

JEREMY HARRIS LIPSCHULTZ, *SOCIAL MEDIA COMMUNICATION: CONCEPTS, PRACTICES, DATA, LAW AND ETHICS*, (Routledge Taylor & Francis Group 2015)

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Examining Legal Issues Implicated by Social Media

*“As a general rule, social media and other Internet communications are not immune from traditional media law—libel, privacy, copyright and commercial speech. When a user signs on to a site, such Facebook, she or he agrees to a Term of Service (TOS) agreement that is essentially a contract.”*¹

Today, people use social media for all aspects of their lives. Social Media can be a useful tool to network with others both socially and professionally. Further, social media can even be used to advertise for your business. While social media can be very useful, it is important for users to understand the possible legal and ethical issues that can arise on social media. In an age where everyone is on social media, it is important for students and professionals to learn how to properly use social media.

The author, Jeremy Harris Lipschultz, presents an analysis and guide to social media use in *Social Media Communication: Concepts, Practices, Data, Law and Ethics*. Lipschultz provides students and professionals the tools to navigate and utilize social media effectively in their careers. While he encourages the use of social media, he also

¹ JEREMY HARRIS LIPSCHULTZ, *SOCIAL MEDIA COMMUNICATION: CONCEPTS, PRACTICES, DATA, LAW AND ETHICS* 161 (2015)

warns readers of potential legal and ethical issues that one may encounter on the web and how to avoid them. This book review focuses on the potential legal and ethical issues that social media users encounter.

Lipschultz is the Isaacson Communications Professor at the University of Nebraska at Omaha. He teaches Communication Law, Computer-Mediated Communication, Social Media Metrics, and Foundation Seminar: Mass Communication. Lipschultz has a Bachelor's of Arts from University of Illinois, a Master's from University of Illinois-Springfield, and a PhD from Southern Illinois University-Carbondale. He also blogs for *Huffington Post* and *ChicagoNow*, often writing about social media. His most recent blog post on Huffington Post was published on December 29, 2016 and is titled: "Social Media News and Entertainment Planning for 2017." He has written several books in the field of media/communications, including such titles as: *Broadcast and Indecency: Defining Free Speech*, *Crime and Local Television News: Dramatic, Breaking, and Live From the Scene*, and *Free Expression in the Age of the Internet: Social and Legal Boundaries*. You can follow him on Twitter @JeremyHL #smc2015.

This book covers all topics relevant to social media use. The book is structured in twelve chapters each tackling a different concept and issue arising out of social media use. Chapter 1: "Introduction to Social Media Concepts" focuses on general social media concepts and theories. Chapters 2-7 explore issues in social media use in journalism, public relations, advertising and marketing, and investment. This review focuses on chapters 8-10, which cover privacy, law and regulation, and social media ethics.

Lipschultz structures his book as a resource guide for students and professionals. In doing so he uses real world examples. For instance, to illustrate a point about how an incorrect or insensitive post can instantly gain coverage through re-tweeting/sharing, he uses the example of the 22 year old from Michigan who dressed as a Boston Marathon victim for Halloween and posted it on Instagram and Twitter.² Lipschultz points out that the 22 year old's tweet and Instagram received thousands of negative tweets/comments, and was also reported on by *Buzzfeed*.³ In addition to using real world, and sometimes pop culture examples, Lipschultz uses 'text boxes' with a iPhone icon to introduce articles written by others on the chapter's subject or to show further research done on that subject matter. These 'text boxes' allow the reader a sense of a "choose your own adventure" type of experience, where you don't need to read the optional 'text box,' but you will certainly learn more information on the subject. The book also seems to encourage use by Professors as each chapter ends with discussion questions.

In Chapter 8: "Big Data and Privacy," Lipschultz starts off the chapter by focusing on the development of privacy as "a right 'to be let alone'" a concept developed by Justice Brandeis.⁴ Lipschultz examines privacy under the Electronic Communications Privacy Act of 1986, which criminalized wiretapping.⁵ Lipschultz then focuses on the privacy policies on popular social media sites such as Twitter, Facebook, Google +, Instagram, Tumblr, and Snapchat.⁶ In this section, Lipschultz pulls actual language from the social media platforms' terms of use/policies.⁷ What is notable about this section is

² See Lipschultz, *supra* note 1, at 1.

³ See Lipschultz, *supra* note 1, at 1.

⁴ See Lipschultz, *supra* note 1, at 141.

⁵ See Lipschultz, *supra* note 1, at 142.

⁶ See Lipschultz, *supra* note 1, at 144-50.

⁷ See Lipschultz, *supra* note 1, at 144-50.

that most users of social media are probably not aware of all privacy rights they are agreeing to give up when they sign up for each platform.⁸ Lipschultz is particularly effective when he goes through each social media platform and identifies which privacy settings are automatically provided and which you have to elect.⁹ Further, he points out which rights you automatically waive just by signing up. For instance, “Twitter broadly collects user data and has the right to use it: ‘This includes not only the messages you Tweet and the metadata provided with Tweets, such as when you Tweeted, but also the lists you create, the people you follow, the Tweets you mark as favorites or Retweet, and many other bits of information that result from your use of the Services.’”¹⁰

In Chapter 9: “Law and Regulation,” Lipschultz begins by discussing the constitutional protections of the First Amendment, including the 1964 case *New York Times v. Sullivan*, which opened the doors of defamation law.¹¹ Next, Lipschultz explains that internet service providers are protected from third-party liability, thus they cannot be sued for libelous content posted on their social media platforms.¹² Interestingly, however, Lipschultz does not mention the Communications Decency Act, which actually provided Internet Service Providers immunity from third-party liability. It would have been useful to explain the Communications Decency Act and the reasoning behind enacting it in this section of the chapter. It should be noted that the Communications Decency Act is mentioned in a different section of the chapter, but focuses on the part of the Act, which makes it illegal to send or make available obscene

⁸ See Lipschultz, *supra* note 1, at 144-50.

⁹ See Lipschultz, *supra* note 1, at 144-50.

¹⁰ See Lipschultz, *supra* note 1, at 145.

¹¹ See Lipschultz, *supra* note 1, at 158.

¹² See Lipschultz, *supra* note 1, at 159.

or indecent material to children.¹³ The Communications Decency Act is also in the section on “Social Media Privacy Issues,” in which Lipschultz does mention it briefly with respect to internet service provider third-party liability in defamation suits.¹⁴ It still would have been helpful if Lipschultz had provided more of a background as to why this Act was enacted at the time, i.e. to encourage new technology and innovations and to not discourage the development of new companies through fear of possible threat of litigation as a result of third party actors.

Later in Chapter 9, Lipschultz provides some interesting additional facts and information that are especially intriguing to lawyers. In a ‘text box’ in this chapter, Lipschultz mentions how a Kentucky Supreme Court ruled that attorneys are allowed to research prospective jurors on social media sites, as long as they do not “friend” them.¹⁵ Also in this chapter, Lipschultz provides information that would be helpful to lawyers, not only for themselves, but for advising clients. For instance, Lipschultz analyzes the Federal Trade Commission regulation of advertising on social media.¹⁶ He notes that the Federal Trade Commission focuses on advertisers rather than endorsers on social media since the “law defines deceptive practices as those misleading “a significant minority of consumers.””¹⁷ Lipschultz also warns users that employers have their own social media policies and employers provide employees very limited privacy rights.¹⁸ He further notes

¹³ See Lipschultz, *supra* note 1, at 170.

¹⁴ See Lipschultz, *supra* note 1, at 181.

¹⁵ See Lipschultz, *supra* note 1, at 162.

¹⁶ See Lipschultz, *supra* note 1, at 174.

¹⁷ See Lipschultz, *supra* note 1, at 176.

¹⁸ See Lipschultz, *supra* note 1, at 180.

that the law is not clear as to whether employees have First Amendment rights in the workplace.¹⁹

In Chapter 10: “Social Media Ethics,” Lipschultz highlights that social media use raises many ethical issues as people believe that their actions are anonymous on the internet.²⁰ Further, he warns that since social media interactions are often in “real-time” people need to be constantly vigilant that they are providing the correct impression.²¹ He notes that this “real-time” interaction can become very helpful in creating a brand, and allows individuals like CEOs to become the face of the company.²² Lipschultz further warns that while social media use should not alter a company’s ethics and principles, it is important to be aware and sensitive of different individual’s views since you are posting on the internet, which has global reach.²³

The book ends with Chapters 11 and 12, which focus on best practices in social media use and the future of social media and information literacy.

The book is a good tool for students and professionals to learn quickly about issues that could come up when using social media. It is written clearly and directly in a way that would be useful to the target audience. The set up—using real world examples, and short concise chapters—is conducive to be read for pleasure, but could just as easily be read as a reference. Further, by only putting one subject matter in each chapter, Lipschultz effectively allows readers to read only chapters that interest them or are applicable to them. For a non-lawyer he provides most of the important information on

¹⁹ See Lipschultz, *supra* note 1, at 180.

²⁰ See Lipschultz, *supra* note 1, at 185.

²¹ See Lipschultz, *supra* note 1, at 187.

²² See Lipschultz, *supra* note 1, at 187.

²³ See Lipschultz, *supra* note 1, at 187.

social media and the law in Chapter 9, but while he covers the most important issues that users need to be aware of, this book is better used as a reference guide in these areas. I would encourage those in the legal field to read Chapter 9, but not to rely on it for any legal analysis. However, to be fair, his intended audience does not appear to be law students or legal professionals, but other non-lawyers who need to be aware that there are legal implications involved in social media use. He does a successful job concisely highlighting and flagging common issues and suggesting precautionary measures to protect oneself.

The book is effective as a reference guide, but I would caution a reader using it for anything other than a reference for flagging potential issues involved in social media use. I believe that most non-lawyer students and professionals are not aware of, or do not consider, the implications of certain social media use. Today, many people are using social media constantly and are broadcasting personal information of their daily lives without worry or care as to who sees it. Lipschultz warns that you are creating a profile for yourself that can be accessed by potential employers and clients. He effectively demonstrates the pitfalls for not using social media wisely through his real world examples. The only real weakness of the book is that he is not a lawyer, so I would advise against using it for legal analysis, but it is a very good reference for a non-lawyer student or professional, which is the intended audience.

Overall, I would recommend this book to its intended readers—students and professionals. It is a good guide for navigating social media for both personal and professional use. I would especially recommend reviewing Chapter 8 where he pulls apart each social media platform's terms of use policy and explains how to properly

protect yourself online.