

ESSAY – Legal & ethical dilemmas with the emergence of the internet as the vehicle for online publishing

This essay will address the topic of the emergence of the Internet as the vehicle for online publishing has created considerable legal and ethical dilemmas for journalists and would be journalists alike. I will do this by analysing three sub-topics of journalists using the internet to research and/or report on stories: journalists accessing a subject's social media account/page to gain information and report on them, journalists using and referring to social media and a journalist's personal and professional use of Twitter. I will complete this analysis by using specific case studies on these three sub-topics.

“News organizations usually accept that they have responsibilities to the societies within which they operate. However, this can cause real tensions within the online medium. Any potential conflicts of interest are usually dealt with on a case-by-case basis. Online news gathering and publishing is a continuous process, with different people frequently working on the same story. Large organizations need policies on linking and other matters to ensure editorial continuity.” (Ward, 2002, p 143)

The case study I will be referring to on the sub-topic of journalists accessing a subject's social media account/page to gain information and report on them, relates to the ethical issues of trauma and privacy. It is also a personal example of mine, as although I was not personally on the receiving end of these ethical issues, I knew the subject. The story is the death of George Matchett, a popular university student who drowned at Puckey's Beach on 23 March 2011. The story of his death made the front cover of the *Illawarra Mercury* on 24 March 2011 and a short “tribute” story, in which the journalist who wrote the story used Facebook comments on Matchett's Facebook wall left by friends of his, was published in the second page of the *Illawarra Mercury* on 25 March 2011. I chose this case study not only because of my personal experience, but due to the ethical issues of the latter story, which involved accessing and using the Facebook posts on Matchett's wall.

“I hate death knocks. I reckon most journalists do. It has to be the very worst part of the job. There is nothing enjoyable about knocking on someone's front door looking for a story, knowing a family is being tortured by grief on the other side. It is bloody awful. Even if you do get the story, you always feel lousy afterwards. When emotions are so raw – even if they are strangers – it's hard not to take a piece of their pain away with you.... That's a lot of doors to knock on. It doesn't get easier; every family, every tragedy is different. And so are the responses to an interview request.... We journalists should be ashamed of ourselves! Well I'm not. It's my job.” (Harris, 2012)

A death knock is an inevitable part of a journalist's career and most of them would rather not do it, but they are still doing a job as Harris points out. In the case of Matchett's death, a

death knock would not have been possible for the journalist due to the fact that at the time of his death, Matchett lived at Campus East, a university accommodation. The university and Campus East staff most likely would not have permitted it in order to protect and help grieving students. Matchett's family was also from Grenfell, which is approximately four hours outside of Wollongong, so a death knock at his family's home would not have been possible either. Due to this, the journalist, Sam Hall wrote a tribute story consisting of Matchett's friends' comments about him on his Facebook wall. I view this story and the methods as a "21st century death knock" or probably more accurate "a virtual death knock." From a personal perspective, I felt that the story of Matchett's death and this story was a bit too soon, however from a journalistic perspective, the journalist's methods were appropriate, considerate and respectful.

The ethical questions that arise from this story and the journalist's methods are: was privacy breached by accessing Matchett's Facebook page for his friends' comments about him? And was clause 11 of the MEAA Journalists' Code of Ethics breached or upheld?

"In a world of hackers, privacy settings are not watertight, and social networking sites such as Facebook make no promises that anything a user uploads will be secure and be prevented from entering the public domain. And whether lawful or not, the simple "copy, paste" or "save as" functions can quickly take a user's content from a social networking site and publish it to the world. Aspiring artists, photographers, cinematographers, poets and musicians should also be wary of the fact that uploading content on Facebook means giving Facebook a non-exclusive license to use that copyright in any way....So users should think carefully before uploading a photo or other content, posting their status, or even writing a private message to another user. As the law currently stands, once the information is on the internet, the user's practical ability to stem any damage arising from the dissemination of that information - and its use by third parties - may be very limited indeed."
(Scott & Ballis, 2011)

The quote above was taken from an article written by Scott & Ballis about Facebook, journalism and expectations of privacy. Most people are aware of the fact that anything on the internet is in the public domain and fair game for journalists and anyone else. Social media websites however are a bit of a grey area. Social media websites have privacy settings that users can adjust to their liking, however if one user posts something to another user's wall, even if that first user's privacy settings are strict, the second user whose wall they have published a post on may not be so strict, therefore any post the first user publishes on the second user's wall can be seen by the public. Also hackers, corporations and even journalists can go above these privacy settings if they tried hard enough. In Matchett's case, when not logged onto Facebook, you can't see his wall, however when logged in, but not friends with him, his wall can be seen and posts can be viewed and read.

In Matchett's case, the journalist can argue that there was no breach of privacy by using the Facebook posts, following the above principle. In regards to clause 11 of the MEAA Journalists' Code of Ethics: *"Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude."* was upheld as the journalist chose an alternative way to conduct a death knock and tribute story instead of entering university property and pestering students in their time of grief.

"Most news organizations realize how valuable social networking can be, both as a newsgathering tool and as a way to promote the news organization's 'brand'. But media companies must strike the difficult balance between these competing interests without stifling the exchange of ideas. Some are still uncomfortable with the personalization of the connection between journalists, sources and audiences." (Burns, 2013, p 79)

Social media is increasingly being embraced across news organisations and entertainment programs. This is evident with morning shows asking for Feedback from viewers via Facebook and Twitter. As well as reality shows, especially those of the likes of Dancing With The Stars, X Factor and Australia's Got Talent showing comments from viewers on performances via Facebook and Twitter.

In terms of news organisations and journalists, it is now becoming common place for journalists to find sources and information on Facebook and Twitter. Even sharing information and reporting on events which started or are based on Facebook are becoming more common. This is ironic considering that blogs, what I like to refer to as "social media's predecessor" were frowned upon by the journalism industry due to the fact that blogs were composed entirely by citizen journalists and were more likely to be subjective and not professionally or even basically edited. The same can be said about social media, although social media material tends to be a lot smaller than blog posts. Due to the commonality of Facebook and Twitter being used by journalists, the social media websites have now set up pages for rules and guidelines for journalists in regards to using the websites and their material when reporting.

The case studies I will be referring to on the sub-topic of journalists using and referring to social media are how social media material from citizens, who are victims of natural disasters are used by major news organisations.

Social media has become a valuable tool in times of natural disaster over the last few years, especially with the Victoria Bushfires (2009) and the Queensland Floods (2011, 2013) (I am not using these particular natural disasters as case studies, merely pointing them out as examples for the purposes of discussion). With the ability of social media to be used with mobile devices, countless Australians who are victims of natural disasters or are in distress can easily tell their loved ones where they are and that they are safe and sound, if that is the

case. Emergency services also make use of social media to issue emergency warnings. This is due to the fact that social media spreads news faster than news outlets, and the journalism industry has followed suit, using images and video from citizens living in the areas, or travelling out of them. So what are the legal and ethical issues?

The most obvious legal issue is copyright in regards to the images and video, however as I pointed out with my first sub-topic, anything uploaded onto the internet is fair game because it is in the public domain, therefore with that logic, there technically is no copyright issue. However the ethical issue is the immediacy of social media being used by journalists and news organisations during natural disasters.

“But just how fast is too fast? Does the play-by-play description of an unfolding event or issue serve the public interest in providing comprehensive news coverage or does it fragment understanding, such that isolated aspects become the focus of so much attention that overall accuracy, fairness and balance are the casualties? Again journalists need to measure the ‘cans’ against the ‘shoulds’...Police and emergency service personnel talk of the difficulties of trying to manage an accident or disaster scene when relatives and friends of the victims show up at the site, having been notified by a journalist’s phone call or a newsflash on the television set.” (Tanner et al, 2005, pp 227-228)

So if journalists use images and video from the victims of natural disaster via social media or alternatively are given the images and video from the victims via their official emails or the news organisation’s website and upload them on the news organisation’s Facebook page, does that mean they should? Should the possibilities of friends and relatives of the victims seeing these images and video and discovering that their loved ones are victims, stop them from uploading them? No it shouldn’t, but it is something they should seriously consider.

Another similar ethical issue that comes from immediacy and broadcasting/releasing information either on the news, by social media or both is accuracy.

“While rumours were common at the height of the disaster, respondents reported that the moderators of the Facebook pages were prompt at confirming information and providing official sources when available. When not available, local knowledge and discussions often provided confirmation on what was accurate. Also, Queensland Police Service used their Facebook page and Twitter to ‘mythbust’ rumours generated on community groups and through the media (QPS, 2011). Inaccurate information posted by a user was usually swiftly corrected by other users, making these pages self regulating.” (Bird, et al, 2012, pp 4-5)

When rumours or only parts of information are being broadcasted or released, which is common during natural disasters, if journalists are referring to official Facebook pages or tweets, they should perform their basic duty of fact-checking on the information on the

pages, or contact the services themselves before broadcasting or releasing the information. This is a rule that should be applied to all natural disasters.

“When media take up a new communication technology, there is a process of negotiation as newsrooms incorporate novel tools and techniques into time-honored ways of working. Journalists have tended to transfer their organizational norms to digital media rather than rethink established routines and conventions. There is an emergent body of literature into what journalists are doing on social media platforms, and how these new practices are interacting with journalistic conventions...There are four main ways that journalists have been using Twitter: to report the news, to drive traffic to websites, to gather the news and to find sources.” (Hermida, 2012, p 675)

The majority of well-known Australian journalists, as well as international journalists have their own Twitter accounts. Some use it for professional purposes to report news, whether it be on the television programs, radio shows or newspapers they work for, or for personal reasons to connect with their fans. However the major issue with journalists using Twitter is expressing their opinions and making comments on news or certain issues, via Twitter. Depending on the content and context of the Tweets, journalists have either been reprimanded or lost their jobs. This is due to the affect it can have on a company’s reputation. Hence, this has lead to journalists having to state that the opinions they express on their Twitter profile are their own, or that they are not associated with (insert name here) company.

“We are still in the early stages of understanding how Twitter and similar real-time social messaging tools are affecting well-established journalistic norms and practices.” (Hermida, 2012, p 675)

Twitter was established in 2006—seven years ago, so not that recently, but not that long ago either. Due this short period, the ethical issues for journalists when using Twitter have only started to appear recently. The legal and ethical issue that is most dominant would be defamation. The case study I will be referring to on the sub-topic of a journalist’s personal and professional use of Twitter is Catherine Deveny’s dismissal from *The Age* due to her Tweets during the 2010 Logie Awards.

“Defamation is not a perfect science, and is centred on the courts’ estimation of contemporary social and moral values.” (Pearson & Polden, 2011, p 190)

Catherine Deveny was tweeting constantly during the 2010 Logie Awards, however the tweets that resulted in the termination of her employment were that she hoped that then eleven-year-old Bindi Irwin “gets laid” and that she also hoped that Rove McManus’ wife, Tasma Walton “didn’t die too”—she was referring to McManus’ first wife, Belinda Emmett

who died of cancer four years earlier. Deveny defended herself by stating that she was “telling grown-up jokes”¹.

In defence of her comments towards Bindi Irwin she stated that she was “using humour to highlight the celebrity culture, the raunch culture and the sexualisation, sexual objectification of women’s bodies.” In regards to her comments towards Tasma Walton, she defended those comments by saying the comments were meant to be nice. “I hope she doesn’t die, I stand by it, I hope she doesn’t and I hope Rove doesn’t, I adore Rove. I worked for him for five years, he endorsed my first book.” She also stated that her comments were taken out of context, however she also stated that she didn’t feel the need to apologise for the comments as she stated that humour is “deeply subjective.”

“Anyone responsible for the publication of defamatory matter can be sued, including the journalist who wrote the story, the subeditor, editor, publisher and printer. More journalists are being named as defendants in defamation actions brought against their employer, publishers or broadcasters.” (Pearson & Polden, 2011, p 203)

Deveny was not sued for defamation by Irwin, her family or Walton and McManus, however she could have been and so could have *The Age’s* editor-in-chief, Paul Ramadge who commented that “...the views she (Deveny) has expressed recently on Twitter are not in keeping with the standards we set at *The Age*.” (This quote also aligns with Pearson & Polden’s quote about defamation being centred on the courts’ estimation of contemporary social and moral values.) Since Deveny wasn’t sued for defamation, neither was Ramadge or any of *The Age’s* subeditors, editors, publishers or printers. Deveny was lucky, however this case study is a lesson for all journalists to be careful with what they choose to say on Twitter or any other social media website, other websites and even in their own publications.

In conclusion, the following legal and ethical issues that arose in my research and case studies were (in order): trauma, privacy, copyright, immediacy, accuracy and defamation. These legal and ethical issues do provide dilemmas for journalists and would-be journalists alike. However these issues aren’t really that much different in the print and broadcast newsrooms and settings than online, the only stand-out difference would be the fact that once something is published on the internet, it is there forever. When a journalist or would-be journalist has to deal with these legal and ethical issues with online publishing and if they make a mistake or deal with these issues incorrectly or inappropriately, it is there for the world to see forever, it is immortalised. These legal and ethical dilemmas can appear in any journalism setting, online or otherwise, therefore to deal with these issues if and when they arise, journalists and would-be journalists should just go back to basics and implement common sense when researching and writing/broadcasting and always be careful.

REFERENCE LIST:

FOOTNOTE:

1. Deveny's quote, as well as the other quotes in reference to Deveny's termination due to her comments of the 2010 Logie Awards on Twitter, which includes a quote from *The Age's* editor-in-chief Paul Ramadge, come from the *Herald Sun* article, 'Catherine Deveny sacked over Twitter jokes'. I chose to reference the quotes in this footnote rather than repeatedly citing it in the text for editorial consistency.

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