COLUMNS / CHRONIQUES

Blog code(s) of conduct: some legal considerations for health librarians

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Introduction

> "Post-Internet 2.0 free speech is most commonly represented by the blog, websites devoted almost solely to giving voice to a person's thoughts and beliefs using the Internet as the medium of free exchange..." [1]

This is the fourth installment of the social media column for the Journal of the Canadian Health Libraries Association / Journal de l'Association des bibliothèques de la santé du Canada (JCHLA / JABSC). It is a brief look at the legal issues associated with blogging and what might constitute a more ethically informed use of blogging technologies. However, its main purpose is to explore the parameters of free speech on blogs and some important legal concepts such as defamation of character, compensatory damages (where someone has injured another's reputation), and using the facts as a defense. The challenge here is to strike a balance between adopting judicious restraint on blogs while permitting ample freedom for fair comment. To summarize, the goal is to move health bloggers (and readers) towards an ethical code of conduct – a timely issue for our field.

In 2011, the use of health and medical blogs, – not to mention Facebook, Twitter, and other social media,– has made it easier to communicate with health professionals from around the world [2]. Library blogs are used in many library settings to push information out to users about library services and community events that causes some critics to refer to them as "shovelware" [3]. But blogs are used for multiple purposes, such as requesting feedback from library users and talking about important issues of the day. For many in the information sphere, the exchange facilitated by blogs is critical to forging relationships with users and building a "digital brand".

What is a blog?

The purpose of the weblog (or blog) continues to evolve in the web 2.0 era. Put simply, a blog is a regularly updated site of entries, arranged chronologically, with the most recent entries posted first. Blogs have been central to the rise of web 2.0 and continue to form the basis of much social commentary and knowledge exchange on the web. Many political blogs are used as platforms for sharing a range of viewpoints on issues, some of which might otherwise never see the light of day – an important part of democracy and public discourse. According to Wikipedia, "... most blogs are interactive, allowing visitors to leave comments and even message each other via widgets on blogs ... it is this interactivity that distinguishes them from other static websites" [4]. The exchange of ideas is precisely why blogs are important for learners in the 21st century because they provide online venues for debate, conversation, and reflective practice. Like other virtual spaces, blog platforms are used to share stories, pictures, and interesting ideas with others and, while doing so, users learn new skills in the process [5].

Internationally, there is a growing community of health and medical bloggers [6]. Many of the most popular medical bloggers started blogging in 2004 and 2005 [7]. In web 2.0 terms, blogging circa 2004 is practically pre-historic but a surprising number of those same medical bloggers continue to blog in 2011. Readers say that what they enjoy most about physician bloggers is the ability to talk to them without the pressures of the clinic and filters getting in the way of open communication. In 2011, health librarians who blog are much fewer in number but are more apt to use blogs for outreach, marketing, and professional development purposes. There is a move to create resources such as blog charters and codes of ethics in some professions in order to govern the use of blogs, i.e., see the Health Care Blogger's Code of Ethics (http://medbloggercode.com/) [8].

In Canada, the Canadian Health Libraries Association / Association des bibliothèques de la santé du Canada (CHLA / ABSC) Code of Ethics is a fine place to begin a discussion of the ethical use of blogs [9]. The Code places a premium on high standards of professional conduct and is firmly grounded in the core values of librarianship. It emphasizes courtesy and respect for others, impartiality and competence in provision of information, and sensitivity to the requirements of each patron. Other competencies include taking responsibility for professional development, an understanding of key concepts such as a duty of care in information provision and confidentiality. Many of these principles can also be applied to using blogs in library services and easily provide a guiding framework for proper usage.

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Blogs and free speech

"...my book on professional liability does not address social media directly. The main reason is that the ideas about professional liability and how to avoid it, do not really change in the face of social media....the basic advice for avoiding professional liability, which is for librarians to be experts on finding information rather than being experts on the information they find, is as true when tweeting or on Facebook, as it is in a face-to-face encounter at the reference desk." [10]

The rise of blogs in the last decade is linked to several global forces such as freedom of assembly in dictatorships and even democratization. In Canada, the right to express opinions on blogs is protected by the Charter of Rights and Freedoms; this includes the right to access the opinions of others without fear of censure or reprisal. It should be said that the potential problems associated with blogs should not prevent health librarians from developing strategies to use them effectively. However, it makes sense to know what limits can be placed on free speech when moving online for debate. Due to the openness of social media (and the assumed anonymity it seems to foster in some people), some organizations block in-house use of blogs, Facebook, and Twitter. Some critics say that bloggers cause a myriad of headaches for organizations, particularly when strategic goals of the organization conflict with the free speech rights of employees [11]. Some organizations have taken steps to block social media entirely, an unfortunate step given its potential for facilitating informal daily learning in the workplace.

Since the mid-1990s, the Internet has generated incendiary debate about the limits of free speech in the digital era [12]. Many bloggers make the mistake that anything they say on their blogs is protected by free speech. As the courts have ruled repeatedly, free speech has limits and the right to speak your mind freely is not absolute. The main caution for bloggers with respect to responsible free speech is to avoid using language that may be considered defamatory. Although defamatory statements represent a fraction of the total on blogs, they come up from time to time; occasionally, vociferous and hostile exchanges called flame wars occur on blogs, Twitter, and especially Wikipedia. A strong word of caution for anyone unhappy or disgruntled about others: save your vitriol and avoid taking grievances onto the blogosphere. Some employee bloggers, for example, have been fired for saying things about their bosses, and violating codes of confidentiality and non-disclosure agreements [13]. To keep your job, learn what can and cannot be said whenever you venture out onto the blogosphere.

Liability and "blog talk"

"...Internet defamation is becoming more common due to the increasing ability of internet users to post comments online. Blogs, message boards, instant messaging services, and social media sites, such as Facebook and Twitter, all allow every day internet users to publish their views on a variety of people and subjects. As a result, internet defamation commonly occurs from defamatory material being posted on various message boards or websites." [14]

The law of defamation has developed historically to safeguard people's reputations. Defamation is an act that exposes others to ridicule and is far more harmful than a joke, exaggeration, or satire [15]. In legal terms, a false or disparaging comment about someone else is considered defamatory. Innuendo can also be ruled by courts as defamatory [15]. If what you are writing on a blog (be it your own or someone else's) causes any emotional distress or injury to someone's dignity or reputation, a statement of claim can be filed against you. In most jurisdictions, a civil case can easily be resolved (or mitigated) if you publish an honest retraction and apologize to the individual affected. A good rule of thumb for anyone who wants to air personal or professional grievances on the web is to reflect on the potential outcomes before going public. If you behave civilly on the blogosphere, you will make friends, build your network of contacts, and your activities you will never get you into trouble. Another caveat is to remember that what you say on the web is stored forever. As a result, choosing your words carefully when posting comments on blogs is as important to librarians as the principle of doing no harm (primum non nocere (first, do no harm)) is for physicians.

In Canada, defamation is a tort (a civil wrong) and "consists of any written, printed or spoken words or acts which lower a person in the estimation of others or cause a person to be shunned or avoided or exposed to hatred, contempt or ridicule" [15]. The law also stipulates that defamation consists of falsely and maliciously publishing defamatory statements about someone else. The legal origins of defamation connect it to slander (harmful statements, usually speech), each of which has a remedy. Defamation is the term used most often but the fundamental difference between the two is the form in which defamation occurs. If spoken or made as gestures (or sign language), then the civil wrong is seen as slander.

On a blog, if a statement is defamatory, it is considered libelous. It's important to remember that defamation may occur as a result of using other social media such as Facebook and Twitter. Defamatory remarks made on video and audio sites are also grounds for civil action [16]. Using qualified language (such as "may") may help to reduce a blogger's liability. A quick correction may also mitigate culpability. But bloggers are liable for defamatory statements left on their blogs even when they are posted anonymously by third parties [17]. A recent American case, Barrett v. Rosenthal, examined this issue but ruled against the plaintiffs. The judge wrote that "the plaintiffs who contend they were defamed in an Internet posting may only seek recovery from the original source [of the defamation]" [18] – in other words, the third party who posted the statement, not the blog owner.

Defenses to a defamation claim include what is known as "fair reports privilege" [19]. Was the statement a well-informed opinion or used as a rhetorical device? The truth can be used as a defense in court, and may be sufficient when you are revealing "substantial truths". Fair reports privilege is particularly important for those who engage in fair and accurate reporting (such as journalists). Official sources must be cited and any report should reflect a close scrutiny of the facts. Historically, "opinions" shared in public about someone were protected from libel but this is no longer the case. Calling a blogpost your opinion does not protect you or make it so. Even phrases such as "I

think'' or ''I believe'' do not protect you. These are actionable if they imply something that is factually untrue [20].

Next column

The legal consequences of inappropriate use of social media raise a number of interesting questions for health librarians (as well as our library users). As a follow-up to this column and discussion about the legal and ethical pitfalls of blogging, it's important to look at the issues (and some of the cases before the courts) associated with employee responsibility in the age of social media. Two concepts that repeatedly come up for health librarians in this context are duty of care and vicarious liability, both of which will be explored in the next column.

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Appendix A. Professional Library Association Codes of Ethics, Blogger Guides

American Library Association. ALA Code of Ethics http://www.ala.org/ala/issuesadvocacy/proethics/codeofethics/codeethics.cfm

Canadian Health Libraries Association / Association des bibliothèques de la santé du Canada (CHLA / ABSC) – Code of Ethics http://www.chla-absc.ca/node/28

Electronic Frontier Foundation. Blogger's Legal Guide. http://www.eff.org/issues/bloggers/legal

Health Care Blogger's Code of Ethics – http://medbloggercode.com/

Medical Library Association. Code of Ethics for Health Science Librarianship. http://www.mlanet.org/about/ethics.html