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Some ethical and legal considerations in the use of Web 2.0

PETER MORGAN

Like all professionals, librarians and other information specialists are subject both to ethical standards that guide our professional conduct, and to legal regulation. It would be entirely wrong to suppose that the growth of the internet is solely responsible for determining the nature of the obligations and constraints to which professional behaviour is nowadays expected to conform. Many of these principles have been with us for far longer, establishing lasting social values and responsibilities that are fundamentally just as relevant now as they ever were. Issues such as copyright, defamation, and negligence - and the need to be aware of them - were part of the fabric of professional life long before the internet arrived.

And yet it is also true that the internet's development has made a significant difference in at least two respects. First, it has accelerated the pace of technology-driven change, and in so doing has forced us to reconsider whether the existing ethical and legal framework is still adequate. When Charlie Chaplin (commenting on moral issues created by the emergence of atomic weapons) wrote 'Man is an animal with primary instincts of survival. Consequently, his ingenuity has developed first and his soul afterwards. Thus the progress of science is far ahead of man's ethical behaviour' (Chaplin, 1964, 507), he was drawing attention to the same relentless process of technological change and human response. Present-day examples can be seen in the public debates surrounding *in vitro* fertilization, genetic modification, and stem cell research. So it is inevitable that the all-pervasive growth of the internet's influence should be followed by a reassessment and redefinition of the standards we need to adopt in order to exploit it responsibly, and we need to be aware of how the results affect our professional activities.

This leads to the second difference, and one that perhaps uniquely defines the internet's character. Kevan and McGrath (2001) describe it thus: 'The relationship between law and the internet is based upon a simple conflict: laws exist to regulate society; [but] the internet has created a new society founded upon the principle that it should be wholly unregulated'. The consequences of that 'simple conflict' are in fact anything but simple, and contain further complexities that are relevant to us. First, the international nature of internet communications

and the 'internet society' mean that the legal framework governing them is subject not only to the laws of each individual country in which internet-based activity takes place, but also to the growing number of transnational agreements such as those formulated by the European Community, and the different jurisdictions cannot always be reconciled. At the opposite end of the spectrum from issues of international governance are those relating to the role of the individual. The participative nature of the internet encourages us to use it in both professional and social life. We therefore become proficient in using its various services and tools for a wide range of purposes; but in so doing, we may deliberately or unintentionally blur the distinction between what we do in a professional capacity and what we do on a personal basis. If we fail to understand or respect the distinction, and if we then find ourselves defending a complaint from an aggrieved third party, such as may happen following a contentious e-mail message, blog post, or tweet, that we believed was being published in a personal capacity, we may nonetheless be involving both ourselves and our employer in questions of liability. While this chapter is primarily a discussion of what might happen in a professional capacity, it cannot completely exclude the personal element.

The reader will already have realised that what has been stated above is not exclusively applicable to Web 2.0, but is relevant to a far broader and longer-established set of occupational circumstances. Even so, it is possible to assert that Web 2.0 has prompted a renewed interest in many of these issues. There are several reasons for this. First, the set of tools that are generally regarded as the embodiment of Web 2.0 have appeared within a relatively short time frame over a decade or so, and the legislative response is struggling to keep pace. This is hardly surprising if we recall the protracted saga of successive attempts at refining copyright legislation throughout the latter part of the twentieth century, as the law attempted to adjust to what with hindsight seem like relatively modest advances in reprographic photocopier technology. Second, it is commonly observed that we live in an increasingly litigious society, one in which the consequences of a momentary lapse may result in an expensive and time-consuming process of complaint, contest, and possibly conviction or compensation. The large number of information professionals who are routinely exploiting Web 2.0 in the course of their work may very well increase the statistical likelihood that some will transgress and be pursued in the courts; but the many different forms of exploitation that Web 2.0 can facilitate may enmesh the legal process in a succession of uncertainties regarding interpretations of the law - What exactly does 'publication' mean? In precisely which country does an internet-based offence occur? Who owns the content of a mashup? In a Web 2.0 environment the targets are frequently ill-defined or constantly moving.

Third, the culture of sharing that is the essence of Web 2.0 has focused renewed attention on protection of intellectual property and digital rights management. Commercial organizations have become increasingly vocal in expressing their concerns as they see their business models and profits, and therefore their incentives to be innovative, threatened by uncontrolled distribution of their commodities. Governments and inter-governmental organizations in turn are responding by adopting a less permissive attitude, drafting legislation that favours the commercial interest, and in consequence may impose deliberate or unintended restrictions on the ways in which information - the commodity in which we deal as information professionals - can be managed. And lastly, for many people Web 2.0 is not merely a set of useful applications: it represents an ideology, an opportunity to work and communicate in a more interactive, informal, transparent, and immediate fashion than has ever been possible hitherto. In identifying with this aspiration and applying the 'do-it-yourself' spirit that accompanies much Web 2.0 activity, the enthusiast may be reluctant to adopt a cautious approach, preferring instead to take risks in pursuit of a goal that seems readily achievable - to act first and seek forgiveness as and when necessary.

To minimise the risks that exist in the world of Web 2.0, the healthcare information professional needs to be aware of the most likely pitfalls, and to have a clear understanding of what constitutes good practice. Thus it will be sensible to start by compiling a checklist of the legal issues that might arise, and then to consider how significant each is and what measures can be taken to eliminate the risk, or at the very least to minimise it to the point where the likely risk is deemed acceptable.

What are the likely problem areas? A basic list of legal issues would include data protection and privacy, defamation, copyright and intellectual property, negligence and breach of duty of care, accessibility, the respective liabilities of the host organization and any third-party organizations that might be engaged, and potential conflicts between national and international law. And in assessing the potential consequences of failure to anticipate and manage these risks adequately, the adverse outcomes will not be confined to possible punishment through the courts. There may also be significant risks to the organization such as reputational damage, operational disruption through loss of data, costly rectification processes, and lowering of staff morale. Kelly (2010) has provided a useful overview of how the organization might plan to identify and assess the risks, especially when a third-party service is under consideration.

The risks may apply to one, several, or all Web 2.0 applications, but a few examples will help to illustrate the problems that might arise. Blogging and Twitter have both attracted much

attention, both from the media and in legal circles, because of the ease with which an innocent and well-intentioned activity may become contentious and result in accusations of defamation. From its outset the history of blogging has involved many enthusiastic adopters who were motivated by the opportunities for free expression (and in the US, at least, could cite the First Amendment in their defence). Controversial opinions have been published as a matter of routine, and inevitably have sometimes resulted in accusations of defamation when they have overstepped the boundaries of what is regarded as acceptable. The speed with which a blogged opinion is transmitted, and the fact that it may be transmitted to an international audience, may both be seen as aggravating the offence; and in some legal systems the absence of any time limit on liability (in English law, for example, a new date of publication is established each time the same item is read online [Edwards and Waelde, 2009, 52]) adds a further element of risk. While this may not seem at first glance to be a matter of great concern for the librarian who maintains a blog, in either a personal or institutional capacity, the risk becomes considerably greater if that same blog permits readers to post their own unmoderated comments. Twitter, while it has the same characteristics of speed and internationality, is in some respects a less risky medium since its limit of 140 characters per message may act as a natural form of restraint; but that same limit may also lead a Twitterer to cut corners and in doing so to imply something that would not have been present in a longer statement.

Data protection issues must be considered with care. In each Web-based service operated by a library, the likelihood is that data about its users will be collected - in the form of email addresses, logon identifiers, cookies, and other records of usage. Where the service involves a third-party host the risks, and thus the need to ensure that privacy can be maintained, is even greater. Edwards (Lex Ferenda, 2010) has identified the problems that can arise when the third party in question has very restrictive practices on access to the data it holds.

A third area of likely difficulty relates to copyright, intellectual property, and plagiarism. For example, the ease with which text and images can be cut and pasted into Web-based library services may blind the blogger or mashup designer to the need to observe the necessary legal formalities. The manager of these services needs to be vigilant in ensuring that rights are observed, and must also have in place a suitable 'take-down' procedure for removing items that are challenged.

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It should be clear from the foregoing that when we set out to use Web 2.0 applications we have to be aware of the possible dangers involved and will be well-advised to undertake a realistic risk assessment. In the institutional environment this may be a formal organizational procedure that all staff have to observe, but even where it is not obligatory the conscientious professional should be thinking critically about the possible pitfalls. This means not only being aware of the more obvious legal requirements, but also in ensuring that the Web 2.0 users' conduct is consistent with the ethical standards expected of them.

We are able to draw on a number of codes of ethical practice from different countries. In some cases codes framed specifically for healthcare information professionals are available (Medical Library Association, 2010; European Association for Health Information and Libraries, 2002) while in other countries the healthcare information profession relies on more general statements issued by parent bodies ([UK] Chartered Association of Library and Information Professionals, 2009a, 2009b) or other authorities, as in the case of the Canadian Health Libraries Association/Association des bibliothèques de la santé du Canada, which relies on the MLA code just cited. It will quickly become apparent that none of these codes or the many others like them (IFLA, 2010) attempts to address issues arising specifically from activity on the internet, let alone from the use of Web 2.0 applications; but that is not a criticism. These codes lay down general standards that can and should be applied in all areas of the healthcare information professional's working life. It follows that if a professional is charged with negligence by an aggrieved client such as a library user, the ability to demonstrate that their actions were consistent with reasonable professional behaviour, as decreed by their fellow-professionals and defined in the relevant code, will form an important part of any defence.

Given the rapidly changing legal framework for regulation of the internet and the Web, it is not realistic - and indeed might be dangerously misleading - for a chapter of this sort, written by a non-lawyer, to cite specific laws and rulings as a definitive statement of what is permissible or forbidden. The obvious *caveat* applies, that nothing here should be taken as authoritative legal advice. The reader who needs such advice must seek that from competent authorities with an up-to-date knowledge of the law, both nationally and internationally, as it affects internet use. It is, though, more realistic to offer guidance on good practice and the principles on which it is based; and for the reader who wishes to be as well prepared as possible by monitoring current thinking, draft legislation under discussion, court rulings, or legal analysis, there are many sources of current awareness available to a non-legally trained audience. Perhaps ironically but not surprisingly, a rich vein of material is

to be found in the blogosphere and on other websites, and a short list of some useful sources that are regularly updated is provided at the end of this chapter.

It is rather too easy for a discussion of ethical and legal issues to sound negative and discouraging. We should rather heed the advice of Jing Jih Chin (Chin, 2010, 3) who, writing about doctors' attitudes to social networking, has observed that 'a knee-jerk reaction to reject any new technology or platform that appears to threaten professionalism risks rendering ... practitioners irrelevant.' The evidence to date is that few librarians, in healthcare or elsewhere, have yet been on the receiving end of legal actions because of their misuse of Web applications, charged with a failure to maintain the necessary ethical standards. A sensible policy of vigilance is likely to ensure that this state of affairs continues.

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Michael Zimmer.org: Information ethics, new media, privacy, values in design, michaelzimmer.org/

panGloss: a UK-based cyberlaw blog, blogscript.blogspot.com/

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