

Government: Hypothetical Case Studies
Unreasonable complainant conduct in a virtual world
SOCAP – Amora Jamison Hotel, Sydney
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Public servants and social media

Recent examples:

- The 'Facebook Six' – NSW Corrective Services
- School principal sues parent for defamation
- NSW police officer takes out AVO on social media stalker
- 19-year old man convicted of criminal defamation of a police officer in South Australia

Today's discussion

- Unreasonable Complainant Conduct (UCC) and the Managing UCC project
- Growing incidence of UCC online and on social media
- What agencies can do to deal with this conduct
- Hypothetical case study

A proactive approach

1. Use online tools and alerts for monitoring discussions about online
2. Develop a social media policy for staff of the organisation
3. Develop a set of rules for complainants on acceptable and unacceptable uses of social media
4. Treat unreasonable complainant conduct online in the same way as unreasonable conduct generally, using the approach advocated in our UCC Manual

Categorisation of complainant conduct

Normal = concerned/upset/annoyed

Difficult = challenging [but acceptable in the circumstances]

Unreasonable = unacceptable

Issues identified in UCC focus groups

- the impact of unreasonable complainant conduct on staff members
- the management of expectations
- the use of surveillance technologies and physical design (ie office layout) to ensure staff safety
- forum shopping, including the involvement of ministers and their staff in complaint handling
- UCC use of social media

Educating the social media generation

- A significant number of young people in Australia have a Facebook account
- There is a growing incidence of inappropriate behaviour by students and parents in social media to defame teachers
- Schools and teachers are being instructed on how to handle such behaviour

Educating the social media generation (cont'd)

Recent examples:

- 17 year old Sydney student charged under the *Commonwealth Criminal Code Act 1995*
- Police officer takes AVO out against woman he had befriended online

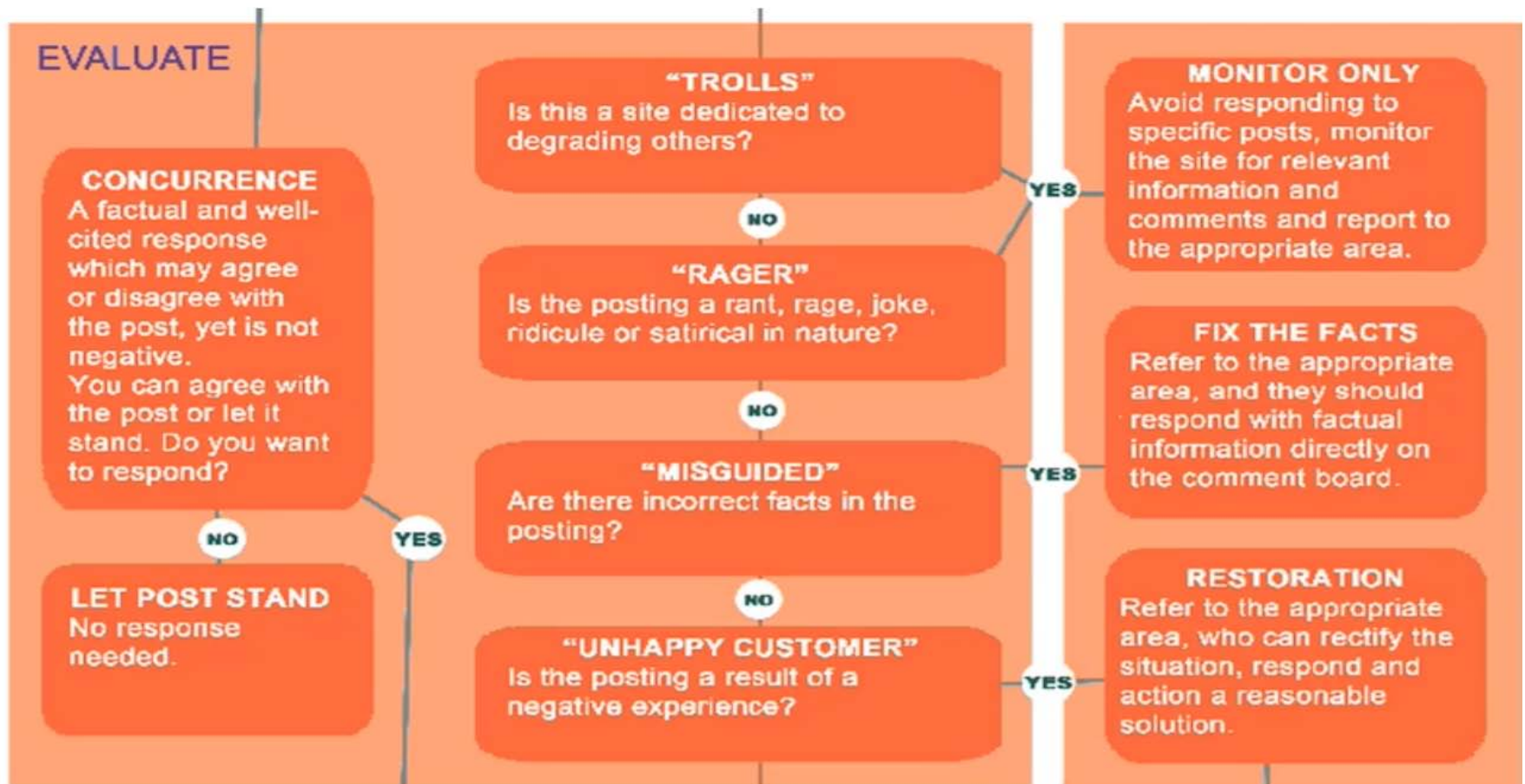
Examples of applicable legislation:

- Victoria – s21A(2) of the *Crimes Act*
- Queensland – s395B of the *Criminal Code*

Question

If organisations are to get involved in managing unreasonable complainant conduct online, what should be the threshold test for doing so? For example, should they only get involved when the behaviour impacts on the workplace environment?

What if the conduct does not reach that threshold? Is there still scope to get involved?



SOURCE: NSW Department of Education and Communities, 'How to manage negative or controversial online conversations,' YouTube video, <http://www.youtube.com/user/nswdec#p/a/u/0/-KKQxbV0xB0>, 5 May 2011.

Risk assessment

Ask yourself:

- is the harm sufficient to warrant action?
- is there a significant risk of misinformation?
- is the conduct of the complainant hijacking the communication stream?
- will the complainant's conduct significantly damage the reputation of the agency?

‘Proactive mechanisms’

Possible proactive mechanisms may include:

- building social media and its associated risks into the agency risk management framework
- developing policies and guidelines for staff in relation to social media – both work-related and person use
- disclaimers for posting on agency social media sites
- counselling services for staff who are the subject of the unreasonable conduct of a complainant

Question

What are the detrimental consequences [eg, *damage to reputation, distress to staff*] to your agency (if any) as a result of the complainant's online conduct:

- Damage to reputation of the agency
- Stress to staff – particularly the doctor as these comments may jeopardise her career
- Hijacking of the communication stream, resulting in an ineffective forum and poor customer service
- Misinformation to public

Question: Do you think you *should* respond to the online attacks by the complainant in all forums?

YES

- All online attacks are capable of being searched in Google and could potentially damage the name of the organisation and the doctor – all posts that are capable of being removed should be removed immediately
- The complainant should be blocked from posting on the agency Twitter and Facebook immediately to prevent further damage

Question: Do you think you *should* respond to the online attacks by the complainant in all forums? (cont'd)

NO

- It is healthy for an agency to receive feedback, even if it is negative
- The complainant could be agitated even further by the removal of his comments
- The agency can't be seen to discriminate against people wanting to provide feedback
- The complainant's personal Facebook and web page are not a concern for the agency
- It's good for the complainant to vent as it means he is not creating work by contacting the agency directly and it may assist him in calming down
- The tone of the rant / the way the complainant vents his concerns may be exaggerated and may support a perception that the complainant has little or no credibility

Question 4: If yes, what are the some control mechanisms you would use to manage the complainant's online behaviour?
[For example, moderator, deletion of posts, etc.]

- Staff moderators
- Risk management strategies
- Media monitors / alerts
- Hosting services
- Disclaimers / guidelines
- Message of support for staff
- CAPTCHA

Forum specific mechanisms

- **Online forums generally**
 - Set clear terms and conditions that are available on the forum
 - Alter settings to allow you to review comments before they are posted
 - Delete offensive comments
- **YouTube**
 - Alter settings
 - Delete offensive comments
 - Limit comments to ‘friends’ only

Forum specific mechanisms (cont'd)

- **Facebook**

- Alter settings to 'block' users
- Posts can be deleted
- A 'wall' can be 'disabled' so that only the profile owner / agency can post
- 'Friend' or 'member' requests can be screened / rejected
- Change privacy settings so that comments posted on your wall can be viewed by you but not others
- Recent changes to Facebook privacy settings may allow agencies to delete offensive 'tags' before they appear on the agency profile page

Forum specific mechanisms (cont'd)

- **Twitter**
 - You can ‘unfollow’ or ‘block’ certain users
 - ‘Flag’ posts that are offensive for possible removal by Twitter
 - Twitter has published rules, policies and guidelines for the use of its forum, which prohibit certain behaviours
 - Submit a Twitter ‘Support Ticket’

Advantages and disadvantages

Staff moderators

Pros: keeps agency well-informed of public perceptions

Cons: resource intensive, requires constant surveillance by the staff member, issue of discretion over the deletion of posts

Media monitors / alerts

Pros: immediate notification when a specific term is posted in a public forum. For a paid monitor, this will be less resource intensive in terms of agency staff.

Cons: may not capture everything and may be expensive if an external provider is utilised.

Advantages and disadvantages (cont'd)

Hosting services

- **Pros:** doesn't require resources from the individual agency in the form of staff moderators, has immediate response times, is in a government environment – relative to other departments dealing with complainants
- **Cons:** agency staff may not receive as much exposure to relevant feedback from people using the forum. An external hosting agency costs money.

Advantages and disadvantages (cont'd)

Disclaimers / guidelines

- **Pros:** complainants know what to expect if they post offensive /defamatory material, complainants may be deterred from posting if they know it will be deleted
- **Cons:** will need to exercise caution in deleting posts. Will need to establish a threshold and make the threshold clear in the disclaimer. May deter people generally from using the site as they are afraid their post will be deleted.

Advantages and disadvantages (cont'd)

Message of support for staff

- **Pros:** supportive for staff, discounts validity of complainant's statement, sheds negative light on complainant's conduct
- **Cons:** is essentially acknowledging the complainant's conduct, may encourage the unreasonable complainant to continue conduct as they know the agency is 'paying attention'.

According to Judith Miller and Julie Markoska from DLA Piper Australia, a good social media policy should:

- Set out procedures for notifying and challenging suspected infringements
- Set out procedures for dealing with inappropriate user generated content posted on social media sites
- Reiterate company policies in respect of confidential information, intellectual property and trade secrets
- Inform employees of consequences of plagiarism and defamation
- Ensure there are consequences for violation of policy

According to Judith Miller and Julie Markoska from DLA Piper Australia, a good social media policy should: (cont'd)

- Stress the importance of employees acting as company representatives
- Know the terms and conditions of use for each website/blog
- Not refer to clients, customers or partners if the relationship with them is confidential
- Not make defamatory statements, and
- Respect the employer's and third parties' intellectual property rights¹

¹ *'Dealing with the risks associated with the use of social media'* by Judith Miller and Julie Markoska, DLA Piper Australia, Internet Law Bulletin May 2011 pp 34 – 37.