

Coffee Pot Fire Hazard

An incident recently occurred where a coffee pot was left turned on overnight. The pot had heated, allowing the liquid to evaporate and the pot to crack from the heat. This exposed the area where the incident occurred to the potential of a fire.

In this case, a security guard discovered the pot by the smell of burnt coffee and was able to unplug and isolate the problem. Most pots are fitted with a one shot device that opens when the pot overheats, shutting off the heating elements. Obviously the pot in question either did not have such a device or it failed to operate.



The best and safest option is to turn off all coffee pots at the end of every day. Each area should develop a procedure suited to their own needs to ensure that the last person out checks that the coffee pot has been turned off.

In 2008 the School of Architecture at Delft University in Holland was destroyed through the failure of a coffee machine.

DON'T LET THIS HAPPEN TO OUR UNIVERSITY



Photo accredited to Jorrit Spike (www.archpaper.com)

Legal & Risk Resources

The following resources are now accessible from our website; www.adelaide.edu.au/legalandrisk/resources:

- *Risk Management Handbook*
- *Trade Practices Compliance Manual*
- *Spam Act 101*

Coming soon...

- *Trustee Act 101*
- *Misrepresentation Act 101*

Contract Register

At any given time the University has literally thousands of contracts in place, from simple procurement transactions, to International Agreements and building contracts. The Records Management Policy recognises the responsibility to provide for the adequate management of official records (including contracts) in accordance with the State Records Act (1997) and aims to ensure that official records created by University staff are preserved for future reference.

To ensure we meet records and contract management compliance and to ensure that more complete information is captured by relevant people within the local area(s), it is required by the Auditor General that the University maintain a "contract register".

The purpose of a register is to record the contracts for which areas are responsible with sufficient details to enable monitoring of key dates, tracking of the internal University actions required to be completed, and management of the relationship with the other contracting party. The following details should typically be recorded in the contract register, for each contract in the Faculty, School or Branch:

- *Commencement and expiry dates;*
- *Milestones and milestone dates;*
- *Cut-off dates or contract review dates;*
- *Any requirements that must be fulfilled by certain dates;*
- *Significant obligations;*
- *TRIM location and confirmation or the original in Legal Documents;*
- *Financial arrangements under the contract;*
- *Names and contact details of the other party's contract representatives; and*
- *Other relevant notes.*

The existence of a Contract Register provides a high level summary and contemporaneous record of the University's contracts. Legal and Risk has developed a contract register template for areas to utilise and this template will be coming your way soon. This is a requirement and not merely a recommendation and we will provide whatever assistance is necessary to assist you in Faculties, Schools and Branches.

Please note that all signed contracts, agreements and leases must also be registered as legal documents at the Records Management Office. For further assistance call Kerry George in the Records Office on 35249 or email kerry.george@adelaide.edu.au.

Staff are advised to re-familiarise themselves with the University's Contracts and Agreements Policy www.adelaide.edu.au/policies/2964/ and keep an eye out for the Contracts Handbook, which will be added to our website shortly. The Handbook covers contract preparation and negotiation, drafting, ongoing management, common provisions and clauses, outsourcing, tenders and more.

From the General Counsel



Welcome to the first edition of Legal and Risks newsletter—Unilink for 2010.

This year in Unilink, we continue our focus on issues arising as a result of the increased use of Web 2.0 technology. In this edition we offer some suggestions as to how you can avoid accidentally defaming someone online, or being defamed yourself.

There are many opportunities for Universities who decide to move away from more traditional methods of classroom content distribution. But as the use of podcasting, blogs, video conferencing and online classrooms becomes more prominent in higher education, new copyright issues should be in the forefront of the minds of staff who utilise this type of technology. The University's Copyright Officer, Geraldine Haese, provides answers to some of the questions staff may have regarding the uploading and distribution of online content.

Also in this edition of Unilink, we introduce you to the New Standard for Risk Management (ISO 31000) and draw your attention to more compliance resources now at your disposal.

If there is an article you would like to contribute to Unilink, or there is a legal, risk, insurance or compliance issue you would like covered in a future edition, please contact phillipa.schliebs@adelaide.edu.au.

Celine McInerney (General Counsel)

DEFAMATION and WEB 2.0

The internet began as essentially a static medium; users merely retrieved information from web sites. But over the last decade, developments in technology and changes in the way we see and use the internet have seen it evolve into an interactive medium which is increasingly a platform for communication. This has become known as Web 2.0 and is characterised by information sharing and social networking via VLogs, blogs, wikis and message boards. In this world of Web 2.0, the off-the-cuff comment that might have been made 20 years ago around the water cooler or in a private letter is often instead effectively and permanently broadcast worldwide.

Web 2.0 lawsuits are multiplying. Last year, numerous people were fired for comments made about their employer on *MySpace*, a Melbourne man was forced to publish an apology in two major newspapers after spreading defamatory allegations through *Facebook* and musician Courtney Love became the first celebrity to be sued for comments she made on *Twitter*.

In Web 2.0, *anyone* can be an 'online journalist', which challenges existing concepts of free speech and acceptability of content. Unlike a newspaper, with its editorial staff and Legal team, the internet is largely an ungoverned forum where anyone can say anything. Not surprisingly, the rise of social networking sites, blogs and chat rooms (including online classrooms) has opened the flood-gates for allegations of defamation against individuals. But when and how does an "allegation" constitute an actual case? Who is liable for online defamation? What can you do if you find defamatory content about yourself on the web? And, is it possible to have material removed completely from search results?

What is defamation?

Defamation is among the oldest causes of action recognised by the legal system. The law of defamation is intended to protect people's reputations from unfair attack, and very generally speaking, it includes any false statement that may harm the reputation of an individual.

Taking legal action against defamation can be difficult and not every negative comment will be defamatory. There are a number of exclusions and defences, such as for statements which are true, merely abusive, honest opinions or trivial. Courts have suggested that statements made in the context of an Internet bulletin board or chat room, are generally likely to be opinions of deliberate exaggeration, rather than definitive defamation.

A recent decision in Florida suggested that a Facebook group called "Ms Sarah Phelps is the worst teacher I've ever met" was *not* defamatory.

A number of similar recent cases in the USA, based on constitutional freedom of speech, have permitted lewd, vulgar and abusive criticism of teachers by students, provided that the comments are not directly threatening or defamatory.

Defamation of the University or its staff

Under the old system of individual state laws, almost anyone or any organisation could bring an action for defamation. However, under the new Uniform Defamation Law, organisations with ten or more employees cannot sue. While the University cannot take action against defamation, individual staff members may be able to sue in their personal capacity.

Defamation by the University

If an author posts a defamatory comment on a blog they are liable. But in practice, it may be virtually impossible to discover their identity. The preferred targets for legal action tend to be those who own and control the blog – the blog host or Internet Service Provider. As the website host, the University is responsible for all material on its website and can be liable for defamatory material on the site if it fails to act to remove material when requested to do so.

What happens if I am defamed online?

Not every offensive or hurtful comment will be defamatory. The law does not prohibit comment which is true, merely abusive, honest opinion or trivial. Even if you *do* ascertain that a genuinely defamatory remark has been published, removal of online material can be a very complicated process.

In the first instance, try to contact the person who wrote the comments – if you can trace them. If you are unable to contact an individual, target the website owner and/or the internet service provider. If the owner or service provider does not remove material after being given reasonable opportunity to do so, you may have a legal claim against them as well as against the person who actually made the defamatory remarks.

Of course, even if the website removes the material, you are still stuck with the problem of copies of it on other websites and search engines and you will need to repeat the process with each of them. Even once entirely removed from websites, echoes of broken links to the comments may still appear for some time in search engines – and UK and US courts have held that search engines are *not* liable for defamatory comments displayed in search results.

Who can help?

Legal and Risk cannot advise staff on personal legal matters, so if you are defamed, we cannot act on your behalf. However, we *can* provide general information and internal support to you, as well as recommend the best approach to take and who you should begin talking to.

Tips for posting online

Defamation is just one of the things to consider how Web 2.0 is changing the way we think about information – what we share about ourselves and what we say about others. Here are some tips which can help avoid liability or embarrassment;

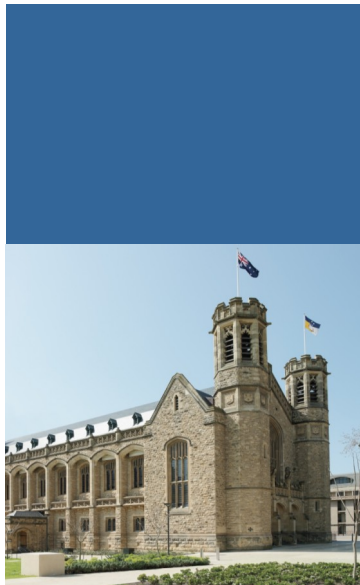
- If you can't prove it, don't say it.
- Do not make threats or admit to anything even remotely resembling a crime – you'll have a hard time undoing such an admission, even if done as a joke.
- Be careful what you share. It is never a good idea to post information or photos online that you wouldn't want your mother, child or employer to see.
- Keep your audience in mind. Facebook has over 250 million users! Remember that your boss or your worst enemy may be part of your network, or that friends of friends may see your post.
- Monitor your information. Remove your name from tagged photos, seek to remove unwanted postings about yourself, and communicate your concerns to friends.
- Be considerate of others when you are posting material. Don't post material which could embarrass or incriminate another person. What goes around comes around.

For more information contact Kim Evans, Senior Counsel (International) on 36103

HOW TO USE WEB 2.0 IN THE ENTERPRISE



PART 1: COMMUNICATE WITH YOUR EMPLOYEES



Did you know...

Our planet adds 487 billion gigabytes of data per year – and rising

(Taken from EMC Study 'As the Economy Contracts, the Digital Universe Expands', May 2009)

ONLINE DISTRIBUTION OF TEACHING MATERIALS

There is no disputing that technology has transformed the way we teach. In addition to digitising textual material for distribution to students, lecturers can now also easily disseminate audio or audiovisual material such as lecture recordings, and television or music clips. Video conferencing, podcasting, wikis and social networking sites are now commonplace methods for virtual communication with students. However, no matter what the technological medium, users should be aware of the copyright issues that may arise.

The technologies

- **Video conferencing** = technology which enables real-time audio and visual interaction between different sites. This can be used to enable classes to span multiple lecture theatres even across campuses.
- **Podcasting** = distributing multimedia files over the internet for playback on a mobile device or a personal computer. The University's MyMedia facility enables lecturers to record lectures for subsequent podcasting via MyUni.
- **Wiki** = a website that allows users to create and edit pages within the wiki website using a web browser. MyUni contains a tool which enables lecturers to create a wiki within their MyUni courses.
- **Social networking site** = a website which enables online networking. Members can do such things as create their own online profile, chat and upload material which may be accessed by other members. Examples include Facebook, Flickr, YouTube
- **iTunesU** = a content distribution platform hosted by Apple through which educational institutions can distribute audio and visual files which may be downloaded by iTunes users.

Copyright issues

Copyright is a set of exclusive rights, which, for most materials, includes the right to copy and to communicate (transmit electronically). As each of the above technologies is a method of electronic transmission, there will be copyright implications if you incorporate any third party material in your use of those technologies.

While the University has various statutory licence schemes and arrangements that permit it to use copyrighted material in particular ways, not every use will be permitted, and some permitted uses may be subject to certain conditions.

Common questions:

Can I play a DVD in a lecture which is being video conferenced with another lecture theatre?

Yes, the Copyright Act permits universities to play commercial DVDs in the classroom, and it includes the right to communicate it in real time to students in remote classrooms. However, the University is NOT permitted to make copies of DVDs. If you are recording your lecture, you must stop your recording while screening a DVD.

Is it acceptable to record a guest lecture or student performance and make it available on MyUni?

The guest lecturer would usually own the copyright in his/her lecture and performers of musical or dramatic works have 'performers rights'. To be able to record the lecture and communicate the recording, you will need to obtain permission from the lecturer or performer (Refer to www.adelaide.edu.au/myuni/forms/files/).

Can I scan pages from books myself and upload them myself onto MyUni?

No. While the University does have a statutory (Part VB) licence which enables it to copy and communicate print material to students, there are strict limits on the amounts that can be copied and made available online. Therefore, you must send any material which you wish to scan to be processed by the Digital Resources Management Centre (www.adelaide.edu.au/library/drmc/) which will ensure that the licence limits are abided by.

Can I upload recordings of TV shows to MyUni for students to view as part of their course?

Yes, the University has a statutory (Part VA) licence which enables the University to copy and communicate television broadcasts for educational purposes. You should submit your file via the University's MyMedia Upload page (<http://mymedia-uploads.adelaide.edu.au>) and ensure you complete the copyright details requested on that page. This will ensure that the required Part VA licence warning notice is displayed with the file.

Can I upload past or current student works onto my MyUni course wiki as examples?

Students retain copyright in their work, therefore you must obtain the student's permission in order for you to copy and communicate that work. (Refer to www.adelaide.edu.au/myuni/forms/files/)

Can I use the University's website, social networking sites or other websites (e.g. iTunesU) to distribute teaching materials?

No, all teaching material should be distributed via MyUni to ensure access is restricted to enrolled students. If you have good reason for making video recordings of lectures publicly available (e.g. if it is of public interest), please consult the Copyright Officer.

For more information on the MyUni and MyMedia technologies, refer to www.adelaide.edu.au/myuni. For more information on Copyright implications in communicating materials electronically, please contact Geraldine Haese, University Legal Counsel and Copyright Officer.

Legal Phrase of the Day

"VEXATIOUS LITIGATION" - Filing a lawsuit with the knowledge that it has no legal basis, with its purpose to bother, annoy, embarrass and cause legal expenses to the defendant.

Vexatious litigation includes continuing a lawsuit after discovery of the facts shows it has absolutely no merit.

Download this and other issues of UNILink from:
www.adelaide.edu.au/legalandrisk/newsletter



Did you know...

By the year 2012 there will be approximately 17 billion devices connected to the Internet

NEW STANDARD FOR RISK MANAGEMENT

In November 2009 Standards Australia released a new edition of the Risk Management Standard. **AS/NZS ISO 31000-2009 Risk management – Principles and guidelines** replaces *AS/NZS 4360-2004 Risk Management* as the leading resource for directors, top level executives and others responsible for managing an organisation's risks and realising opportunity.

This new international standard is based on the old Australian Standard and should be familiar to anyone with a working knowledge of *AS/NZS 4360*.

The new standard provides organisations with a generic framework and a process for managing risk much like the old edition. New to the standard is the inclusion of 11 guiding risk management principles an organisation should comply with and a management framework for the effective implementation and integration of these principles into an organisation's management system.

The guiding principles state that risk management:

1. *Creates and protects value*
2. *Is an integral part of all organisational processes*
3. *Is part of decision making*

4. *Explicitly address uncertainty*
5. *Is systematic, structured and timely*
6. *Is based on the best available information*
7. *Is tailored*
8. *Takes human and cultural factors into account*
9. *Is transparent and inclusive*
10. *Is dynamic, iterative & responsive to change*
11. *Facilitates continual improvement and enhancement of the organisation*

New also is additional information that sets out the attributes of enhanced risk management for those organisation's who strive for a higher level of achievement.

Many of the definitions have changed to reflect a new emphasis that risk is the effect of uncertainty on objectives and not just an event. Some of the key definitions are as follows (others can be found in the ISO/IEC Guide 73 Risk Management – Vocabulary):

	NEW	OLD
	AS/NZS/ISO 31000-2009	AS/NZS 4360-2004
Risk	Effect of uncertainty on objectives	Chance of something happening that will impact on objectives
Risk management	Coordinated activities to direct and control an organisation with regard to risk	Culture, processes and structures that are directed towards realising potential opportunities whilst managing adverse effects
Risk Management Framework	Set of components that provide the foundations and organisational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management throughout the organisation	Set of elements of an organisation's management system concerned with managing risk
Risk Management Policy	Statement of the overall intentions and direction of an organisation related to risk management	<i>Not defined</i>
Risk Management Plan	Scheme within the risk management framework specifying the approach, the management components and resources to be applied to the management of risk	<i>Not defined</i>

AS/NZS/ISO 31000-2009 is now available from Standards Australia's distributor SAI Global or through the University's Library website. For further information contact Anne Hill (Manager Risk Services) on 830 34603 or by email (anne.hill@adelaide.edu.au).

US Twitter Lawsuit Dismissed

An Illinois court has dismissed a Twitter defamation lawsuit filed by a Chicago property management company, *Horizon Realty Group*, against a former tenant, Amanda Bonnen, who posted a comment about the company on the social networking site.

In May 2009, Amanda Bonnen wrote on her Twitter feed: "Who said sleeping in a mouldy apartment was bad for you? Horizon Realty thinks it's okay."

Horizon sought \$US50,000 for damage to its reputation and in response Bonnen successfully argued that the tweet was mere opinion in a social context and that the elements of defamation could not be established as a matter of law.

SOURCE: *Lawyers Weekly* 5 February 2010

Governor's Leadership Foundation

The *Governor's Leadership Foundation (GLF)* program is directed at South Australians who are leaders, or emerging leaders in their organisations and who have demonstrated the potential to become future leaders in our State. Positions in the program are highly competitive and it is considered a real achievement to be offered a place. Late last year, three members of the University of Adelaide were accepted into the 2010 GLF Program. Legal and Risk would like to warmly congratulate;

- *Ms Jo Close*, Institute Manager, Robinson Institute;
- *Dr Chika Anyanwu*, Senior Lecturer, Media; and
- *Mr Andrew Stevens*, Director, Executive Education.

For further information about the program visit the Leaders Institute of SA website www.lisa.com.au/program.asp



Did you know...

The average 21 year old in the US has spent 5,000 hours playing video games, has exchanged 250,000 e-mails, instant and text messages and has spent 10,000 hours on a mobile phone