Why Social Media “Likes” Disability Claims Assessors

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A photo of a young man enjoying snowboarding is posted online on a social networking site. Nothing unusual in that – hundreds of thousands of photos are shared in this way every day. The difference here is, this man is currently receiving disability benefits under an Income Protection (IP) policy, claiming that, following an accident at work, he suffers widespread musculoskeletal pain causing significant functional limitation.

How useful would this personal insight be the next time you were due to review this claim? The explosion of social media means this kind of information is readily available if you know how and where to find it. Information that is openly shared in this way has the potential to add a new dimension to disability claims management.

Assessors who have yet to tune in to the potential “mine” of information available on social media websites could be missing out. This article discusses the potential benefits of looking online, reviews the legal position of using what is found and outlines some practical suggestions for successful research.

Traditional claims tools
Assessors use a variety of non-medical tools to monitor claimant activity. This helps identify symptom exaggeration, misrepresentation and inaccurate reporting of functional capacity. The tools used commonly in disability claims are surveillance, activity diaries and home visits; each with certain limitations.

Home visits require a pre-planned appointment, allowing the claimant time to prepare. The advance notification can hinder a truly objective assessment of activity and capacity levels. Activity diaries, at least when used in isolation, are of limited benefit since the information provided within is entirely subjective. Surveillance provides an objective assessment but meets objections due to its cost and the difficulty of guaranteeing the extent, value and quality of observations. Even if good surveillance video footage is obtained, a claimant may successfully argue the activity observed was a “one-off” or unrepresentative of their true level capacity – the “good day, bad day” scenario.

Today an investigator need not drive around hoping to spot a claimant carrying a ladder or cleaning out gutters. Instead, they can find information about a claimant by scanning social network sites. Accessing information in this way should be viewed as complimentary to the traditional investigative techniques.
of surveillance, independent medical examinations, factual interviews and activity diaries.

**Tuning in to the social network**

Social network services allow users to share their life stories with a network of friends. Many users are unaware their information is in the public domain and thus visible to unknown parties. Despite this flaw, social networks have captured the public imagination. Facebook has 1.15 billion active accounts and 700 million people use the service every day; Twitter displays 400 million daily message “tweets”; Instagram has in excess of 150 million active users who have together posted 16 billion images and Tumblr hosts almost 110 million personal blogs.1

All very interesting, but what does this have to do with the life insurance industry and disability claims in particular? Claims management is all about gathering information and the huge numbers of users suggest that a sizeable proportion of insurance claimants are likely to be contributors. This offers assessors an opportunity to track their activities. Monitoring these sites is a cheaper and quicker way of gaining insight into a claimant’s activities and domestic situation than arranging surveillance or a home visit. Theoretically at least, it also provides an opportunity for a more genuine appraisal of the true level of functional capacity.

**Fighting claims fraud**

The primary benefit to claims assessors reviewing the content of social networking sites is to enhance the investigation into dishonest submissions and to prevent fraud. The insurance industry is guilty of failing to communicate adequately the magnitude of fraud and its cost to the public and to policyholders in particular.

In the U.S. mining of social media is one of the fastest growing trends in claims investigation, perhaps because health insurance fraud costs an estimated $80 billion each year, adding hundreds of dollars to individual’s premiums.

Getting this stark message across becomes more urgent as insurers seek to use new channels of information to detect fraud, particularly if there is concern it represents a violation of privacy.

An example from Australia shows how fraudulent IP claims can be terminated using open-source (publicly accessible) intelligence records. In this case, the policyholder reported incurring whiplash, shoulder and spinal injuries in a motor vehicle accident. She claimed she suffered headaches and joint pain and needed help with her care. The claims assessor uncovered her active social media account, which had a public, not private, profile. She publicly shared information about her involvement in the sport of Oztag – a physical team game blending elements of football and rugby. More detail of her involvement was available on the Oztag league website. Traditional surveillance was used to observe her playing in matches. This prompted further medical examination and eventual closure of the claim.

There are other examples of IP claimants who have set up or run businesses unrelated to their insured occupation, all without notifying their insurer, and who have been uncovered through Internet and social media search.

**Practical steps**

When policyholders submit a claim, they give the insurer consent to investigate the full circumstances of it. There is no great risk to the claims assessor taking that investigation into the field of social media and the Internet. In fact it is clearly risky not to do so.

Disability claimants may have become “surveillance aware” in recent years, thus reducing the potential of this investigative technique. However, when it comes to sharing personal information online, users are often unsparing. Publicly available data harvested from online sources can provide a “pattern of life” picture in a matter of hours rather than the days that traditional surveillance might take.

The first step in using the Internet in a claim investigation is to run general searches and check major social media sites for any presence of the claimant.

Top tips to undertake quick and easy Internet searches:

- The start point is to submit the claimant’s full name in inverted commas into a search engine such as Google, Bing or Yahoo. This will generally locate a person’s social media accounts, blogs and mentions of his or her name on web pages.
- Search by address or telephone number if there is suspicion that the claimant is using their home or premises for alternative business activities. Page entries for any site to which the person contributes will be shown and can be entered through the search engine.
- With large claims portfolios it may be impractical to undertake this task at regular intervals on all claims. An alert system, such as that operated by Google, can be used to overcome this. The alert system continually monitors the Internet for designated search

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Privacy issues
Privacy invasion is not acceptable claims practice, but case law distinguishes information an individual has voluntarily placed in the public domain. In Beye v. Horizon Blue Cross Blue Shield of New Jersey (United States District Court, D. New Jersey, Aug. 1, 2008), the court ruled privacy concerns in relation to information on social media sites were “far less as the beneficiary chose to disclose the information”.

Some social media sites allow users to set security that blocks their accounts to access from unauthorised individuals. In these instances, an insurer cannot initiate contact by seeking to link with (e.g., “friend”) the claimant, create false accounts, purposely mislead or monitor private chats. Channels that lack a blocking facility may therefore prove a better source.

Blocking an account creates a barrier; arguably something most likely to be done by the very individuals the insurer seeks to investigate. Blockers may ensure their information remains hidden to prevent discovery of a dishonest claim.

Information placed on social networking accounts that is not “blocked” is considered to be within the public domain and therefore not subject to the same privacy laws that surveillance operatives face. That said, searching for public information on a social networking site is not too different from video surveillance undertaken in a public location.

Legal issues
National legal domains will take an individual stance on the legality of using this data in a claims context, and as a result it is beyond the scope of this article to consider the exact position in every territory. This should be checked locally. In theory, should a claim become the subject of legal proceedings, social network records, including those not publicly accessible, may be obtained through the formal discovery process, providing the insurer can demonstrate the need for, and relevance of, this information. An individual’s right to privacy is not absolute and the courts must weigh it against the public interest.

There is more supportive case law. In EEOC v. Simply Storage Management (United States District Court for the Southern District of Indiana, Indianapolis Division, May 11, 2010), the court held that the permissible scope of discovery did extend to information appearing on social media sites even if it was password protected. This ruling identified profiles, postings, messages, photographs and video as discoverable evidence. Although the court recognised this could reveal private or even embarrassing information, this was outweighed by the fact that the information produced had already been shared with at least one other person through private messages and postings.

It may now also be possible to compel a claimant to provide the information needed to access private information, such as a log-in and password. In Zimmerman v. Weis Markets, Inc., May 19, 2011, the plaintiff was ordered to disclose usernames and passwords for all his social network accounts when he sued after allegedly suffering injuries while operating a forklift at the defendant’s warehouse. The defendant sought discovery of the non-public parts of the plaintiff’s social network accounts to determine whether he had actually suffered the physical injuries he claimed. The ruling described personal information freely shared on the Internet, albeit privately, with others as “fair game” for defendants to discover if there was sufficient indication from the public postings that
Further relevant information would come to light.

Anecdotal reports suggest lawyers may now brief clients about their social media activity and the correct use of privacy settings. It has even been suggested that claimants have been advised to post misleading or inaccurate information such as, “Wow, my back is killing me, I’ve never been in so much pain”. To combat this influence in a claim, assessors must think carefully how information from social media matches up with other known facts.

### The way ahead

Social media and forms of open-source intelligence are here to stay and offer rich pickings to savvy claims managers. As the courts become more familiar with these sources of information, it seems likely that they will be made available as evidence subject to the same rules and privilege as the information taken from the more established media outlets. The fact that, by definition, a social networking site allows voluntary sharing of personal details can only act to strengthen this position.

While information captured through Internet investigations alone may be insufficient to allow claim declinature or termination, it is useful when combined with other evidence and medical information. The opportunity for assessors to find objective and first-hand insight to a claimant’s activities and functional capacity quickly and cost effectively should not be overlooked. It clearly represents an important additional tool in claims.

Some insurers may block the claims assessors’ access to social media sites but those insurers risk putting themselves at a competitive disadvantage. Claims assessors are recommended to investigate the potential of social media and to understand the legal aspects of using it. The information in social media has the potential to enhance claims management in the continuing battle against insurance fraud.

### About the author

Rob Frank has worked in the Life Insurance industry for 20 years and been with Gen Re since July 2010. He is the Principal Claims Advisor in the Sydney office with responsibility for philosophy, best practice and training across Australia and New Zealand.