Social Media and DR

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This paper was prepared and settled jointly by the members of ADRAC.

Introduction

Dispute resolution is accomplished by communication. Disputes are often attributed to communication or the lack of it, which in itself is communication. On the rare occasions when communication is not a contributing cause of a dispute, the dispute is conveyed by communication. Communication is there, one way or the other in conflict and in disputes.

Conflict, disputes and dispute resolution are intrinsic to the human condition. Conflict could be said to be a byproduct of 'social activity'. Conflict and its resolution are both a result of and meet some of the fundamental social needs of humanity. Conflict results from relationships; relationships meet the needs for acknowledgement of individuality and connection with others. Meeting one's own needs and others' inevitably results in conflict. When a dispute arises it is the striving for equanimity which creates the need for dispute resolution.

A range of social media in a multitude of forms facilitates the communication fundamental to relationships, the same communication that contributes to, conveys and resolves disputes.

Quote

> [The paradoxical aspects of its uses coincide with the ambiguity and limits of human communication.](#)

This comment by Lasen referred to the mobile phone, particular to its mobility, accessibility and to its being a personal device.

Connection between Social Media and DR

Communication is fundamental to meeting the needs, conveying the rights and exercising the authority of individuals, groups and entities. Much communication takes place through social media. The distinction between real and virtual interfaces has long since become academic: communication is communication; disputes are disputes; and resolution is resolution. Social media is along for the ride.

Definition

Consistent, descriptive terminology for the field of multiple originators and multiple receivers, virtual, interpersonal communication is elusive. At present the terms 'social software', 'social media', 'social networking' and 'online comms' are used almost interchangeably. Even when terms are defined and distinguished from another, the distinction is often specific to a particular author and likely to be contradicted by another.

Social media shifts the emphasis from the physical space to the virtual space and from the verbal communication of the mobile phone to communication in any and all modalities. Social media shift the concepts of 'remote' and 'alone' by shifting the reference point from spatial to virtual reality.

Social media are platforms of virtual reality which facilitate high connectivity and high acknowledgement among like-minded people.

The [Justice and Regulation Department, State Government of Victoria](#) resorts to describing and classifying rather than characterising social media:

> Social media - Content created by people using highly accessible and scalable publishing technologies. Social media is distinct from traditional media such as newspapers, television and film. Social media comprises relatively inexpensive and accessible tools that enable anyone (even private individuals) to publish or

access information – other media generally require significant resources to publish information.

Social media may include (although is not limited to):

- social networking (e.g. Facebook, LinkedIn, Bebo, Yammer, Snapchat)
- video and photo sharing apps (e.g. Instagram, YouTube, Vine, Pinterest)
- blogs, including corporate blogs and personal blogs, Tumblr
- blogs hosted by media outlets (e.g. comments or your say feature)
- micro-blogging (e.g.Twitter)
- wikis and online collaborations (e.g. Wikipedia)
- forums, discussion boards and groups (e.g. Google groups, Whirlpool)
- vod and podcasting
- online multiplayer gaming platforms
- instant messaging (including SMS, WhatsApp, Viber)
- geo-spatial tagging (Foursquare, Yelp).

Perhaps ADRAC could enter the fray with a definition of social media along the lines of 'platform involving multiple recipients/senders of communication through the Internet and wireless networks as well as by platforms that rely on them'.

Context/summary

Social media in disputes and dispute resolution has been causing consternation among some and being taken as read among others. The [American Bar Association (ABA) (undated)](#) notes that 'the clash between social media and traditional litigation is tectonic'. While litigation is not for this purpose a form of dispute resolution, it does make the point.

> Social media's obsession with limitless access to loose distribution of all sorts of personal and commercial data is diametrically opposed to litigation which is a tightly regulated and highly orchestrated process for producing, exchanging and presenting information.

In the same paper, the ABA asks two questions: 'Does ADR's relative lack of formality when it comes to gathering and presenting information make special rules regarding social media more or less important [than for litigation]?'; and 'What guidance should parties, counsel and neutrals follow regarding the use of social media in mediations and arbitrations?'.

The ABA suggests two principles which in its opinion addresses some of the issues that they perceive to be arising from the ubiquitous use of social media: the parties' interests and adhering to professional ethics.

For those who have only known communication to include social media, the principles of best practice accommodate the particular considerations of social media and dispute resolution. Social media presents particular issues regarding privacy and confidentiality as well as security of information. The risks of communicating through social media and storing information electronically are likely to be different from the risks of communicating in person and storing information in hard copy. However, how the risks are perceived will depend upon a cost benefit analysis on the perceptions of providers and clients.

Social media does not yet initiate communication; it is a carrier. As the ABA concluded, it is the lived principles of DR practice that affect dispute resolution and therefore inevitably affect the efficacy of social media.

Overall themes

Social media are inevitably an aspect of dispute resolution as are people. The elements of dispute resolution remain the same; the means of implementing processes of dispute resolution evolve.

Social media platforms enable multiple messages to be sent and received in the same time that it takes to write a text message. To the extent that messages are affirming and affiliating, good will is disseminated far and wide. To the extent that messages are critical and isolating, bad blood is delivered on well beyond a friendship circle.

Mapping Social Media and DR

Social media is in use in all forms of dispute resolution, from facilitative approaches to advisory and determinative approaches, because when people younger than 'a certain age' communicate, they often broadcast their news.