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Social Media and Homeowners Insurance: Are Your Facebook Posts Covered?

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Introduction

“Sticks and stones may break my bones, but words will never hurt me.” Unless you post them on Facebook or Twitter. In that case, there’s an increasingly likely chance you’ll find yourself sued for defamation.

For most people, getting sued for defamation would have been unthinkable twenty or thirty years ago. To prevail on a defamation claim, a plaintiff must prove that the defendant “published” the allegedly disparaging statement to a wide-enough audience to cause the plaintiff reputational or other harm. Before the advent of social media in the late 1990s and early 2000s, the average person could not have easily reached such an audience.

The rapid, historic rise of social media websites and mobile networking applications (or “apps”) has completely changed this. Now, anyone with a smart phone or computer can easily share his or her opinions—whether on issues, events, or other people—for the world to see.

In only two decades, social media has become an entrenched part of our everyday lives. In 2005, only 7% of adults in the U.S. used social networking sites or apps.¹ By 2015, the number had skyrocketed to 65%.² The increase among “young adults” (ages 18-29) is particularly staggering. While only 12% of young adults used social media in 2005, 90% did last year.³ For adults between 30 and 49, social media use jumped from 8% to 77% over the same period.⁴

¹ ANDREW PERRIN, PEW RESEARCH CENTER, *Social Networking Usage: 2005-2015*, Oct. 2015, at 2, available at <http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/>.

² *Id.*

³ *Id.* at 4.

⁴ *Id.*

Countries around the world have experienced similar trends. Indeed, Facebook now has roughly 1.13 billion total active daily users worldwide.⁵ This means that for every seven humans on Earth, at least one logs onto Facebook every day. With over 700 million daily users, China's top messaging platform, WeChat, is not far behind.⁶ The immensely popular apps Snapchat and Twitter have about 150 million and 136 million daily users, respectively.⁷ Over a billion people also now use WhatsApp.⁸

As social media has given more and more people a freely accessible forum for publicly expressing themselves, there has been an explosion in the number of defamation lawsuits stemming from allegedly disparaging statements made online. In 2009, for example, singer Courtney Love was sued for calling her fashion designer a drug dealer, thief, and prostitute on Twitter after the two had a billing-related dispute.⁹ Love ultimately paid nearly \$800,000 to settle the litigation.¹⁰

But you do not have to be rich or famous to get sued. More commonly, these suits have targeted ordinary people who probably had no idea that their online activities would expose them to civil liability. Consider Ava Bird, whose former attorney sued her in 2013 for posting an allegedly defamatory review on Yelp.¹¹ Or the British Columbia woman whose neighbor sued

⁵ FACEBOOK, *Our History*, <http://newsroom.fb.com/company-info/> (last visited Oct. 14, 2016).

⁶ *WeChat Breaks 700 Million Monthly Active Users*, BUSINESSINSIDER.COM, Apr. 20, 2016, available at <http://www.businessinsider.com/wechat-breaks-700-million-monthly-active-users-2016-4>.

⁷ Sarah Frier, *Snapchat Passes Twitter in Daily Usage*, BLOOMBERG.COM, June 2, 2016, available at <http://www.bloomberg.com/news/articles/2016-06-02/snapchat-passes-twitter-in-daily-usage>.

⁸ Cade Metz, *One Billion People Now Use WhatsApp*, WIRED.COM, Feb. 1, 2016, available at <http://www.wired.com/2016/02/one-billion-people-now-use-whatsapp/>.

⁹ Eriq Gardner, *Courtney Love Ends Twitter Defamation Row With \$350,000 Settlement*, BILLBOARD.COM, Aug. 31, 2015, available at <http://www.billboard.com/articles/news/6678793/courtney-love-ends-twitter-defamation-row-with-350000-settlement>.

¹⁰ *Id.*

¹¹ Paresh Dave, *California Supreme Court Votes to Review a Libel Case over Negative Yelp Reviews*, LATIMES.COM, Sept. 21, 2016, available at <http://www.latimes.com/business/technology/la-fi-tn-yelp-ava-bird-20160921-snap-story.html>.

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