

# CAN I GOOGLE APPLICANTS?

AND OTHER SOCIAL MEDIA CONCERNS FOR THE HR MANAGER

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YES, you can...BUT there's more:

- 
- An Update on Social Media
  - To Google or Not
  - SM/Employment Issues of the Day
  - Looking Ahead

# AN UPDATE ON SOCIAL MEDIA



# It was the Best of Times . . .



**Clarence House**   
@ClarenceHouse

 Follow

Her Royal Highness The Duchess of Cambridge was safely delivered of a son at 4.24pm

 Reply  Retweet  Favorite  More

**15,472**  
RETWEETS

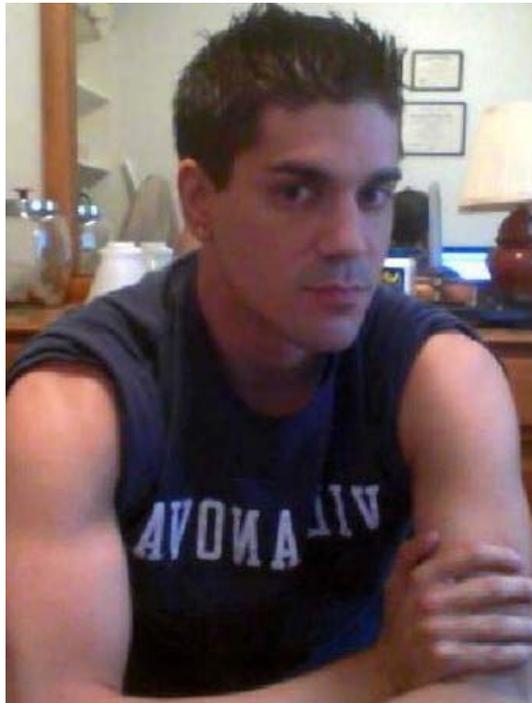
**5,308**  
FAVORITES



12:35 PM - 22 Jul 13



. . . it was the Worst of Times



crunk\_bear CarlyCrunkBear  
Such an easy day... Can't wait to roll up after school. ☺☺☺  
2 days ago Reply Retweet Favorite

crunk\_bear CarlyCrunkBear  
This is. Hilarious. @Splif  
2 days ago Reply

crunk\_bear CarlyCrunkBe  
@DaveyClair I do that, but

Amount: 34.93  
Tip 18%: 10% why do you get 18  
Adt1 Tip: 0  
Total: 34.93  
Cash

**#McDStories**  
**#SpreadTheCheer**

# Saturation to Maturation to Mobile



- **72%: Online adults use social networking sites**
  - Men (70%) | Women (74%)
  - White (70%) | Black (75%) | Hispanic (80%)
  - 18-29 (89%) | 30-49 (78%) | 50-64 (60%) | 65+ (43%)
- **61%: Of mobile phones are smartphones**
  - 40%: Access social on mobile
  - 91 – 103%: Percentage of US population w/mobile

# Social Plus

## □ **Second Screen Experience**

- 38%: Via smartphone
- 41%: Via tablet

## □ **Social Care**

- 47%: Engage in customer service via SM
- 30%: Prefer SM care over phone

## □ **Social Ads**

- Asians: Most-likely to share, like, or purchase
- Whites: Least-likely to take action

# Burnout or Addiction?

61% - Taken a Facebook Vacation

## Reasons for Facebook Breaks

61% of Facebook users have voluntarily taken a multi-week break from using the site in the past; these are the reasons they gave for doing so

Was too busy / Didn't have time for it	21%
Just wasn't interested / Just didn't like it	10
Waste of time / Content was not relevant	10
Too much drama/gossip/negativity/conflict	9
Was spending too much time using the site	8
Only an intermittent or infrequent user	8
Went on vacation/trip/deployment	8
Just got tired/bored with it	7
No real reason / Just because	6
Concerns about privacy/security/ads/spam	4
Did not have computer/internet access	2
Prefer other ways to communicate / Facebook not "real life"	2
Health or age issues	2
Took a break for religious reasons	1
Didn't like posting all the time / Didn't want to share	1

Source: Pew Research Center's Internet & American Life Project Omnibus Survey, conducted December 13 to 16, 2012 on landline and cell phones. N=316 for Facebook users who have taken a break from using the site in the past.

\$200 for 5 Months

\$5 for 30 Days



## Facebook Deactivation Agreement

I Rachel Bair agree to deactivate my Facebook Account from 2/4/13 to 6/26/13.

In return, my dad, Paul Bair, agrees to pay me \$ 50.00 on 4/15/13 and \$ 150.00 on 6/26/13. He/she will have access to my Facebook to change the password and to deactivate the account. This will prevent me from re-activating the account in the future. I plan to use the money for the following purposes: stuff.

Signed and agreed to in full:

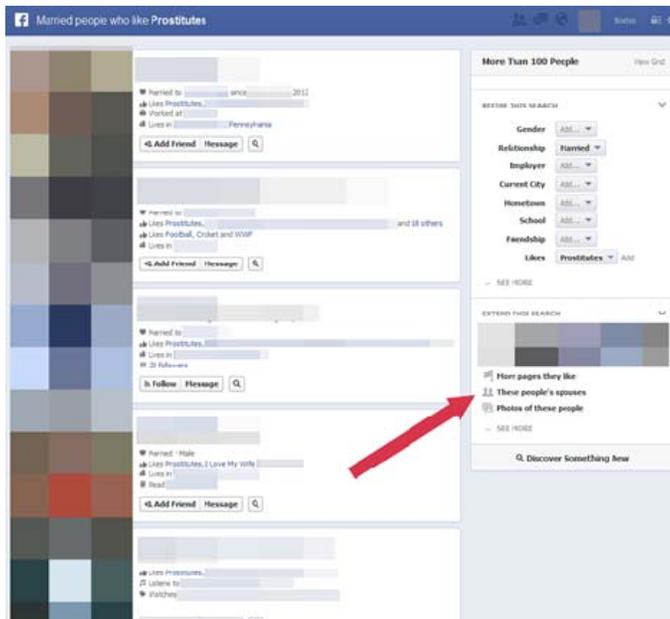
Rachel Bair

Paul Bair 2/4/13

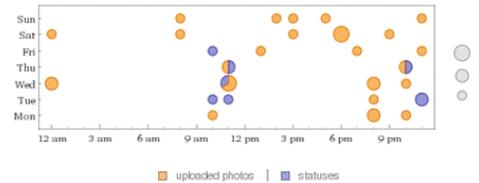
# Web 3.0 – The Semantic Web

Facebook Graph

Wolfram | Alpha



mouseover for friend details



mouseover for breakdown details

(based on data from 37 total activities)



(excluding "a", "he", "for", etc.)  
 (based on data from 212 wall posts)

# Other Social/Tech Developments

## □ Predictive Analytics/ Psychometrics

- Data used to suggest results without a search
- Ex: Google Now; Mashable's "The Next Big Thing"
- Ex: Facebook data reveals intimate secrets

## □ Shift to Photos and Video

- Snapchat: Self-destructing texts / photos
- Vine/Instagram: Microvideos
- Pinterest: J.Crew Fall Catalog



THE TIP OF THE ICEBERG...  
TO GOOGLE OR NOT



# “Drunken Pirate”



**Issue:** SM picture discovered. Should this person be giving a teaching license?

**What do you see here?**

**What conclusions would you draw?**

# Social Media Background Checks

40. Do you possess a North Carolina drivers license?  Yes \_\_\_ No. If yes number \_\_\_\_\_

41. Do you possess a drivers license from another state? \_\_\_ Yes  No  
If yes, what state? \_\_\_\_\_ Drivers license number? \_\_\_\_\_

42. Has your license ever been suspended or revoked? \_\_\_ Yes  No If yes, please explain  
\_\_\_\_\_  
\_\_\_\_\_

43. Do you have any web page accounts such as Facebook, Myspace etc. ? If so list your  
username and password. \_\_\_\_\_

The Concern	The Business Case
Illegal or Unlawful Activity	Negligent Hiring
Character and Personality	“Good Fit”
Inaccuracy or Exaggeration	Corroboration
Too Much Information	Additional Good Information

# Is it Reliable?

The Google logo is centered on the page. It consists of the word "Google" in its signature multi-colored font: blue 'G', red 'o', yellow 'o', blue 'g', green 'l', and red 'e'.

Google

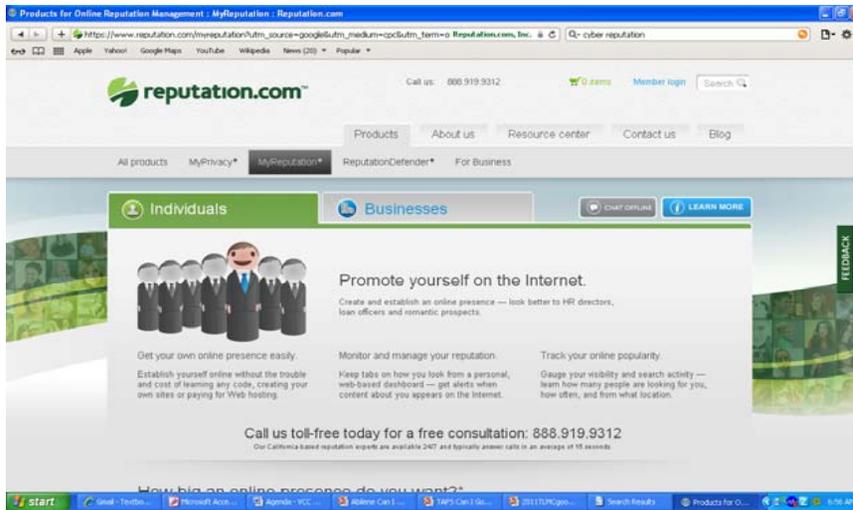
A search input field containing the text "John Sim".

John Sim

Google Search

I'm Feeling Lucky

# Identity Management or Manipulation



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Track your online popularity. Gauge your visibility and search activity — learn how many people are looking for you, how often, and from what location.

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Step 1: Choose Your Plan. If you wish to use one of our already established companies, once you subscribe, you will be directed to our company directory with over 100 virtual firms listed to choose from and new companies are added every week!

Our Commitment

We will act as your very own human resource department and supervisor.

# Smith v. Dep't of the Treasury



## Termination or Resignation?

“. . . Hiring Official had performed an **independent 'routine' Google search** and discovered that Complainant had filed a case in United States District Court in which he brought suit against [the Agency.]”

# Social Recruiting



**92%** Use or plan to begin using SM

- **49%** Saw an increase in **quantity** of candidates
- **43%** Saw an increase in **quality** of candidates
- **20%** Reported it took **less time** to hire
- **31%** Saw an increase in employee **referrals**

# What do Recruiters Look at?



86%

Likely to look at SM profiles

48%

Always review online profiles

- ❑ **View Negatively:** Reference to illegal drugs; sexual nature; profanity; spelling/grammar errors; alcohol
- ❑ **View Positively:** Membership in professional organizations; volunteering/donations to charity
- ❑ **View Neutrally:** Political; overtly religious

# Does it Impact the Decision?



69%

Have **rejected** a candidate

68%

Have **hired** a candidate

At what stage does screening happen?

- ▣ 47%: After receiving an application
- ▣ 27%: After initial conversation w/candidate
- ▣ 7%: Does not screen
- ▣ 4%: Right before making an offer

# What's the Problem?

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Access to protected class information.

Opportunity to use unlawfully.



# No Snooping Laws

## Federal

- Social Networking Online Protection Act (SNOOPA) – H.R. 537 (introduced on Feb. 6, 2013)
- Making it illegal to ask job applicants and employees for social networking or email accounts

## State

- 14 States – MD, MI, NJ, CA, IL, NM, UT, WA, AR, CO, OR, VT, NV, WA
- Laws designed to prohibit employers from requiring social media username and passwords

**“An answer searching for a problem?”**

# Mitigate Risks & Maximize Rewards



- **Create consistency**
  - ▣ Identify the search criteria
  - ▣ Train evaluators
- **Create transparency**
  - ▣ Seek consent
  - ▣ Disclosure search as part of review
- **Create compartmentalization**
  - ▣ Filter protected class information
  - ▣ Limit decision-maker's access

# The New Hiring Reality



THE REST OF THE ICEBERG...  
SM/EMPLOYMENT ISSUES OF THE DAY

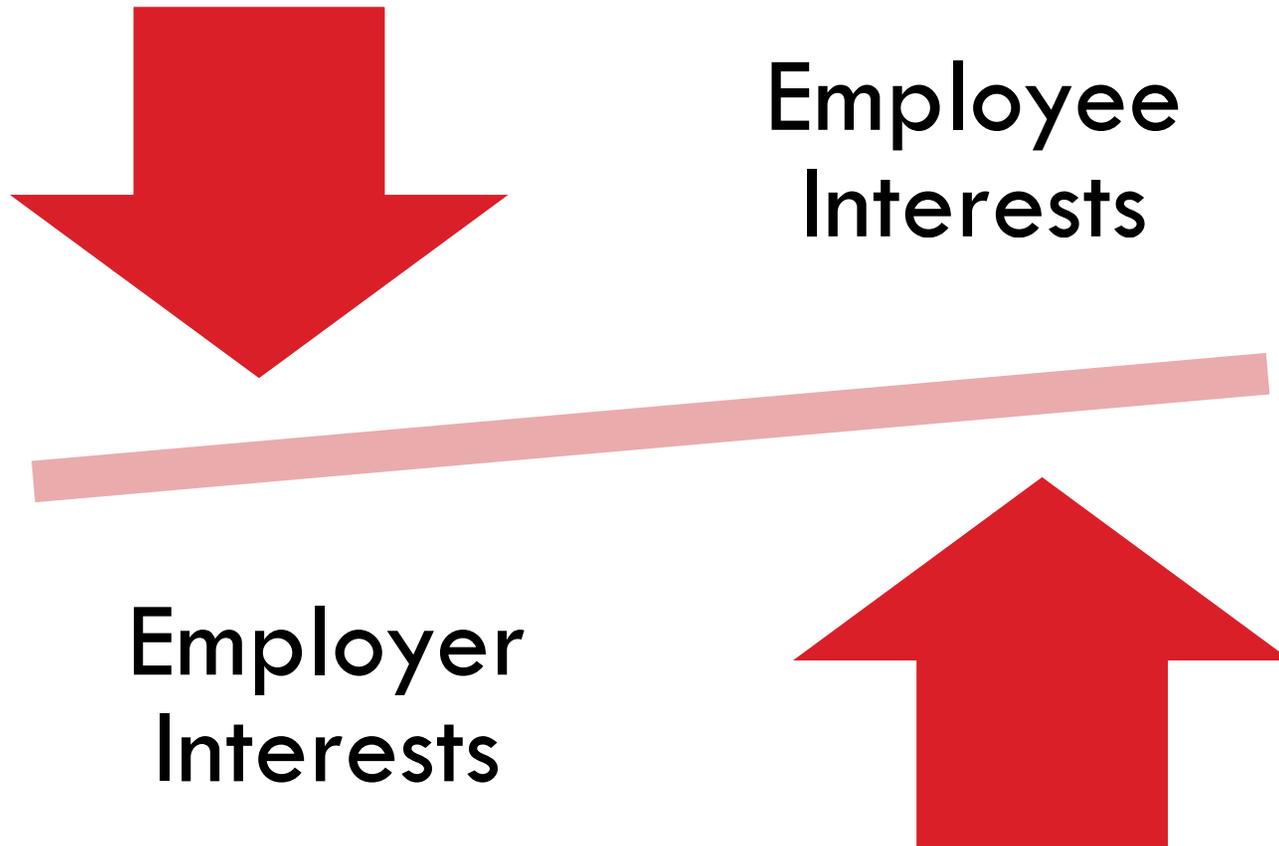


# Obligations of Employers



- Make the workplace **free of unlawful discrimination**, harassment and retaliation
- Promptly and confidentially **investigate** complaints of discrimination, harassment and retaliation
- Where discrimination, harassment, or retaliation may have occurred, take **prompt and appropriate remedial action**

# A Social Media Policy...Have One!



# Social Media Policy Top Tips



- Be specific
  - ▣ Vague = Liability
  - ▣ Set out acceptable and unacceptable usage
- Prohibit unlawful behavior (e.g., discrimination)
- State extent and nature of monitoring
  - ▣ Limit monitoring to what is necessary
- Clarify who owns what material at what time
- Protect confidential, proprietary information

# I Can Say Whatever I Want!



## **Two Legal Tests:**

### **“Matters of Public Concern”**

- Those which can be fairly considered as relating to any matter of political, social, or other concern to the community.
- Whether the employee spoke primarily in his role as a citizen rather than as an employee addressing matters of only personal concern

# Monitoring and Investigating



# Digital Harassment



## □ Harassment

- ▣ Hostile and/or violent comments to FB and shared among coworkers
- ▣ Vulgar words and pictures via text message
- ▣ Both supervisory and coworker harassment

## □ Reprisal

- ▣ Feared approaching management when online harassment was occurring

# Harassment Example



**Christopher** [redacted] I told you, you would be the first to know!

<http://cheezburger.com/View/5341739264>



**Coworker Totally Looks Like Mahmoud Ahmadinejad**

cheezburger.com

Coworker Totally Looks Like Mahmoud Ahmadinejad

Like · Comment · Share · 12 hours ago · ✖



**Elliot** [redacted] this is a little out of line

9 hours ago · Like



**Sam** [redacted]

4 hours ago · Like



**Amy** [redacted] This is awful. So you're saying my husband looks like a human rights violating dictator. The fact that you think this is funny tells me all I need to know. It's sickening.

3 hours ago · Like



**Misha** [redacted] This is [redacted] up. Sam doesn't look like him. Sam is a completely different ethnicity than him. This is workplace harassment. The person who posted this is an asshole.

3 hours ago · Like

# EEOC OFO

## OFO – “Social Media”

- ❑ Winter v. Veterans Affairs (2012) – social media experience among reasons for selection.
- ❑ Reese v. Interior (2012) - “Recruitment of younger people through Facebook and other social networking sites put older workers at a disadvantage as older people use computers less than younger people.”

## OFO – Reverse and Remand

- ❑ Denny v. Veterans Affairs (2012) – Sexually-tinged comments, “With a face like that...”
- ❑ Knowlton v. Transportation (2012) – Posts on FB, “... and see if his Black ass wants to complaint.”

# Peer v. F5 Networks



“I start crying the instant my alarm goes off in the morning and don’t stop until I finally get to sleep at night. All I do all day at work for the past week is dream up practical ways to kill myself that won’t require people I love to clean up the mess . . .”

- **Issue:** What happens when management learns of “direct threat” information through social media?
- **Takeaways/Impact:** Friending subordinates on social media; being on notice; obligations to act regardless of forum; duty to engage in interactive process

# Rodriguez v. Wal-Mart Stores



Supervisor views FB pages of direct reports and sees posts of attendance at a July 4<sup>th</sup> party after calling in sick. Supervisor responds to one of the post and publically chastises them for lying. Supervisor gets terminated for violating social media policy.

- **Issue:** What should a supervisor do upon learning of actions by direct reports on SM?
- **Takeaways/Impact:** Know the SM policy; engaging publically v. privately; friending direct reports

# Investigations and eDiscovery



- Legal discovery of electronic documents and data
  - ▣ Email, web pages, word processing files, spreadsheets, metadata, databases, backup tapes, cached memory, hard drives, thumb drives, PDAs, firewall/IDS logs, phone call logs, IMs, etc.
  
- Anything outside of the traditional discovery of writings or business records on paper is “eDiscovery”

# Sample Discovery of SM



- A complete copy of any information relevant to the allegations in your Complaint contained in any Facebook profile that you maintain, which data can be generated using Facebook’s “download your information” or “download a copy” tool.
- Identify all blogs, microblogs, personal websites, or other personal or professional social media profile pages that you have or had maintained from [date] through present, and state all handle names, user names, and screen names you have used or currently use on these sites.

# Sanctions for Failure to Preserve



- **EEOC v. Honeybaked Ham**

- Production and review of SM information (including user name and pw)
- SM = “Everything About Me” file folder

- **Christou v. Beatport**

- “Losing” ones smartphone after litigation hold
- Recognition of privacy concerns, but still within the realm of relevant evidence

# Stewart v. CUS Nashville, LLC

- Blog Entry
- Facebook Post
- + Verbal Comment
- Reprisal**



# MGMT Officials Gone Wild

**Founder**  
**Liliana Level**

**Blogs (hosted on  
Coyote Ugly's website)**

“This particular case will end up pissing me off[,] cause it is coming from someone we terminated for theft.”

**Director of Operations**  
**Daniel Huckaby**

**Drunk Posts on FB**

“Dear God, please don't let me kill the girl that is suing me . . . that is all.”

Deletes post.

# Law Enforcement Use of SM



**Sunith Baheerathan** @Sunith\_DB8R

Any dealers in Vaughan wanna make a 20sac chop? Come to Keele/Langstaff Mr. Lube, need a spliff or two to help me last this open to close.

Details



**York Regional Police**

@YRP



Follow

Awesome! Can we come too? MT  
@Sunith\_DB8R Any dealers in Vaughan  
wanna make a 20sac chop? Come to  
Keele/Langstaff Mr. Lube, need a spliff.

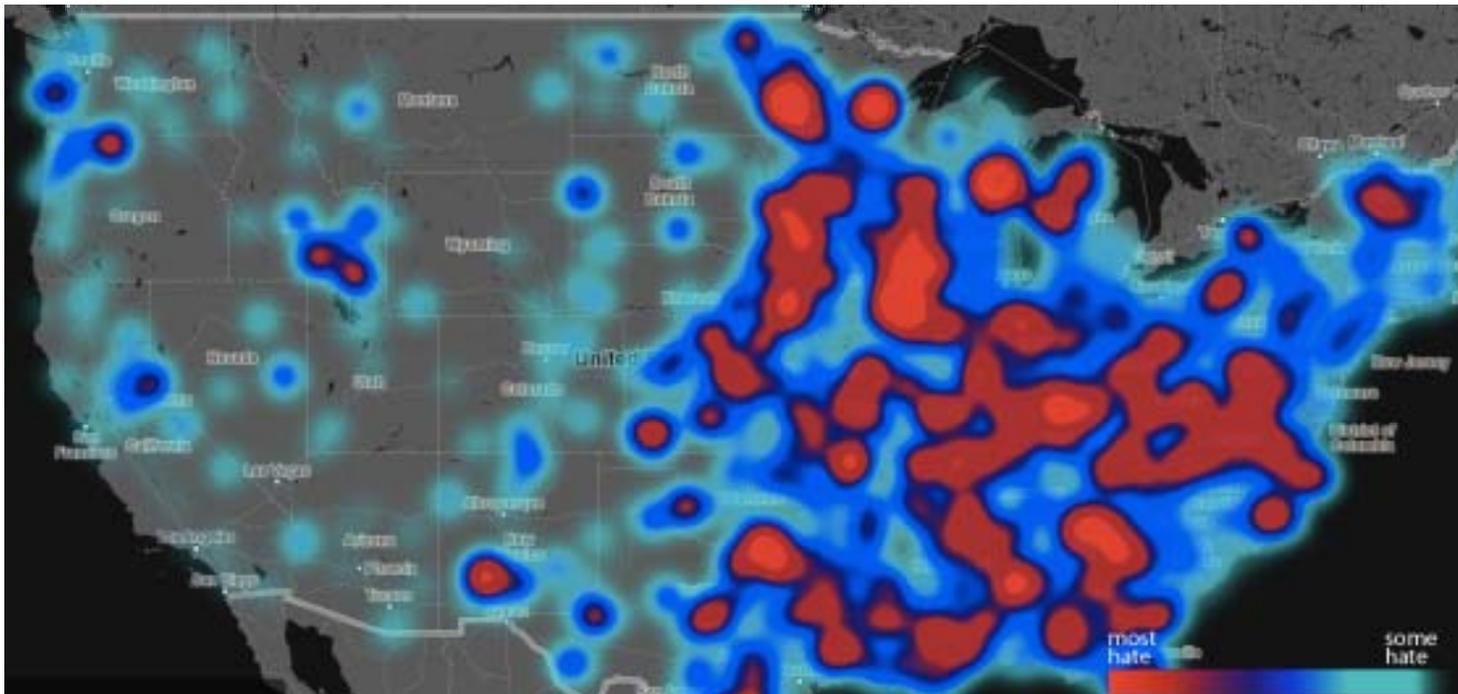
Name + evidence + location + employer + photo

LOOKING AHEAD



# Smarterphones and Smartapps

**“Hate Map”** - Where racist, homophobic, and offensive tweets originate



# Service via Facebook

- **Fortunato v. Chase Bank**
  - Whether FB was acceptable for summons and complaint
  - No, without degree of certainty
- **FTC v. PCCARE247, Inc.**
  - Whether email + FB was acceptable
  - Yes, as a supplemental means
- **Joe Hand Promotions, Inc. v. Carrete**
  - No, for FB as the sole means of service

The High Court in UK accepts FB & TW as means

# Recommendations



- ❑ **Promote education and awareness**
  - ▣ Update policies, procedures, and practices
  - ▣ Integrate social media into future training
  - ▣ Enhance collaboration across business functions
- ❑ **Develop a social media strategy with regard to:**
  - ▣ Hiring Process
  - ▣ Harassment
  - ▣ Mess Up Plan
- ❑ **Enhance investigations and discovery**
  - ▣ Incorporating social media evidence
  - ▣ Document retention strategy and litigation holds

# CLOSING THOUGHTS



# Disney World During Christmas



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THANK YOU!