

# FACING UP TO FACEBOOK

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## Facing Up to Facebook

- Must I?
- May I?
- Can I?
- Should I?

## Must I?

- Vicarious liability?
  - "We reject the proposition that the doctrine of respondeat superior renders schools liable for the acts of their students . . . . A student's status as student does not, by itself, make the student an 'employee' or 'servant' of the school the student attends." – *Kavanagh v. Boston University* (Mass. 2003)
- CDA?
  - "Through this provision, Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party." – *Carafano v. Metrosplash.com, Inc.* (9th Cir. 2003)

## May I?

- Privacy issues?
  - "The defendant is subject to liability . . . only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs. Thus there is no liability for the examination of a public record concerning the plaintiff, or of documents that the plaintiff is required to keep and make available for public inspection. Nor is there liability for observing him or even taking his photograph while he is walking on the public highway, since he is not then in seclusion, and his appearance is public and open to the public eye." – *Restatement (Second) of Torts § 652B*
- Jurisdiction?
  - Where *is* MySpace?

## Jurisdiction

- The code applies to the on-campus conduct of all students and registered student organizations. The code also applies to the off-campus conduct of students and registered student organizations in direct connection with:
  - Any activity sponsored, conducted, or authorized by the university or by registered student organizations;
  - Academic course requirements, such as internships, field trips, or student teaching;
  - Any activity that causes substantial destruction of property belonging to the university or members of the university community or causes serious harm to the health or safety of members of the university community; or
  - Any activity in which a police report has been filed, a summons or indictment has been issued, or an arrest has occurred for a crime of violence.

## Can I?

- 60 *million* Facebook users
- 75 *million* MySpace users
- Plus:
  - Xuqa
  - Xanga
  - Bebo
  - Livejournal
  - Yahoo! 360°
  - Orkut
  - Myworld
  - Friendster
  - Myyearbook
  - Tickle
  - Hi5
  - Faceparty
  - 43things
  - ...

## Should I?

- Assumed duty and liability?
  - "One who undertakes . . . to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking . . ." – *Restatement (Second) of Torts* § 323
- What is it you're really concerned about?

## Talkin' 'Bout My Generation

- Ronald/Nancy Reagan: "Just say no."
- Bill Clinton: "I experimented with marijuana a time or two, and I didn't like it. I didn't inhale it, and never tried it again."
- George W. Bush: "When I was young and foolish, I was young and foolish."
- Barack Obama: "Yes, I inhaled. Wasn't that the point?"