

Private Eyes, Public Web sites



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The explosion of social networking sites has resulted in an infinite amount of information available online, but claims analysts using this information must always keep relevance in mind.

It seems everyone is interested in or at least has heard of Facebook, Twitter, Myspace and other social networking sites. Undoubtedly, they are becoming increasingly popular and bringing people closer together. These new networks provide an abundance of possibilities to keep “friends” (real or virtual) informed of our daily status, our activities and even our whereabouts should we choose to do so. This level of sharing has led to the creation of an electronic evidence trail of a user’s thoughts and activities, including photos as created and recorded by the user.

Insurance companies have caught on to this trend. They are starting to surf the Web to gather information about claimants as part of the claim adjudication process. The explosion of electronic social networking sites has resulted in an infinite

amount of information available online. Insurance professionals are increasingly discovering the value of social media for uncovering relevant information about their claimants.

Canadian courts have in most cases ruled in favour of the insurer with respect to accessing and presenting information found on social networks to be used against the plaintiff. From these decisions, we can interpret that information on the Web is public and can be used as evidence. There is nothing unethical about an insurance company representative or investigator accessing a claimant’s information on a social networking site not protected with privacy settings. ‘Virtual surveillance’ of a claimant’s public information is no different from video surveillance in any public location.

PROACTIVE CASE MANAGEMENT

These new online resources, when employed appropriately and diligently, can help claims analysts compile a “complete” picture of a claim and make timely and accurate decisions. Searching the Web for information should be a key part of a sound proactive case management practice. However, insurance companies need to be strategic when determining how and when to use this

information. Insurers should not adopt an approach in which each claimant is the subject of a Web-based search. Claims analysts should use Web-based searches appropriately, just like they would use any other tools at their disposal.

If warranted, analysts and investigators should search for profile information on search engines such as Google or 123people.com. Search results using 123people.com are presented in a structured way for optimal use. They include results from traditional search engines as well as pictures, videos, email addresses and phone numbers. In addition, you will find social network profiles, blog entries, relevant documents, instant messenger IDs, news and Amazon results. Notable websites are Facebook, Myspace, Flickr, LinkedIn, Blogger, YouTube and Twitter. Foursquare (update on user's location) and Blippy (what users have purchased) are also good.

BE STRATEGIC

Before considering an Internet search on a claimant, the analyst should ask himself the following questions:

- What information do I already have on file?
- Is this enough to render a decision?
- What are the incongruities? Red flags?
- What is the chronology of events in the file?
- What information seems to be missing or not making sense?

If a search is necessary, the analyst should then take a strategic approach to determine:

- What sites should be viewed?
- What information are we looking for? What are we trying to prove?
- The type and relevance of the information available.
- The reliability and/or quality of the information.

UNDERSTANDING SOCIAL MEDIA RESOURCES

An analyst needs to understand the various media sources and their applications to improve his or her investigation. A Web site is different from a blog or a social media site. Each has its own purpose and "clients." For example,

LinkedIn is more suited for a business environment than Facebook. Professionals use LinkedIn for networking and sharing expertise, while Facebook can be used by the masses and allows for more personal interactions. These differences change the way searches are conducted and the type of information gathered. LinkedIn will be better suited for vocational information, while Facebook may reveal the claimant's personal information.

TIPS FOR A SUCCESSFUL INVESTIGATION

- Web searches should be done sooner rather than later, especially if you think a case might go to legal. Plaintiff's lawyers are well aware of insurance companies searching the Internet; they are advising clients to restrict access to personal information and to be cautious about what they post.
- Usually Web sites are static, whereas people are constantly updating their blogs and social media profiles. Infor-

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mation found one day can be deleted the next. If relevant information is discovered, the site needs to be visited regularly and the information saved. Clear copies should be downloaded, printed, dated and filed. Always copy the url address.

- Analysts need to ask themselves if the results of the search are relevant to the case.
- Analysts should also try to confirm the validity of the information with other objective methods.
- Analysts unsure about the relevance of information or the process for obtaining such information should refer the case to their in-house legal counsel for guidance.

VALUABLE TOOL, BUT NOT A MEANS TO THE END

Claims analysts should be careful with the information obtained on the Web. Often when a search gets a positive

"hit," there is a tendency to give that information more weight than appropriate. Analysts should always stay focused on the relevance of the information. Apparent inconsistencies observed through photos or comments obtained on the Web should not be taken at face value. Rather, they should be assessed against the claimant's reported limitations. Obtaining a picture of a claimant dancing, running or playing golf — or comments that he or she is going to a party on a given night — does not necessarily mean they are not disabled. One has to make sure of:

- when the pictures or comments were produced;
- in what context the pictures or comments were produced;
- where the information stands in time when compared to the chronology of events; and
- is the information relevant to the actual claim?

As in video surveillance, "virtual surveillance" should be only one among many tools the claims analyst has in his or her tool kit. It should not be the only tool. Presenting in excess of 200 pictures without any context will not win you a case.

Some insurance companies are establishing private accounts on social networks to better search for claimant information or pictures that might damage a claimant's credibility. Insurance representatives and private investigators hired by these companies should be aware that courts have forewarned to avoid the practice of creating a social Web site profile for the sole purpose of trying to access information in order to ambush a plaintiff.

Companies should consider creating guidelines for Web searches, clarifying who should have access to the Web and social networking sites. In addition, the guidelines should outline the internal process for signoff on authorizing these searches.

In the end, it all boils down to good common sense. A balanced approach throughout the investigative process and sound use of available tools are key. ≡