

Reproduced with permission from Social Media Law & Policy Report, 04 SMLR 11, 03/17/2015. Copyright © 2015 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Upcoming Trends in Social Media and Privacy Law



BY ANA TAGVORYAN, JOSHUA BRIONES AND JESSICA
MCElROY

An abundance of new technologies and applications are on the horizon for 2015. Shopping via social media is increasing, and smart devices are changing how people eat, exercise and even regulate the temperature of homes. Simultaneously, an abundance of new social media platforms that promise to provide users with real privacy are also gaining in popularity. This means we can expect to see an increased interplay between social media, privacy and users' everyday lives.

Ana Tagvoryan is a partner in the Corporate Litigation group in the Los Angeles office of Blank Rome LLP, where she concentrates her complex commercial litigation practice on consumer class action defense, with a particular emphasis on privacy-related common law and statutory claims.

Joshua Briones is a partner in the Corporate Litigation group in the Los Angeles office of Blank Rome LLP, where he focuses his national practice on bet-the-company class actions and has participated in the defense of dozens of class actions in state and federal courts across the country, involving all stages of the litigation and appellate processes.

Jessica McElroy is an associate in the Consumer Finance group in the Los Angeles office of Blank Rome LLP, where her practice focuses on a variety of consumer finance litigation matters.

1. Shopping Via Social Media

In early 2014, social media giants Twitter and Facebook began testing features that allow users to make purchases with a few clicks and without ever having to leave the sites. Twitter's real-time media platform makes it the ideal consumer venue for short-term incentives and fleeting consumer trends. In October 2014, it was revealed that there was a secret feature within Facebook's Messenger application that, if activated, would allow users to transfer money to each other using their debit card information.¹ Facebook previously unveiled "Autofill With Facebook," a feature which allows users to pull in credit card and billing information stored on Facebook to interact with Facebook's 450,000 e-commerce merchants.²

Facebook's leap into the mobile payments arena mirrors the efforts of other tech heavy hitters. Apple, for example, released its Apple Pay application, which allows users to use their iPhones to pay in stores and within other applications. AmazonFresh's site provides same-day delivery of grocery essentials. Other online services, such as Blue Apron, deliver pre-measured ingredients based on pre-selected meals so that users can enjoy home-cooked meals without ever stepping foot in a grocery store.

¹ Josh Constine, *Hacked Screenshots Show Friend-to-Friend Payments Feature Hidden In Facebook Messenger*, TechCrunch, Oct. 5, 2014, <http://techcrunch.com/2014/10/05/pay-with-facebook-messenger/>.

² Josh Constine, *Facebook Rolls Out Billing Info "Autofill" for Simpler Checkout To 450K Ecwid E-Commerce Merchants*, TechCrunch, Apr. 30, 2014, <http://techcrunch.com/2014/04/30/facebook-ecommerce/>.

Although it might seem like these companies are merely taking the logical next step in online retail, the legal issues associated with shopping via social media are complex. Adam Levitin, a Georgetown law professor, has argued that by implementing Apple Pay, Apple has transformed itself into a regulated financial institution.³ This transformation, Levitin argues, means that Apple could now be considered a “service provider” for purposes of the Consumer Financial Protection Act.⁴ If so, Apple could potentially be subject to certain regulatory provisions imposed under the terms of the act and consequently the target of litigation for alleged non-compliance.⁵

2. Illusion of Privacy Is Giving Way to Actual Privacy

Although the market is filled with social media sites that allow users to put their private lives on public display, 2014 saw an increase in social networks that cater to those who want to keep their private lives private. For example, applications such as Snapchat, Whisper and Secret are theoretically designed with privacy in mind. We expect to see the number of these applications increase in 2015.

However, whether these supposedly “private” social media platforms can deliver on what they promise remains to be seen. In early 2014, Snapchat was hit with a massive hack—hackers appeared to have posted the account information for over 4.6 million Snapchat users.⁶ Suddenly, user photos meant to be private were now available on the Internet. Snapchat is not the only “private” social media network to be hit. In October 2014, it was reported that Whisper was compiling a searchable database of users’ locations and posts—though the company later denied the report.⁷

Of course, there may be legal implications associated with revealing or collecting user information, especially when this is done by companies that purport to protect users’ privacy. As savvy users become increasingly concerned about and sensitive to the ways in which their personal information is being collected and broadcast, terms of service and privacy policies are expected to be intensely scrutinized by companies and consumers alike.

³ Adam Levitin, *Apple Pay and the CFPB*, Credit Slips, Sept. 10, 2014, <http://www.creditslips.org/creditslips/2014/09/apple-pay-and-the-cfpb.html>.

⁴ *Id.*

⁵ *Id.*

⁶ Doug Gross, *Millions of Accounts Compromised in Snapchat Hack*, CNN, Jan. 1, 2014, available at <http://www.cnn.com/2014/01/01/tech/social-media/snapchat-hack/>.

⁷ Paul Lewis & Dominic Rushe, *Whisper: The Facts*, Guardian, Oct. 17, 2014, available at <http://www.theguardian.com/media/2014/oct/17/-sp-whisper-tracking-location-users-facts-response>.

3. The Internet of Things Beginning to Integrate with Social Media.

The number of smart devices in people’s homes, offices and lives in general is increasing every day. Items that might not be “smart” just yet—for example, your jewelry and household appliances—will be transformed into smart devices in the near future. Imagine your refrigerator being linked to your Facebook account such that when you create a Facebook event to host a Superbowl Sunday party, your fridge could track the number of friends that you invite and send you a reminder to pick up groceries. Imagine jewelry that tracks your vital statistics and imports them to your smartphone, which could instantly update your doctor if it senses your glucose is low or your blood pressure is too high.

As with many technological advancements, there are certain to be related legal issues. Hacking, as discussed above, is one of these issues. If users are unable to protect their privacy in the existing technological infrastructure, will they be able to protect the more sensitive data associated with their homes and personal lives? If your doctor can access your vitals via smart technology, a hacker could as well. Businesses will need to develop and implement systems that are designed for protection against these new data sources and potential for security breaches. Knowledgeable and effective legal representation will be required in order to successfully assist companies with navigating the legal issues involved in social media and privacy law.

4. An Overall Increase in Social Media Platforms

Facebook and Twitter remain the social media juggernauts and Instagram, Pinterest and Snapchat have all been popular, but newcomers seem to have picked up on the perceived shortcomings of these larger platforms and are now attempting to capitalize on them. Ello, for example, launched in March 2014 and promises to never sell user data or show advertisements. Yik Yak, launched in 2013, allows users to create and view “Yaks” with people in close physical proximity to the user. The idea is that the closer people physically are to each other, the more relevant the posts will be to users located in the same area. Tsu, publicly launched in October 2014, promotes itself as being the first social media platform that allows users to retain ownership of their posted content.

As social media platforms increase, the legal issues pertaining to the use of social media by employees is likely to increase as well. For example, are employers allowed to monitor their employees’ use of social media? Can businesses make employment decisions based on social media content? Can an employer be held liable for the social media content or conduct of its employees? These are complex issues, and companies should take a proactive approach to recognizing and addressing them.



**THIS ARTICLE FIRST
APPEARED IN
SOCIAL MEDIA LAW
& POLICY REPORT**

NEW RULES OF ENGAGEMENT

SOCIAL MEDIA LAW & POLICY REPORT

Corporate use of social media is skyrocketing, and so are the legal risks to your clients and their organizations. Now, staying up to date on the latest legal implications just got easier.

Introducing **Social Media Law & Policy Report™** — the only resource that integrates timely news, real-world analysis, full-text case law, primary sources, reference tools, checklists, and sample policies to help you advise clients with confidence.

**START YOUR FREE TRIAL — CALL 800.372.1033
OR GO TO www.bna.com/smlr-article**

**Bloomberg
BNA**