

WALKING THE (social media) LINE

By Jude Mathurine

Journalists are moving from the margins to the mainstream. While media organisations wrap their heads around social media strategies, editors and reporters struggle to keep pace with changing policies, laws and practice.

As media evolve into channels for networked, digital and dialogic journalism, the scope for regulation and scrutiny of professional conduct has extended from news articles and features to formal and informal social media communication. Social media behaviours include tweets, updates, comments, likes, blogs and uploads of user-generated content (UGC). Use of social media networks (SMNs) broadens the mediascape, muddies notions of journalistic identity and increases mutual dependence between traditional journalists and the people formerly known as the audience.

Social media can no longer be regarded as a fad for sustainable media organisations. One third of the top 15 websites used by South Africans are social media. A study on the South African network society found that while only 17% of South Africans read a daily newspaper, over 22% used the internet everyday (De Lanerolle 2012). World Wide Worx reports that about 5.3 million South Africans have Facebook accounts and over 9.35 million locals use Mxit, while 2.3 million South Africans are on Twitter. Stats SA reported 35% of SA households have internet access with the majority accessing web services via mobile devices, and 80% of Facebook users access it via mobile. Mxit has over 50 million African users.

Social conversations in spaces like Mxit or Facebook

help activate audience participation and interaction, with potential brand-building utility to achieve organisational goals like promotion and marketing of editorial content and services particularly among youth. In Africa in 2010, 20% of the population consisted of youth between the ages of 15 and 24, and 70% of Africans were under 30 years old, according to the United Nations. Youth use of mobile social media like Mxit, BBM and WhatsApp is a significant plank in traditional media's editorial, marketing and revenue generation strategies.

At an editorial level, journalists who don't participate in the social media coverage of news events like the Oscar Pistorius trial in real time are regarded as the exception, not the rule. The Twitter following of EyeWitness News reporter, Barry Bateman rose 604% from 17 000 to over 12 2000 followers during his coverage of Pistorius' bail application.

Social media users are conduits, amplifiers of media messages, and potential sources. The journalistic scoop is on life-support as ordinary netizens bypass the influence of mainstream media to receive stories broken from the source. However, few news organisations have established processes and workflows for verifying online information, and even fewer have policies for transparently correcting errors and inaccuracies after publishing online. Economics also plays a role. As media

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organisations feel the pinch from falling revenues, journalists often spend more time at their desks, editorial appointments are juniorised and traditional gatekeeping is rationalised, centralised or outsourced. Lapses in professional judgement that may follow increase the scope for legal liability, as well as damage to public faith in journalism.

In a social media age, media rely more on audiences. Mutual dependence requires journalists to be aware of regulations of use, aggregation and curation of data from public social media channels. Nick Couldry argues that the inclusion of a range of new actors like citizens in the media ecology means that accountability on SMNs becomes a concern not just for journalists, but “all... who circulate speculation, rumours, facts, photos, information, and views through a global grid of communications” (in Ward and Wasserman 2010).

Challenges are issues of copyright, bias, false news, defamation and privacy. Journalists often move informal and interpersonal communications from the margins of SMNs to a more formal, visible, regulated mass media mainstream.

Consequently, journalists need to be aware of the application of existing laws and case law to platforms like social media. Publishers do not enjoy unfettered freedom of expression and media on the internet and SMNs.

Industry regulation

Newman, Dutton and Blank (2012) suggests in a study on the changing ecology of news that most media in the United Kingdom have clear social media policies. The South African situation is mixed. Research by the Deputy Press Ombud conducted in 2010, suggested only 5% of SA journalists had knowledge or sight of the South African Press Code. How journalists understand the relationship between SMNs use and defamation, intellectual property violation, invasion of privacy, inaccuracy, bias, unprofessional communication and the like, may not be any better.

Online publishers who do not volunteer to join industry regulatory bodies may still elect to follow industry rules and guidelines to align to accepted standards, says information technology lawyer, Nerushka Deosaran.

“... the roles of these organisations are to create awareness of the law to its members as well as creating the best practice ‘guidelines’ of doing things.”

There are a few industry regulatory mechanisms worth noting. The South African Press Freedom Commission proposed that websites, digital publications and apps of newspaper titles that belong to Print Media South Africa (PMSA) become subject to the Press Code and the SA Press Council. The Association of Independent Publishers’ (AIP) – 250 small independent newspapers and periodicals – are also subject to the SA Press Code. AIP Executive Director Louise Vale estimates that about half their members have websites, but few use platforms like Facebook. While the dangers of social media are real, they are not on the radar of most independent publishers yet, she said.

About 126 online publishers are regulated by the

Code of Conduct of the Digital Media and Marketing Association (DMMA). The DMMA is not an industry regulatory body but a voluntary association that arbitrates and resolves minor complaints between online publishers and users. The DMMA can boot out members who transgress its code of conduct.

Several news organisations have also set up social media policies to establish what kinds of online conduct are permissible within the workplace.

Good social media policies:

- empower social media use to achieve organisational goals;
- provide a framework of reference to correct inaccuracies or abuse, avoid litigation and damage to own reputation;
- and offer an instrument for human resources to assess disputes pertaining to online conduct.

Broadcasters like eNews Channel Africa and Primedia, and news organisations like Times Media Group, Independent Newspapers, *Mail & Guardian* and Media24 have social media policies in place for all titles. However, Caxton and the SABC are still developing social media guidelines and standard practices for newsrooms and journalists.

Legal liability

“A new set of norms is emerging for online conduct and the social web is challenging our established norms and practices,” said Web.Tech.Law attorney Paul Jacobson. “The news media has certain responsibilities that non-news media don’t really have but paradigms are definitely shifting.”

Legislation like the Promotion of Equality and Unfair Discrimination Act which regulates hate speech and the National Health Act of 2003, which protects the privacy of medical information equally apply to traditional and social media communication. Trolling or posting provocative updates, tweets and comments could amount to cyber-bullying under the Protection of Harassment Act of 2013.

Journalists may also be restricted for sharing where they like (National Keypoints Act of 1980) or using audience UGC without permission (Copyright Act of 1978). Few local media apply fair use principles or even attribute ownership of UGC when using citizen-generated content like mobile video or social photos.

Journalists may not always share or re-share what they like, unless comment is fair, they are convinced the ideas are true and there is an overwhelming public interest to do so. In May 2012, the *Daily Sun* published screen grabs from a viral cellphone video that showed a 17-year-old girl being gang raped, which clearly violated aspects of the Film and Publications Amendment Act.

SMNs use for real time courtroom coverage may also be circumscribed. In 2012, Acting Judge Bert Bam applied sections 153 (3A) and 154(2) of the Criminal Procedure Act (CPA) to forbid social network reportage during the cross-examination of rape survivor, Ina Bonette, until the end of her testimony.

While exercising the right to freedom of expression

in reporting news, journalists should be mindful of constitutional rights and how they may influence other rights like dignity and privacy, said Deosaran.

“Reporters should avoid making defamatory comments without justification...and acting in a manner that can fulfil the elements of the crime, crimen injuria,” she said.

In Dutch Reformed Church Vergesig, Johannesburg Congregation and Another vs Rayan Soknunan, 2012, the South Gauteng High Court found that creators of Facebook pages have an obligation to regulate access and moderate or remove unlawful posts. Justice Willis found that “if one wants to stop wrongdoing, it is best to act against the wrongdoers themselves”. The Willis judgement made a critical distinction between use of SMNs for social purposes relative to a communication function in the public interest.

Publishers should educate and appoint online editors and journalists who are versed in media law to judge fair comment from defamatory, racist, sexist or inflammatory speech. Social media policies and a social media strategy are essential.

Signing up the resident intern to manage social media can be risky. Comment sections should have terms and conditions of use and feature tools to allow easy reporting of abuse. The economic, logistical and capacity challenges of moderating content have seen some media forego use of UGC including comments. Some media selectively permit online commentary.

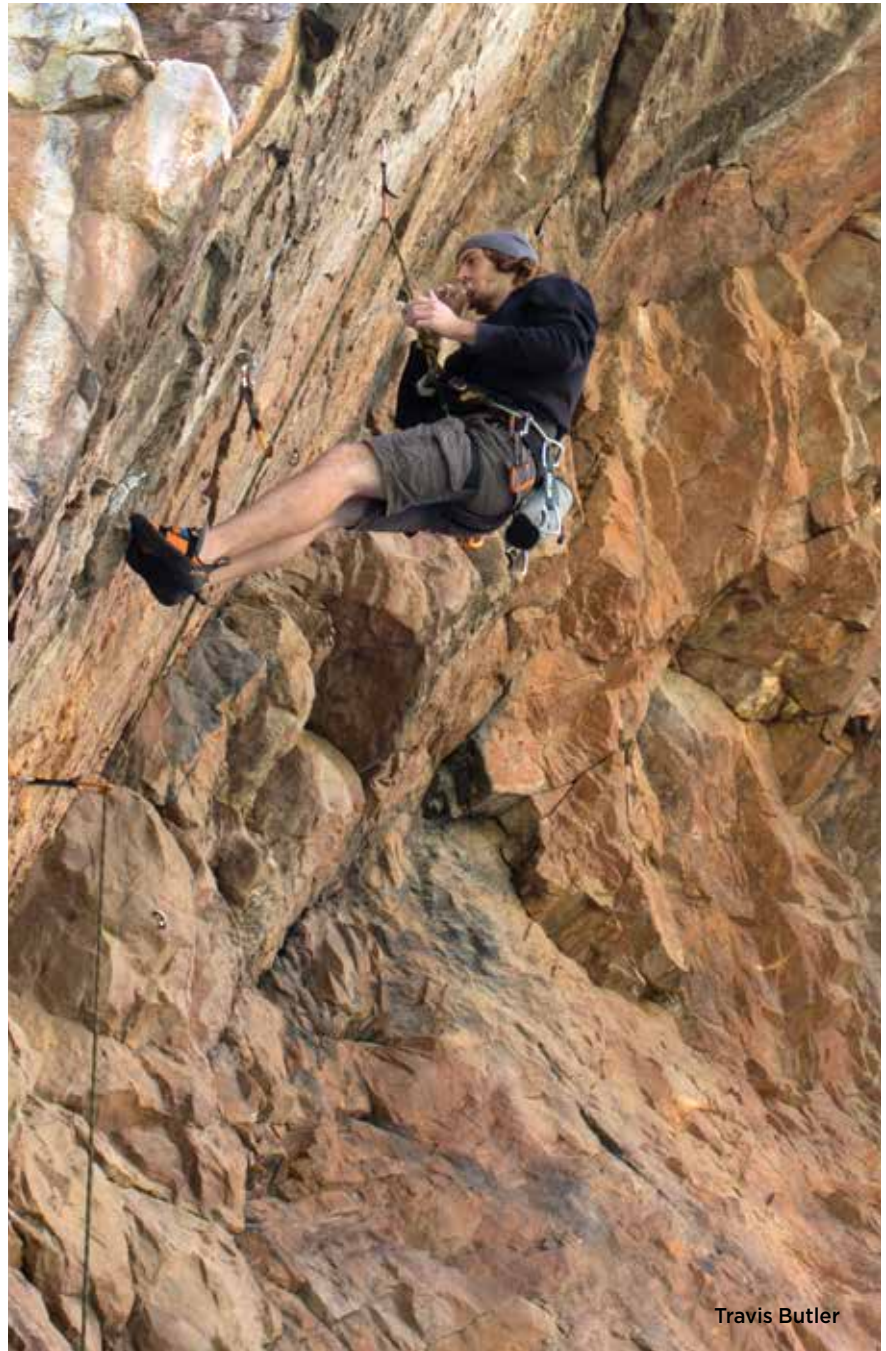
Media workers can be disciplined or fired, regardless of whether a publisher has a social media policy or not.

You're fired

In 2012, eNews Channel Africa's sports reporter Lance Witten was suspended after he tweeted “Linkin Park is so badass, people are dying to see 'em” following an accident which killed a concert-goer. He apologised and was later re-hired and ordered to go for social media training. McIntosh Polela, spokesman for South Africa's elite police unit, the Hawks, was less lucky. Polela tweeted, “I trust that JubJub's supporters gave him a jar of Vaseline to take to prison” after Molemo 'Jub Jub' Maarohanye and Themba Tshabalala were found guilty on charges of murder and attempted murder. Despite apologising for his actions and removing the remark from his Twitter stream, he was fired after a disciplinary hearing in accordance with police disciplinary regulations. A disclaimer on Polela's Twitter account which claimed that he tweeted in his private capacity had little effect. While it may be useful for employees to use disclaimers to distinguish private and professional opinion, the lines are blurry.

“Don't say anything on social media that you wouldn't say on live television on the 7pm news,” advises Deosaran.

In 2011, SuperSport commentator Tank Lanning was fired for tweeting from a commentator's workshop. The company claimed that while Lanning's tweets hadn't breached any aspect of the company's social media policy, his behaviour had violated aspects of his employment contract by tweeting confidential and market sensitive information.



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WHAT JOURNALISTS AND MEDIA SHOULD DO

- Be sensible and sensitive to other people's rights and interests. Apply conventional rules and norms (via @pauljacobson).
- Identify yourself as a journalist and include a disclaimer on your social media profiles.
- Don't be a cyber-bully in terms of the Protection of Harassment Act.
- Be transparent. Declare conflicts of interest.
- Have an online corrections policy that's timeous and transparent.
- Respect privacy on social media. Do not use content from private Facebook profiles unless there is an argument for public interest. This is akin to quoting “off the record” conversation (via @julieposetti)
- Vet, verify and contextualise information curated from social media accounts (via @niemanlab).
- Don't engage in character assassination, name calling, bullying and threats. Don't bait trolls.
- Facilitate easy reporting of abuse on your social networking channels.
- Employ and train journalists and online editors who can apply understandings of media regulation to newsgathering, curation, engagement, marketing, crowdsourcing and data mining using SMNs.
- Don't do anything stupid (BBC)!

In late 2012, the *Citizen* fired photographer Johan ‘Slang’ Hattingh who criticised the paper on Twitter for cloning out the images of two South Africans killed in a suicide bombing in Kabul. The picture appeared on the title’s front page. The paper used Hattingh’s employment contract to dismiss him for defamation, bringing the title into disrepute and damaging trust between employer and employee.

There is a concern that companies’ intolerance of public criticism by its functionaries may affect freedom of expression in the workplace and worker rights. The right of workers to criticise the practices of their employers is critical and protected following a Constitutional Court judgement in the case of South African National Defence Union vs Minister of Defence, 1999.

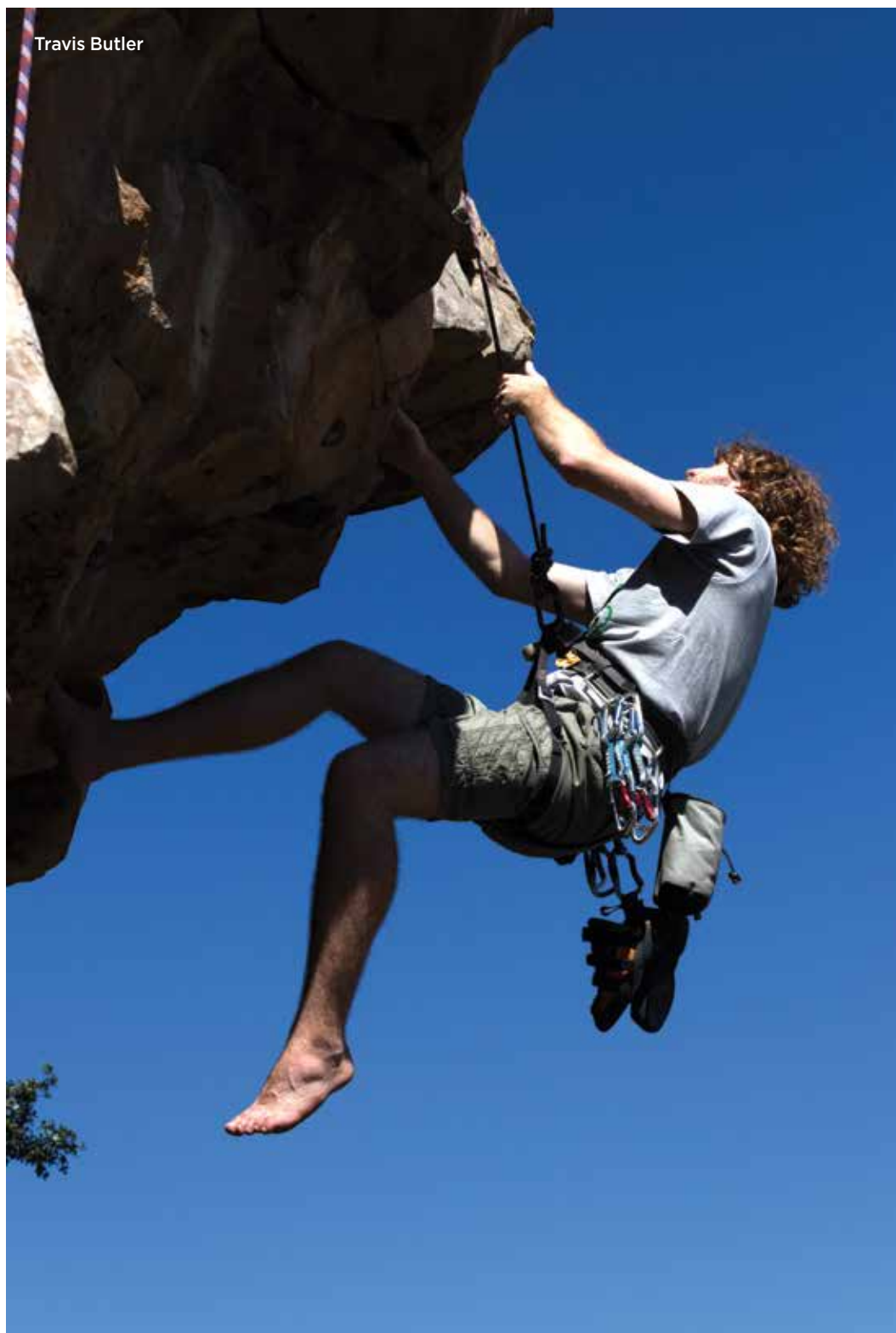
“It might be a whistle-blowing in some respects that there is justifiable basis for speaking out,” said Unesco Director of Freedom of Expression and Media Development Professor Guy Berger. “On the other hand, in many contracts, it is assumed that you signed up voluntarily and that includes abiding by terms of employment.”

Fifth estate

If laws and social and human resource policies fail to hold media to account, people will. Networked publics can be useful, though antagonistic, in the struggle for media accountability. Ward and Wasserman note how the Fifth Estate’s online activism can spill over into offline demonstrations and campaigns that call for boycotts and lobby for institutional change (2010). In South Africa, organised civil society groups and media NGOs like Media Monitoring Africa, Genderlinks, the Freedom of Express Institute and others play a role here. More recently, organisations like AfricaCheck based at Wits University play a role in policing accuracy in media regardless of platform. AfricaCheck hopes to spread the culture and enable the practice of fact-checking, vetting and verification among the wider journalistic community. In some cases, they offer sufficient pressure or sanction to censure the press for its decisions through discussion, viral campaigns and online activism on websites and SMNs like Twitter and Facebook.

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