

# Legal Issues for Social Networking Sites and Users

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## Abstract

Participation in social networking sites has dramatically increased in recent years. Services such as FaceBook, MySpace, YouTube allow millions of users to create online profiles and share personal information with large numbers of friends and unknown numbers of strangers. Social networking sites enable users to publish content and the publishing of those contents might create a number of legal issues, such as making harmful false statements about someone else or infringing copyright. In this paper, firstly, I discuss social networking sites, patterns of information revelation in online social networks. Then I discuss legal liability of users and social networking site vendors and lastly, I present some example of some recent incidents, some policy and weakness of different social networking sites.

KEYWORDS:

## 1 Introduction

Social networking sites(SNS) have morphed into a mainstream medium for teens and adults. However, The concept of social networking is not a new invention. Sociologically humans are driven to form communities based upon affiliations or common interests. Recently social networking has become synonymous with online networking. SNS encourage and enable people to exchange information about themselves, share pictures and videos, and use blogs and private messaging to communicate with friends and others who share their own interests. Web sites such as MySpace, FaceBook and YouTube enable users to upload and create content in profiles. These sites, often known as part of Web 2.0 that may incorporate blogs, photos in addition to contact information for registered users. A key feature of these sites is the ability to build a network of friends, either by encouraging people to join the service or finding other registered users with similar interests.

This paper is divided into three parts. First part describes the laws pertaining to social networking sites. Here I highlighted the two popular laws that are used in United States. Section 512(C) of the Digital Millenium Copyright Act (DMCA) and Section 230 of the Communications Decency Act [8, 7]. This section also describes the Deleting Online Predators Act of 2006 (DOPA) [1]. Second part describes the legal liability of SNS vendors and users. And the third part shows some examples for SNS users and sites like MySpace defeat spammers. Also it describes the policy and weakness of some social networking sites.

It seems that almost everyone is a member of an online social network. People are taking advantage of these new online meeting spaces to make friends, communicate and expand business opportunities. But what are the legal obligations that arise out of the use of social networks, both for the user and the sites themselves? The law in this area is still relatively unclear, but some recent developments have created intriguing precedent and legislation in process promises to keep things interesting for the foreseeable future.

## 2 Information Revelation and Online Social Networking

While all social networking sites share the essential purpose of online interaction and communication, specific goals and patterns of usage vary significantly across the different services. The most common model is based on the presentation of the participants profile and the visualization of his or her network of relations to others - such is the case of Friendster. Online social networking thus can morph into online classified in one direction and blogging in another. Patterns of personal information revelation are, therefore, quite variable. First, the pretense of identifiability changes across different types of sites. The use of real names to present an account profile to the rest of the online community may be encouraged (through technical specifications, registration requirements, or social norms) in college websites like the FaceBook, which aims to connect participants profiles to their public identities. The use of real names may be tolerated but filtered in dating/connecting sites like Friendster, which creates a thin shield of weak pseudonymity between the public identity of a person and her online persona by making only the first name of a participant visible to others, and not her last name. Alternatively, the use of real names and personal contact information could be openly discouraged, as in pseudonymous-based dating websites like Match.com, that attempt to protect the public identity of a person by making its linkage to the online persona more difficult. However, notwithstanding the different approaches to identifiability, most sites encourage the publication of personal and identifiable personal photos. [9]

Second, the type of information revealed often orbits around hobbies and interests, but can stride from there in different directions. These include: semi-public information such as current and previous schools and employers (as in Friendster); private information such as drinking and drug habits and sexual preferences and orientation ; and open-ended entries.

Third, visibility of information is highly variable. In certain sites any member may view any other members profile. By contrast on some sites, access to personal information may be limited to participants that are part of the direct or extended network of the profile owner. Such visibility tuning controls become even more refined on sites which make no pretense of pseudonymity, like the Facebook.

### 3 Laws pertaining to social networking sites

The two most important statutes to consider when discussing the legal liabilities and obligations of the social networking sites are Section 512(C) of the Digital Millennium Copyright Act (DMCA) and Section 230 of the Communications Decency Act. The Digital Millennium Copyright Act (DMCA) is a United States copyright law which implements two 1996 World Intellectual Property Organization (WIPO) treaties [2]. It criminalizes production and dissemination of technology, devices, or services that are used to circumvent measures that control access to copyrighted works and criminalizes the act of circumventing an access control, even when there is no infringement of copyright itself. It also heightens the penalties for copyright infringement on the Internet. Passed on October 12, 1998 by a unanimous vote in the United States Senate and signed into law by President Bill Clinton on October 28, 1998, the DMCA amended title 17 of the U.S. Code to extend the reach of copyright, while limiting the liability of Online Providers from copyright infringement by their users. In this section I also discuss about the new upcoming law named DOPA (Deleting Online Predators Act).

#### 3.1 Section 512 (From DMCA)

Section 512(c) removes liability for copyright infringement from websites that allow users to post content, as long as the site has a mechanism in place whereby the copyright owner can request the removal of infringing content. The site must also not receive a financial benefit directly attributable to the infringing activity.<sup>3 4</sup>

This creates an interesting problem for most sites that allow users to post music, photos or video. For instance, several content owners have sued YouTube, the video sharing site, for copyright infringement, and YouTube has claimed a 512(c) defense. Since YouTube is a subsidiary of Google, its future business plan most likely involves serving advertisements according to the kind of video that users view or search for. If the site does this, however, it could amount to a financial benefit directly attributable to the sharing of copyrighted materials. [8, 7]

Those cases are currently before federal district courts, and their resolution will greatly impact the services that social networks offer, as well as their business models.

#### 3.2 Section 230

Section 230 of the Communications Decency Act immunizes website from any liability resulting from the publication of

information provided by another. This usually arises in the context of defamation, but several courts have expanded it to cover other sorts of claims as well. Thus, if a user posts defamatory or otherwise illegal content, Section 230 shields the social network provider from any liability arising out of the publication. Websites that, in whole or in part, create or develop contested information, on the other hand, are deemed "content providers" that do not benefit from the protections of Section 230. [8, 7]

A recent U.S. Court of Appeals (9th Circuit) opinion has called the section's broad coverage into question, and created uncertainty for social networking sites that have relied on Section 230 to protect them from claims relating to the content that their users create. A divided Ninth Circuit panel found that the website created or developed information on the site in two ways: First, by creating the questions that users answered when creating their profiles. Second, by channeling or filtering the profiles according to the answers to those questions.

The court's second justification is fairly controversial, and goes against the widely established precedent granting a broad, robust privilege to interactive service providers. In essence, the panel's ruling holds that, by channeling information to users and providing search capabilities. For example Roommates.com, as the name implies, provides services for individuals looking for rooms or roommates, and operates in a similar fashion to many other social networking sites, such as MySpace.com. The site collects information from its users upon registration, and then organizes the information into profiles that can be viewed by other users. Roommates.com has added an additional layer of information, "meta-information" you could say, that it is at least partly responsible for creating or developing. [8, 7]

The effects of this new "channeling" test could be devastating for social networking sites, many of which operate in similar ways to Roommates.com. Sites could now find themselves open to liability for information posted by third-parties, and this could result in a reduction of the number of speech-related services available online - exactly the opposite of what Congress intended when passing Section 230 in the first place. For example, MySpace.com attempts to restrict the ability to view underage profiles by preventing older users from accessing them. In effect, the web site filters the content based on answers provided during registration to ensure that only minors of certain ages can view other profiles from that age group. This would almost certainly qualify as meta-information under the Roommates.com decision, and would bump MySpace out from under the protection of Section 230. [8, 7]

#### 3.3 State Laws

In addition to these federal statutes, several states have enacted or proposed laws that would create requirements for social networking sites, particularly in regards to monitoring the presence and activities of sexual predators using the sites. Virginia, for example, has enacted a law requiring sexual offenders to register their email addresses and IM screen names, and allows police officer to create mechanisms for web sites to check user information against the resulting

database. [8, 7]

The North Carolina state senate recently passed a bill requiring that parents and guardians register with a social networking site and verify their ages before their children can sign up for an account. This is to counter the difficulty in verifying the ages of minors, who usually lack credit cards or other sources of information concerning their ages. That bill still requires approval from the North Carolina House of Representatives.

### 3.4 DOPA

The Deleting Online Predators Act of 2006 (DOPA) is a bill (H.R. 5319) brought before the United States House of Representatives on May 9, 2006 by Republican Pennsylvania Representative (R-PA) Mike Fitzpatrick. The bill, if enacted, would amend the Communications Act of 1934, requiring schools and libraries that receive E-rate funding to protect minors from online predators in the absence of parental supervision when using "Commercial Social Networking Websites" and "Chat Rooms". The bill would prohibit schools and libraries from providing access to these types of websites to minors. The bill also would require the institutions to be capable of disabling the restrictions for "use by an adult or by minors with adult supervision to enable access for educational purposes." [1]

The bill is considered controversial because according to its critics the bill could limit access to a wide range of websites, including many with harmless and educational material. Arguments for the bill focus on the fear of adults contacting children on MySpace and similar websites. Many Internet websites, however (ranging from Yahoo to Slashdot to Amazon.com), allow user accounts, public profiles, and user forums, in accord with the bill's definition of "social networking". The bill places the onus upon the Federal Communications Commission to provide clarification. [1]

## 4 Legal Liability of SNS Vendors and Users

This section describes the legal liability of social networking sites and users. Some consideration from the vendors point of view and user point of view are also discussed.

### 4.1 Legal Liability of SNS Vendors

Congress generally protects site vendors from legal liability for user-supplied content. 17 USC §512(c) says that vendors generally aren't liable for user-supplied copyright infringing content unless the copyright owner notifies the vendor and the vendor fails to promptly remove the infringing content. 47 USC §230(c)(1) says that vendors aren't liable under any circumstance for other types of legal claims based on users' content (with minor exceptions). [8]

Questions to Consider: What legal responsibility, if any, should vendors have for user-supplied content? Should it matter if vendors (a) receive notice from a harmed party (or are otherwise aware of the problem) and don't act, or (b) regularly remove user content based on their own editorial

standards? Are social networking sites different from other communications media, such as telephones, newspapers or broadcasters?

Some legislators are concerned about the presence of sexual predators on social networking sites, and they have proposed a variety of laws designed to restrict predator access to the sites. [8]

Questions to Consider: What steps should vendors voluntarily take to protect users from sexual predators? What steps should vendors be legally required to take? What liability should vendors face if sexual predators use the site to find and communicate with victims?

### 4.2 Legal consideration for SNS Users

Social networking users do not enjoy any of the immunities granted to social networking sites under the law, so they should be careful to always act appropriately when posting messages or files to the sites. The main areas where users can get themselves into trouble are through the posting of defamatory content or content that infringes on intellectual property rights. Since no statutory immunities exist to shield users, the standard laws pertaining to defamation and infringement apply. If a user is found to have posted defamatory content, the user will be liable, even if the site can escape liability under Section 230. Similarly, if a user posts material that infringes on another's copyright, the user will face liability for the infringement, despite the site's potential safe harbor under Section 512. [8]

The First Amendment and state constitutional free-speech provisions often come into play in these types of defamation suits. Several of the most prominent cases regarding user liability for material posted on social networking sites have dealt with students suffering criminal charges or adverse consequences at their schools as a result of allegedly defamatory, threatening or indecent messages posted on social networking sites.

Also keep in mind that many states are in the process of passing laws that create obligations to verify a user's age. Any fraud or circumvention of these requirements could have repercussions for social networking users in addition to the usual charges of defamation and infringement.

### 4.3 Legal Liability of Users

Social networking sites enable users to publish content. Publishing content can create a number of legal issues, such as defamation (making harmful false statements about someone else) or copyright infringement. In this respect, social networking sites don't create any "new" legal issues: users who publish content can be liable for their publication choices just like other content publishers, such as newspapers or magazines. [8]

Question to Consider: Assuming that most users don't know the laws applicable to publishing content, should they be less liable for their publication choices than more knowledgeable content publishers, like newspapers or magazines?

Users often believe that they have some degree of anonymity for their statements and actions on social networking sites, and in some cases they try to hide their true

identity. However, users' identities often can be easily revealed through legal processes. Sometimes, users suffer adverse consequences due to their social networking site, such as school discipline, foregone job offers or employment termination. [8]

## 5 Some example for SNS User and Vendors

This section mainly describes some recent incidents like a fourteen years old girl suit against MySpace, MySpace defeats spammers and social networking sites are worried about the Deleting online predator act(DOPA). The main purpose of these example is to understand the different type of problem that arise for both the user and the SNS vendors.

### 5.1 A Fourteen Years old Girl's Suit against MySpace

A fourteen-year-old girl has just sued MySpace, a popular social networking site where people can meet in cyberspace and exchange profiles. A nineteen-year-old boy Texan Pete Solis lied in his profile about being a high school senior on a football team to gain a minor's trust. The girl alleges that after she had contact with Solis on the site, he asked for her cellphone number, she gave it to him, they met up in person, and he sexually assaulted her. [5]

The girl is suing Solis for sexual assault and intentional infliction of emotional distress. Solis was arrested in May and it appears he will also face criminal prosecution. In addition, the girl is suing MySpace and its parent corporation, News Corporation. She alleges that the two companies were aware that sexual predators were getting in touch with minors on the site, and did nothing to stop it.

The Children's Online Protection Act (COPA) requires MySpace and other websites that target children under thirteen to obtain "verifiable" parental consent before the children can use the site. MySpace goes further: It simply prohibits children under thirteen from setting up accounts and creating personal profiles on its site, no matter what. [5]

What about children over thirteen? Federal law does not speak to the issue. But MySpace voluntarily displays only partial profiles for those registered as being fourteen or fifteen years old – unless the person viewing the profile is already on the teenager's list of friends.

Congress is contemplating measures that would further protect over-thirteen teens, but they are not yet law. Just last month, the House introduced a bill, the "Deleting Online Predators Act" (DOPA) that would both prohibit access to online social networks at schools, and require the Federal Trade Commission to create websites containing information about the potential dangers the Internet poses to children and teens. [5]

Finally, if current federal law has any relevance here, it may actually be to immunize MySpace from liability. Section 230 of the federal Communications Decency Act (CDA) provides a so-called "safe harbor" which immunizes web intermediaries from liability arising from user-posted content.

MySpace warns users that: "People aren't always who they say they are. Be careful about adding strangers to your friends list. It's fun to connect with new MySpace friends from all over the world, but avoid meeting people in person whom you do not fully know. If you must meet someone, do it in a public place and bring a friend or trusted adult." MySpace also notes "Don't mislead people into thinking that you're older or younger. If you lie about your age, MySpace will delete your profile". And it reminds users that they act as their own peril: "MySpace.com is not responsible for the conduct, whether online or offline, of any User of the MySpace Services." [5]

Based on these statements, it's hard to support a claim that MySpace falsely assured users regarding the services its site provided, or misleadingly omitted information from the material it posted. Thus, a fraud claim here is unlikely to succeed.

### 5.2 Social Network Sites worried about DOPA law

Libraries and schools could be required to limit access to certain Web sites if the Deleting Online Predators Act (DOPA), which recently cleared the U.S House of Representatives, moves swiftly through the Senate. Introduced by Rep. Michael Fitzpatrick (R-Penn). [1]

The act covers federal organizations that receive funding for computers and Internet access via the U.S. E-Rate program, primarily schools and libraries. The American Library Association (ALA), which is actively lobbying against the measure, estimates two-thirds of U.S. libraries receive this funding.

Social networking sites YouTube, MySpace, Facebook, Friendster and others count large numbers of children among their users, though core demographics for those who access sites like MySpace are getting older and the effects may be less than expected, said eMarketer senior analyst Debra Aho Williamson.

As of May 2006, one-third of MySpace's U.S. users were between the ages of 18 and 34, but 36 percent were between 35 and 54, and nearly 10 percent were 55 or older, according to comScore Media Metrix. The research firm notes that 12- to 17-year olds, an age category filled with controversy for MySpace due to fears of sexual predators, has diminished in importance, falling from 22 percent of the site's users in May 2005 to 17 percent in May 2006. [1]

Now MySpace and other social-networking sites like LiveJournal.com and Facebook are facing a new threat: a proposed federal law that would effectively require most schools and libraries to render those Web sites inaccessible to minors, an age group that includes some of the category's most ardent users.

That's a broad category that covers far more than social-networking sites such as Friendster and Google's Orkut.com. It would also sweep in a wide range of interactive Web sites and services, including Blogger.com, AOL and Yahoo's instant-messaging features, and Microsoft's Xbox 360, which permits in-game chat.

### 5.3 MySpace Defeats Spammers

MySpace.com is a social networking service that allows members to create unique personal profiles online to find and communicate with other people. MySpace is out there in Cyberspace seeking to root out spammers. A recent court victory shows this to be true. MySpace filed a lawsuit in federal court in Los Angeles against defendant Sanford Wallace- FreeVegasClubs.com, RealVegas-Sins.com, and Feebleminded Productions. MySpace alleged that the defendant had engaged in an abusive scheme to disseminate commercial messages and solicitations to MySpace users. [6]

Indeed, according to MySpace, it received many complaints related to the defendant's Web sites, and after investigation, it discovered that the defendant had created more than 11,000 similar MySpace profiles and 11,383 unique America Online email accounts to register those profiles. MySpace claimed that the defendant first sent out a series of messages, comments, and bulletins to MySpace users designed to redirect users to a Web site containing a MySpace logo and soliciting MySpace members' user names and passwords through a box that closely resembled a box used by members when logging onto MySpace. The defendant then allegedly used this phishing technique to hijack members' user names and passwords so that the defendant could log onto their profiles and send messages to their friends and send them to the defendant's Web sites.

Overall, MySpace asserted that the defendant sent nearly 400,000 messages and posted 890,000 comments from 320,000 hijacked MySpace user accounts. [6] MySpace also claimed that the defendant created groups on MySpace that redirected users to the defendant's Web sites, which included altering the MySpace "unsubscribe" link to point to the defendant's Web sites instead of actually allowing members to unsubscribe. MySpace argued that the defendant's Web sites contained adult-oriented material; and because MySpace permits users as young as fourteen years old to create profiles, the defendant's activities on MySpace created the possibility that minors might view offensive content.

Finally, the defendant admitted that his Internet business earns him about 1 million dollars per year. [6]

## 6 Policies and weakness of Social Networking Sites

This section describes the DMCA policy on seven of the largest social networking sites including Myspace, Facebook, Bebo and more. In each case, it evaluate their policy, look for weaknesses and, as necessary, recommend steps for improvement. Most of the social networking sites need a lot of improvement. Some of them have very critical issues that make it almost impossible to report copyright infringement, or other abuse problems, to the host. [3] It can be seen than most of the sites are not registered to U.S Copyright office(USCO). The United States Copyright Office, a part of the Library of Congress, is the official U.S. government body that maintains records of copyright registration in the United States. It is used by copyright title searchers who are attempting to clear a chain of title for copyrighted works.

USCO also serves as a resource to the domestic and international copyright communities. The Copyright Office consults with interested copyright owners, industry and library representatives, bar associations, and other interested parties on issues related to the copyright law. The Copyright Office promotes improved copyright protection for U.S. creative works abroad through its International Copyright Institute. [4]

### 6.1 ORKUT

Format: Email

Email Address: amac@google.com

Location of Policy: Google's Digital Millennium Copyright Act(DMCA) Policy

Registered with U.S Copyright Office(USCO): No (registered as Google)

Comments: Orkut is Google's social networking site and it shares its DMCA policy with the rest of Google's services. Unfortunately, Google's DMCA policy is obstructionist. It's requirement of a physical signature does not mesh with the law, in particular the ESIGN act, and makes it nearly impossible to email a notice in. You can get around these requirements by scanning in your signature, placing it in a PDF and emailing that, but it is a huge hassle that is unnecessary and adds work for both the submitter and the processor. That issue aside, Google's policy is very robust, containing the necessary information to file a notice and a counter-notice. It also provides links to several relevant sites. However, the policy is difficult to find from the Orkut Web site, buried in the terms of use, and the actual Google policy is more targeted at the search engine, not the hosting services such as Orkut and Blogspot. [3]

### 6.2 FACEBOOK

Format: Email/Form

Email Address: copyright@facebook.com

Location of Policy: Facebook's Copyright Policy

Registered with USCO: Yes

Comments: Facebook's copyright policy is amazingly robust, including both notice and counter-notice information as well as well-worded cautions against sending false notices and providing a useful Copyright FAQ that can answer many of a member's or a copyright holder's questions. Best of all, Facebook provides a very easy-to-use form for submitting either a DMCA notice or a counter-notice. The form automatically checks that the notice is valid and aids inexperienced rightsholders in sending a notice in. All in all, it is almost the perfect policy with the perfect method for receiving notices, either via email or form. The only complain about the policy is that the link to it is buried in the terms of use, under "Copyright Complaints" but, beyond that, Facebook sets the bar up to which other social networking sites will be held. [3]

### 6.3 XANGA.COM

Format: Email

Email Address: help-dmca@xanga.com

Location of Policy: Xanga's DMCA Policy  
Registered with USCO: Yes

Comments: Initially there was no DMCA information on their site and no registration with the USCO. But now their policy is a model for other sites in the field to look at. Though not as practical as Facebook's they have a well-written and robust policy that details both notice and counter-notice procedures. Their policy provides full contact information, including fax, email and snail mail as well as reasonable cautions on filing a false notice and links to relevant pages. They've also registered with the USCO and all of their information is consistent. Only complaint is that their DMCA policy is buried as a link in their terms of use, under "Copyright Infringement" and can be a little bit hard to find. The link under "Legal" in the "Help" section. All in all, it is a very robust and very effective policy that, since the initial problems were resolved, has worked very well. [3]

## 6.4 BEBO

Format: Email

Email Address: [copyright@bebo.com](mailto:copyright@bebo.com)  
Location of Policy: Copyright Policy, Terms of Service  
Registered with USCO: No

Comments: Bebo has taken some solid steps to deal with these issues more appropriately. They have done away with the registration requirement, have posted a full DMCA policy in their terms of use and have designated an agent to handle all such claims. The policy itself is very robust, if a bit hidden, containing all of the necessary elements to file a notice and a counter-notice. It is a complete policy that, for whatever reason, is not supplemented by an actual registration with the USCO. Still, the progress has been impressive and hope that the site will continue to push forward in this area, perhaps bringing it to full safe harbor compliance. [3]

## 6.5 FRIENDSTER

Format: Email

Email Address: ??? (help at friendster.com?)  
Location of Policy: Item Eight, Terms of Service  
Registered with USCO: No

Comments: The site denotes one paragraph to the issue in their terms of service, of which but one sentence is targeted as those wishing to file a DMCA notice. However, following the "Contact Us" link provided takes you to a page with no clear contact information to report such an infringement. The policy is woefully incomplete, does not provide adequate contact information and offers no guidance on filing a notice at all. Worst of all, the site is not registered with the USCO, so it is impossible to obtain the information through that database. This policy is effective non-existent. [3]

## 6.6 LINKED IN

Format: Postal Mail

Email Address: None  
Location of Policy: User Conduct, User Agreement  
Registered with USCO: No

Comments: As bad as the Friendster policy is, this one is much worse. Not only do they only denote one sentence to copyright issues, but they do not provide information to contact a DMCA agent anywhere on their site or with the USCO. Worst of all, the only means of contact they provide for handling abuse complaints, all abuse complaints, is a postal address in California. Though LinkedIn's structure makes it slightly less of a copyright danger, there are still many potential problems and their policy is beyond reckless. It is a shame that the social network targeted at business users has such a sloppy policy. [3]

It was very disappointed in how the social networking sites followed the DMCA. Two, Friendster and LinkedIn, outright failed, having incomplete and inadequate policies and only Xanga and Facebook were real standouts.

## 7 Conclusion

It can be concluded that most of the social networking sites need a lot of improvement in their policy and must be recovered from weakness of policy. The law in this area is still unclear, but some recent developments have created intriguing precedent. The law must be clear enough to solve the problems of copyright. Here, in this paper I try to highlight the most recent laws from United States that were used to solve different problems relating to social networking sites and users. As the Web becomes more and more reliant on social networking sites, their DMCA/copyright policies will become more and more significant. We can not allow these sites to have weak or ineffective policies, because they will become homes to plagiarists, spammers and others that want to misuse the content.

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