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Project Title: Social Media Liability: A case study of the legal implications of warning

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PHD PROGRESS REPORT 2016

Background

In an emergency, the communication of risk information plays a pivotal role in mitigating and modifying the likelihood of a community's exposure to hazard impacts. Historically, there have been gaps in the ability of the emergency service sector to effectively communicate with the public. Consequently, there is increasing research into the field of risk communication and warning. This research seeks to determine both best practice in the design of message content, to bring about the desired response, as well as the most appropriate means of dissemination. Changes in technology mean there has been ongoing development of new communication channels. In recent years, these channels have included third party social media platforms such as Twitter, Facebook and Snapchat. With the public's increasing use of these platforms and the expectation that they will be used by government for public communication, social media has been increasingly integrated into risk communication and warning strategies. However, with new technologies come new concerns as to whether any legal implications arise. These concerns, stem from the unique attributes of the platforms; such as Facebook's algorithms which affect the timing of messages. Equally, there can be a general concern that in not utilising social media platforms there will be grounds for a legal claim. This thesis focuses on the legal implications of using social media as a dissemination channel for warning. Although social media is also used to gain situational awareness, the scope of this thesis is limited to outgoing communication that may bring about legal actions, in the area of negligence.

Progress

As a legally based thesis, much of the work, rather than involving the gathering of empirical data, revolves around theoretical and doctrinal research. Doctrinal research includes the analysis of case law and legislation which is relevant to the research questions. The nature of this work means that while at the outset, there is end-user engagement to establish the

nature of the problems being faced, and areas of concern, there is limited end-user input during the analysis stages. The findings of the analysis are however, very relevant to informing doctrine and governance structures for risk communication and warning, as they provide a legal rationale for the inclusion of certain actions. For example, the findings highlight that, not only is it common sense to check that public understand the symbols used in messaging so they respond as anticipated, it is also important from a legal perspective that the symbols represent the danger which is likely to occur. This needs to be done in a way that is clear and unambiguous. In this way a warning agency ensures reasonable care is taken in warning, which is a key element to be able to demonstrate in a negligence action.

With the theoretical and doctrinal focus in mind, the last 12 months have been filled, in part, with analysis of case law and legislation. In the first instance, a content analysis of emergency management and related regulation was undertaken. This content analysis sought to determine the actual extent of the responsibility for warning, which is incorporated in legal instruments, against which the emergency management sector might be held legally accountable. It also focused on the extent to which social media has been incorporated into plans, guidelines and other legal instruments. With the responsibilities outlined, it was then a matter of determining whether legal accountability, and therefore liability might arise. This second phase required an in-depth analysis of the case law related to warning. The analysis of the legislation and the case law, resulted in the compilation of four draft chapters, which include key findings and recommendations. Some of these research findings have been incorporated into the research poster, which has been supplied for AFAC 2016.

Along with the legal analysis which has been undertaken, the remainder of the time has been spent:

- Consolidating the final chapter structure of the thesis and crafting the chapters which provide the theoretical story supporting the analysis.
- Presenting the thesis in the 'three-minute thesis' format at the BNHCRC Research Forum in Brisbane 2015, as well as attending the RAF in Hobart in 2016.
- Co-authoring an article which is about to be submitted for approval for publication. Once the article has been accepted for publication, the title and article will be made available through BNHCRC.
- Furthering my teaching and communication skills

As the thesis is in its final year, and the draft is due in September / October 2016, the next 3 months will primarily be spent completing the full draft. My final examination will take place in November this year, and all going well, with incorporation of any feedback from this examination, will be submitted in February 2017. Although I have had little time to focus on publications, my aim is to apply for a write-up scholarship at the end of the thesis, in order to achieve my writing goals. I will also be applying the skills I have been learning in my communication workshops, which covers digital media creation, to produce some podcasts related to my research. These will be made available to end-users related to the Communications Project, as well as more generally on the Bushfire and Natural Hazards website.



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