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## Over the web, loose lips can sink more than ships

Companies need to establish tight guidelines for mobile devices and social networking, writes Dan Pearce.

Executives in many Australian companies view social networking sites as a fast track to a golden age of marketing, with millions of people around the world as potential customers.

What many employees fail to recognise is that communications using Facebook, YouTube, Twitter and other sites, if handled carelessly, can cause havoc for their employer by alienating customers, depressing revenues and harming reputations.

And staff who send messages without giving serious thought to the content leave themselves open to legal action for defamation, contempt of court, copyright infringement, racial vilification or bullying.

For too many people, electronic communication has become little more than a stream of consciousness.

Even more disturbing for employers is that they may be legally liable for posts and tweets made by their staff.

The global reach of the online world can give rise to complicated jurisdictional issues.

A hypothetical example illustrates how one event can cause multiple problems for several organisations.

Frank, a salesman for a large publicly listed information technology company, was enjoying a fruitful day until updating his favourite social network site transformed it into the worst day of his life.

For weeks he had been working on a big project and that morning his customer gave it in-principle approval.

Frank's boss, who enjoyed a wine at lunch, took Frank out for a congratulatory meal. On returning to his office, after too many drinks, Frank updated his Facebook page to share his success with his friends.

He even uploaded a photo of him and his boss at the restaurant with the empty wine bottles on display.

Frank's friend, Tom, read the update and sent a message to his followers: "Frank, you legend, join us at the topless pub to really celebrate."

Ian, another friend, heard the tweet, joined his friends for a drink, photographed the fun with his iPhone and went to email the photo to his friend Mark.

But the predictive email address that appeared, and which Ian inadvertently accepted, was not "Mark" but "Marketing"; a group email from the contacts book of the firm where he is a young lawyer. He had used the work-supplied phone to send the photo to a thousand clients, one of whom was Frank's major customer-to-be. Another was the father of Tom's girlfriend, who was concerned to see Tom embracing the topless pub staff.

Frank's Facebook update was the catalyst for several potential breaches of the law.

The obligation of confidentiality came first. An employee who posts information about a big deal is effectively publicising information that should be treated with sensitivity.

Frank's boast to his contacts didn't name the prospect but did prompt a reply to all from a friend working for the customer-to-be: "Look forward to seeing you over here more often."

Another friend in the contact list worked for a rival. Yet another was a finance journalist. Both could quickly establish market-sensitive information before it was disclosed to the ASX.

Defamation is another concern. In our case, Tom followed up his first tweet with some jabs at Frank's boss: "Out with Sir-lunch-a-lot again!" and: "His afternoon clients no doubt get good value."

The defamatory implication is that Frank's boss is often affected by alcohol and behaves unprofessionally, paving the way for a claim for a published apology and damages, especially after another prospect dumped a deal the next day.

Liability does not necessarily stop with the individual. In this example, Ian's iPhone was provided by his law firm, which had no policy governing the private use of office facilities.

Partners at the firm use their mobile devices at all hours and younger lawyers followed suit. Ian's behaviour and the law firm's lack of guidance leave it exposed.

Other clients expressed dismay at the law firm's poor controls. Even if the firm can assert that Ian was acting outside his professional role, its loss of reputation remains.

Frank failed to emerge unscathed. His customer-to-be was extremely unhappy about the way he made the deal public and about the subsequent festivities, threatening to take his business elsewhere.

A social networking disaster is usually the impetus for executives to examine where they went wrong. In many cases the answer is that they did not have appropriate policies and procedures.

Having robust, clearly defined, up to date and easily understood policies and procedures that cover employee use of social networking sites like Facebook and Twitter is essential.

Business-related information posted by executives and other staff on professional networking sites like LinkedIn also needs to be covered in the policy, as it can affect anti-poaching and non-compete restraints.

In addition, every company needs a mobile phone policy that leaves staff in no doubt about when they can use a company supplied phone for private calls.

Social networking sites can have amazing applications, but it is important to avoid the unintended ones.

After reading through the article above, discuss the following questions.

1. What are the main points made by the author with regard to information placed on social networking sites?
2. Should users of Facebook, YouTube and other social networking sites be concerned that posts they have uploaded years before may be used against them in the future?
3. Should companies have policies regarding how their employees use the internet while at work or how they use company supplied equipment like computers and mobile phones for personal use?