EUROPEAN BARS FEDERATION

INTERMEDIATE MEETING
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SOCIAL MEDIA AND LAWYERS

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If I may start by saying that as with the majority of other jurisdictions, in England and Wales there are no specific professional conduct rules directed to control the use of social media by Lawyers. The General Professional Code serves to regulate aspects of such use in terms of honesty, confidentiality, the Lawyers position as an Officer of the Court and Advertising Standards.

Traditionally Law firms have been known for being very paper based – from bookcases full with legal works to case notes and ever–growing piles of legal paperwork – but this is changing as Law firms move away from paper and into the digital world.

Social media such as Facebook, Twitter and Blogs are really just another means of communication but with the added benefit of allowing users to interact. In a sector that demands measureable returns from marketing initiatives, it means that not all Lawyers will see the benefit of investing in social media as an appropriate communication channel; it has to be a matter of careful assessment. Nonetheless taking into account that Facebook now has over 400,000000 members that would equate to the world's third largest country in population terms and for some where law is a business, that audience is too large to ignore. Social networking relies on inquisitiveness – our wish to know what others are doing. In the private sector that may merely equate to gossip, whereas in a business environment the exchange of information, development of close client relations and networking may well advance and be crucial to economic growth. It has been suggested that perhaps Twitter could become the on line equivalent of the coffee shop, the working lunch, the after work drink and the game of golf.

A recent survey has shown that Twitter has permeated the UK Legal scene to a significant degree. Over half the top 50 UK Law firms have a Twitter account, although the extent in which those accounts are used varies. The statistics reflect the position in the United States, where 76 of the AM LAW 100 have a presence on Twitter.

Allen and Overy LLP, DLA Piper UK LLP, and Eversheds LLP are three of a growing number of UK headquartered Law firms which are embracing the use of social networking sites. Allen and Overy's Twitter page was originally set up to support its G-20 London Summit Campaign as a way of promoting a

series of comment and analysis articles written by their international partners and to encourage dialogue about the issues raised in the articles.

The firm identifies its primary goals from use of social networking as the promotion of their brand and promotion of dialogue on relevant issues. In addition Allen and Overy have developed a dedicated You Tube Channel, groups on Facebook and Linkedin, client facing and internal blogs and Wikis.

Clearly security is an important consideration and the UK Government has been warning professional services firms that they are being targeted by hackers. With the choice of using social media there comes responsibility to adopt policies, and procedures not only to protect the user and third parties but to uphold the general rules of conduct applicable to the profession.

With the advent of alternative business structures and increased "consumerisation" of the legal sector in the UK, there is no doubt that many enterprises will seek to exploit social media to boost business and it remains to be seen whether the regulatory authorities will in due course need to consider special rules to control the use of such media, or find the existing rules sufficient.

At the present time it has to be said that the relationship between social media and the law is causing great concern than its use by Lawyers and if I may I would like to spend a little time highlighting a number of recent developments which in part give rise to that concern

- Family Law - In family cases facebook pages have been used or scrutinised by the Courts as a source of evidence as to character, motivation or the truth of allegations in a family law dispute. However social networking sites have also been used by spouses or family law litigants in a more direct and unsavoury way eg. as a vehicle for getting revenge on a separating spouse or as a means of surreptitiously getting round an unfavourable Order or Direction from the Court

- Employment Law – some employers may use social media to find out more about prospective job candidates. Information on networking sites, eg. Age, medical conditions, race, religion, sexual orientation is often plainly available but could not be called for at an interview. If the candidate is unsuccessful, the availability of such information could be the basis for a discrimination claim. Indeed an unscrupulous jobseeker may even intentionally put this information on the internet knowing that any company which refuses to hire him or her will have difficulty proving the negative i.e. that it never saw the information and therefore did not use it as a basis for its hiring decision.

- Service of Court Orders – A County Court has this year granted permission for a Court Order to be served on a Defendant via Facebook. In cases where a party experiences difficulties in serving the claim form or other documents, the Court has power to allow service by an alternative method or at an alternative place. This development is an indication that the English Courts are willing to take a modern approach to service by adapting procedures to new technologies.

- Twitter Libel Action – Earlier this year a Welsh Councillor was ordered to pay damages in what is believed to be the first UK libel action resulting from comments posted in Twitter – in the United States such actions are known as "Twibels"

- Civil unrest – In the wake of the recent riots that occurred in a number of cities Facebook and Twitter are to help the Police learn more about social networks and how to monitor them for signs of trouble. Notwithstanding the fact that the Government does already have powers to order a blackout, with which they would be forced to comply, they have however firmly rejected suggestions that their services should be shutdown during the riots arguing that public safety would be threatened.

- Privacy – The recent controversy over the availability of injunctions poses several significant questions for the Law, Parliament and the Courts. In the most famous on-going case the Claimant was a well known footballer who was alleged to have had a sexual liaison with a model and a reality TV star. Such claims are brought in respect of privacy on the basis of breach of confidentiality or misuse of private information. In such cases the Human Rights Act 1998 requires the Court to balance the competing interests of the qualified rights to a private life by the Claimant and freedom of expression by the media. There is a distinction between what is in the public interest and what interests the public. If a super – injunction is obtained the press are restrained from both publishing information which concerns the applicant and is said to be confidential or private and from publishing or informing others of the existence of the Order and the proceedings. However, in the majority of cases an Anonymised Injunction is usually granted. In those circumstances the Claimant is anonymised but the fact of the injunction and some of the details (except those which would tend to identify the Claimant) can be reported. The footballer obtained an Anonymised Injunction, nonetheless subsequently his name was widely publicised on social networks and in the foreign media. The case then took two further turns. Firstly a Sunday Paper published a picture of the player on its front page and then the day after publication John Hemming named the footballer in the House of Commons, relying upon Parliamentary privilege. Common to this and

many other cases has been the use of Twitter to reveal the identity of the person protected by the Anonymised Privacy Injunction. Culture Secretary Jeremy Hunt MP recently remarked that Twitter stands accused of "making an ass of the Law". The Lord Chief Justice recently admitted that the Law on enforcement was ill equipped to deal with Injunctions broken on the internet and suggested that greater regulation of the technology itself may be the answer.

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