**■ EBOOK** Managing & Resolving Commercial Disputes 2020

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BY ALMA ANGOTTI, ALEX SHEA AND ELIZABETH SISUL

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OVER THE PAST DECADE, SOCIAL MEDIA has become an increasingly integral part of our social fabric, serving as a critical tool for networking, community building, commerce and so much more. With its increasing prevalence, social media has also become a way for people to, intentionally or unintentionally, track their lives – both professionally and personally. It is natural, then, that social media can also be a valuable tool for members of the legal community. Indeed, practical uses of social media in the legal system run the gamut from vetting an expert witness to providing evidence corroborating a crime. As such, integrating social media

into one's work has become the norm, rather than the exception.

With the increased use of social media by public and private practitioners, advanced methods of collecting and analysing social media data, also known as social media intelligence (SOCMINT), have become an important means of obtaining information. SOCMINT is much more than looking at someone's profile page. SOCMINT uses big data, data analytics and critical technology, such as natural language processing, to provide highly precise and meaningful findings. This information can then be used for purposes such as tracking geographic locations, identifying and tracing assets, identifying red flags and vulnerabilities, and understanding the public conversation regarding relevant people, business and events. For this reason, the applications for SOCMINT in litigation and investigations are far-reaching.

The following article will show how governments are employing some of these tactics and provide insight into the creation and application of SOCMINT.

## GOVERNMENT USE OF SOCIAL MEDIA

As social media has become more prevalent, law enforcement has dedicated increased resources to building its social media ca-

pabilities. In a study conducted by LexisNexis Risk Solutions, 81 percent of law enforcement professionals reported using social media in investigations. Below are a few examples.

The New York City Police Department (NYPD) created a social media unit that monitors social media in search of evidence of criminal activity. NYPD guidelines allow officers to monitor social media for information and leads and, with authorisation, to create online aliases. SOCMINT has enabled the NYPD to anticipate gang activity and identify sex trafficking and various types of fraud.

In December 2018, the Internal Revenue Service (IRS) sought to procure a tool that would enable the agency to mine social media platforms for evidence of tax evasion. According to the request for information, the IRS planned to use the tool for activities such as identifying instances of taxpayer-reported identify theft.

In December 2019, the French parliament passed a law that allows French tax authorities to search social media for evidence of tax evasion. As examples of ways in which the authorities might use social media in their investigations, French budget minister Gérald Darmanin stated that they could monitor indi-

viduals who regularly posted photographs in France, yet claimed they were not residents of France, or compare photographs evidencing an individual's lifestyle with his or her declared income.

The incorporation of social media into government investigations has positively impacted enforcement efforts. Two recent criminal cases, one domestic and one international, demonstrate some of the ways in which law enforcement uses social media in its investigations.

In September 2019, the District of New Jersey filed a complaint against Rubbin Sarpong for conspiracy to commit wire fraud based on his involvement in a scheme in which he and co-conspirators pretended to engage in romantic relationships with victims, who they then persuaded to send them large sums of money. As detailed in the charging documents, "[i]n Facebook and Instagram accounts, Mr Sarpong bragged about the money he was making by posting photographs of himself posing with large amounts of cash, as well as photographs of luxury vehicles and expensive designer clothing".

Law enforcement officers were able to connect the dates of some of these photographs to the dates of substantial wire transfers into Sarpong's account and withdrawals of large amounts of

cash. In addition, the charging papers described a post in which Mr Sarpong referred to a "Dubai millionaire", noting that one of the co-conspirators lived in Dubai. This evidence derived from social media served both to corroborate other evidence and paint an unfavourable picture of the defendant and his lifestyle.

Social media has also been used as a tool to aid in the prosecution of crimes internationally. In *Prosecutor v. Bemba et al.*, in the International Criminal Court, Jean-Pierre Bemba Gombo, who was charged with war crimes and crimes against humanity for his role in an armed conflict in the Central African Republic, was separately charged with witness interference for bribing witnesses to influence their testimony against Bemba. In the bribery case, investigators used photographs from Facebook to establish links between the individuals involved and corroborate other evidence.

**HOW TO EMPLOY SOCMINT IN LITIGATION AND INVESTIGATIONS**

There is no doubt that governments are incorporating social media into their investigative practices. It is therefore important for legal professionals who do criminal or other government

work to have access to the same information and tools. When used effectively, SOCMINT can provide a window into a subject's thoughts, frame of mind and point of view, when other methods of obtaining this information, such as the ability to issue a subpoena or depose a subject, are unavailable. Indeed, because social media can provide a real-time account of a subject's activity, SOCMINT could be just as or more probative than testimony obtained through subpoenas or depositions. Moreover, by comparing a subject's social media activity across online forums and platforms, SOCMINT can also provide a lens through which one can identify deception or infer intent.

Having a comprehensive workplan is key to achieving meaningful results when using SOCMINT in litigation and investigations. An effective workplan should include the following steps.

First, conduct initial open-source research and determine the scope. It is critical to develop a thorough understanding of the types of data needed and the best means for collection. Sources of SOCMINT include not only those platforms with which most people are familiar, such as Facebook or Twitter, but also lesser-known online forums, such as Gab.com and dark web forums, which are frequently used for nefarious purposes (Gab is a social

media network that has been known to attract extremists based at least in part on its lack of user guidelines. The dark web refers to websites that cannot be accessed without special software and browsers. The dark web is frequently associated with criminal activity due to the high level of anonymity it provides its users).

Second, collect related information and create a discrete data set. Logic-based queries are often used to facilitate collection of relevant information, which can then be consolidated into a comprehensive data set. Proper data collection tools and knowledge of available and extractable metadata (i.e., data stored on the 'back end' of individual posts) are imperative, as they help assure access to data that has been deleted or removed by the user.

Third, process and clean the data. Processing and cleaning the data involves filtering out irrelevant data and validating content with the support of technology-enabled process efficiencies. This step is vital to ensuring the validity and integrity of each data set.

Finally, analyse the data. Once the data is clean, it should be structured in a way that provides for meaningful analysis and visualisation. Natural language processing technologies can also be applied to quantitatively and qualitatively evaluate patterns

and trends within the data.

SOCMINT provides legal professionals with an additional means of information-gathering that can help level the playing field in litigation and investigative matters. While the facts of each matter are unique, following these steps will help build a framework for delivering meaningful results.

**CONCLUSION**

Within the legal community, social media has many different applications. Social media is now routinely used in litigation and investigative matters, and it is incumbent on those doing this type of work to recognise and respond to this increasing reliance on social media. Those who recognise, and take advantage of, the value social media has in such matters will be well-positioned to effectively represent their clients.

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