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Social media and deontological implications

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Deontology - definition

deontology

is generally defined as

"the theory or study of **moral** obligation"
(merriam-webster.com)

from the ancient Greek

- "**δεόν**" (meaning 'obligation' or 'duty', and its plural "**δέοντα**") and
- "**λόγος**" (word, but also discourse)

And so a literal translation of the Greek word could be something like "discourse about the things to be done"



Deontology - the meaning

Despite being the ethics rules often written and coded in "deontological" codes of conduct, they are truly **juridical rules** (in Italy, the Supreme Court "Corte di Cassazione" clearly stated so in decision of Sect. III 03 Mar 2011 no. 5116 and S.U. 2007 no. 26810).

Nonetheless we generally feel, according to the definition given in the prior slide, that "**deontology**" refers to

something more

than what is strictly due by any juridical rule.

It refers also to an indicative behaviour or other non-mandatory provisions that are expected to be observed.

In the Italian "codice deontologico forense" the last article, art. 60, clearly says that "The rules of this code are mere examples of the most frequent behaviours and do not limit the field of application of the general principles expressed"



Social media

”The term Social Media refers to the use of web-based and mobile technologies to turn communication into an interactive dialogue“ (definition from Wikipedia English).

And it may refer, just to give a few examples, to:

- **Newsgroups**
- **blogs** (available everywhere and in sites such as Blogger, Drupal, Open Diary)
- **micro-blogs** (like Twitter)
- **Social networking** (Facebook, LinkedIn, Myspace, Google+)
- **Shared document Managing and Editing Tools** (like Google Docs/Drive)
- **Wikis** (Wikipedia, Wikispaces)
- **Community Q&A** (Ask.com, Yahoo! Answers)

For a more detailed discussion, please refer to [my presentation about "Lawyer and social media" at the Sept. 2011 Wroclaw congress](#) (www.fbe.org - > congresses - > congress of Wroclaw 2011)



Social media and generic deontological rules

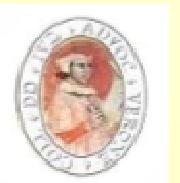
Should the use of social media by any lawyer be subject to generic rules of conduct?

Of course, yes.

There is no reason to deny that the same ethical obligations we must respect in our professional conduct should apply also in any online environment.

And so **integrity**, **independence**, and a **behaviour** that doesn't undermine the trust of the public in the legal profession are a must also when we approach the social media.

In the countries that have explicit rules about advertising, of course the use of social media as an advertising channel must obey those rules, too.



Is there a need for specific rules?

No one loves, I think, to add up rules over rules without a real need.

The answer should be "no" if we believe that no special issue or danger is hidden in the use by lawyers of the social media.

But social media have different dynamics that the "average lawyer" may not fully understand, and so he can violate somehow the ethics rules without even realizing it.

If we think this is true, then a few specific rules, or at least explicit guidelines or best practice notes, may help the said "average lawyer" to use these media in a correct way.



"dangers" of violation general rules

Principles of general behaviour

The use of social media really has a few, often subtle, dangers for us to violate, without realizing it, some "general" rules

As for Italy, art 5 of "Codice deontologico forense" requires the lawyer to always behave with probity, dignity and decorum, and a lawyer may be charged also for non-professional behaviour if it can compromise his professional reputation or the lawyers' as a class.

(something like principle 6 of UK SRA Code of Conduct 2011 or art. 1.3 of the French Règlement Intérieur National de la profession d'avocat.)



"dangers" of violation general rules general behavior - Risk of violations

Lawyers should realize that if they make, for example, trivial or dirty jokes, heavily criticize institutions or courts or singular judges, or discuss a case from any social media account in which it's explicit or clear they are lawyers (and that they use also to promote their firm, discuss legal matters, etc.), they can violate the rules of general behaviour while they may be much more free if using a "private" account side by side with a "professional" account.



general behaviour - risks of violation

Possible guideline

A rule or guideline could sound something like:

"Lawyers should keep any social media account used to discuss legal matters or promote their activity or in which they reveal to be lawyers clear from any personal and non-juridical post that could compromise probity, dignity and decorum, and use a different and private account for any free posting instead."



general behavior - Control of the Bar

The national or local Bars are in charge of the control of the potential on-line violations of their members.

Some social media, however, allow to restrict to "**friends**" or "**circles**" the discussions.

What is written in those restricted areas is not public, not even to a potential controller, but may however potentially violate in any possible way the principles of the ethic codes.



general behaviour - Control of the Bar

Possible guideline

A possible rule or guideline could say:

"Lawyers should not restrict the access to their professional social media accounts, in order to allow the potential control from the Bar"

The Consiglio Nazionale Forense in opinion no. 49 of April 27th aprile 2011 under request of the Verona Bar, suggested that restrictions to public visibility are not acceptable in any profession-related account



"dangers" of violation general rules Confidentiality

Becoming "friend" (facebook) or "connected" (LinkedIn) with a client or using the twitter account to exchange information between client and lawyer may reveal to the world the lawyer-client relationship.

This generally violates a deontological rule in Italy, art 17 of C.D.F.), but it may often happen in a very subtle way. For example, if you discuss a case in general terms, but the case is rare or famous enough to let people understand who the client was

All of these media also authorize "private" messages, that every now and then are **posted, by mistake, in the "public area"**.

By the way, this happened two weeks ago to a former Italian Foreign Affairs Minister in its F.B. page



Confidentiality suggestion

A rule or guideline to preserve confidentiality could suggest :

"Lawyers should be aware that becoming friend or connected with a client, or discussing a specific and peculiar case, could reveal the lawyer-client relationship, and doing so violate the related prohibition.

They must therefore avoid those behaviours in their social media pages and posts"



Rules about advertising

Many countries, such as Italy, have limitations regarding the advertising of lawyers in general, and more specifically there are restrictions about the on-line advertising.

As for Italy, there are basically two specific rules:

- 1) The web advertising of an Italian lawyer **MUST** be done only through **domains owned by the lawyer** or its associated firm directly referable to the lawyer its firm
- 2) **No third party advertising** is allowed, both in the form of banners on the page and as pop-up pages is allowed in web space of the lawyer



Advertising and domain property

The need to advertise only on domains of their property (e.g. www.tregnaghi.it) is **to allow everyone to check that the online source is truly related to the lawyer**, while social media allow without restrictions **fake identities**.

We can do nothing against the danger of someone acting with our identity, but that also allows every lawyer that did not follow the rules to defend himself just saying: "It wasn't me, but someone else impersonating me".

Not an easy defence if it was not previously reported to authorities, but still possible: a stalker or enemy could easily impersonate a lawyer to damage his reputation.



Advertising and prohibition to advertise third parties

In the countries that, like Italy, have these rules for on-line presence of lawyers, there is an high risk of violations if the lawyers use social media as a sort of "**firm site**", just easier to build.

Many lawyers that could not, by themselves, build a "regular site" may be tempted to build a Facebook page with the same content, since it is easier, for the average lawyer's I.T. skills, to build a facebook page than a site on an owned domain (people generally feel so, even if it is not necessarily true)

But such a page (see the following example)



...does not follow a few rules

The screenshot shows a Facebook page for a law firm. A red arrow points to the URL in the browser's address bar, which is partially obscured by a red line. Another red arrow points to the page content, specifically the 'Informazioni' section. The page includes a profile picture, a cover photo, and a description of the law firm's services. The 'Informazioni' section lists the firm's name, address, and contact information. The 'Attività degli amici' section shows a list of friends. The 'Foto' section shows a list of photos. The 'Informazioni' section also includes a list of services offered, such as civil law, labor law, and criminal law. The 'Attività degli amici' section shows a list of friends, including 'Aya Simonelli' and 'Autumn Taylor'. The 'Foto' section shows a list of photos, including a photo of a person and a photo of a group of people. The 'Informazioni' section also includes a list of services offered, such as civil law, labor law, and criminal law. The 'Attività degli amici' section shows a list of friends, including 'Aya Simonelli' and 'Autumn Taylor'. The 'Foto' section shows a list of photos, including a photo of a person and a photo of a group of people.

http://nino-bio.dlinkddns... Lunedì 12 Settembre | IL M... Windows Live Hotmail recapito studio legale michela de bellis - avvocato Codice deontologico foren...
www.facebook.com/pages/recapito-studio-legale-michela-de-bellis-avvocato/186475588068199
Personalizza...
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ricerca
Home Profilo Trova i tuoi amici Account
recapito studio legale michela de bellis - avvocato Mi piace Modifica
studio legale - avvocato - Atria
Informazioni Modifica
Descrizione
L'avvocato Michela De Bellis esercita la propria attività legale con professionalità, serietà e dinamismo operando in diversi settori del diritto ed offrendo un servizio ampio e completo volto a fornire prompte soluzioni ai quesiti posti dal cliente, anche grazie alla collaborazione di stimati ed affermati colleghi che mettono a disposizione la propria conoscenza ed esperienza in specifici rami giuridici.
Nel continuo impegno di aggiornamento professionale, l'avvocato De Bellis ha ottenuto l'abilitazione all'esercizio delle funzioni di mediatore nelle controversie civili e commerciali, sia presso gli organismi accreditati che privatamente.
In una società in continua evoluzione è necessario impostare la propria attività attorno alle esigenze del cliente, cercando di mettersi a sua disposizione.
L'obiettivo dell'avvocato De Bellis è essere in grado di offrire un servizio puntuale ed efficiente per il cliente, un servizio dinamico ed eventualmente preparato a sfruttare le potenzialità di un gruppo di lavoro per la risoluzione delle tematiche più complesse.
Aree di attività:
- diritto civile: proprietà e diritti reali, comunione e condominio, locazioni, affitti e compravendite, obbligazioni contrattuali, extracontrattuali e da responsabilità professionale, successione e lesione della legittima, separazioni e divorzi
- diritto del lavoro: contratto di assunzione, licenziamenti, mobbing, ricorsi al giudice del lavoro, risoluzione transattiva delle controversie
- contrattualistica: predisposizione ed interpretazione
- proprietà industriale: deposito marchi nazionali ed internazionali, tutela amministrativa e ordinaria, tutela del diritto d'autore, contraffazione, concorrenza sleale
- recupero crediti: attività stragiudiziale ed assistenza fase giudiziale
- infertilità e diritto assicurativo
- diritto penale
Grazie alla preziosa collaborazione di stimati ed affermati professionisti, lo studio legale può offrire consulenza ed assistenza anche nell'ambito del diritto amministrativo, tributario e societario.
Consiglia questo luogo
Aiuta i tuoi amici a scoprire luoghi fantastici da visitare. Consiglia questo luogo!
Scrivi un consiglio...
Persone che potresti conoscere Mostra tutti
Aya Simonelli 48 Aggiungi agli amici
Autumn Taylor 48 Aggiungi agli amici
Sponsorizzate Mostra tutte
Internet veloce: Chrome
google.com
Chrome si avvia e apre la tua pagina web ed applicazioni preferite in un tempo. Scarica il browser veloce di Google.
Conto BNL Revolution Più
bnl.it
BNL
gi regala un anno di emozioni Sky
Fino al 30 settembre BNL ti regala un anno di grandi emozioni Sky. Scopri la promozione.
Giochi Gratis 100%
thundertrucks.it
Gioco GRATUITO! Divertiti su thundertrucks.it, 100% Gratis, 100% Flash. Clicca qui per giocare ora! Nessun download richiesto.
Fantastici giochi online
instantplaycasinogames.com
Hai un po' di tempo? Perché non provi uno dei più divertenti giochi di slot?
Chat (0)

Prohibition to advertise third parties

The danger is quite high, since the choice of the ads is made by the social media owner, and it is influenced by the online frequentations of the single user (not of the lawyer). It may lead the user to believe that the lawyer is somehow connected with the advertising third parties.

A rule or guideline could say:

"Lawyers should avoid to build information pages, even on social media sites, that are filled by the provider with third-parties advertising"



Thanks for your kind attention

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@FTregnaghi (in English)

More about "Lawyers and social media and deontology" in the perspective of the Italian Ethics code may be found (in Italian) here:

http://www.ordineavvocati.vr.it/UserFiles//File/Francesco_Tregnaghi_avvocato_e_social_media_2011.pdf

Forza Adriano!