information about the company, its staff or customers will result in disciplinary action that may lead to dismissal.

Summary

In summary, companies should:

- clearly establish rules of use
- set out consequences of misuse
- publicise the policies
- seek advice if in doubt.

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QUESTION 2

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QUESTION 2

Video sharing sites

‘Video sharing web sites, in particular YouTube, contain a lot of illegally copied materials. What are the legal issues if this material is then in advertently used by a company (ie on the blog of an employee)?’

ANSWER

The answer is straightforward. If the person who copies the material does not have the agreement of the copyright owner to do this then it is copyright infringement.

However, when it comes to the responsibility of the employer for this, it is a little more complicated. Whether the employer is responsible depends upon concepts of vicarious liability. In simple terms, if the employee creating the blog is acting in the course of his or her employment then the employer will be vicariously liable.

If the employee is using the employer’s assets (communication systems) to set up a personal blog, then the position is less clear. At one end of the spectrum it could be argued that the employer is allowing its facilities to be used much like a telephone system and the employer would not be responsible if, for example, the employee in a personal telephone call said something defamatory about someone else.

Peer-to-peer software and infringement

On the other hand, where the employer knows that employees are using its communications systems to set up blogs which use material in infringement of third-party copyright, then an argument can be made that the employer is authorising the infringement. As such, this would mean that the employer is a primary infringer of copyright or could be a secondary infringer on the basis that they are possessing or dealing with infringing copies in the course of a business with knowledge. These questions are undetermined in English law.

Questions about authorising infringement have been looked at in the context of companies selling peer-to-peer software in the United States and Australia (in the *Grokster* and *Kazaa* litigation, respectively), which was subsequently used by individuals to infringe third-party copyright. Those decisions have gone in favour of the copyright holders. But this was on the basis that there was evidence that the software suppliers were actively encouraging infringement and sharing in the profits generated.

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QUESTION 3

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QUESTION 3

Regurgitated content and liability

‘Social networking sites are all about user generated content. Much of this content is regurgitated from other sources. What are the legal issues if this material appears on a company’s website (i.e. if the company is using some type of social networking functionality)?’

ANSWER

The answer to this is clear. If the company has set up the site then it is likely to face the risk of liability in the following respects:

Defamation

If the material is defamatory then the company could be responsible for each fresh publication on its site. There are defences available under Section 1 of the Defamation Act for ‘innocent’ publication, but if the company takes an active part in monitoring, editing or participating in the site then that defence is unlikely to be available.