

Friend Me? When Social Media, Higher Ed and the Law Collide



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**spots
everywhere!**



EMPLOYEES ARE NOT JUST



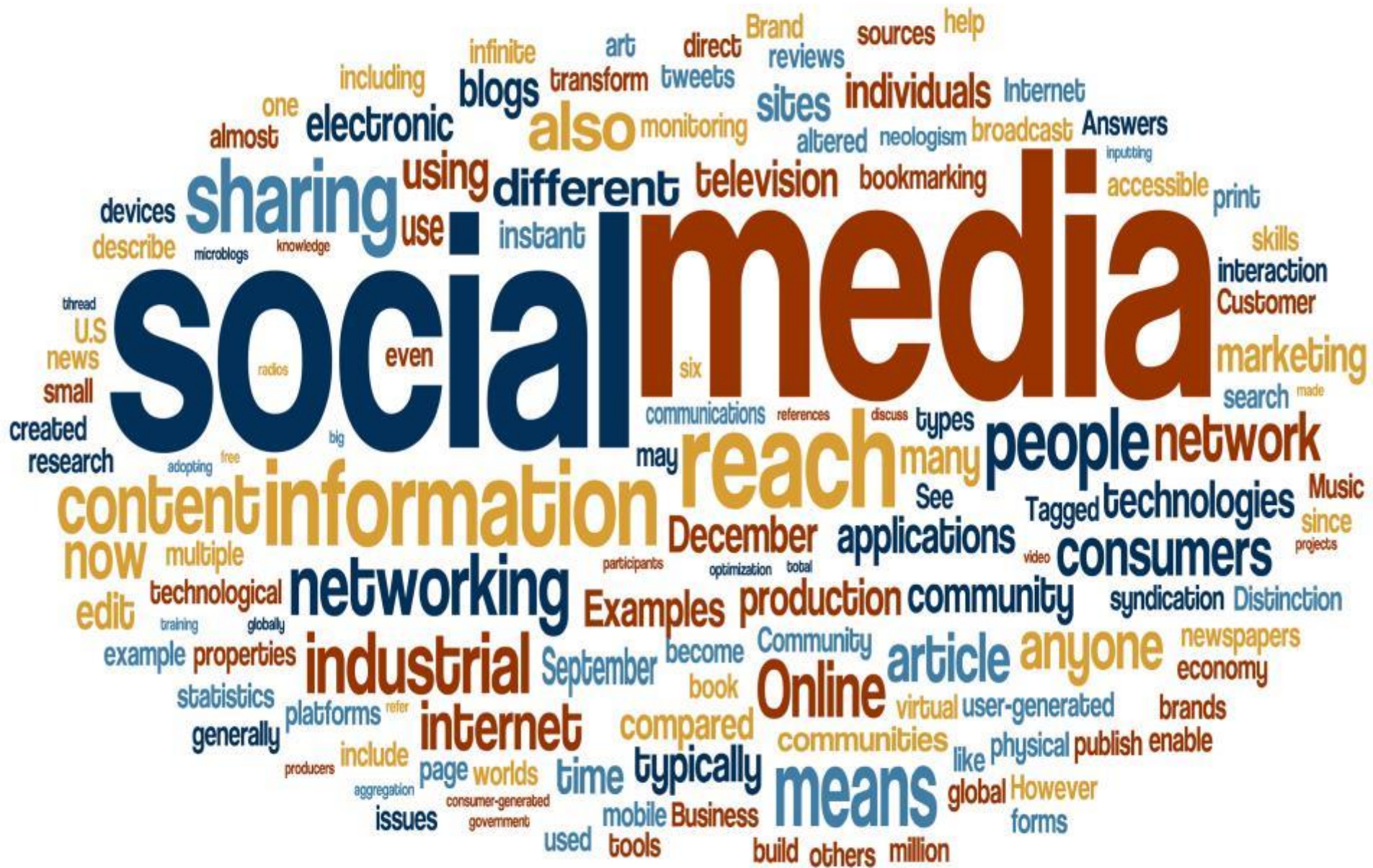
**HANGING OUT AT THE
WATER COOLER**

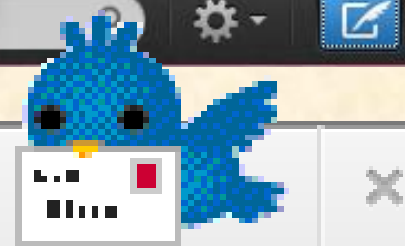
immagur[®]

Pin + test

test

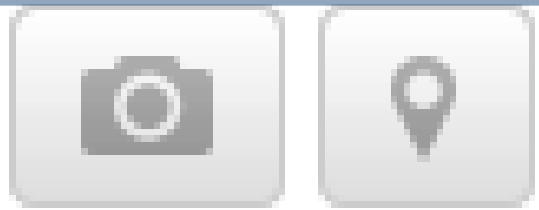
The image features a central logo for 'immagur' in a bold, black, rounded font. Above it, the words 'Pin + test' are written in a red, cursive script. Below the main logo, the word 'test' is written in a red, cursive script. The background consists of a blue, stylized, rounded font that appears to be a distorted or mirrored version of the 'immagur' text. There are also two small geometric shapes: a black triangle pointing up and a blue triangle pointing down.





What's happening?

More than a billion tweets are sent every 48 hours.



Tweet

**Instagram
42 million
acquired 4.25
photos are
million users in
uploaded to
only 7 months
Instagram daily.**

1.2 billion users
on

facebook



Roswell



Friends



Post

**Every sixty seconds
293,000 status
updates are posted
on Facebook**



Roswell



Friends ▾

Post

Every **sixty** seconds
293,000 status
updates are posted
on Facebook



Roswell



Friends ▼

Post

Every **sixty** seconds
293,000 status
updates are posted
on Facebook



Roswell



Friends ▾

Post

**Every two
seconds
someone is**

Linked  **in**

290%

of social media users between the ages of

290%

...they fear could come back to haunt them during a job search. or other content that...

Percent of users who
say they have
21 **REMOVED**
a photo, status, or
comment for fear of
repercussions from
their employer.

The 55 and older crowd has the **HIGHEST** rate of growth in social media use.

**Social media
accounts for 16
minutes out of
every hour spent
online.**

#EPMU Budgets

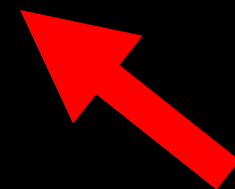


Delete Photo

Are you sure you want to delete this photo?

Confirm

Cancel



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WHAT IS SOCIAL MEDIA?



WHAT IS SOCIAL MEDIA?

A type of online media where information is uploaded primarily through user submission. Web surfers are no longer simply consumers of content, but active content publishers.

CYBERLOAFING

One study determined
that **Facebook costs**
employers \$28 Billion
per year in productivity-
loss

FOR HIGHER EDUCATION

LEGAL LANDMINE

v.

**INNOVATIVE AND FRESH WAY TO
COMMUNICATE WITH AND ENGAGE
STUDENTS, ALUMNI AND PUBLIC**

LEGAL LANDMINE

- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Pregnancy Discrimination Act
- Title VII of the Civil Rights Act of 1964
- Fair Labor Standards Act
- Family Medical Leave Act
- Uniformed Services Employment & Reemployment Rights Act



LEGAL LANDMINE

Particularly important to colleges/universities:

- Family Educational Rights and Privacy Act (FERPA)
- First and Fourth Amendment
- Health Insurance Portability & Accountability Act (HIPAA)
- Copyright Infringement
- Defamation



David Gruth and the University of Kansas

- September 16, 2013 in response to Navy Yard shooting in D.C. that killed 13, UK Journalism professor tweeted:

The blood is on the hands of the #NRA. Next time, let it be YOUR sons and daughters. Shame on you. May God damn you.

- Media firestorm on both sides. Demands for professor's termination.
- UK put him on indefinite administrative leave. Board of Regents responded with "Social Media Policy"
 - can terminate for "improper use of social media"
 - that too resulted in backlash . . . what is improper use???
 - revised to allow for a list considerations of what is "improper"

Hannah v. Northeastern State University

- Hannah appoint Department Chair shortly after being hired.
 - faculty not happy and start posting derogatory comments about Hannah on Facebook
 - *“They’re making a f*cking Indian chair.”*
 - *“Our chair will bring all the handbaskets we need.”*
 - Hannah reports post to University. University determined they were racial references but “not intended to be racist or threatening at a level of a hate crime but a poor attempt at showing dissatisfaction and mistrust of department/college/university and selection process.”
- The commenters were reprimanded by Hannah sued under Title VII when same people were put on Hannah’s on tenure committee.

FREE SPEECH

- Did the employee speak as a part of his job duties? If yes, then the First Amendment does not protect him from employer discipline. *Garcetti v. Ceballos*.
- Was the employee's speech on a matter of public concern? If no (and therefore the employee spoke merely on a private matter), then the First Amendment provides no protection from employer discipline. *Connick v. Myers*.
- Does the value of the speech to the speaker and the public outweigh the employer's interest in maintaining the efficiency of the office? If yes, then the speech is protected by the First Amendment and discipline of the employee is unconstitutional. *Pickering v. Bd. of Ed.*

“Drunken Pirate” Snyder v. Millersville University

Snyder, a 25-year-old student teacher posted a picture on her MySpace profile that showed her in a pirate costume and drinking from a cup. ‘Drunken Pirate.’

- University asserted that her MySpace profile promoted drinking and prevented her from receiving a teaching degree.
- Snyder sued and claimed the University infringed upon her First Amendment right to free expression.
- **Ruling:** The federal district judge ruled that Snyder’s student teacher position made her a public employee. Therefore, the protections afforded to her under the First Amendment are more limited than if she were merely a student. The judge found that Snyder’s ‘Drunken Pirate’ picture was not a matter of public concern. Therefore the school did not infringe upon her right to free expression.

WHAT IS THE BEST RESPONSE?

- **Awareness**
 - It's Everywhere
- **Realization**
 - It's Not Going Away
- **Embrace**
 - Train on Proper Use
 - Official Sites for Organization
 - Find the right fit for Social Media in your workplace



SOCIAL MEDIA STRATEGY

- Make sure authors know they're responsible for their content.
- Emphasize that confidential information should not be shared.
- Maintain the privacy of followers.
- Add value — don't just post to post.
- Maintain the college/university's voice.

SOCIAL MEDIA STRATEGY

- Identifying college/university sanctioned social media:
 - Student clubs and organizations
 - Student services, such as housing and dining
 - Student newspapers
 - College programs
 - Libraries and buildings
 - Residence halls
 - Alumni groups
 - Emergency notifications
 - Athletics

SOCIAL MEDIA STRATEGY

- Social Media Policy
- Electronic Communications and Information Resources Policy
- Acceptable Use Policy
- Conflict of Interest Policy
- Technology Policy

THE PATH TO A POLICY

- Step 1:** The Basics of Creation
- Step 2:** Implementation and Education
- Step 3:** Monitor and Stay Vigilant
- Step 4:** Stay Current: Update, Update, Update

STEP ONE: CONSIDERATIONS FOR AN EFFECTIVE SOCIAL MEDIA POLICY

- Prohibitions on all uses of social media that are disrespectful, inflammatory, offensive, dishonest, or damaging to the university's reputation and business interests.
- Content and posts should not include slurs, personal insults, obscenity, or anything likely to tarnish the image of the university and its brands.
- Prohibitions on posting confidential or proprietary information about the university, its students, its alumni or fellow employees.

STEP ONE: CONSIDERATIONS FOR AN EFFECTIVE SOCIAL MEDIA POLICY

- Requirement that employees who express their opinions after identifying themselves as college employees include disclaimers

(Example: If you publish content to any website outside of the university and it has something to do with the work you do or subjects associated with the university, use a disclaimer such as this: “The postings on this site are my own and do not represent university’s positions, strategies or opinions.”)

- Any messages that might act as the “voice” or position of the university or a school/college/unit must be approved by _____.
- Time, place, manner restrictions.
- Caution: Restrictions should be **narrow!**

STEP TWO: MAKING IT WORK

- All the standard procedures still apply, e.g., written, well disseminated policies and signed acknowledgments.
- Update other policies, such as any harassment or discrimination policies, to fit with new social media policies.
- Look at code of conduct policy for employees and students.
- Train Employees in the social media platforms the policies are designed for.

STEP THREE: MONITORING & VIGILANCE

- All the standard procedures still apply, e.g., articulate infractions, discipline consistently, and document appropriately.
- Monitor communications about your university/college that appear on *public* sites.
 - Google Alerts. It's free.
- Determine the extent that internal monitoring systems, such as spam filters, web traffic monitors, and firewalls, are needed.
- Discuss and learn from employees.

STEP FOUR: UPDATE, UPDATE, UPDATE

- Review and critique your policies.
- Are they effective?
- Are they still current?
- Are they still lawful?
- What has their effect been on productivity, morale, etc.?

USING SOCIAL MEDIA IN HIRING

TIME TO GO SURFING?

HIRING DECISIONS

- Hiring decisions: 91% of employers surveyed in September 2011 reported using social networking sites to screen prospective applicants.
- Employers can benefit from the ***lawful*** use of information obtained from social media. Information discovered while viewing personal social media sites could be equated to questions asked in an interview.
- Areas to watch include *Race, Age, Religion, Marital Status, Sexual Preference, Pregnancy Status or Disability.*

SCREENING APPLICANTS

RISK: INCONSISTENT USE OF SCREENING

Employers who inconsistently or arbitrarily determine which applicants will be subject to social media screening are at risk of employment discrimination claim.

- The court denied a defense motion for summary judgment when a top candidate was passed over allegedly on the basis of information about his religious belief uncovered through an online investigation. *Gaskell v. Univ. of Kentucky*, 2010 WL 4867630 (E.D. Ky. Nov. 23, 2010).

SCREENING APPLICANTS

RISK: INCONSISTENT USE OF SCREENING

Employers who inconsistently or arbitrarily determine which applicants will be subject to social media screening are at risk of employment discrimination claim.

- If, for example, an employer's electronically stored information reveals that the employer has only viewed the online profiles of applicants, this fact may serve as evidence of disparate treatment.

SCREENING APPLICANTS

RISK: INCONSISTENT USE OF SCREENING

Employers who inconsistently or arbitrarily determine which applicants will be subject to social media screening are at risk of employment discrimination claim.

- If social media is used to screen applicants, consider what a hiring manager will say at a deposition as to why some applicants' social media was viewed and others were not. Unfavorable testimony will likely serve as discriminatory intent.

SCREENING APPLICANTS

RISK: LEARNING *TOO MUCH* INFORMATION

- Consider the effect on litigation. Social media can reveal information that is protected information such as race, age, medical condition—that employers generally keep out in employment applications.
- If an employer views an applicant's online profile with such information, the employer loses the argument that it could not have discriminated against the applicant because it had no knowledge of the protected characteristic.

BEST PRACTICES

- Screen applicants in a uniform manner.
- Have a neutral party screen information.
- Search information that is job-related
- Never create false personas to gain access to information.
- Don't "friend" applicants in order to gain access to their non-public profiles.
- Document the information that is discovered.
- Consider the credibility of the source.
- Be well advised of the law.

PASSWORD REQUESTING

Recent Developments

- Legislation has been introduced or is pending in at least 28 states that prohibit employers from requesting passwords to personal Internet accounts to get or keep a job.
- 19 states have social media privacy laws including Arkansas, California, Colorado, Illinois, Maryland, Michigan, Nevada, New Jersey, New Mexico, Oregon, Tennessee, Utah, Virginia, Washington, and Wisconsin

Recommendation

- Never force the access by requesting the username or password.
- Never force the connection by requesting friending.

KEY POINTS

What can an employer do?

- Maintain consistent protocols to screen applicants' social media profiles & information regardless of their race, gender, or other protected class status.
- Access private employee information resources only with proper employee authorization.
- Comply with the terms of use of all social media websites.
- Ensure that employment decisions are made with accurate information, as false and misleading information is prevalent in social media.
- Avoid retaliatory employment actions (terminations, demotions, etc.) against protected activities.

THANK YOU!!

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