

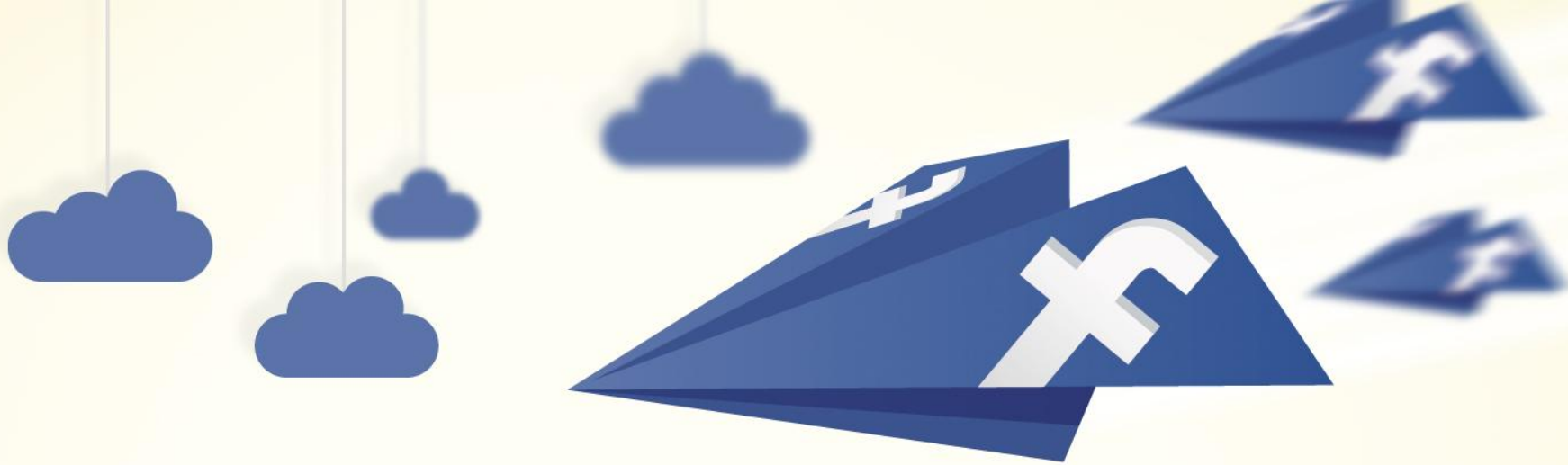


# AN EXPLORATION OF EMPLOYER'S RIGHT TO USE SNS IN HIRING AND FIRING

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July 2013

The 3<sup>rd</sup> APSN Conference



## Social Networking Sites (SNS)

- social media utility that connects one with the people around you, include text, audio, video, images, podcasts and other multimedia communications



## SNS Users

-  Facebook: 1.11 billion monthly active users as of March 2013
-  LinkedIn: 200 million members as of December 31, 2012
-  Twitter: 288 million monthly active users as of January 2013
-  SinaWeibo: 46.2 million daily active users as of December 2012
-  Renren: 57 million monthly active users as of March 2013



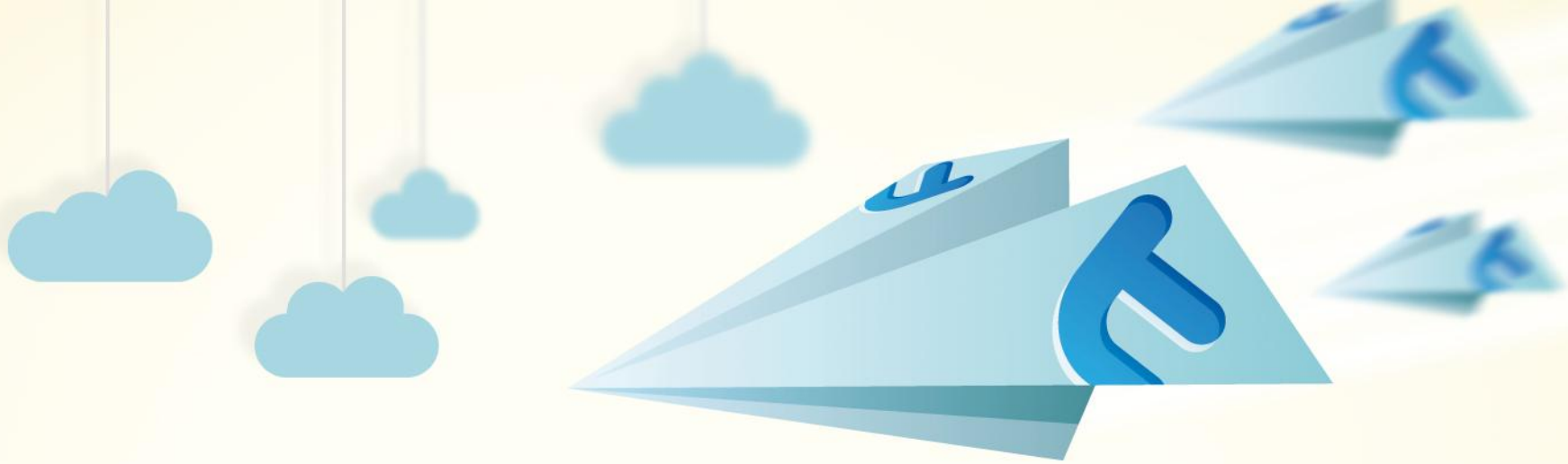
# Outline

- I. Nature of the Problem: attitudes of employers and employees
- II. Attempts of Legal Regulation
  - a) accessing accounts by Employers: the US Approach
  - b) The use of info on SNS – US, Germany, Australia
- III. In Search of a Solution



## Issue

- To what extent an applicant or employee has an expectation of privacy in their personal social networking site?

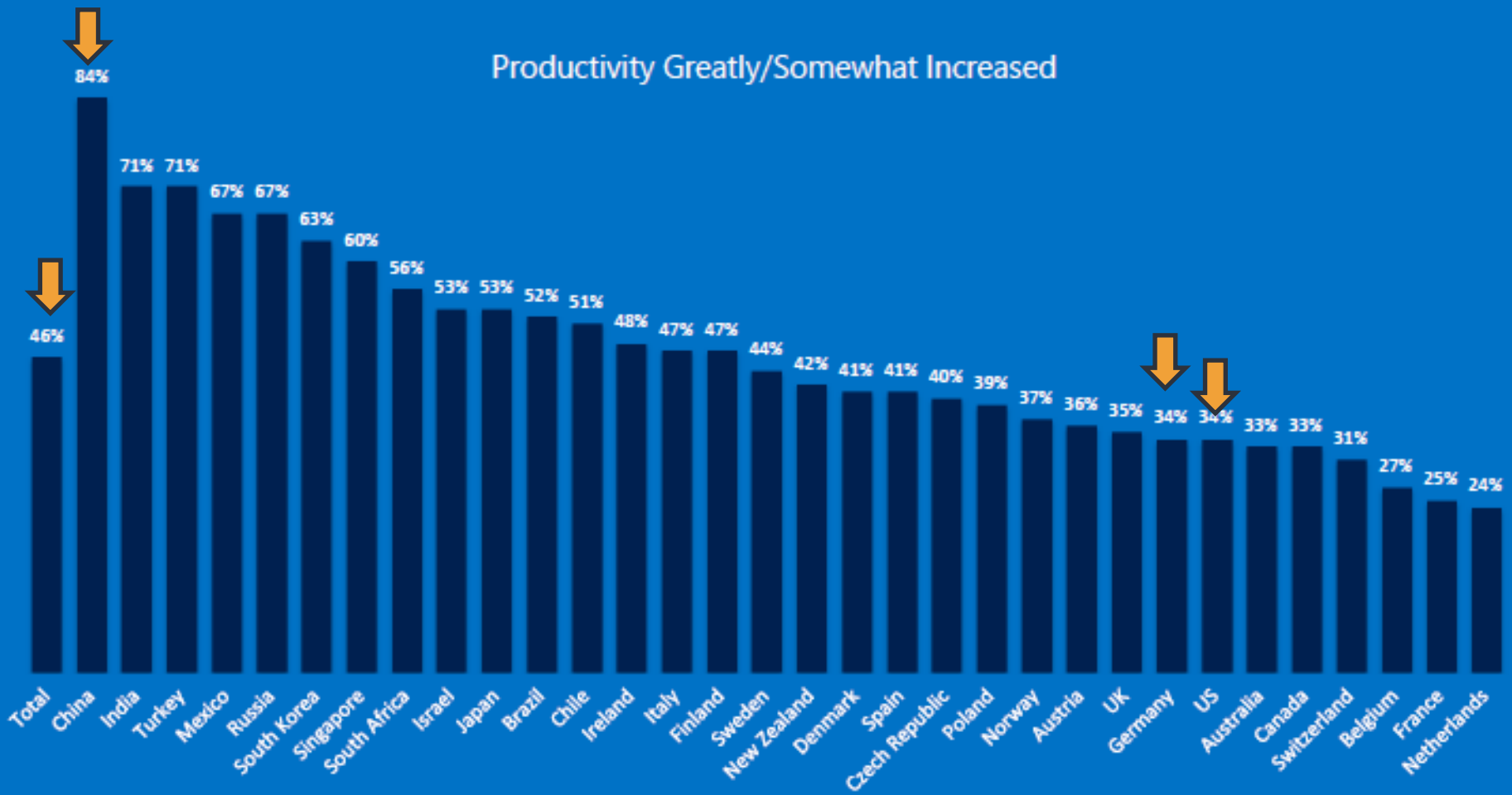


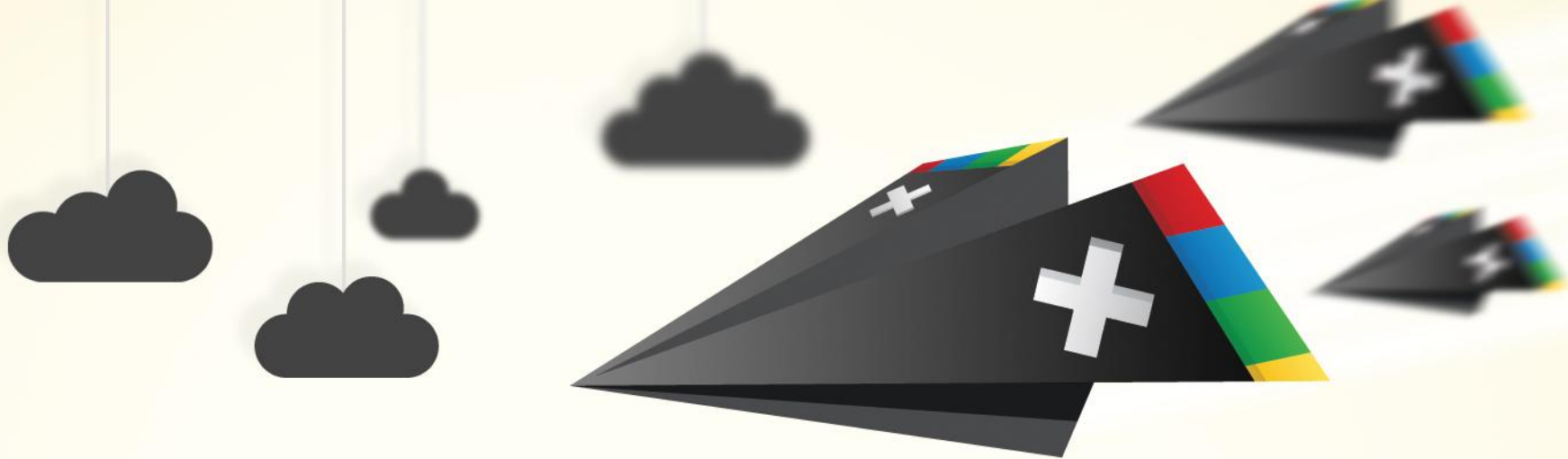
# Part I

THE PROBLEM:  
CHANGING NATURE, CHANGING ATTITUDES

# Impact on productivity: by country

Increased productivity by usage of social tools is most prevalent in China, followed by India, Turkey, Mexico and Russia. These are also the countries where use of these tools is most common.





## The Concerns of Employers

- Disclosure of trade secrets/confidential information
- Sexual or racial harassment of colleagues
- Posting of clients' pictures or information
- AND







## 揚言咖啡潑他信女兒 空姐被炒

東方太陽電子報 手機平板都睇得?

【本報訊】國泰航空一名泰國籍機艙服務員，上月廿五日在一班由曼谷往香港航班上工作時，因發現其中一名乘客為泰國前總理他信女兒巴東蒂（Paetongtarn Shinawatra），遂在社交網站facebook上發表想向她潑咖啡的言論。國泰接獲投訴經調查後，認為該名機艙服務員在未獲授權或許可下，違規在社交網站披露乘客資料，已被解僱。



### 泰籍空姐fb貼乘客名單

該名國泰駐港泰籍空姐在其個人facebook網頁上，張貼上月廿五日由曼谷往香港航班上的乘客名單，其中一名商務客位乘客是泰國前總理他信女兒巴東蒂。該名空姐更留言指從未想過巴東蒂會在該航班上，並且表示隨即向機艙服務經理報告，指在得知敵人的女兒在航機上後已經無法工作，更表示想向巴潑咖啡，「我致電我的個人顧問，問是否可以向巴東蒂潑咖啡時，對方說這是違反香港法律。」

國泰航空在facebook的官方網頁隨即擠滿逾百個留言，指有關做法是政治分化泰國，有個別留言更表明不會再乘搭國泰。泰國《民族報》（《The Nation》）引述巴東蒂表示，對該名空姐計劃向她潑咖啡的行動感到不安，「我只是乘搭航班探望父親及工作，若這樣是錯或令該名空姐感到憤怒，我致歉，而大部分國泰空姐是有禮貌的。」



泰國前總理他信（左）及女兒巴東蒂。（資料圖片）



# Flight Attendant Fired for Posting Hostile Comments and a Picture of a Passenger on Facebook

December 6, 2012 | Filed under: BizTechNews | Posted by: Maria Lloyd

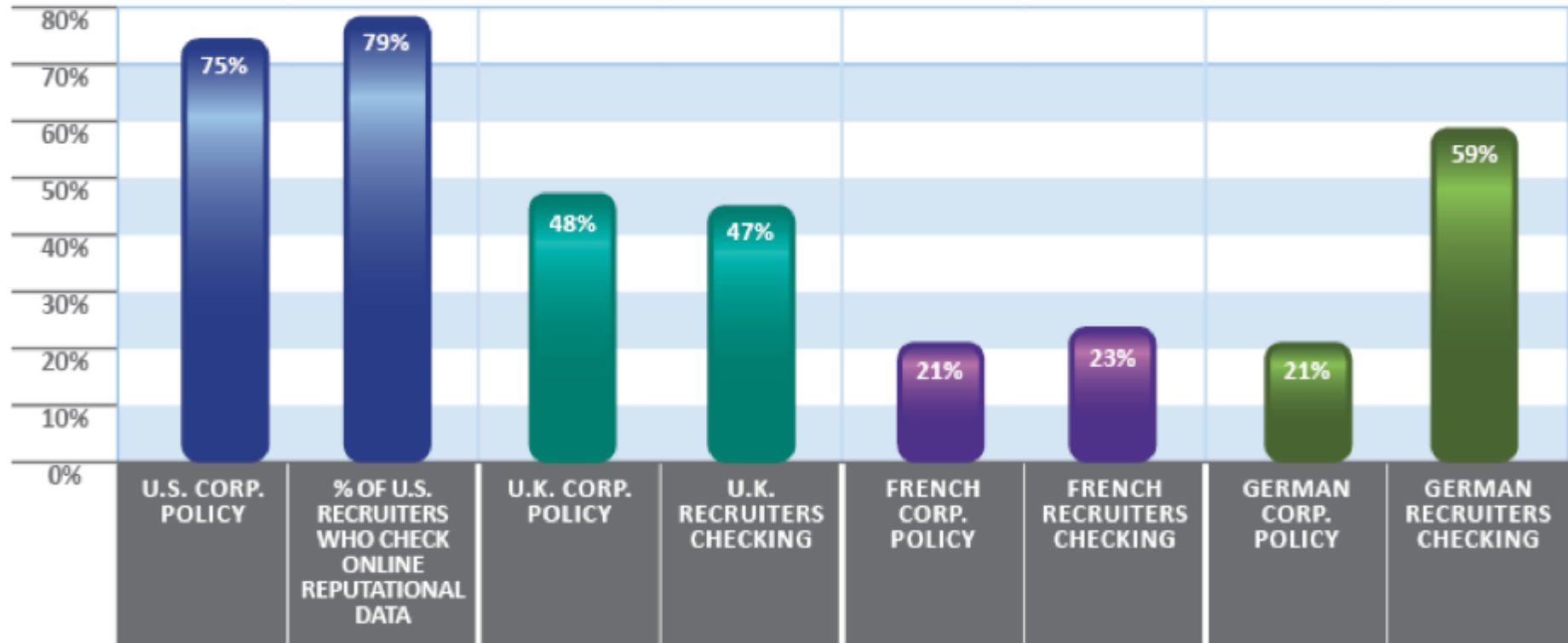
It's another day and another person left jobless because of their Facebook profile. A flight attendant for Cathay Pacific, an Asian airline based in Hong Kong, has lost her job after posting hostile comments about Thai Prime Minister Thaksin Shinawatra's daughter, Paetongtarn Shinawatra. In addition to stating she wanted to throw coffee in the woman's face, she also posted a picture of her seating number on the flight.



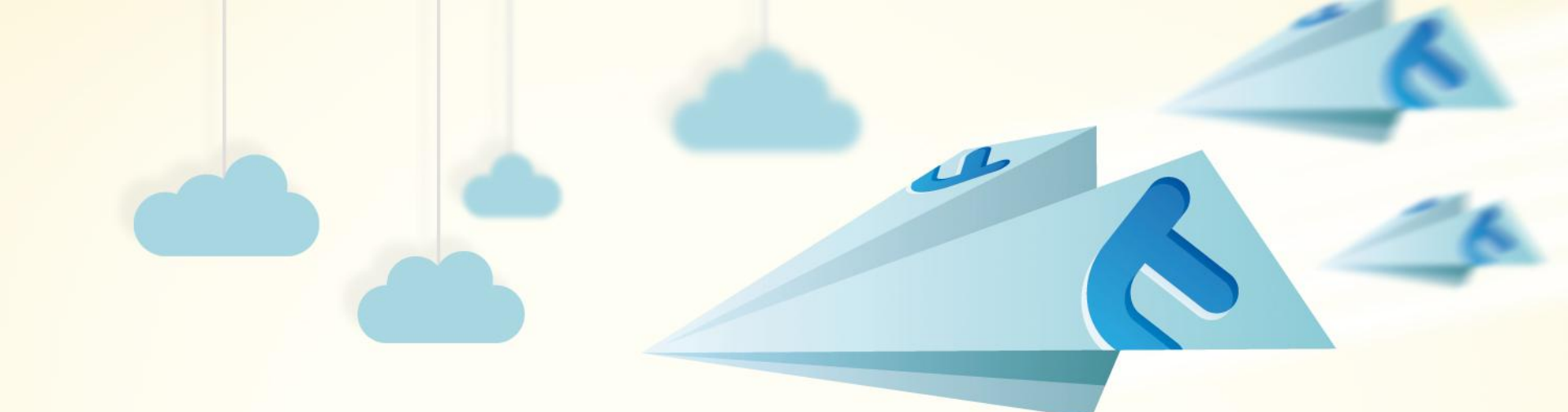
Paetongtarn Shinawatra was on a Bangkok-to-Hong Kong flight on Nov. 25 when the incident occurred. The flight attendant caused a stir within the Thai online communities, which led Cathay Pacific to take to its Facebook page to clear the air (pun intended). The company stated that the posting of a passenger's personal information was unauthorized and against the airline's privacy rules and concluded by stating the flight attendant is "no longer an employee." Here's the controversial post that the flight attendant wrote on her Facebook page: "Paetongtarn, I didn't throw coffee in her face today but she had no clue that I will keep on fighting until your clan can no longer live like fleas on the Thai soil."

In an additional post, the flight attendant said she called her personal adviser to ask "if it was all right to throw something on (Paetongtarn) on this flight." On Monday, she said she resigned to take responsibility for her actions.

**Figure 2. Percent of companies with policies that require review of reputational data vs. percent of recruiters and HR professionals surveyed who seek it**



Cross-Tab Marketing Services, Online Reputation in a Connected World, Jan. 2010, p 6.

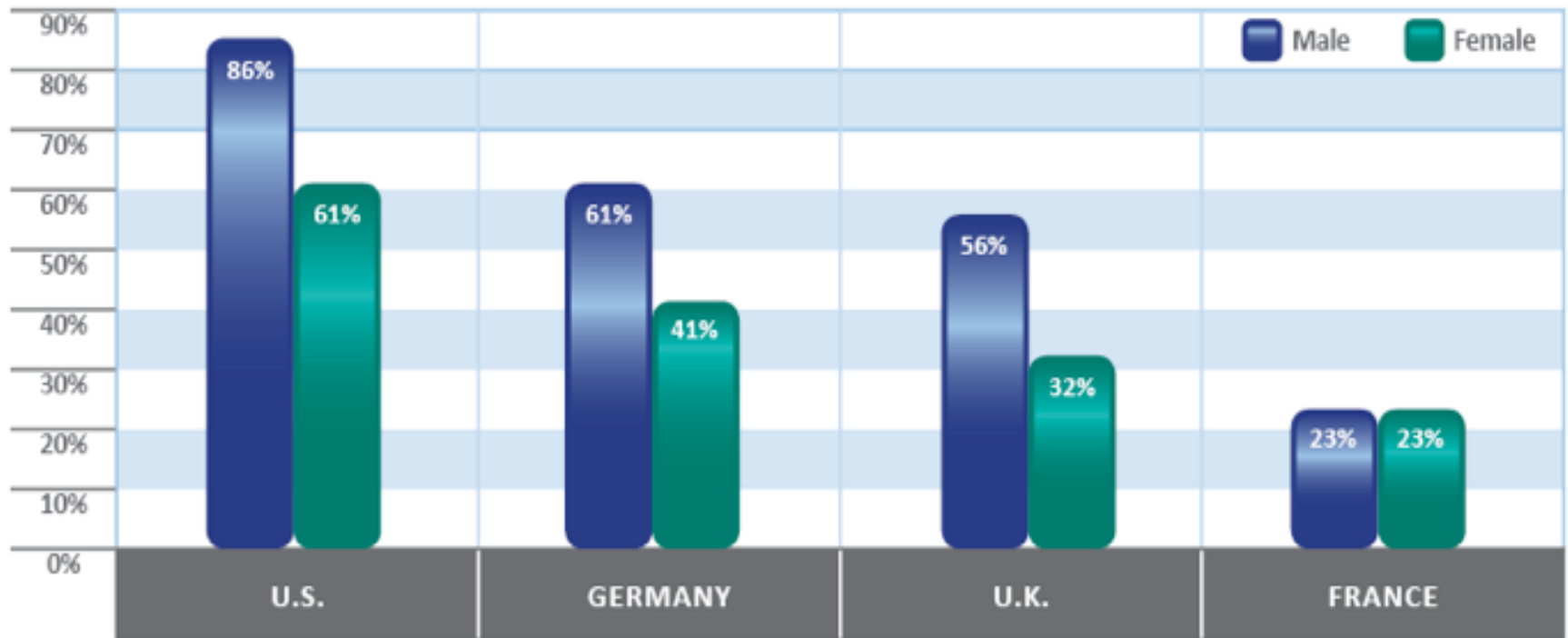
An illustration at the top of the slide features several light blue paper airplanes flying across a pale yellow background. Some airplanes are in the foreground, while others are blurred in the distance. There are also several light blue, fluffy clouds scattered throughout the scene, some appearing to be suspended by thin vertical lines.

## **71% of Hong Kong hiring managers check job candidates' Facebook profiles**

“This is well above the regional average of 50% (Australia 36%; New Zealand 34%; and Singapore 50%)”

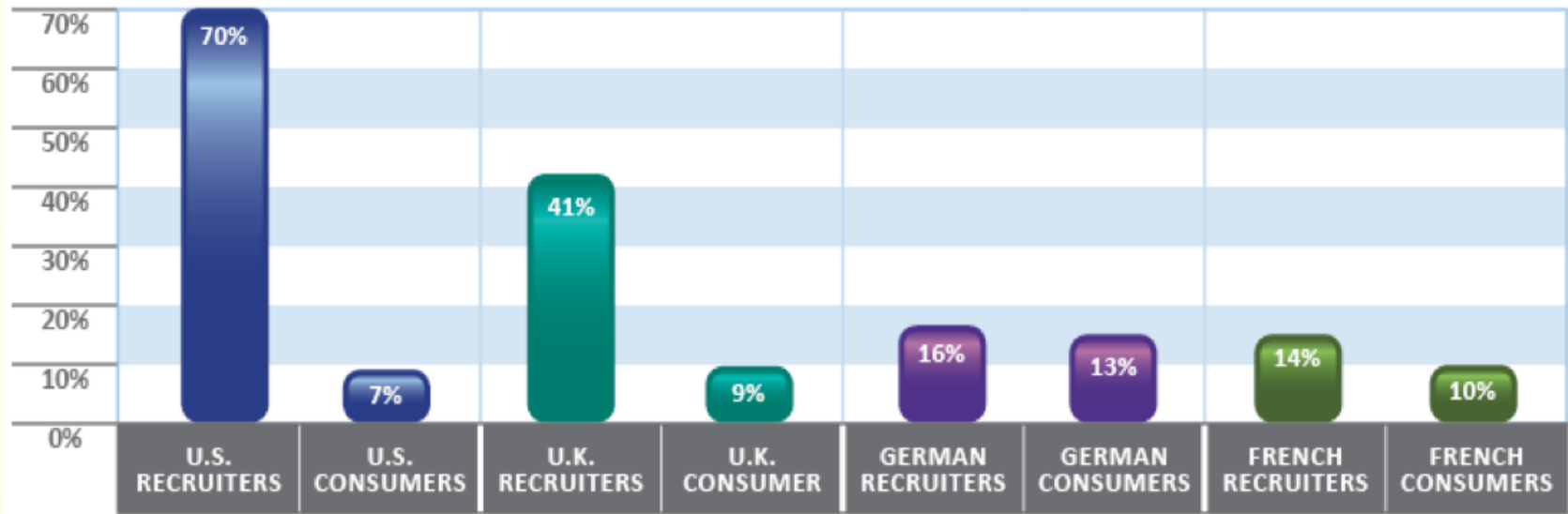
----USE OF FACEBOOK MAY AFFECT CAREER PROSPECTS  
30 May 2011

**Figure 3. Recruiters and HR professionals by gender who review online reputational information**



Cross-Tab Marketing Services, Online Reputation in a Connected World, Jan. 2010, p 7.

**Figure 1. Recruiters and HR professionals who have rejected candidates based on data found online vs. consumers who think online data affected their job search**



Cross-Tab Marketing Services, Online Reputation in a Connected World, Jan. 2010, p 5.





# Facebook Fired





# FACEBOOK FIRED: 8% of US Companies Have Sacked Social Media Miscreants

August 10, 2009 by Adam Ostrow  
434

Tweet 73 Like 1K +1 1 Stumble 407 Share 11 tumblr email share

Like Send 1,084 people like this.

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[www.GROUPON.hk/Hongkong](http://www.GROUPON.hk/Hongkong)

There have been a number of cases where an employee's misuse of social media has lead to their dismissal. However, it appears that these aren't just outliers, but the result of a serious crackdown by corporate America on tracking their employee's online activities.



According to a new study by Proofpoint, an Internet security firm, of companies with 1,000 or more employees, 17 percent report having issues with employee's use of social media. And, 8 percent of those companies report having actually dismissed someone for their behavior on sites like Facebook and LinkedIn. That's double from last year, where just 4 percent reported having to fire someone over social media misuse.

Some other interesting findings from the study:

- 15 percent have disciplined an employee for violating multimedia sharing / posting policies
- 13 percent of US companies investigated an exposure event involving mobile or Web-based short message services

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Google

fb留言鬧老闆上司 隨時被炒

下一篇

## fb留言鬧老闆上司 隨時被炒 病假遊玩照上載 同事告密成證據

撰文:蔡瑤

欄名:城市熱點

現時facebook的社交分享功能及服務愈出愈多，吸引不少市民日玩夜玩，但上班族肆無忌憚地上fb的同時，可能隨時惹禍。有僱員因在fb「唱衰」老闆遭「炒魷」，亦有人將病假期間遊玩照片上載fb，疑遭同事告密開罪上司。

輔導機構提醒，在fb上要懂言慎行，因為所發表的圖、文隨時廣傳，成為「罪證」。與此同時，愈來愈多僱主招聘時，悄悄在社交媒體蒐集應徵者資料，以剔走愛「蒲」、愛投訴一族（見另文——[網上起底「叮走」問題應徵者](#)）。

「賺大錢都減薪、無良老闆！」職工盟統籌幹事譚駿賢憶述，一名旅遊業員工在fb上狠批公司減薪，結果遭僱主藉詞炒魷，但賠足代通知金。

### 諷僱主刻薄 上司脾氣差

fb引發的勞資糾紛已逐漸浮現，有網民在討論區透露，友人去年因為在fb留言指：

「做滿3年底薪6,600... 嘩~咁好既工係邊到搵~?!」以諷刺僱主刻薄，豈料翌

日即遭上司「照睇」，她立刻在社媒發帖向同事「召勇」再被出賣，但仍挽救不了

專誠贈予閣下

## 價值500港元 蘋果禮卡！

只需快快參加  
《外匯交易者問卷調查》\*

**請即參加問卷調查！**

\* 條款細則適用



CitiFX Pro™  
專誠為資深及經驗人士而設的外匯存款交易方案




基督教家庭服務中心  
Christian Family Service Centre

盈力僱員服務顧問高級經理吳慧琪提醒僱主，若遭員工在社交媒體批評，宜坦誠向對方了解，亦應讓對方有機會解釋。（陳偉能攝）

### 辦公室facebook 惹禍事件簿

事件	員工心聲
事主一時氣憤，忘記自己add了上司，將對公事不滿寫在fb上，其後引起上司不滿	「擔心日後日子難過，都係fb惹事」
同事周六遲到早退，2日後卻將當天在商場玩大抽獎照片上載fb	「個同事好cheap，仲好天真好傻……係咪唔知我有佢fb，定係太信我？」



## Right to be Forgotten > Right to Delete?





Headhunters, bankers, partners and clients go online before taking any decisions.



## Manage your E-reputation

With a subscription to this service, Reputation Squad will provide you with an assessment of your E-reputation.

Your **visibility on the internet** may not only be the result of your actions but that of those that know you, whether friendly or not.

You can now follow the evolution of your **E-reputation** and ask the team at **Reputation Squad** to intervene if necessary.

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# web<sup>2.0</sup> suicide machine

*Make the switch to web2.0  
free life*



Select your  
Social Network:



Please read the C&D letter from Facebook [here!!!](#)

*Faster, Safer, Smarter, Better*

Tired of your Social Network?

Liberate your newbie friends with a Web2.0 suicide! This machine lets you delete all your energy sucking social-networking profiles, kill your fake virtual friends, and completely do away with your Web2.0 alterego. The machine is just a metaphor for the website

Web2.0  
Suicide  
Machine

0 hrs. 52 min.

vs.

manual  
suicide:

9 hrs. 35 min.



FEATURED

事件营销 **口碑营销**

**危机公关** 信息处理

新闻发布 **百度营销**



## 删除负面如何收费？删帖价格？

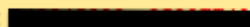
2012年09月13日 | 删除负面

1、首先，不是所有负面内容我们都可以删除。2、删除负面的价格是根据目标网站及内容而决定的，所以咨询的时候需要您提供要删除的网址链接。（对于链接您不必担心，我们会对信息进行保密避免信息遭到扩散）3、不需要您提前支付任何费用，成功删除以后再确认付款给我们既可。4、删除信息的时间是根据内容和网站确定的，一般承诺给您的时间是24小时内或者2个...

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- 1、删除信息需要您提供具体链接地址。
- 2、删除快照需要您提供关键词或截图。
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- + 如何删除百度帖子?如何推广百度博客,Q...





## Part II

# REGULATING ACCESS OF ACCOUNTS BY EMPLOYERS





- Employee of housing estate management co. left a message on the housing estate intranet defaming the plaintiff

胡說八道  
絕非好漢  
強詞奪理  
狗狗不如





# Hui Kee Chun v. The Privacy Commissioner for Personal Data (2009) CA



- Appellant was a former lecturer of VTC, alleged the Head had completed students' assignments for the students, and gave instructions for him to do so.
- Recorded the conversation, uploaded that onto the internet
- Head complained to PC that there was wrongful collection and misuse
- PC: DPP3 misuse of personal data



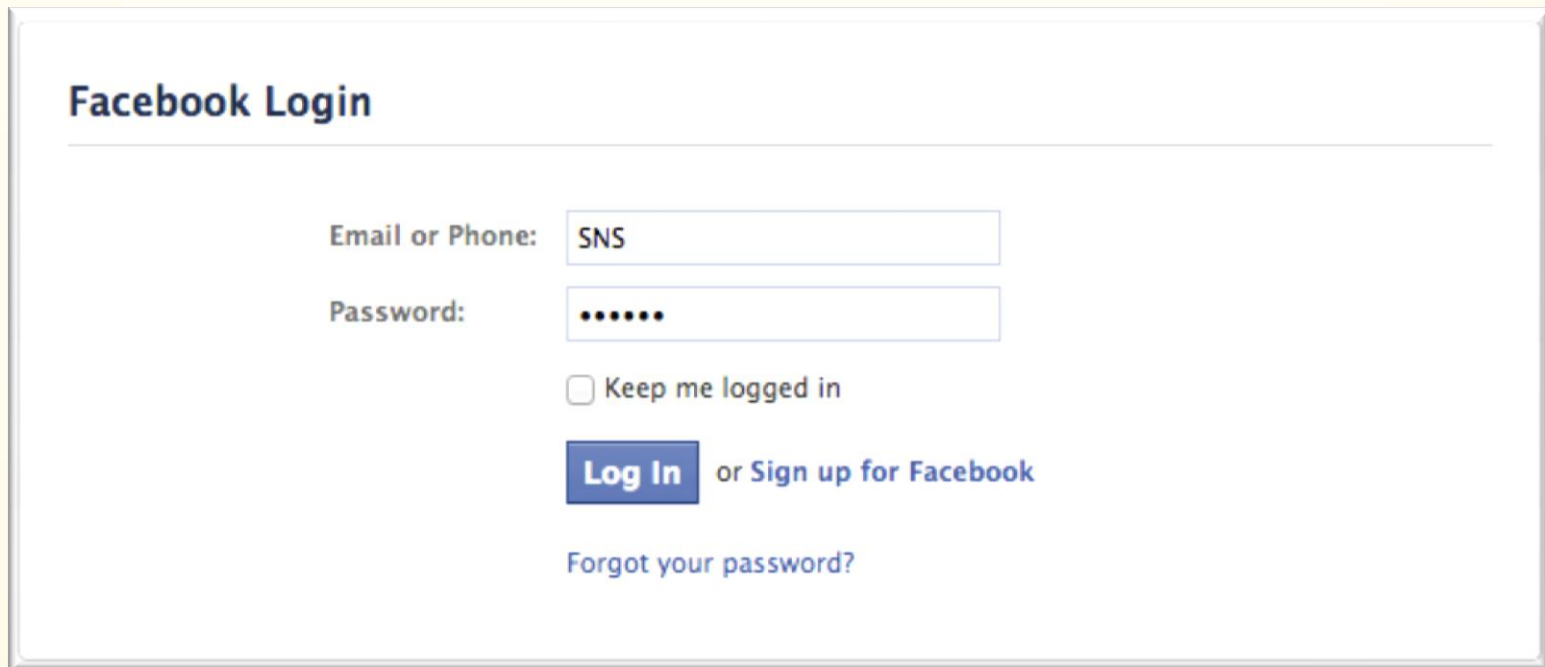


# Hiring

- when SNS setting is open to all



# If not open to all



The image shows a screenshot of the Facebook login interface. At the top, there are several orange paper airplanes and clouds, some with white RSS icons. Below this, the text 'If not open to all' is displayed in a large, bold, red font. The main content is a white rectangular box with a thin grey border, containing the Facebook login form. The form has the title 'Facebook Login' at the top left. Below the title, there are two input fields: 'Email or Phone:' with the value 'SNS' and 'Password:' with a masked password of seven dots. Below the password field is a checkbox labeled 'Keep me logged in'. At the bottom of the form, there is a blue 'Log In' button followed by the text 'or Sign up for Facebook'. Below the button and text is a link that says 'Forgot your password?'.

**Facebook Login**

Email or Phone: SNS

Password: ●●●●●●●

Keep me logged in

**Log In** or Sign up for Facebook

[Forgot your password?](#)



# Macau

2013年6月18日 澳門日報 B6

## 博總冀個資辦查“就業黑名單”

【本報消息】幸運博彩業職工總會負責人一行日前到訪個人資料保護辦公室，期望當局徹查及確保就業黑名單不存在，並且要求監管博企背景審查授權書的內容，防止求職者私隱和自由選擇職業的權利被侵犯。個資辦副主任楊崇蔚表示，該辦已對“黑名單”進行深入的調查，現階段沒有跡象顯示“黑名單”的存在。僱主向僱員收集的資料和處理有明確的規範指引，若僱主違反相關的條例將受到法律處罰。

幸運博彩業職工總會副理事長梁孫旭、馬靜雯，理事盧耀華等一行五人，日前到訪個人資料保護辦公室，獲個資辦副

主任楊崇蔚、職務主管廖志漢及公關宣傳技術員莫雯慧接見。博總提出“博彩業就業黑名單”與“背景審查制度”意見及訴求。

梁孫旭表示，工會兩年內接獲卅七宗關於“博彩業就業黑名單”的求助，求助者因種種原因，被博企解僱後一直無法再踏入博彩業工作，一些求職者甚至在面試時已被拒諸門外，促請當局徹查及確保相關制度的不存在。

馬靜雯及盧耀華稱，現時博企要求僱員在入職前需簽署一份僱員背景審查授權書，擔心企業可通過授權書獲取一些與工作無關的私人資料。背景審

查若沒有得到監管，將會引起危害性效果。

楊崇蔚表示，求職者或僱員

一旦發現私隱受到侵犯，可到個資辦求助。



博總負責人與個資辦代表合照





# Password Protection Law Hiring and Firing

Overview of US State Law on Social Networking Password Protection, as of  
06/06/2013

Area of Bill	Enacted	Under Review	Failed	Total
Employment	10	23*	5	38







## Different Types of Statutory Protection

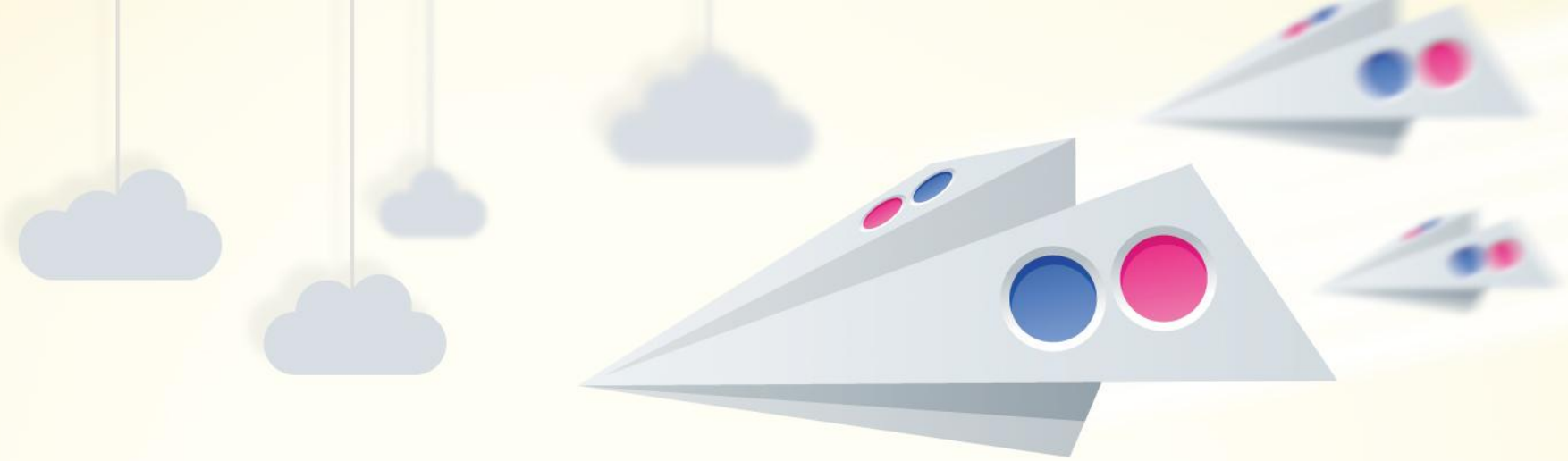
- Scope of coverage: sns, email, any electronic personal account
- Prohibition of employers seeking login info from applicants or employees; or seeking such info or access from co-workers
- Exceptions: investigation of misconduct; formal investigation on alleged violation of laws
- Remedies: damages, reinstatement



## What about

- “Shoulder surfing”
- Pressuring applicants or employees to ‘befriend’ the employers
- Changing privacy setting to allow public access





- **Part IIB**

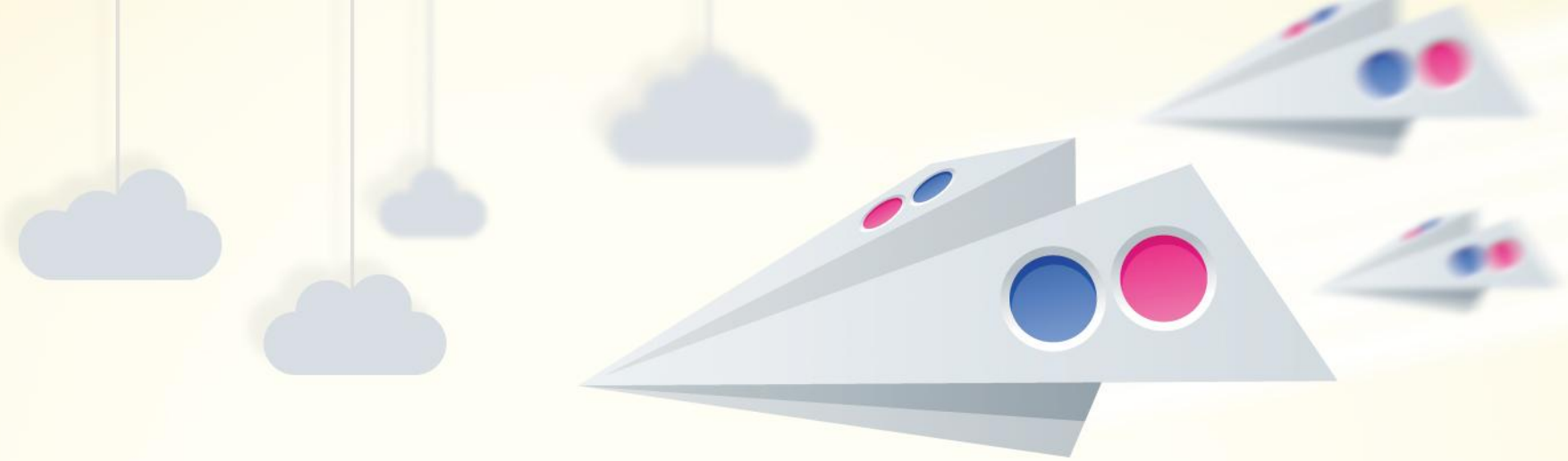
## **THE USE OF INFO ON SNS BY EMPLOYER: A COMPARATIVE STUDY**





## USNY Party Shuttle and Fred Pfantzer (2013)

- Tour bus driver posted on Facebook criticism of the company on work conditions, benefits, union activities
- Posted on a page for NYC Tour Guides, accessible only to tour guides invited to join



## Held by National Labor Relations Board

- Must reinstate the plaintiff and provide back pay
- Related to work and union benefits, not libelous

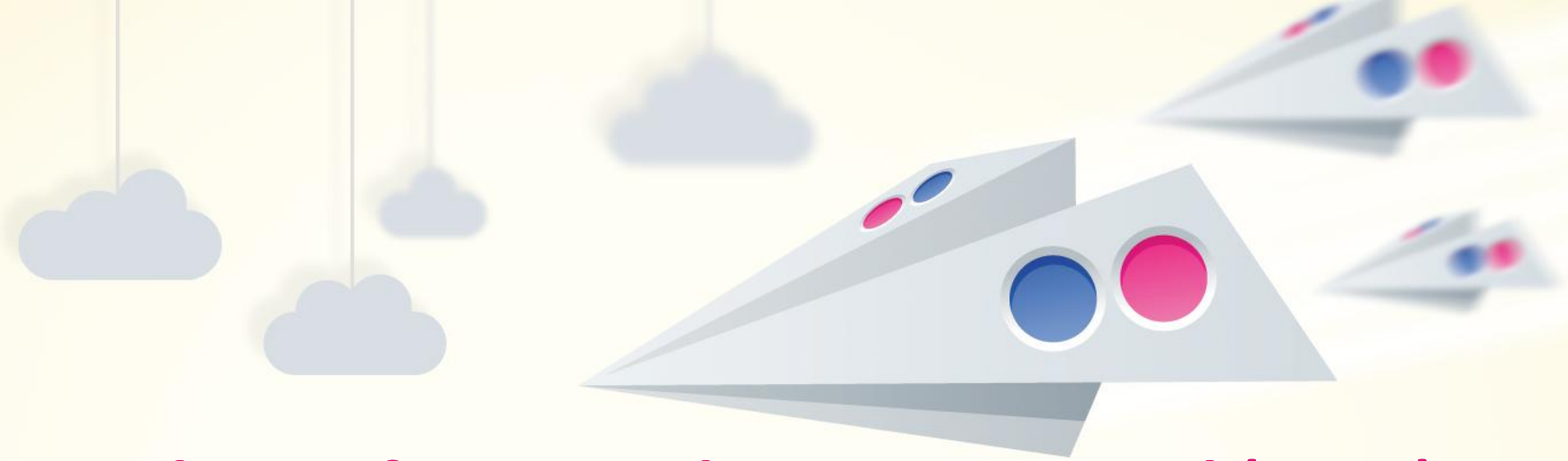
An illustration at the top of the slide features several stylized paper airplanes in shades of grey, blue, and pink, flying across a light yellow background. To the left, there are several light blue, fluffy clouds, some of which are suspended by thin vertical lines, giving the impression of hanging clouds.

# Germany

- Landesarbeitsgericht Hamm Urteil (2012)
- Facts: apprentice called his employer on Facebook to be an “oppressor”, “slave driver” and “exploiter”
- Private setting, with 112 friends

# Held

- Comments: insult
- Accessible to a multitude of persons
- PI was 26 years old, the special feature of apprenticeship
- Depended on individual case and particular facts



## Australia: Linfox Australia v. Gen Stutsel (2012)

- A truck driver posted on Facebook criticising 2 managers, calling one of them ‘bacon hater’ and another with words constituting sexual harassment
- Dismissed for offensive, derogatory and discriminatory comments,
- but not supported by Commissioner

An illustration at the top of the slide features several light blue paper airplanes with red and blue circular accents on their wings, flying towards the right. In the background, there are several light blue, fluffy clouds, some of which are suspended by thin vertical lines, giving the impression of hanging clouds.

# Held by Fair Work Australia

1. nature of the comments and statement
2. Width of publications
  - Internet: can reach wide audience, ease of forwarding comments, permanent nature
  - Did not agree this was mere vetting, as conversation in a pub
  - BUT

The background of the slide features a light yellow gradient. In the upper left, there are several stylized grey clouds hanging from thin vertical lines. To the right, there are three paper airplanes in flight, rendered in a 3D style with grey bodies and blue and pink circular accents. The largest airplane is in the foreground, pointing towards the left.

## In particular

- Stutsel had been employed for 22 years
- Facebook was set up by his daughter for him
- Page was only for ‘friends’
- some of the statements complained were made by other colleagues but were not sued or dismissed
- S: did not know how to delete comments made by others

An illustration at the top of the slide features several paper airplanes in shades of grey, blue, and pink, flying across a light yellow background. Some airplanes are in the foreground, while others are blurred in the background. There are also several light blue, fluffy clouds, some of which are suspended by thin vertical lines, giving the impression of hanging clouds.

# Suggested Legal Framework

- the ‘place’ of the discussion: open setting or just fro ‘Friends’> the reach of the audience
- Subject matter: any verbal or physical threats being made; racial or sexual harassment; defamatory statement
- The nature of the ‘outburst’: the cause
- Abusive or insulting personal remarks
- Employers: consistent application of policy





## Part III: Things to Bear in Mind

- Employer
  - An employee's conduct
  - Companies' own policies in determining whether termination is legal under the circumstances: cannot be overly broad
  - System of verification
  - Opportunity for employees or applicants to dispute information
- Employee
  - Password
  - Expression in private setting of SNS
  - No. of friends
  - Relation with works
  - Nature of speech: abusive
  - Exceptions always apply



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