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Korporativne društvene mreže: Etička i pravna pitanja

Sažetak

Mnoge studije menadžmenta naglašavaju kako društvene mreže ne mijenjaju samo teoriju menadžmenta već i menadžment u praksi. Uspjeh ovih društvenih mreža se odražava na razini same organizacije kroz Korporativno društveno umrežavanje (CSN). Ali kako zaštititi tvrtku i njezine zaposlenike od pravnih rizika povezanih s korištenjem ovih novih suradničkih alata? Ovdje ćemo analizirati s pravnog stajališta u kojoj mjeri CSN može imati koristi od svoje suradničke dimenzije. Ovakvo umrežavanje se često smatra moralnim kao što je i na javnim društvenim mrežama. Zatim ćemo raspravljati o ovom pitanju s etičkog stajališta i analizirati rizike. U zaključku ćemo predložiti neka dodatna područja istraživanja.

Ključne riječi: CNIL, Korporativno društveno umrežavanje, (CSN), Upravljanje rizicima, etika društvenih medija, sloboda govora .

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Corporate Social Networks: Ethical and legal Considerations

Summary

Many management studies underline how social networks change not only the theory of management but also management in practice. The success of these social networks is reflected at the organisational level itself through Corporate Social Networking (CSN). But how to protect the company and its employees from the legal risks linked to the use of these new collaborative tools? Here, we will analyze from a legal point of view to what extent CSN may benefit from its collaborative dimension. Such networking is frequently considered as virtuous, as in public social networks. Then, we will discuss the matter from an ethical point of view and analyze the risks therein. In conclusion, we will suggest some further fields of research.

Keywords: CNIL, Corporate Social Networking, (CSN), Risk management, Ethics of social media, Freedom of speech.

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Introduction

From a management viewpoint, the development of networks results in a dual transformation: on the one hand, the definition of the actors involved, and on the other, the study of the relationships between them (Chauvet & Collet, 2010). It is in fact thanks to the notion of the networking of actors, in a broader sense, that we can study almost all organizational phenomena. The keys to formal or informal regulation, structural changes, decisional processes and inter-company alliances may all be studied from this angle. This analysis involves issues such as the manager's personality, their personal coalition and network. Their career progression, management style and how they deal with change will be largely influenced by the interpersonal relationships which stimulate the logic of the network. It is as if the very construction of the network of relationships defines the identity of a manager and the way they operate; in short, the means they use to move forwards and "change things" (Chauvet & Collet, 2010, p. 89).

This study focuses on how social networks intervene increasingly in management. Our first level of study will analyze how the notion of social networks influences the way we approach some of the main disciplines of management. Needless to say, this subject has been widely studied. Consequently, we will present only a report of existing studies, in particular in France and in Europe. Subsequently, we will focus on internal corporate social networks, which have become widespread and aim mainly at benefiting from the same collaborative effects in various organizational domains, such as entrepreneurship, data processing, governance or innovation, albeit more slowly. This leads us to consider, from a legal point of view, how to build a successful CSN. These aspects must be taken into account, in order to encourage equal levels of commitment from partners who need to know the rules of the game, in the same way as for the external social networks to which they may have access. Finally, we will demonstrate how legal risks co-habit with ethical issues.

The development of social networks in organizations

Management networks may be considered in different ways (Granovetter 1973; 2005). They are composed of “*an alternative to oversocialized and undersocialized visions of the individual*” (Bret et al. 2006, p. 94). In this study, we will focus on social media: web services enabling people to set up a page to which others have access when linked to the same service. This can be a medium on which a network of contacts share information such as LinkedIn, a micro blog or photo storage platform enabling the user to spread or obtain information (Twitter), or even blogs offering self-produced content. As remarked by Elefant (2011), social media development within an organization is stimulated by users’ interest in these new ways of communicating, interacting and collaborating. According to Pew Research report (August 2010), the number of adults between 50 and 64 using social media increased by 88% from April 2009 to May 2010 (p.4). Consequently, companies will have no choice but to improve their customer relationship management through these channels. The author also cites examples from the energy field such as *Nebraska Public Power District (NPPD)* which offers its clients videos on recycling and sustainable energy on Youtube, and *Ozarks Electric Cooperative Corp.* or *Ameren* using Facebook, either to report potential black-outs or to launch recruitment campaigns (p7-8). In addition, *Duke Energy* is an example of a firm which has developed social media in order to revitalize its ties with stakeholders.

Social networks and collective intelligence: consequences on organizations.

Improving customer relations management is not the only consequence of the appearance of social networks. As explained by Baret et al. “*Ferrary and Pecqueux have shown that that in Silicon Valley, capital risk managers use social networks to obtain information on the viability of projects submitted*” (2011, p. 97). In other words, it would seem that networks have more influence in the service sector than in the manufacturing sector. In this case, they are used to validating the information circulating on a given project by this means. In fact, capital risk managers rely mainly on their networks to check information. These

relationships inspire confidence between members, thus as Barnett et al. note, the affective and normative dimensions of the relationship are clearly visible here.

By improving customer relations management in the industrial sector and creating trust so as to develop business in the service sector, social media generate a profound change in management, as commonly defined (Frery 2010). Analyzing management using three basic dichotomies –organization or market, exploration or exploitation, and autonomy or coordination – he proves that even today, in an era of social media, the very boundaries of the company must be reconsidered. In fact, “Management 2.0” appears to be a consequence of this reduction in boundaries, causing a revolution in the collaboration of autonomous agents. This aims to maximize the benefits of collective intelligence. As such, the Hollywood Stock Exchange case is striking, focusing on the American movie market since 1996 (p. 56): according to the author, it has predicted over 80% of the Oscar nominations and has never made a mistake for any major award. This collective wisdom is also called upon as soon as professionals need the participation of users to improve a product. This is the case with information media such as the American *Huffington Post* which enhances the celebrity of bloggers in return for free editorial contributions. It is equally the activities of communities linked to networks which have developed the most innovative, state-of-the-art telecom applications. The many applications sold in Appstore are essentially the fruits of ten of thousands of contributors and thus do not appear in the R&D budget of this IT giant. However, Frery notes that they produce a monthly turnover of \$165 million (p. 52). These new modes of collaboration with their externalized creation are revolutionizing the classic paradigms of management, in particular regarding third parties.

Company Social Networks (CSN) and collaborative value

Up to now, we have only mentioned the virtuous effects of new collaborative modes based on external company networks. The question is: how to benefit from these positive effects within the company, that is to say, between its employees. With this aim in view, companies tend to set up internal social networks so as to maximize each contributor’s potential. These CSNs significantly modify not only exchanges between

contributors, but also the work organization of individuals. In fact, company social networks offer any employee the opportunity to express themselves and show their personal identity within the group, which tends to increase transparency and the recognition of others; *“the exchange is “not hidden” which produces collaborative value”* as Galinon-Méléneć explains (2010, p. 42). This new collaborative and information management tool raises two points: firstly, the balance of power, and secondly, employees’ motivation to use such tools. First, the entire organization control system needs to be reconsidered: if CSNs are designed to highlight both the differences and mutual interests of individuals, aiming at the transparency and pluralism inherent in such networks, the participatory dimension dominates and renders the commonly found hierarchies almost superfluous, and even obsolete. Secondly, we underline that both the company and its employees run risks when using CSNs; to such an extent that companies are reluctant to use them and the employees are unsure of how to use them. Company social networks involve legal and ethical risks. We will now analyze the key questions concerning the future development of CSNs.

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Factors to consider when drawing up the rules for a CSN.

-The drawing up of user conditions, thinking about their implementation and precisely defining those granted access to the network (whether open or closed).

-In the domain of individual freedoms, be especially careful to

-Implementing the Data Protection Act (loi informatique et libertés) to protect personal data

- Legal issues raised by people accessing the CSN and confidentiality

- Individual freedom of speech related to company liability and the necessity to implement a users' charter which sets out how to use the company social networks

- Right to oblivion and the user profile retention period

And finally, where collective working relations are concerned

- Consultation of the Works' Council

- The role of trade unions in CSNs.

Without an acceptance procedure, modifications are unenforceable regarding the contributor in the case of litigation. Generally, the company social network is to be used solely for professional purposes. Regarding the protection of individual freedoms, the rules for using personal data must be applied. When creating a company social network, the individual in charge of personal data files must fulfil numerous obligations. The nature of the data itself justifies these measures. If the network were international, this would be all the more essential. The individual in charge of the files is legally bound to protect users' rights. When collecting data, the right to information is demonstrated by the obligation to inform people that; they may decline to supply the data; about how the data will be used; and about their right

to access and rectification. The right to access personal data is embodied in the obligation to answer a user's request. The law has reinforced the rights to access, rectification and oblivion. A new European set of rules is in progress, aiming at strengthening these obligations for all member States.

Today, protecting personal data is a legal obligation in almost all European countries. In France, the French Data Protection Authority (Commission Nationale Informatique et Libertés or CNIL) has created diverse protection and control devices. It sets out the conditions for "managing contributors" in simplified norms (1). Beyond the usual points of personnel management, these norms require IT tools to be provided for employees. A certificate of conformity must be issued by the CNIL when setting up a CSN (see below "CNIL directive").

CNIL directives

Fundamental principles rule these systems; in fact the data processing manager, who is often the company managing director (2), is bound by the following obligations:

- data is collected and processed trustworthily and legally;
- it is collected for predetermined and legitimate purposes and will remain so;
- data is adequate, relevant and not excessive considering the purpose for which it is intended and will remain so;
- data is accurate, complete and up-dated when necessary ; appropriate measures must be taken so that data incomplete or inaccurate for the purpose for which it is intended may be processed or modified;
- data is stocked to ensure identification of those concerned for no longer than required for the purpose for which it was collected or processed.

The entire system is controlled by the CNIL whose function is to complete the preliminary procedures and systematically check the purpose of the personal data files. It is also responsible for checking the nature of the data, its retention period, the rules of access to it, the third

parties who deal with the users and how they may exercise their right to access, etc.

The declaration made by the file creator is an essential point in the operation. They are legally bound by such a declaration. In addition, when setting up a company social network a significant problem is the collection of employees' personal data by the employer. In fact, despite the employee's absolute right of privacy recognized by the French Supreme Court in October 2001 (3) when using their professional email, on 17 May 2005, the aforementioned court authorized employers to access their employees' personal data saved on hard disks, under certain conditions (4). This measure may only be justified in the face of a risk or extraordinary event and the employer must respect the principle of proportionality as well as the principle of purpose. In the setting up of a given social network, such problems may arise. Indeed, a satisfactory balance must be found between the employee's right of privacy and the justifiable company interest in controlling exchanges within its private network. The employee faces a further risk: they may mix their private life with their professional life when staying connected to the CSN during their free time. Addiction is possible, which may involve health risks. The employer must avoid these risks and make sure the CSN is used reasonably thanks to a community manager.

Legal issues of confidentiality and defining those granted access to the CSN.

The first thing to do is define who will be granted access to the network. The company will choose between an open network and a closed one. Access must be dealt with carefully. "Closed" networks are generally only accessible for the company's contributors. It is therefore a question of defining which kind of contributor will access which type of content. How to deal with access in the case of a short-term employment contract ending? Which kind of access will be granted in the case of an internship? And so on. If the network is "open", the type of outsiders granted with access would be defined precisely (subcontractors, consultants etc.). For security reasons, a closed network appears easier to run. Confidentiality is also a major point to consider when creating the network, and as long as the CSN is in service. In fact, CSNs are special networks since they are accessible to a limited number of users. And even though everything circulating on the network is not

confidential, some content is. Consequently, those granted access to confidential data must be chosen with special care to avoid the unwanted spread of information and hacking. Responsibilities in terms of the nature and the circulation of information must also be clearly defined.

Individual freedom of speech and company responsibility. The need to set up a users' good practices charter as a framework for using the company social network.

The limit to individual freedom of speech.

Individual freedom is protected within a company as stated in French employment law, art. L 1121-1 "no one may restrict the right of individuals or the individual and collective liberties if the means is not justified by the nature of the job to be performed or is not proportionate to the goal sought". The principle of the freedom of speech is applied within the company and also on the CSN. However, this does not imply the company is not liable under civil and criminal law for the editorial content on the IT tools used by its employees. This is a risky area. The company may also be blamed for libellous or defamatory comments. Jurisprudence confirmed this when upholding dismissal for denigrating remarks about a company on the public social network, *Facebook*(6). It seems normal that freedom of speech is limited when defamatory statements are posted. So, what about this risk on company social networks? It would appear to be limited since pseudonyms are forbidden and therefore each user is identified by their real name on CSNs (7).

It is advisable to set up a users' good practices charter when creating a private network, so as to regulate its use. In fact, employees must be aware of the conditions of use and formally agree to them. In the eventuality that these conditions change, the same procedure would be followed again, that is: informing the employees and obtaining express acceptance of the new set of conditions. This charter is a must for a CSN to work well (Ray, 2012). It will stipulate that talking politics or religion, proselytizing and money-making activities are prohibited on the network. The company will state that neither surveys nor the collection of statistics will feature in CSN control tools, in order not to

discourage employee use. The CSN should not be seen as a “policing” tool, to avoid reluctance to use it. The network’s goals must be clear.

Mixed forums which bring together clients, suppliers and employees should be avoided. The risk of problems is minimized in comparison to public networks. Employees are more responsible and refrain from certain comments. The real problem would be employees who are reluctant to express themselves: this could cause a CSN to fail.

Note that if a charter giving guidelines for use is necessary, it is not sufficient. Each coordinator must specify the rights and obligations linked to the nature and confidentiality of the data processed. The French association for the protection of personal data (AFCDP) is to publish a precise reference document on this subject shortly.

Right to oblivion and retention period of user profiles

In order to respect the right to oblivion, users’ personal data must be deleted from the CSN when they cease to work for the company. The right to oblivion consists of restricting the personal data retention period on the computer. Computers must not enable information on individuals to be saved indefinitely. The law states that data is (9) saved in a way enabling individuals to be identified for a period not exceeding the time required to reach the goals for which it has been processed. This period should not exceed what is strictly necessary, after which, data must be rendered anonymous. In terms of right to oblivion, the CNIL has focused on protecting particular areas.

For example, any image or sound recorded on a video-surveillance system may not be conserved longer than a month (10). Therefore, it is clear that the right to oblivion must be one of the parameters taken into account creating a CSN. Some advice may be given:

- encourage companies to inform each CSN user on the risks regarding their private life.
- use secure encryption methods;
- implement a certification procedure which would issue *quality stamps* to protect privacy.

It is preferable that individuals enjoy a real right to oblivion, not only regarding their private life (i.e. family, love life, hobbies...) but also their professional life, in particular when they cease to work for a company. It is essential that CSNs respect this right to oblivion. The best way is to delete the data so as to avoid any future dispute. The period during which user profiles are saved should be reduced and they should be deleted when closing the account. It is important to define what will happen to contributions by former employees. Should they become anonymous or rather be deleted? If these contributions have an academic interest, it may be better to save them anonymously.

However, if needed, the administrator would be able to know the author's identity.

In the context of collective work relations, the works' council must be consulted (11) to discuss the role of trade unions in the CSN. Indeed, since we are speaking about introducing new technology into a company, the law requires works' council to be consulted whenever an IT system may have consequences on employment, skills, pay, training or working conditions. This new IT system is likely to affect every employee, thus necessitating such procedures.

What place will be given to trade unions in the CSNs? Some companies already allow trade unions to create communities on the network and thus "avoid signing a collective agreement for unions to have access to electronic modes of expression", (Ray, 2012). It is a company's responsibility to grant trade unions access to CSNs or to choose another mode of expression. Such presence on CSN enables a company to monitor union support by measuring frequentation.

CSN and ethical matters

This short discussion aims at considering the conditions required to develop an ethical CSN. In addition to legal issues, the CSN possesses an important ethical dimension. Baret et al's study « Management et réseaux sociaux : jeux d'ombres et de lumière sur les organisations » provides a clear analysis of these ethical risks when CSNs are used improperly. The authors emphasize the instrumental and utilitarian aspects of CSNs, (p. 100), in which social links become pure

conflicts of interest (p. 101). However, this reduction of exchanges to conflicts of interest relegates the cultural and political challenges of new IT tools to the background. Portes (1998), Baret et al. emphasize the need for more critical observations on the uses of social networks; the negative aspects being frequently ignored. They highlight in particular the *lock-in* phenomenon: namely, when members of a given community exchange views, exchanges with people who do not belong to the said community become increasingly limited. It is as if this *lock-in* phenomenon functioned as a factor of exclusion and a very restrictive social control device, even resembling a Mafia model. By their nature, company networks, granting access to a limited number of people, might also suffer from *lock-in* effects.

Clark and Roberts (2010) identify real difficulties in defining the boundaries between the private information circulating on CSNs and the professional or public one. For them, it is in the company's interest to distinguish between them on CSNs. Having a good work/life balance is a way of limiting stress factors among employees and therefore an appealing selling point for an organization, not only for its staff, but also for external partners. As explained by Elefant (2011): "A social media policy should distinguish between different uses — for example, employee use of social media for personal reasons (during work and off hours) and employee use of social media for business. The policy should also clarify employees' obligations even when off the clock: for example, some utilities prohibit employees from using a company email for public posting on personal time." (p. 54).

An ethics analysis of CSNs should also shed light on the potential expression of the self on these networks (Deslandes, 2012a). Users will undoubtedly work on themselves and write about themselves on this kind of network (Galison-Méléneć, 2010; Ranzini et al., 2012). This is an important point, since when doing so each individual may discover themselves through their own writing and also expose this personal material for approval by others. As Granjon & Denoël (2010) write, "the said confirmation is based on specific forms of self-esteem founded on subjective singularities, that is to say, on the recognition of particular qualities through which individuals find their plural identities"

These new communication tools appear to revitalize the relationship individuals enjoy with themselves and with others within companies. They offer new prospects which may change the view each

has of themselves, of others and of society; the three basic elements of professional ethics. From this point of view, an empirical study of people who use the most innovating tools, (such those suggested by Yammer), would be of great interest, so as to analyze from three angles (micro/meso/macro), precisely what defines management ethics (Deslandes, 2012b).

Conclusion

This study has established some of the aspects for which social networks in general have radically transformed management, in particular personal development, innovation and customer relationship management. However, it also suggests that CSNs may generate positive changes only when the stakes and legal implications are understood and managed successfully in a company. The success of a CSN is dependent on how much it takes into account negative effects such as *lock-in*, and ambiguities which result when privacy and public life blend. If all these conditions are present, a CSN will become what it is intended to be: a real motor for transforming a company, through a profound change in the vision each has of their own activity and their own work.

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