to these terms. All social media platforms have their own terms of service (as outlined in Table 2.1), but each platform has gotten into trouble due to rising concerns about who “owns” the content being shared—and perhaps used for profitable means. Snapchat, for example, updated its services and advised users that while individual users have “ownership rights,” Snapchat still has power to use their content since it is on the platform:

[Y]ou grant Snapchat a worldwide, perpetual, royalty-free, sublicensable, and transferable license to host, store, use, display, reproduce, modify, adapt, edit, publish, create derivative works from, publicly perform, broadcast, distribute, syndicate, promote, exhibit, and publicly display that content in any form and in any and all media or distribution methods (now known or later developed).

We will use this license for the limited purpose of operating, developing, providing, promoting, and improving the Services; researching and developing new ones; and making content submitted through the Services available to our business partners for syndication, broadcast, distribution, or publication outside the Services. (Wood, 2015)

Endorsements (bloggers and influencers). Whether or not bloggers or **influencers** (individuals who are able to persuade audiences to take action) are getting paid for their content, images, or experiences by a brand is one of the rising legal concerns about social media. The FTC has taken actions to address this concern with bloggers, but moved on to social media celebrities and influencers. For example, DJ Khaled (an influencer on Snapchat) never discloses whether he is getting paid by the brands that he features on his snaps (Frier & Townsend, 2016).

The FTC also has been “keeping up with the Kardashians” when it comes to following their endorsement and advertising practices. A nonprofit that focuses on cases involving deceptive advertising has drawn its attention to the Kardashians with evidence from Instagram that they have been violating the FTC’s endorsement and advertising guidelines (Maheshwari, 2016). It is not just a single case that the FTC has focused on, but each member of the family has posted content that has drawn concern. Plus, the Kardashians have also come under fire for promoting items and products on Instagram, but it is hard to tell whether they really like the products or it is just an ad (Maheshwari, 2016). The same goes for the Kardashians promoting certain weight loss products and skin care lines. The key trend across all of these cases is that these individuals are not being honest to the public about whether or not they are getting paid to promote or be part of a campaign. The way in which the Kardashians have addressed this in their Instagram posts has been to add #ad to the end of the update.

The main concern here is that companies are paying (and sometimes overpaying) influencers to promote their brands, and audiences need to be aware of this. According to Captiv8, influencers with a certain number of followers can get \$187,500 for a YouTube video, \$75,000 for a post on Instagram or Snapchat, and \$30,000 for a post on Twitter (Maheshwari, 2016).

These actions have significant consequences for the brands associated with these individuals. For example, YouTube personality PewDiePie was asked along with other YouTubers to promote a Warner Bros. video called *Middle-Earth: Shadow of Mordor* with positive reviews. Not disclosed was that he was being compensated. The FTC also went after the popular clothing brand Lord & Taylor for paying fashion influencers, but the influencers did not disclose that they were getting paid (Frier & Townsend, 2016). These cases have sparked the updated need for influencers to disclose to their audiences whether or not content is a promoted post or a sponsored ad. Most of the time, the influencers will use a hashtag such as #sponsored, #ad, or #paid. While this mostly applies to images and updates, the FTC requires influencers to voice this on the screen as well as place it on the screen if they are doing a video (Frier & Townsend, 2016).

Yet some influencers and celebrities fail even at the endorsement mentions in a big way. Scott Disick learned this lesson when he copied and pasted a note from a brand without putting it into his own words (Beale, 2016). This particular example shows the implications that companies need to be aware of when targeting influencers and celebrities to promote their brands. Consumers today are very aware of the true nature of an influencer's promotion, and they want these recommendations and insights to be authentic, not paid. In addition, while number of followers and size of community are important indicators to consider, they are not everything. Communities come and go, and if followers detect any misleading or fake actions by an influencer, they will leave and the influencer will no longer be prominent.

SOCIAL MEDIA POLICIES

Social media offers many opportunities and resources for users to share, create, report, and communicate with each other. With each opportunity comes a unique challenge that constantly must be addressed in addition to forecasting future ethical and legal incidents that may impact social media practices. Many corporations, businesses, news organizations, and professionals have their own respective social media policies that help guide them through their online correspondence.

One case that really put this front and center involved Domino's in 2009. In April of that year, two Domino's employees went rogue and decided to film



Source: Instagram/Scott Disick (@letthelordbewithyou)

themselves being inappropriate with the food being served. This video caught the attention of a blogger, who then went to Twitter to voice his concern. As a result, Domino's responded (actually creating a Twitter account because it didn't have one before) to reassure its customers and others about the situation (Clifford, 2009).

National Public Radio (NPR) has a social media policy that is comprehensive in terms of its expectations from employers and media outlets. Accuracy is one of the most important elements highlighted in the policy since NPR is dedicated to making sure the information presented to its media outlets is correct and verified ("Social Media," 2017).

While most organizations, corporations, and businesses have a social media policy, it is important that they share certain points of information with their employees directly but also with their audiences publicly. Having a social media policy will help educate and inform your audiences on what to expect from you online. Here are some must-haves for your social media policy:

Introduction to the overall purpose of your social media policy. You need to outline not only why it is important to have a social media policy, but why it is important to the organization, business, media outlet, or agency you represent. Your rationale for the use of these guidelines and practices for your internal and external audience is crucial to state in this section. Make sure to personalize and frame it for the organization in question. Yet also make sure to include a statement that discusses the requirements. Education on your social media policy and guidelines needs to happen as frequently as they need to be updated. New legal and ethical scenarios that could possibly face your brand need to be addressed and added to the guidelines for your social media policy; holding workshops, online sessions, and educational meetings on the changes and revisions for the social media policy are ways to accomplish this.

Employee conduct and personal identity section. Employees are on the front lines of social media and are essentially brand ambassadors for their company, brand, or business. An employee conduct and personal identity code outlines what employees' role is and how they are expected to present themselves professionally on social media. For example, you do not want to advocate for a client's work without disclosing you are actually working on that campaign. That's why you often see the hashtag #client being shared. The same goes for representing your role at an agency, media outlet, or business. Humana has invited its employees to use #HumanaEmployee to let their community know they work at Humana while providing some guidelines on what they can and cannot share (confidential information, passwords, personal communication, etc.).

Added section for representing the brand and following the law. Make sure your employees and everyone on board knows what they can share that helps represent the brand professionally, but also what they need to be aware of from a legal standpoint. Terms of service, sharing of copyright content, disclosure of confidential information, privacy, respect for others, and obeying the laws online are just some of the things that need to be included here.

Overall tone on social media. Being respectful and professional, and not engaging in a flame war or going rogue, should also be advised. Outlining what to do to combat hacking, fix errors, address crises or threats, report fake accounts, or handle another challenge in a systematic way can help improve the situation further. Also, this provides consistent action steps that employees can take in order to identify, discuss, and handle specific situations in a timely manner.

Responsibility for what you create, write, and share. Being aware that what you share is for public viewing is important to note here. Sometimes you will see a lot of discussion that is positive toward your client, the business you represent, or even yourself. However, sometimes you will get some negative or even hateful comments directed toward you and your brand. Noting and reporting what each comment means for the brand and for yourself is important. Talking with your team or with close confidants about your situation is best. You always want to take action to make sure everyone on your team is aware of what is happening, and brainstorm solutions and responses that fall in line with your core values and principles in a timely manner. You should never be alone in handling these types of situations. Contacting your legal team with the necessary documents and evidence (screen shots, links, messages, etc.) will help in this situation as well.

Authenticity and values presented online. Your values for your organization offline need to be present and nurtured online as well. The trouble comes when there is a disconnect between how people see you online and offline. Be true to yourself for a personal brand, but also note the impact being authentic has for your employer. Apply common sense to understanding the overall culture inside both your organization and the community with which you interact. Take time to see what others are saying, and put your best foot forward each and every time you interact with someone online. Be the better person because each conversation, interaction, and piece of content shared online contributes to the marble glass of items that make up your reputation.

CHAPTER SUMMARY

The legal and ethical landscape will continue to change and evolve for social media. We will be faced with new cases, legal suits, ethical challenges, and situations. Having a foundation in professional ethical conduct while also being aware of what the law says is more important than ever for social media professionals to note. You do not want to wait and ask for permission for certain tasks—that is too risky for the social media landscape today. Educating not only yourself, but your team, about some of these rising issues and situations on the professional and personal level is key for success in the

industry. In addition, we must understand that ethical and legal behavior comes not only from the top down, but also from the bottom up. Ethical and legal practices from company leadership are expected since they contribute to the overall environment of the company and its future placement in the industry. If no standards are set or value is not attributed to ethical or legal practices for social media at the organization, media outlet, or agency you belong to, move along to a place that does have these values. One misstep, as we have seen in this chapter, can wreak havoc on your personal brand for years to come.

THOUGHT QUESTIONS

1. Based on the reading, what is the current legal landscape in social media? What are some of the main issues to be aware of?
2. Define ethics. What are some of the key principles in your code of ethics for using social media?
3. Identify current legal challenges and risks on social media. How would you address them?
4. From a legal and ethical standpoint, what are some benefits and challenges of using influencers and social media personalities on social media?
5. Identify the key elements of a social media policy. What is mandatory to include, and what three areas would you add or expand on for your social media policy?

EXERCISES

1. Write an ethical code of conduct for your social media practices. What are some of the main concepts you feel are necessary to adhere to for your own personal conduct online? What concepts or behaviors do you feel strongly against and want to make sure to avoid on social media?
2. Influencer marketing and engaging with a large audience online has become quite the trend for businesses and brands. You have been asked to engage with influencers as part of the Kentucky Derby Festival (KDF), a nonprofit organization of local events in Louisville before the Kentucky Derby. What would you advise the KDF to keep in mind when it comes to working with influencers based on FTC regulations? Write a few of these points down, and for each point, discuss how you would address it proactively and some of the risks to avoid.
3. You have been asked to create a social media policy for a local small business. The company has never had such a policy, but wants to make sure its employees are aware of what they can and cannot do online. Use Hootsuite's guide (blog.hootsuite.com/social-media-policy-for-employees/) to help you design a social media policy for employees to use when sharing content on behalf of the brand.

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