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USER'S DIGITAL IMAGINARIES OF SELF USURPED THROUGH WORK: WHY USERS AUTONOMY IS AT RISK

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This paper argues that employers are dictating standards of online behaviour that unduly restrict the ability of users to manage their imagined identities and audiences on social media. Users carefully manage their personal and professional identities online and offline in an effort to avoid blurring of these domains. They exercise some degree of choice in segmenting or integrating their personal and professional domains. Whilst much of the rhetoric around the management of identity in social media revolves around autonomous choice in sharing practices and the affordances and process of platforms, socially engaged employees have little control over the way they manage their personal and professional boundaries. In fact, the social media policies adopted by some organisations actively deprive users of autonomy in how they manage these domains. By conducting a legal analysis of social media policies through the theoretical lens of boundary theory, I argue that restrictive policies impede an employee's ability to manage their identities by collapsing boundaries which facilitate further blurring of domains. These insights give rise to legal concerns about the enforceability of these policies against employees.

Employees are legally bound to follow social media policies which exist as either contractual terms within the employment contract or as directive guidelines in policies.¹ Organisations typically implement social media policies that constrain employee behaviour in an effort to minimise the firm's legal and reputational risk. For example, many policies adopt restrictive terms in attempts to limit breaches of privacy or claims of bullying or discrimination amongst staff members.² To avoid these risks, organisations

¹ *Romero v Farstad Shipping (Indian Pacific) Pty Ltd* [2014] FCAFC 177, [49],[62] whether the terms have contractual or directive effect relies upon the promissory wording of the terms used. Contractual terms have greater legal effect for employer damages if terms are breached.

² Andrew Creed and Ambika Zutshi in Chapter 8 'Social media: does it generate the continuum of transparency in organisations?' in Cornelius Reiman, *Public Interest and Private Rights in Social Media* (Chandos, Oxford, 2012) 138.

often attempt to set the parameters for employee behaviour and expectations that are consistent with the organisation's culture whilst reflecting emerging societal norms.³ The problem is, these organisational policies are inconsistent with societal norms. Some policies state that employees must affiliate with their work via disclaimers on their private social media accounts. The difficulty in requiring such a disclaimer is that it restricts the user to presenting a professional self and places them within the context of the commercial marketplace of work, even when the technology is used in private and in social contexts. By regulating personal communications in this way, employers are interfering with the ability of individuals to create their online identities in ways that conflict with community expectations.⁴ These restrictive policies reflect expectations and norms more conducive to the work environment,⁵ as opposed to one's social environment. By collapsing these boundaries, these legal policies have unintentional consequences for employee autonomy.

I propose that online boundary management theory is a lens through which to enhance user autonomy and inform better policy. Users manage their boundaries in the public or semi-public online domain⁶ by balancing their roles and responsibilities of work and life in their preference for keeping those domains separate or integrated.⁷ Users also

³ Patricia Sanchez Abril et al, 'Blurred Boundaries: Social Media Privacy and the Twenty-First-Century Employee' (2012) 49 (1) *American Business Law Journal*, 63, 113-114.

⁴ Ben Light, 'Navigating Work' *Disconnecting with Social Networking Sites* (Palgrave Macmillan, 2014) 83.

⁵ Melissa Gregg, *Work's Intimacy* (Cambridge and Malden, Polity Press, 2011) 6. Gregg considers Facebook reflects norms of middle-class professional workplaces which encourages an adoption of tactics appropriate to the workplace into the methods and modes of socialising. Others consider the concept of friendship in 'friending' is misplaced and made to primarily serve individual economic gains.

⁶ Ariane Ollier-Malaterre, Nancy Rothbard and Justine Berg 'When Worlds Collide in Cyberspace: How Boundary Work in Online Social Networks impacts Professional Relationships' *Academy of Management Review*, 2013 38(4), 645, 648.

⁷ Ellen Kossek et al, 'Work–nonwork Boundary Management Profiles: A Person-Centered Approach' (2012) 81 *Journal of Vocational Behavior* 112, 114. The three management styles include role identity centrality and perceived boundary control.

undertake a self-assessment in how they wish to be perceived by their audience.⁸ The outcome of this process preserves user autonomy in how they control and manage their personal and professional domains.

Organisations that mandate employees present as their professional self in private online networks remove the ability of employees to choose their preference for integration or segmentation. These work disclaimers reflect a segmented approach that portrays only the user's professional self to the exclusion of all other selves. This is problematic as employees are forced to segment audiences which not only restricts their ability to manage their own boundaries, but requires employees to engage in considerable ongoing effort and skill to avoid potential mismatches between their personal beliefs and work norms.⁹ Rather than hinder users' boundary control and consequent behaviour, employers should be helping employees with their boundary management regarding online connections.¹⁰

This framing suggests an important shift in the legal regulation of employee behaviour and the extent to which social media policies should be able to collapse these boundaries. In mitigating for risk, employers will often have an incentive to over-reach their legitimate areas of control. In order to promote autonomy, the law needs to be at least skeptical, if not critical of these policies, and the threats they pose to personal communication. Organisations constraining behaviour in this way to minimise legal and reputational risk, potentially increases legal risk if its own policies are deemed unlawful. In Australia, employees have a general legal obligation to obey directions contained within the policy provided that the direction is not unlawful, is not unreasonable and falls within the scope of the employment contract.¹¹ In legal terms, this analysis suggests that restrictive policies may not be enforceable. Through the insights of boundary theory, I argue that policies that restrict the ability of users to manage their identities and how they are perceived by their audience are unlikely to fit within the scope of the employment relationship.

I conclude that organisations are exceeding the limits of their control over how employees choose to manage their online identities. First, work disclaimers restrict the ability of employees to manage their own boundaries. Second, restrictive social media policies may not be legally enforceable against employees. I propose that one way to

⁸ Ariane Ollier-Malaterre et al, above n 6, 650. Users identify as either *self-enhancers* or *self-verifiers*.

⁹ Ibid 663.

¹⁰ Ibid 664.

¹¹ *Grant v BHP Coal Pty Ltd* [2014] FWCFB 3027, [130].

preserve autonomy is to remove work disclaimers from policies, or failing change, for courts to render these restrictive policies unenforceable.