



Proceedings

A monthly newsletter from McGraw-Hill

September 2011 Volume 3, Issue 2



The McGraw-Hill Companies

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Dear Professor,

I hope your Fall Semester 2011 is off to a great start! Welcome to McGraw-Hill's September 2011 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 3, Issue 2 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the September 2011 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. Tobacco company litigation against the federal government over graphic warning requirements on cigarette labels;
2. China's recent "crackdown" on Internet content;
3. Employer restrictions on employee Facebook postings;
4. Videos related to a) a new Missouri Facebook law meant to protect students from sexual predators; and b) the United Kingdom's response to limitations on social media;
5. An "ethical dilemma" related to a recent lawsuit alleging that Microsoft tracks the location of its mobile customers without permission; and
6. "Teaching tips" related to Video 1 ("Missouri Teachers Protest 'Facebook Law' Meant to Protect Students From Sexual Predators"); and The Ethical Dilemma ("Microsoft Windows Phone Tracks Customers Without Consent, Lawsuit Claims") of the newsletter.

Here's to continued academic fulfillment in 2011!

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Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) Tobacco company litigation against the federal government over graphic warning requirements on cigarette labels;
- 2) China's recent "crackdown" on Internet content; and
- 3) Employer restrictions on employee Facebook postings.

Hot Topics in Business Law

Article 1: "Big Tobacco Sues Feds over Graphic Warnings on Cigarette Labels"

<http://www.msnbc.msn.com/id/44171861/ns/health-cancer/t/big-tobacco-sues-feds-over-graphic-warnings-cigarette-labels/>

According to the article, tobacco companies want a judge to put a stop to new graphic cigarette labels that include the sewn-up corpse of a smoker and pictures of diseased lungs, saying they unfairly urge adults to shun their legal products and will cost millions to produce.

Four of the five largest United States tobacco companies sued the federal government recently, saying the warnings violate their free speech rights.

"Never before in the United States have producers of a lawful product been required to use their own packaging and advertising to convey an emotionally-charged government message urging adult consumers to shun their products," the companies wrote in the lawsuit filed in federal court in Washington.

The companies, led by R.J. Reynolds Tobacco Co., Lorillard Tobacco Co., said the warnings no longer simply convey facts to allow people to make a decision on whether to smoke. They instead force them to put government anti-smoking advocacy more prominently on their packs than their own brands, the companies say. They want a judge to stop the labels.

The Food and Drug Administration (FDA) refused to comment, saying the agency does not discuss pending litigation. But when she announced the new





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labels in June, Health and Human Services Secretary Kathleen Sebelius called them frank and honest warnings about the dangers of smoking.

The FDA approved nine new warnings to rotate on cigarette packs. They will be printed on the entire top half, front and back, of the packaging. The new warnings also must constitute 20 percent of any cigarette advertising. They also all include a number for a stop-smoking hotline.

One warning label is a picture of a corpse with its chest sewed up and the words: "Smoking can kill you." Another label has a picture of a healthy pair of lungs beside a yellow and black pair with a warning that smoking causes fatal lung disease. The lawsuit said the images were manipulated to be especially emotional. The tobacco companies said the corpse photo is actually an actor with a fake scar, while the healthy lungs were sanitized to make the diseased organ look worse.

The companies also said the new labels will cost them millions of dollars for new equipment so they can frequently change from warning to warning and designers to make sure the labels meet federal requirements while maintaining some distinction among brands.

Joining R.J. Reynolds and Lorillard in the suit are Commonwealth Brands Inc., Liggett Group LLC and Santa Fe Natural Tobacco Company Inc. Altria Group Inc., parent company of the nation's largest cigarette maker, Philip Morris USA, is not a part of the lawsuit.

The free speech lawsuit is a different action than a suit by several of the same companies over the Family Smoking Prevention and Tobacco Control Act.

The law, which took affect two years ago, cleared the way for the more graphic warning labels, but also allowed the FDA to limit nicotine.

The law also banned tobacco companies from sponsoring athletic or social events and prevented them from giving away free samples or branded merchandise.

A federal judge upheld many parts of the law, but the companies are appealing.





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Discussion Questions

1. In your opinion, do the new graphic labeling requirements on cigarette packages represent reasonable government regulation? Why or why not?

Student opinions will vary in response to this line of questioning. In terms of the development of modern consumer protection law, the trend since the 1960s has been to provide consumers with more product-related information so they can make a more reasoned purchase decision. The key here is whether such graphic labeling requirements, directly on product packaging, represent excessive government regulation

2. In terms of strict government labeling requirements on cigarette packages, why the focus on the tobacco industry? Why not alcohol? Why not fast food?

For years, the federal government has engaged in a noticeable "crackdown" on the tobacco industry. This is likely due to the development of scientific evidence that proves, to a reasonable degree of medical certainty, that tobacco consumption causes cancer, and that nicotine is addictive. Perhaps this focus will shift to other products, such as alcohol and fast food, in years to come.

3. Assess the tobacco industry's argument that the new graphic labeling requirements unfairly infringe upon the free speech rights of tobacco companies.

The term "marketing" encompasses commercial efforts to entice consumers to purchase products. In essence, the new graphic labeling requirements represent "anti-marketing", because such advertising is intended to actually discourage consumption. Although businesses do have a constitutionally-protected right to free speech under the First Amendment to the United States Constitution, it is not an absolute right, and it is subject to reasonable "time, place and manner" restrictions. The key legal question here is whether such graphic labeling requirements represent an unreasonable restriction on commercial free speech.

Article 2: "China Cracks Down on Internet Content"

http://www.huffingtonpost.com/2011/08/24/china-internet-crackdown_n_934960.html

According to the article, a Communist Party leader has told China's Internet companies to tighten control over material online as Beijing cracks down on dissent and tries to block the rise of Middle East-style protests.

The party secretary for Beijing, Liu Qi, issued the warning following a visit this week to Sina Corp., which operates a popular microblogging site, according to the party-published newspaper Beijing Daily.



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Internet companies should "strengthen management and firmly prevent the spread of fake and harmful information," Liu was quoted as saying after the visit Monday to Sina. He said companies should "resist fake and negative information."

Communist authorities encourage Internet use for education and business but are uneasy about its potential to spread dissent, especially after social networking and other websites played a key role in protests that brought down governments in Egypt and Tunisia.

Beijing is in the midst of one of its most sweeping crackdowns on dissent in years and has detained or questioned hundreds of activists, lawyers and others.

The government tries to block access to foreign websites deemed subversive and Chinese operators of websites where the public can post comments are required to watch the material and remove any that violates censorship rules.

The government's censorship rules prompted Google Inc. to close its China search engine last year. Mainland users can see Google's Chinese-language search site in Hong Kong but access is slower and the company's China market share has shrunk.

The report on Liu's warning gave no details of how Internet companies were expected to change their management.

Employees who answered the phone at Sina referred questions to a spokeswoman who did not answer her phone.

With Liu during the visit were Sina CEO Charles Chao and Kai-fu Lee, a former boss of Google's China unit who runs a technology investment company, according to the Beijing Daily.

Chao told Forbes magazine in March that Sina's microblogging site, Weibo, has at least 100 employees monitoring content 24 hours a day. The company said in May that the number of Weibo users had passed 140 million.

Also this week, the Beijing Internet Media Association, a government-sanctioned industry group, called on its 104 member companies to police Internet content, possibly prompted by Liu's order.

"Propaganda guidance to the public should be led toward a correct direction," the appeal said, according to the Beijing Daily. "Online news should be trustworthy and should not spread rumors or vulgar contents."

Liu, the party secretary, also visited the headquarters of Youku.com Inc., a video portal, and talked with CEO Victor Koo, the report said.

China has the world's biggest online population, with 485 million Internet users as of June 30, according to the government-sanctioned China National Internet Information Center.





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Meanwhile, a major Chinese Internet commerce platform, Taobao, has told merchants that use its service to stop selling virtual private network and other software that allows Web surfers to avoid government filters.

Taobao, part of Alibaba Group, said it acted after finding VPNs were being used to visit foreign websites illegally. A company spokesman said Tuesday it took the action on its own without receiving government orders.

Discussion Questions

1. In your reasoned opinion, is this an appropriate form of government regulation? Why or why not?

This form of government regulation would appear to run contrary to "The American Way," since it attempts to limit (or eliminate) political dissent to government. As our founding fathers knew well, dissent is the key to a functioning democracy. In modern times, the internet is a key channel of communication. In the cyber-world, online communication involves the First Amendment right to "peaceably assemble." To take away that line of communication would be a violation of the First Amendment to the United States Constitution if it were to happen in this country. Obviously, incitement to riot or violent overthrow of the government is not constitutionally protected, but expressing opposition to government certainly is.

2. In your reasoned opinion, could this form of government regulation ever happen in the United States? Why or why not?

Perhaps one should "never say never," but as mentioned in response to Discussion Question Number 1 above, such a form of government regulation would constitute a violation of the First Amendment to the United States Constitution. Again, expressing opposition to government represents free speech.

3. As the article indicates, the Chinese government's new censorship rules prompted Google Inc. to close its China search engine last year. Was this a wise business decision on Google's part? Why or why not?

In the purest business sense, terminating operations in China, with its population of 1.3 billion, may not be a wise move. Google, Inc., however, is effectively making a statement with its decision; namely, that a "free and open" internet is vital to the success of its company, and to the internet as a whole.



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Article 3: "Applebee's Worker Must Choose Job or Posting on Facebook"

<http://abcnews.go.com/Business/applebee-workers-decision-job-facebook/story?id=14457871>

According to the article, an Applebee's worker may be fired if he refuses to sign an agreement that bars employees from making negative comments about the workplace on Facebook.

"I was pretty much told it was going to come to a point where I was probably going to have to sign it or be let go," said 36-year-old Jason Cook of Federal Way, Washington.

Cook has worked for an Applebee's franchise, Apple American Group, for three years and has no complaints against his employer. But he's concerned the policy would limit his self-expression. He shared those concerns in status updates on the social networking Website.

In an update on August 31, Cook wrote, "I have come home and talked to my family. I have wrestled with my conscious [sic], and weighed my options. A line has been drawn in the sand. I'm not sacrificing my principles."

"Ever since I was voiced my concerns, several employees have said [they] don't feel comfortable signing it but I have kids, rent to pay, and bills to pay," he said.

He also wonders just how far the negative comment restriction might go. "If I repost a comment by Bill Maher is that going to be a negative comment?"

Employer restrictions on social media Websites are becoming more common. The National Labor Relations Board issued its first Facebook ruling in November against an employer it said engaged in unfair labor practices for firing an employee who wrote derogatory posts about her supervisor on Facebook.

Since that complaint was filed in Connecticut, the NLRB has seen social media charges filed in all 32 of its regions.

"We're just trying to figure it out like everyone else," said Nancy Cleeland, public affairs director at the NLRB.



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Last month the labor mediation organization released a report detailing the outcome of 14 cases surrounding social media policies at companies. One of the common themes: use of broad restrictions.

It is this type of restriction that concerned Cook. In a comment on Facebook about the agreement, Cook had concerns about its language. "The words 'negative comments' should be changed to 'slanderous comments,'" he wrote to his family and friends on Facebook.

"I do understand their point of view that they don't want negative comments about the restaurant and company. I understand that part is legal," Cook said. "My problem is I post a lot of political and religious discussions on my account and, first off, if I inadvertently post something that may be misconstrued as a negative comment towards an employee."

Cook said he hopes the company will reword the policy and that he can remain an employee. He said his family is behind him "100 percent" if he decides to leave the company over this.

Discussion Questions

1. Assess the employee's freedom of expression rights in this situation.

The First Amendment to the United States Constitution, which protects free speech rights, applies to government suppression of freedom of expression ("Congress shall make no law...abridging the freedom of speech..."); it does not address (at least not directly) employer suppression of freedom of expression. In your author's opinion, Applebee's does have the right to suppress negative comments about the workplace its employees might otherwise make on Facebook. Employees have the freedom to choose whether to work for a company that would have such a policy, and contractually, if the employee signs (either before or during employment) an agreement suppressing such expression, such an agreement would, in the opinion of your author, be legally enforceable.

2. Assess the employer's "employment-at-will" and contractual rights in this situation.

As many of your students will likely know, the "employment-at-will" doctrine refers to the employer's right to fire an employee for any reason (so long as the employer's reason is not in violation of federal and/or state anti-discrimination law), or for no reason at all. Every state in the United States has adopted, at least in some form, the employment-at-will doctrine. In your author's opinion, the employment-at-will doctrine would empower Applebee's legally to terminate any employee who refused to sign an agreement forbidding the employee from posting negative comments about the workplace on Facebook.





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As mentioned in response to Discussion Question Number 1 above, from a contractual standpoint, if the employee signs (either before or during employment) an agreement suppressing such expression, such an agreement would, in the opinion of your author, be legally enforceable. The employment-at-will doctrine not only empowers the employer to "fire at will"; it also empowers the employee to leave the company for any reason or no reason at all. Ultimately, the employee can choose whether to work for a company that requires such a policy/contract. (Although some students will likely emphasize that the "Jobs Depression" of recent years would likely make such a choice difficult for an employee who has dim employment prospects elsewhere.)

3. In your reasoned opinion, which right(s) should prevail in this case: the employee's right to freedom of expression, or the employer's "employment-at-will" and contractual rights? Explain your response.

For reasons expressed in response to Discussion Questions Numbers 1 and 2 above, it would appear that at least from a legal standpoint, the employer's "employment-at-will" and contractual rights prevail in this case. Whether such rights should/would prevail from an ethical standpoint or in the "forum of public opinion" is a different debate altogether.



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Video Suggestions

Video 1: "Missouri Teachers Protest 'Facebook Law' Meant to Protect Students From Sexual Predators"

<http://abcnews.go.com/Technology/missouri-facebook-law-bans-teachers-contacting-students-internet/story?id=14364188>

(Note: See the accompanying article at the above-referenced web site.)

According to the article, teachers in Missouri have gone to court to protest a new state law meant to protect children from sexual predators at school. The teachers say the law is so broadly worded that it will stop them from using the Internet to contact kids -- even their own -- for the most innocent of reasons.

The law, called the Amy Hestir Student Protection Act, was named for a young Missouri woman who said she was molested by a junior high school teacher. It says, among its provisions, that teachers may not contact their students through electronic communications, such as instant messages or Facebook posts, that cannot be seen by others, such as parents or school administrators.

"The only thing we're prohibiting -- the only thing -- is hidden communications between educators and former students, mostly minors, who have not graduated," said State Sen. Jane Cunningham, the law's chief sponsor.

But the Missouri State Teachers Association says the law "is so vague and overbroad that the plaintiffs cannot know with confidence what conduct is permitted and what is prohibited." The association has filed for an injunction to stop the law, which goes into effect August 28.





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"When districts are telling their teachers to delete their Facebook pages and warning coaches to stop texting players to tell them a bus will be late, we knew we couldn't wait for a special session of the legislature," said Aurora Meyer, the online community coordinator for the teachers association.

In Missouri, the case against what's often referred to as the "Facebook Law," has taken on a life of its own. In addition to the teachers' association court petition, the American Civil Liberties of Eastern Missouri is pursuing a case, and the Missouri National Education Association has asked for a meeting with Cunningham's staff in the hopes that a "clean-up bill" can be passed to end the controversy.

In the meantime, local school districts are busy trying to write the new social-media policies that the new law mandates. They have until January 1, and some teachers say they worry that administrators, fearing that they'll be held liable in a sexual abuse case, will write needlessly tough policies.

Cunningham, a Republican from St. Louis' western suburbs, said the law is not nearly as onerous as teachers and school districts claim and cited an Associated Press investigation that found that 87 Missouri teachers lost their licenses because of sexual misconduct.

"A lot of sexual relationships start with the most innocent text message: 'How do I do this math problem?' or 'I'm going to be late for practice,'" said Cunningham. "Coaches can use instant messages," she said. "They just have to copy the parents--that's all."

Chuck Collis, a high school science teacher who is a plaintiff in the complaint filed by the Missouri State Teachers Association, said he still worried about the reach of the law.

"In my opinion, this portion of the bill cannot be fixed," he said. "It is a clear violation of my First Amendment right to free speech. The state has no business controlling how I communicate with other people.

"I am not comfortable with the overall thrust of the bill," said Collis. "It paints all teachers as sexual predators of children. This is largely not the case."



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Chris Guinther, the president of the Missouri National Education Association, said the intent of the law was good, but "I think the bill went a little bit too far.

"Like many laws, the devil is in the details," she said.

The clock continues to click on the law. Students around the state are about to start a new school year, and the new law takes effect Sunday. Teachers said they're not sure they can legally answer homework questions on Facebook or through Google Docs.

"It's a whole new world," said Guinther, "but it's how our students communicate."

Discussion Questions

1. According to the article, the Amy Hestir Student Protection Act forbids teachers from contacting their students through electronic communications, such as instant messages or Facebook posts, that cannot be seen by others, such as parents or school administrators. In your opinion, is this a reasonable state government regulation? Why or why not?

Student opinions will likely vary in response to this line of questioning. Although the purpose of the law, reducing the chance of inappropriate teacher contact with students, is commendable, the practical application of the law is questionable. For example, assume a track coach plans to take his five (5) star track team members to state finals, but needs to change the meeting location for their departure at the last minute, and would like to text-message his team members with the new location. Arguably, the new law would forbid the track coach from sending such a message.

2. Is the First Amendment to the United States Constitution's free speech protection relevant to this case? If so, in what sense is it relevant?

There is a First Amendment free speech issue in this case, since the law relates to government suppression of expression. Whether the overriding purpose of the law, protecting students from inappropriate teacher contact, outweighs the right of teachers and students to freely communicate, will be a matter for the court to decide.

3. Is the constitutional right to privacy relevant to this case? If so, in what sense is it relevant?

There is a right to privacy issue in this case, since there is an implied constitutional right to privacy, and since the Missouri law seeks to suppress privacy. Whether the overriding purpose of the law, protecting students from inappropriate teacher contact, outweighs the right to privacy in teacher-student relations, will be a matter for the court to decide. Historically, the privacy argument has not been successfully applied to teacher-student relations, for obvious reasons.



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Video 2: "U.K. Not Pursuing Limits on Social Media"

<http://www.cnn.com/2011/08/26/tech/social-media/uk-social-media/index.html>

(Note: See the accompanying article at the above-referenced web site.)

According to the article, a recent meeting between the British government and Internet communications firms was friendly, not confrontational, according to people from the organizations that took part in the meeting.

At the meeting, the government "did not seek any additional powers to close down social media networks," the British Home Office, the government's home security department, said in a statement.

"The discussions looked at how law enforcement and the networks can build on the existing relationships and cooperation to crack down on the networks being used for criminal behavior."

Spokespeople for the British Home Office declined to provide additional details about whether it broached the issue of imposing limits social media.

The gathering took place about two weeks after British Prime Minister David Cameron suggested that the government should impose limits on the "free flow of information" when it's "used for ill."

"When people are using social media for violence, we need to stop them," he said then.

Twitter took the brunt of the blame immediately following the violent rioting and looting in England. However, people mostly used private lines like BlackBerry Messenger to organize, rather than Twitter or Facebook, later reports found.

"RIM continues to maintain an open and positive dialogue with the UK authorities and continues to operate within the context of U.K. regulations," a RIM spokeswoman said in a statement late Thursday. "It was a positive and productive meeting, and we were pleased to consult on the use of social media to engage and communicate during times of emergency."

The U.K. was still entertaining the idea of limiting social media usage shortly before the meeting. In a statement released beforehand, the Home Office said: "We are working with the police to see what action can be taken to prevent access to those services by customers identified as perpetrators of disorder or other criminal action."



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Instead of detailing plans to block criminals' access to networks, police and government officials solicited advice from those in attendance about how to monitor the sites, the organizations said. Spokeswomen for the Home Office and for Facebook described the meeting as "constructive."

"We welcome the fact that this was a dialog about working together to keep people safe rather than about imposing new restrictions on Internet services," the Facebook spokeswoman said in a statement. She noted that Facebook already has rules in place to punish illegal activity on the site.

A Twitter spokeswoman said that governments and police rely on its service to distribute alerts. "We are always interested in exploring how we can make Twitter even more helpful and relevant during times of critical need," she said.

Discussion Questions

1. Compare and contrast the United Kingdom's approach to government regulation of social media to China's approach (as referenced in Article 2, "China Cracks Down on Internet Content.")

The difference between the United Kingdom's approach and China's approach is dramatic, and reflects the U.K.'s open approach to political discourse and debate, versus China's "command-and-control" style of government. Note that the United Kingdom still embraces a non-regulatory approach to social media even in light of violent street protests in recent months (social media makes it easier to organize such protests). One wonders what China would do if faced with similar protests.

2. The United Kingdom has experienced open protests in the streets in recent weeks. In your opinion, should the "clear and present danger" of protests dictate a U.K. government "get-tough" approach to the use of social media? Why or why not?

In your author's opinion, the U.K. should adopt a measured approach when considering such a response to open street protests. Completely shutting down the use of social media when faced with such a situation would be contrary to a participatory style of government, since it would limit the ability of U.K. citizens to engage in non-violent political discourse via social media. If someone uses social media to conspire to commit and/or commit a criminal act, the U.K. should punish that person to the fullest extent of the law. However, the U.K. should not pass draconian measures that might constrain a limited number of criminals at the expense of millions of law-abiding U.K. citizens.

3. In the United States, how would the First Amendment to the United States Constitution affect the United States government's reaction to such protests?

Social media is a vibrant, vital method of communication in today's United States. Given the import of the "free speech" provision of the First Amendment to the United States Constitution, the United States should adopt a measured approach if faced with a similar situation. As stated in response to



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Discussion Question Number 2, completely shutting down the use of social media when faced with such a situation would be contrary to a democratic style of government, since it would limit the ability of citizens to engage in non-violent political discourse via social media. If someone uses social media to conspire to commit and/or commit a criminal act, the United States should punish that person to the fullest extent of the law. However, the United States should not pass draconian measures that might constrain a limited number of criminals at the expense of millions of law-abiding citizens.



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Of Special Interest

This section of the newsletter addresses a recent lawsuit alleging that Microsoft tracks the location of its mobile customers without permission.

Ethical Dilemma

"Microsoft Windows Phone Tracks Customers Without Consent, Lawsuit Claims"

http://www.huffingtonpost.com/2011/08/31/microsoft-windows-phone-lawsuit_n_944197.html

(Note: See the accompanying article at the above-referenced web site.)

According to the article, a recent lawsuit alleges that Microsoft tracks the location of its mobile customers even after users request that tracking software be turned off.

The proposed class action, filed in a Seattle federal court recently, says Microsoft intentionally designed camera software on the Windows Phone 7 operating system to ignore customer requests that they not be tracked.

The lawsuit comes after concerns surfaced earlier this year that Apple's iPhones collected location data and stored it for up to a year, even when location software was supposedly turned off. Apple issued a patch to fix the problem.

However, the revelation prompted renewed scrutiny of the nexus between location and privacy. At a hearing in May, United States lawmakers accused the tech industry of exploiting location data for marketing purposes -- a potentially multibillion-dollar industry -- without getting proper consent from millions of Americans.

The lawsuit against Microsoft cites a letter the company sent to Congress, in which Microsoft said it only collects geo-location data with the express consent of the user.

"Microsoft's representations to Congress were false," the lawsuit says. The litigation, brought on behalf of a Windows Phone 7 user, claims Microsoft transmits data -- including approximate latitude and longitude coordinates of the user's device -- while the camera application is activated. It seeks an injunction and punitive damages, among other remedies.

The case in U.S. District Court, Western District of Washington is Rebecca Cousineau, individually on her own behalf and on behalf of all others similarly situated v. Microsoft Corp., 11-cv-1438.





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Discussion Questions

1. Describe what, if any, privacy rights Microsoft customers have in this case.

In your author's opinion, Microsoft customers do have a right to privacy in this case, especially if the allegations contained in the complaint are true (specifically, that Microsoft tracks the location of its mobile customers even after users request that tracking software be turned off.) Although most Business Law classes focus on the implied constitutional right to privacy recognized to guard against governmental intrusions on privacy, there is also the legally-recognized tort of invasion of privacy, designed to guard against private-party intrusions on privacy.

2. In your reasoned opinion, has Microsoft acted illegally in this case? Explain your response.

Although student opinions may vary in response to this question, in your author's opinion, if the allegations included in the complaint are true (specifically, that Microsoft tracks the location of its mobile customers even after users request that tracking software be turned off), Microsoft has acted illegally in this case.

3. In your reasoned opinion, has Microsoft acted unethically in this case? Explain your response.

Although student opinions may vary in response to this question, in your author's opinion, if the allegations included in the complaint are true (specifically, that Microsoft tracks the location of its mobile customers even after users request that tracking software be turned off), Microsoft has acted unethically in this case. Mobile customers who have specifically requested that tracking software be turned off have the right to expect that Microsoft (or any other company that provides mobile services) will comply with their request.



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Of Special Interest

This section of the newsletter will assist you in covering:

- 1) Video 1 ("Missouri Teachers Protest 'Facebook Law' Meant to Protect Students From Sexual Predators"); and
- 2) The Ethical Dilemma ("Microsoft Windows Phone Tracks Customers Without Consent, Lawsuit Claims.")

Teaching Tips

Teaching Tip 1 (Related to Video 1, "Missouri Teachers Protest 'Facebook Law' Meant to Protect Students From Sexual Predators"): The "Amy Hestir Student Protection Act"

Before answering the Discussion Questions related to Video 1, have students review the following summary of the "Amy Hestir Student Protection Act" (This summary can also be located at

http://www.senate.mo.gov/11info/BTS_Web/Bill.aspx?SessionType=R&BillID=4066479):

SCS/SB 54 – This act creates the "Amy Hestir Student Protection Act."
(Section 160.085)

SECTION 37.710 - This act grants the Office of the Child Advocate the authority to file any findings or reports of the Child Advocate regarding the parent or child with the court and to issue recommendations regarding the disposition of an investigation, which may be provided to the court and the investigating agency. The Office may also mediate between alleged victims of sexual misconduct and school districts.

SECTION 160.261 - If a student reports alleged sexual misconduct by a teacher or other school employee to a school employee who is required to report to the Children's Division, the employee and the school district superintendent must forward the allegation to the Children's Division within twenty-four hours. Any reports made to the Children's Division must be investigated by the Division in accordance with Division procedures. The school district must not conduct an investigation for purposes of determining whether the allegations should be substantiated. A district may investigate the allegations for purposes of making a decision regarding the accused employee's employment. This act also requires the investigating officers to review the report using a preponderance of evidence standard.

SECTION 160.262 - This act authorizes the Office of the Child Advocate to offer mediation services when requested by both parties when child abuse allegations arise in a school setting. The mediator must not be a mandated reporter of child abuse. No student, parent of a student, school employee, or school district will be required to enter into mediation. If either party does





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not wish to enter into mediation, mediation will not occur. Procedures for mediation are described in the act.

SECTIONS 160.2100 & 160.2110: This act creates the Task Force on the Prevention of Sexual Abuse of Children. This act shall be known and may be cited as "Erin's Law."

Task Force members must be individuals who are actively involved in the prevention of child abuse and neglect and child welfare. The President Pro Tem of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the Senate may each appoint one member of the General Assembly to the task force. The following additional members will be on the task force: the director of the Department of Social Services, or his or her designee; the Commissioner of Education, or his or her designee; the director of the Department of Health and Senior Services, or his or her designee; the director of the Office of Prosecution Services, or his or her designee; a representative representing law enforcement, appointed by the Governor; three active teachers employed in Missouri, appointed by the Governor; a representative of an organization involved in forensic investigation relating to child abuse, appointed by the Governor; a school superintendent, appointed by the Governor; a representative of the State Domestic Violence Coalition, appointed by the Governor; a representative from the juvenile and family court, appointed by the Governor; a representative from the Missouri Network of Child Advocacy Centers, appointed by the Governor; and an at-large member appointed by the Governor.

The Task Force must make recommendations for reducing child sexual abuse. The Task Force must submit a final report with its recommendations to the Governor, General Assembly, and State Board of Education by January 1, 2013. The Task Force will end on January 1, 2013.

The Task Force may also adopt a policy addressing sexual abuse of children, including a curriculum.

SECTION 162.014 - A registered sex offender, or a person required to be registered as a sex offender, is prohibited from being a candidate for school board. A sitting school board member who is a registered sex offender or is required to be registered will not be eligible to serve as a board member at the conclusion of his or her term.

SECTION 162.068 - By July 1, 2012, every school district must adopt a written policy on information that the district may provide about former employees to other public schools.

The act grants civil immunity to school district employees who are permitted to respond to requests for information regarding former employees under a school district policy and who communicates only the information that the policy directs and who acts in good faith and without malice. If an action is brought against the employee, he or she may request that the Attorney General defend him or her in the suit, except as described in the act.

If a school district had an employee whose job involved contact with children and the district received allegations of the employee's sexual misconduct and as a result of such allegations or as a





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result of such allegations being substantiated by the Child Abuse and Neglect Review Board the district dismisses the employee or allows the employee to resign and the district fails to disclose the

allegations in a reference to another school district or when responding to a potential employer's request for information regarding such employee, the district will be liable for damages and have third-party liability for any legal liability, legal fees, costs, and expenses incurred by the employing district caused by the failure to disclose such information to the employing district.

When a school district employs a person who has been investigated by the Children's Division and for whom there has been a finding of substantiated from such investigation, the district must immediately suspend the person's employment. The district may return the person to his or her employment if the Child Abuse and Neglect Review Board's finding that the allegation is substantiated is reversed by a court on appeal. Nothing shall preclude a school district from otherwise lawfully terminating the employment of an employee about whom there has been a finding of unsubstantiated from such an investigation.

A school district that has employed a person for whom there was a finding of substantiated from a Children's Division investigation must disclose the finding of substantiated to any other public school that contacts it for a reference.

A school district is prohibited from discharging or discriminating against an employee who, acting in good faith, reports alleged sexual misconduct.

SECTION 162.069 - By January 1, 2012, every school district must develop a written policy concerning teacher-student communication and employee-student communications. Each policy must include appropriate oral and nonverbal personal communication, which may be combined with sexual harassment policies, and appropriate use of electronic media as described in the act, including social networking sites. Teachers cannot establish, maintain, or use a work-related website unless it is available to school administrators and the child's legal custodian, physical custodian, or legal guardian. Teachers also cannot have a non-work-related website that allows exclusive access with a current or former student. Former student is defined as any person who was at one time a student at the school at which the teacher is employed and who is eighteen years of age or less and who has not graduated.

By January 1, 2012, each school district must include in its teacher and employee training a component that provides information on identifying signs of sexual abuse in children and of potentially abusive relationships between children and adults, with an emphasis on mandatory reporting. Training must also include an emphasis on the obligation of mandated reporters to report suspected abuse by other mandatory reporters.

SECTION 168.021 - In order to obtain a teaching certificate, an applicant must complete a background check as provided in section 168.133.





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SECTION 168.071 - The crimes of sexual contact with a student while on public school property as well as second and third degree sexual misconduct are added to the offenses for which a teacher's license or certificate may be revoked.

SECTION 168.133 - School districts are responsible for conducting the criminal background check on bus drivers they employ. For drivers employed by a pupil transportation company under contract with the district, the criminal background check must be conducted through the Highway Patrol's criminal record review and must conform to the requirements of the National Child Protection Act of 1993, as amended by the Volunteers for Children Act. A school district's criminal background check on school employees must include a search of publicly available information in an electronic format that displays information through a public index or single case display.

This act changes, from two to one, the number of sets of fingerprints an applicant must submit for a criminal history background check. The Department of Elementary and Secondary Education must facilitate an annual check for employees with active teaching certificates against criminal history records in the central repository, sexual offender registry, and child abuse central registry. The Missouri Highway Patrol must provide ongoing electronic updates to criminal history background checks for those persons previously submitted by the Department of Elementary and Secondary Education.

A school district may conduct a new criminal background check and fingerprint collection for a newly hired employee at its own expense.

SECTION 210.135 - Third-party reporters of child abuse who report an alleged incident to any employee of a school district are immune from civil and criminal liability under certain circumstances.

SECTION 210.145 - The Children's Division must provide information about the Office of the Child Advocate and services it may provide to any individual who is not satisfied with the results of an investigation.

SECTION 210.152 - The Children's Division may reopen a case for review at the request of the alleged perpetrator, alleged victim, or the Office of the Child Advocate if new, specific, and credible evidence is obtained that the Division's decision was based on fraud or misrepresentation of material facts relevant to the Division's decision. Procedures for reopening an investigation are described in the act. Any person who makes a request to reopen based on facts the person knows to be false will be guilty of a class A misdemeanor. The Division cannot reopen an investigation while the case is pending before a court or when a court has entered a final judgment after de novo judicial review.

SECTIONS 210.915 and 210.922 - This act adds the Department of Elementary and Secondary Education to the list of departments that must collaborate to compare records on child-care, elder-care, and personal-care workers, including those individuals required to undergo a background check under Section 168.133 and who may use registry information to carry out assigned duties.





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SECTION 556.037 - This act modifies the current statute of limitations for the prosecution of unlawful sexual offenses involving a person eighteen years of age or younger so that such a prosecution must be commenced within thirty years after the victim reaches the age of eighteen.

This act is identical to the perfected version of SS/SB 286 (2011), contains provisions identical to HB 219 (2011), and is substantially similar to the perfected version of SCS/SB 631 (2010), is similar to SB 41 (2009), HCS/HB 1314 (2008), SB 1212 (2008) and contains provisions similar to HB 1911 (2010), HB 2334 (2008) and HB 2579 (2008).

Teaching Tip 2 (Related to the Ethical Dilemma, "Microsoft Windows Phone Tracks Customers Without Consent, Lawsuit Claims"): Apple Inc.'s Approach to Customer Tracking

Have students view the following video to learn about Apple Inc.'s approach to customer tracking:

http://www.huffingtonpost.com/2011/08/31/microsoft-windows-phone-lawsuit_n_944197.html

After viewing the video, have students answer the following Discussion Questions:

Discussion Questions

1. Comment on the ethics of Apple Inc.'s approach to customer tracking.

In your author's opinion, Apple Inc. appears to have the ethical "high ground" here in terms of not engaging in customer tracking. Of course, one critique of Apple's approach is that the company was merely reacting to the controversy surrounding competitor Microsoft's customer tracking.

2. Are there marketing advantages to Apple Inc.'s approach to customer tracking? If so, describe those advantages.

There are marketing advantages to Apple Inc.'s approach to customer tracking, especially in terms of the company's appeal to customers who are truly concerned about their privacy.

3. In your reasoned opinion, would Apple Inc. have adopted its new approach to customer tracking without the related controversy surrounding Microsoft Corporation? Explain your response.

This is a conjectural, opinion-based question, so there is no "correct" answer. However, it is certainly curious that Apple Inc. adopted its new approach to customer tracking after the controversy surrounding Microsoft Corporation developed. For customers concerned about their privacy, "better late than never," perhaps!



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Chapter Key for McGraw-Hill/Irwin Business Law Texts

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 5, 42, and 45	Chapters 5 and 42	Chapter 8	Chapters 5, 8 and 42
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 1, 4, 24 and 25	Chapters 4 and 24	Chapter 5	Chapters 4, 5 and 24
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition	Chapters 3, 48 and 51	Chapters 3 and 51	Chapter 6	Chapters 3, 6 and 51
Barnes et al., Law for Business, 11th Edition	Chapters 4, 25 and 46	Chapters 4 and 25	Chapter 6	Chapters 4, 6 and 25
Brown et al., Business Law with UCC Applications Student Edition, 12th Edition	Chapters 2, 20, 35, 40 and 43	Chapters 2, 35 and 40	Chapter 6	Chapters 2, 6 and 35
Reed et al., The Legal and Regulatory Environment of Business, 15th Edition	Chapters 6, 13, 17 and 19	Chapters 6 and 19	Chapter 10	Chapters 6, 10 and 19
McAdams et al., Law, Business & Society, 9th Edition	Chapters 5, 8, 12, 15 and 16	Chapters 5, 8 and 12	Chapter 7	Chapters 5, 7 and 12
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 11, 21 and 25	Chapters 2 and 11	Chapter 9	Chapters 2, 9 and 11
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 11 and 17	Chapters 2 and 11	Chapter 6	Chapters 1, 6 and 11

This Newsletter Supports the Following Business Law Texts

- Barnes et al., Law for Business, 10th Edition, 2009© (007352493X)
- Brown et al., Business Law with UCC Applications Student Edition, 12th Edition, 2009© (0073524948)
- Kubasek et al., Dynamic Business Law, 2009© (0073524913)
- Kubasek et al., Dynamic Business Law: The Essentials, 2010© (0073377686)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition, 2010© (0073377643)
- McAdams et al., Law, Business & Society, 9th Edition, 2009© (0073377651)
- Reed et al., The Legal and Regulatory Environment of Business, 15th Edition, 2010© (007337766X)
- Melvin, The Legal Environment of Business: A Managerial Approach, 2011© (0073377694)

