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<th>An Exploration of Employer's Right to Use SNS in Hiring and Firing</th>
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<tr>
<td><strong>Author(s)</strong></td>
<td>Cheung, ASY</td>
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<td><strong>Citation</strong></td>
<td>The 3rd Asia Privacy Scholars Network Conference, Hong Kong, China, 8-9 July 2013</td>
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<td><strong>Issued Date</strong></td>
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<tr>
<td><strong>Rights</strong></td>
<td>This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.</td>
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</tbody>
</table>
AN EXPLORATION OF EMPLOYER’S RIGHT TO USE SNS IN HIRING AND FIRING

Professor Anne SY Cheung
The University of Hong Kong
anne.cheung@hku.hk
July 2013
The 3rd APSN Conference
Social Networking Sites (SNS)

• social media utility that connects one with the people around you, include text, audio, video, images, podcasts and other multimedia communications
SNS Users

- Facebook: 1.11 billion monthly active users as of March 2013
- LinkedIn: 200 million members as of December 31, 2012
- Twitter: 288 million monthly active users as of January 2013
- SinaWeibo: 46.2 million daily active users as of December 2012
- Renren: 57 million monthly active users as of March 2013
Outline

I. Nature of the Problem: attitudes of employers and employees

II. Attempts of Legal Regulation
   a) accessing accounts by Employers: the US Approach
   b) The use of info on SNS – US, Germany, Australia

III. In Search of a Solution
Issue

• To what extent an applicant or employee has an expectation of privacy in their personal social networking site?
Part I

THE PROBLEM: CHANGING NATURE, CHANGING ATTITUDES
Impact on productivity: by country

Increased productivity by usage of social tools is most prevalent in China, followed by India, Turkey, Mexico and Russia. These are also the countries where use of these tools is most common.
The Concerns of Employers

- Disclosure of trade secrets/confidential information
- Sexual or racial harassment of colleagues
- Posting of clients’ pictures or information
- AND
维珍航空公司宣布计划用三年斥资一亿英镑提升豪华商务舱产品。这是维珍有史以来对于商务舱最大规模的投入。3月1日起上海飞往伦敦的航班启用全新的‘精致餐饮’服务。在好莱坞黄金时代著称的高脚香槟杯将用来盛装迎宾酒，提前唤醒乘客的味蕾。还有经典的英式下午茶，每份还配有个装满点心的迷你糕点架。

2012-02-07 17:28 来自新浪微博

2012-02-07 17:28 来自新浪微博 举报

评论(3580)  转发(631)

失眠症小姐✈：东西少，又难吃，光改餐具有什么用？(5月23日 14:46)

小篮子丶：东西少，又难吃，光改餐具有什么用。该公司管理层好2.小事化大。 (4月9日 11:49)

宅人-沈昕：东西少，又难吃，光改餐具有什么用 (3月21日 23:15)

KaaateM☆：东西少，又难吃，光改餐具有什么用？大家的楼出乎意料的统一！盖得好！ (3月11日 15:06)

好_运amy：东西少，又难吃，光改餐具有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用有什么用
【本報訊】國泰航空一名泰國籍機艙服務員，上月廿五日在一班由曼谷往香港航班上工作時，因發現其中一名乘客為泰國前總理他信女兒巴東蒂（Paetongtarn Shinawatra），遂在社交網站facebook上發表想向她潑咖啡的言論。國泰接獲投訴經調查後，認為該名機艙服務員在未獲授權或許可下，違規在社交網站披露乘客資料，已被解僱。

泰籍空姐fb貼乘客名單
該名國泰駐港泰籍空姐在其個人facebook網頁上，張貼上月廿五日由曼谷往香港航班上的乘客名單，其中一名商務客位乘客是泰國前總理他信女兒巴東蒂。該名空姐更留言指從未想過巴東蒂會在該航班上，並且表示隨即向機艙服務經理報告，指在得知敵人的女兒在航機上後已經無法工作，更表示想向巴潑咖啡，「我致電我的個人顧問，問是否可以向巴潑咖啡時，對方說這是違反香港法律。」

國泰航空在facebook的官方網頁隨即擠滿逾百個留言，指有關做法是政治分化泰國，有個別留言更表明不會再乘搭國泰。泰國《民族報》（《The Nation》）引述巴東蒂表示，對該名空姐計劃向她潑咖啡的行動感到不安，「我只是乘搭航班探望父親及工作，若這樣是錯或令該名空姐感到憤怒，我致歉，而大部分國泰空姐是有禮貌的。」
Flight Attendant Fired for Posting Hostile Comments and a Picture of a Passenger on Facebook

December 6, 2012 | Filed under: BizTechNews | Posted by: Maria Lloyd

It’s another day and another person left jobless because of their Facebook profile. A flight attendant for Cathay Pacific, an Asian airline based in Hong Kong, has lost her job after posting hostile comments about Thai Prime Minister Thaksin Shinawatra’s daughter, Paetongtarn Shinawatra. In addition to stating she wanted to throw coffee in the woman’s face, she also posted a picture of her seating number on the flight.

Paetongtarn Shinawatra was on a Bangkok-to-Hong Kong flight on Nov. 25 when the incident occurred. The flight attendant caused a stir within the Thai online communities, which lead Cathay Pacific to take to its Facebook page to clear the air (pun intended). The company stated that the posting of a passenger’s personal information was unauthorized and against the airline’s privacy rules and concluded by stating the flight attendant is “no longer on an employee.” Here’s the controversial post that the flight attendant wrote on her Facebook page: "Paetongtarn, I didn’t throw coffee in her face today but she had no clue that I will keep on fighting until your clan can no longer live like fleas on the Thai soil."

In an additional post, the flight attendant said she called her personal adviser to ask “if it was all right to throw something on (Paetongtarn) on this flight.” On Monday, she said she resigned to take responsibility for her actions.
Figure 2. Percent of companies with policies that require review of reputational data vs. percent of recruiters and HR professionals surveyed who seek it.

71% of Hong Kong hiring managers check job candidates’ Facebook profiles

“This is well above the regional average of 50% (Australia 36%; New Zealand 34%; and Singapore 50%)”
Figure 3. Recruiters and HR professionals by gender who review online reputational information

Figure 1. Recruiters and HR professionals who have rejected candidates based on data found online vs. consumers who think online data affected their job search

<table>
<thead>
<tr>
<th>Percentage</th>
<th>U.S. Recruiters</th>
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Cross-Tab Marketing Services, Online Reputation in a Connected World, Jan. 2010, p 5.
Facebook Fired
FACEBOOK FIRED: 8% of US Companies Have Sacked Social Media Miscreants

August 10, 2009 by Adam Ostrow

There have been a number of cases where an employee’s misuse of social media has lead to their dismissal. However, it appears that these aren’t just outliers, but the result of a serious crackdown by corporate America on tracking their employee’s online activities.

According to a new study by Proofpoint, an Internet security firm, of companies with 1,000 or more employees, 17 percent report having issues with employee’s use of social media. And, 8 percent of those companies report having actually dismissed someone for their behavior on sites like Facebook and LinkedIn. That’s double from last year, where just 4 percent reported having to fire someone over social media misuse.

Some other interesting findings from the study:

- 15 percent have disciplined an employee for violating multimedia sharing / posting policies
- 13 percent of US companies investigated an exposure event involving mobile or Web-based short message services
fb留言鬧老闆上司 隨時被炒
病假遊玩照上載 同事告密成證據

撰文: 蔡瑤
欄名: 城市熱點

現時facebook的社交分享功能及服務愈出愈多，吸引不少市民日夜遊玩，但上班族無懼地在網上發表 Dias同時，可能隨時碰上不痛快的事宜。有僱員因在fb「唱衰」老闆遭「炒魷」，亦有人將病假期間遊玩照片上載fb，疑遭同事告密開罪上司。

輔導機構提醒，在fb上要懂慎行，因爲所發表的圖、文隨時廣傳，成爲「罪證」。與此同時，愈來愈多僱員在病假期間遊玩的照片上載fb，亦隨時碰上不痛快的事宜。有僱員因在fb「唱衰」老闆遭「炒魷」，亦有人將病假期間遊玩照片上載fb，疑遭同事告密開罪上司。

「毫不留情都減薪、無良老闆！」職工盟統籌幹事譚駿賢憶述，一名旅遊業員工在fb上狠批公司減薪，結果遭僱主藉詞炒魷，但賠足代通知金。

職僱主刻薄 上司脾氣差

fb引發的勞資糾紛已逐漸浮現，有網民在討論區透露，友人去年因爲在fb留言指出：「做法3底薪6,600……唉~唔好好似工係邊到搵~？」以諷刺僱主刻薄，豈料翌日即遭上司「照例一一切處罰，令該名員工被開除，但仍難苟同。
Right to be Forgotten > Right to Delete?
Headhunters, bankers, partners and clients go online before taking any decisions.

Manage your E-reputation

With a subscription to this service, Reputation Squad will provide you with an assessment of your E-reputation.

Your visibility on the internet may not only be the result of your actions but that of those that know you, whether friendly or not.

You can now follow the evolution of your E-reputation and ask the team at Reputation Squad to intervene if necessary.

Reputation Squad guarantees up-to-date reports to assure maximum reactivity in cases of defamation, calumny, denigration or slander for example.

Our mission

To help you follow and protect your E-reputation.
Make the switch to web2.0 free life

Select your Social Network:

Please read the C&D letter from Facebook here!!!

Faster, Safer, Smarter, Better

Tired of your Social Network?

Liberate your newbie friends with a Web 2.0 suicide! This machine lets you delete all your energy sucking social-networking profiles, kill your fake virtual friends, and completely do away with your Web 2.0 alter ego. The machine is just a metaphor for the website.
删除负面如何收费？删帖价格？
2012年09月13日 | 删除负面

1、首先，不是所有负面内容我们都可以删除。2、删除负面的价格是根据目标网站及内容而决定的，所以咨询的时候需要您提供要删除的网址链接。（对于链接您不必担心，我们会对信息进行保密避免信息遭到扩散）
3、不需要您提前支付任何费用，成功删除以后再确认付款给我们既可。
4、删除信息的时间是根据内容和网站确定的，一般承诺给您的时间是24小时内或者2个...
Part II

REGULATING ACCESS OF ACCOUNTS BY EMPLOYERS
Employee of housing estate management co. left a message on the housing estate intranet defaming the plaintiff
Hui Kee Chun v. The Privacy Commissioner for Personal Data (2009) CA

- Appellant was a former lecturer of VTC, alleged the Head had completed students’ assignments for the students, and gave instructions for him to do so.
- Recorded the conversation, uploaded that onto the internet
- Head complained to PC that there was wrongful collection and misuse
- PC: DPP3 misuse of personal data
Hiring

• when SNS setting is open to all
If not open to all

Facebook Login

Email or Phone: SNS
Password: ********

Keep me logged in

Log In or Sign up for Facebook

Forgot your password?
博總冀個資辦查“就業黑名單”

【本報消息】幸運博彩業職工總會負責人一行日前到訪個資保護辦公室，期望當局徹查及確保就業黑名單不存在，並且要求監管博彩業背景審查授予書的內容，防止職員私自泄露和自由選擇職業的權利被侵犯。個資辦副主任楊卓蔚表示，該辦已對“黑名單”進行深入的調查，現階段沒有跡象顯示“黑名單”的存在。僱主向僱員收集的資料和處理有明確的規範指引，若僱主違反相關的條例將受到法律處罰。

幸運博彩業職工總會副理事長梁孫旭、馬靜雯、理事盧耀華等一行五人，日前到訪個資保護辦公室，獲個資辦副主任楊卓蔚、職務主任廖志漢及公關宣傳技術員鄭愛慧接見。博總提出“博彩業就業黑名單”與“背景審查制度”意見及訴求。

梁孫旭表示，工會兩年內接獲卅七宗關於“博彩業就業黑名單”的求助，求助者因種種原因，被博企解僱後一直無法再踏入博彩業工作；一些求職者甚至在面試時已被拒諸門外，促請當局徹查及確保相關制度的不存在。

馬靜雯及盧耀華稱，現時博企要求僱員在入職前需簽署一份僱員背景審查授予書，擔心僱員可透過授予書獲取一些與工作無關的私人資料。背景審查若沒有得到監管，將會引起危害性效果。

楊卓蔚表示，求職者或僱員一旦發現私隱受到侵犯，可到個資辦求助。
## Password Protection Law

### Hiring and Firing

<table>
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<th>Area of Bill</th>
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<td>23*</td>
<td>5</td>
<td>38</td>
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</table>
Different Types of Statutory Protection

• Scope of coverage: sns, email, any electronic personal account
• Prohibition of employers seeking login info from applicants or employees; or seeking such info or access from co-workers
• Exceptions: investigation of misconduct; formal investigation on alleged violation of laws
• Remedies: damages, reinstatement
What about

• “Shoulder surfing”
• Pressuring applicants or employees to ‘befriend’ the employers
• Changing privacy setting to allow public access
• Part IIB

THE USE OF INFO ON SNS BY EMPLOYER: A COMPARATIVE STUDY
USNY Party Shuttle and Fred Pfantzzer (2013)

• Tour bus driver posted on Facebook criticism of the company on work conditions, benefits, union activities
• Posted on a page for NYC Tour Guides, accessible only to tour guides invited to join
Held by National Labor Relations Board

• Must reinstate the plaintiff and provide back pay
• Related to work and union benefits, not libelous
Germany

- Landesarbeitsgerich Hamm Urteil (2012)
- Facts: apprentice called his employer on Facebook to be an “oppressor”, “slave driver” and “exploiter”
- Private setting, with 112 friends
Held

• Comments: insult
• Accessible to a multitude of persons
• Pl was 26 years old, the special feature of apprenticeship
• Depending on individual case and particular facts
Australia: Linfox Australia v. Gen Stutsel (2012)

• A truck driver posted on Facebook criticising 2 managers, calling one of them ‘bacon hater’ and another with words constituting sexual harassment
• Dismissed for offensive, derogatory and discriminatory comments,
• but not supported by Commissioner
1. nature of the comments and statement
2. Width of publications
   • Internet: can reach wide audience, ease of forwarding comments, permanent nature
   • Did not agree this was mere vetting, as conversation in a pub
   • BUT
In particular

• Stutsel had been employed for 22 years
• Facebook was set up by his daughter for him
• Page was only for ‘friends’
• some of the statements complained were made by other colleagues but were not sued or dismissed
• S: did not know how to delete comments made by others
Suggested Legal Framework

• the ‘place’ of the discussion: open setting or just from ‘Friends’
• the reach of the audience
• Subject matter: any verbal or physical threats being made; racial or sexual harassment; defamatory statement
• The nature of the ‘outburst’: the cause
• Abusive or insulting personal remarks
• Employers: consistent application of policy
Part III: Things to Bear in Mind

- Employer
  - An employee’s conduct
  - Companies’ own policies in determining whether termination is legal under the circumstances: cannot be overly broad
  - System of verification
  - Opportunity for employees or applicants to dispute information

- Employee
  - Password
  - Expression in private setting of SNS
  - No. of friends
  - Relation with works
  - Nature of speech: abusive
  - Exceptions always apply
Thank you