

The right to privacy online in the UAE – To post or not to post?

In the time it will take you to read this article, there will have been over 2,500,000 tweets on Twitter™, nearly 750,000 Instagram™ photos posted and over 13,500,000 Google™ searches made. The internet and social media are firm fixtures in the daily lives of billions of people around the world.

The explosion of online activity in recent years has led to UAE legislators introducing new laws to directly protect our online privacy and prevent the use of legislation which pre-dates the rise of social media in ways the original law-makers could not have anticipated. Despite this reform, the UAE has witnessed a very public struggle unfold between the right to freedom of speech and the right to privacy which is exacerbated by the diverse society of the UAE.

Privacy – what are we trying to protect?

In general terms, privacy refers to the right of an individual to keep certain information about themselves to themselves. In any given jurisdiction, privacy may be regarded as a societal norm or a protected legal right but it will always be a culturally relative concept. The relativity of the right – that is, the various ways different people interpret the concept of privacy – comes to the fore in the UAE where people from a wide range of cultures live, work and socialise together. The UAE offers a unique forum in which to test the traditional Western-centric concept of privacy in a legal system which was founded on and developed by different standards.

It is not uncommon in many jurisdictions for the right to freedom of expression to be raised as a defence to claims of breach of privacy, such as in the numerous cases of paparazzi photographers attempting to take and publish images of celebrities. In practice, navigating the line between these two culturally

relative rights – the right to privacy and the right to freedom of expression – is made even more complex in a culturally diverse context like in the UAE. The boundaries of what is permissible under the protection of the right to freedom of expression before you begin to encroach into the privacy rights of fellow residents is therefore particularly difficult to ascertain.

A clear example of the difficulties in interpreting privacy arose recently when an Australian expatriate in Abu Dhabi was fined and deported for "writing bad words on social media". This resulted from posting a photo on Facebook™ which, had it been posted in her home country, would not have made readers think twice about a possible breach of privacy. The photo showed a car, without a disabled badge, which had parked across two disabled parking bays. The post did not reveal the registration plate of the car, any names or identifying features.

It is clear that there is a need to establish a framework which can be easily followed by all members of a multicultural society, such as that in

Dubai and in the wider UAE. This is especially important given that the risks of getting it wrong and falling foul of UAE privacy laws can attract large fines, jail sentences and even deportation.

How is privacy protected in the UAE?

There is a suite of laws in place in the UAE to protect privacy as a fundamental right. As an example, the UAE Constitution of 1971 entrenches the right to confidentiality of communication (whether by post or otherwise) pursuant to Article 31.

The UAE Penal Code (Federal Law No. 3 of 1987) sets out a number of defamation and privacy offences. Article 372 prohibits the publishing of anything which could expose the victim to public hatred or contempt, while Article 373 prohibits false accusations which cause dishonour or discredit. In addition, Article 378 prohibits the publishing of any news, pictures or comments which may

reveal the secrets of peoples' private or family lives, even if the published material is in the public interest and true.

These Penal Code offences have a slightly more limited scope of application because they require the person publishing the statement to have had an intention to reveal private information or to cause harm.

More recently, a specific law regarding 'cybercrimes' (Federal Law No. 5 of 2012) has been introduced which, on a plain reading of its provisions, penalises a much wider range of activity online. For example, Article 21 makes it an offence to "assault the privacy of a person" online in any of the following ways:

- Overhearing, interception, recording, transferring, transmitting or disclosure of conversations, communications or audio or visual materials;
- Capturing pictures of a third party or preparing electronic pictures or transferring, exposing, copying or keeping those pictures; or
- Publishing electronic news or pictures or photographs, scenes, comments, statements or information, even if they were correct and true.

Given the ease of making recordings or taking photographs and publishing them on social media simply at the touch of a button, it could be very easy to fall foul of this provision. Further, the law encompasses certain other actions, such as accidentally overhearing a private conversation or privately storing photographs taken of

others even if they are never published, which are such passive actions that it is not clear how an individual is best advised to avoid committing the offence. Furthermore, unlike the Penal Code offences, the cybercrimes law does not require there to be an intention to assault an individual's privacy.

Each of these offences also carries penalties, including fines in the region of AED150,000 to AED500,000, deportation of foreign nationals and/or imprisonment.

Will my next social media post be in breach of the privacy law?

The scope of the UAE's privacy laws means that a seemingly innocuous social media post could theoretically constitute a breach of privacy, defamation and be an offensive publication all at once. So should we stop using social media altogether?

From recent local news, it certainly appears as if a number of non-malicious acts have been caught by these laws. There are a number of cases which highlight the need to proceed with caution in this area. A man was prosecuted for defamation for posting on Instagram™, without consent, a video of a friend and his family sleeping. An American citizen who published a parody of Dubai youth culture online was charged with infringing another provision of the cybersecurity law which makes it an offence to publish information which could expose state security or prejudice public order. A group of

public officials is currently awaiting trial for breach of privacy laws for installing CCTV cameras without adequate cause. Recent reports suggest that the Dubai Police considers that these offences can even be extended to the simple act of using offensive 'emojis' online.

The UAE Telecommunications Regulatory Authority has also recently published guidance in a white paper on the appropriate usage of various social media and online communication platforms. This guidance suggests that taking appropriate caution when posting material online and considering whether a post could cause offence or breach an individual's privacy. They also outline the requirement of obtaining consent before posting photos of or tagging another person on social media, and highlight the importance of ensuring your own security settings are up to date and have not been shared with others.

These official publications, as well as the prevalence of public officials' usage of social media in the UAE, highlight that keeping an online presence is not being discouraged per se. Maintaining an appropriate balance between protecting citizens' privacy and not restricting individuals' freedom of expression is not an easy task. We should be encouraged that the UAE is being proactive in the creation of new laws which address the needs of our increasingly online lives, but equally should heed the warnings which have been given and ensure that, as we do with other aspects of our lives, we are sensitive to the cultural environment in which we live.

Conclusion

It is very important that both individuals and companies are aware of what the relevant laws encompass so that they can ensure that their internet usage is risk-free. In particular, businesses that use social media sites (such as LinkedIn™, Facebook™ and Twitter™) should be aware of not only the content they publish themselves but also anything posted by customers on their site, as there may be a risk that a business could be held accountable for both their own and their customers' posts. It may be prudent for businesses to ensure that user-generated content is moderated before appearing on their company's social media pages.

The overriding message is that members of the social media community should take the same level of caution in their actions online as they would in other areas of their life in the UAE.

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