Information Sources 20 Years Ago
Today’s Information Diet
We Are Addicted to Media!

per day watching, reading, listening or simply interacting with media

We Are Addicted to Our Phones...

Americans check their phones... 63...times per day!

Source: SlickText, January 4, 2022, “44 Smartphone Addiction Statistics for 2022.”
Consumers Spend Time Across Platforms

Average Time Spent Per Adult 18+ Per Day (Based on Total U.S. Population)

Attention Span & Digital Media

Source: Muck Rack, July 14, 2020, “How declining attention spans impact your social media.”
Facebook is Still the Most Used Social Platform

% of U.S. adults who say they ever use...

- **Facebook**: 69% (2019), 69% (2021)
- **Twitter**: 23% (2021), 22% (2019)
- **Snapchat**: 25% (2021), 24% (2019)
- **LinkedIn**: 28% (2021), 27% (2019)
- **Instagram**: 37% (2021), 40% (2019)
- **Pinterest**: 31% (2021), 28% (2019)

Source: Pew Research Center, February 8, 2021, "Social Media Fact Sheet."
Social Media Use By Age

% of U.S. adults in each demographic group who say they ever use..

Source: Pew Research Center, February 8, 2021, “Social Media Fact Sheet.”
Age Dictates How Americans Get Their News

% of U.S. adults in each demographic group who say they prefer ___ for getting news...

- Smartphone, Computer or Tablet
- Television
- Radio
- Print Publications

Digital Devices: #1 Way to Consume News

% of U.S. adults in each demographic group who say they prefer ___ for getting news...

- Half of Americans say they prefer a digital device to get news.
- Americans ages 50+ use both television and digital.
- Younger age groups have almost fully turned to digital devices.

News Use Across Social Media Platforms

% of U.S. adults who get news on each social media site...

Facebook: 31%
YouTube: 22%
Twitter: 13%
Instagram: 11%
Reddit: 7%
TikTok: 6%
LinkedIn: 4%
Snapchat: 4%
WhatsApp: 3%
Twitch: 1%

Increasing Popularity of TikTok

- One of the most popular social platforms among Gen Z
- 100 million users in the U.S.
  - 73.7 million active monthly users
- Platform is increasingly being used for political activism, organizing and as a news source
  - 6% of U.S. adults reported using the social media app as a source for news in 2021
Voters Increasingly Going Online to Research Candidates and Causes

• 52% of U.S. voters sought out information about elections and candidates online
• 33% visited a candidate’s website or social media

American Trust in Mass Media Dips to Second Lowest on Record

Question: “In general, how much trust and confidence do you have in the mass media -- such as newspapers, T.V. and radio -- when it comes to reporting the news fully, accurately, and fairly -- a great deal, a fair amount, not very much, or none at all?”

Source: Gallup, October 7, 2021, “Americans’ Trust in Media Dips to Second Lowest on Record.”
Elected Officials & Government Shifting Online

Livestreams & Video Conferencing Platforms
What This Means for Elected Officials

• **Conversation is largely online** – meet your constituents where they are

• **Use social media to have ‘public conversations’ with your constituents** – and treat them like everyone is listening

• **Target your message** to specific and key constituency groups

• **Develop engaging content** focused on **issues people care about**
  - Videos
  - Photos

• **Build an audience** gradually over time
  - Paid strategies
  - Organic
Be Proactive on Social Media

- Share news articles, be a source for important city information
- Feature positive community work
- Show how you’re helping your community and constituents
- Constructively interact in the comments with your residents
- Follow and engage with other local and state leaders
What This Means for Elected Officials

• You’re always “on the record”
• Privacy **does not** exist
• Be transparent and open – all the time
• Remember that **everything online lives forever**
Be Prepared

• Be prepared and have a plan for when news breaks about you or your city

• Ensure that your social media team is aware of the plan and designate a “point person”

• Coordinate your strategy with other local leaders and groups for information consistency
Social Media Don’ts

- Avoid arguing, provoking or responding to ‘trolls’ trying to start a fight
- Remove comments you don’t like, because you don’t like them
- Post when angry, impaired or not in a good frame of mind
- Take on a reporter – a good fight sells newspapers
- Post over informing, long press releases
- Weigh in on everything
Emerging Legal Issues

A SOCIAL MEDIA GUIDE FOR LOCAL AGENCY OFFICIALS
SOCIAL MEDIA USERS LOVE TO SHARE!

- Birthdate
- Place of Employment
- Relationship Status
- Family Members
- Places Visited
- Home and Email Addresses and Phone Numbers
- Photos
- Schools Attended

- Political, Religious, Social Viewpoints and Causes
- Clubs, Civic Activities, Networking Groups
- Life Events
- How Much they Hate Their Boss
- Offensive Costumes and Remarks
- What They Did on the Day They Called in Sick
- How Much They Drank Over the Weekend
- Their Plans to Overthrow the Government
BUT, I HAVE PRIVACY SETTINGS!

Moreno v. Hanford Sentinel, Inc. (CA 2009)
No reasonable person who takes the affirmative act of posting information on a social media website has an expectation of privacy.

State v. Harris (NY 2012)
One has no reasonable expectation of privacy in information intentionally broadcasted to the world on Twitter.

Romano v. Steelcase, Inc. (NY 2010)
The sharing of personal information is the very nature and purpose of social networking sites, else they would cease to exist.

Vasquez Santos v. Matthew (NY 2019)
“Tagged” photos posted by others are discoverable in litigation if relevant to claims in lawsuit, even if user has privacy settings.
WHAT ABOUT MY “PRIVATE” CHATS?

• Some platforms have end-to-end encryption *(if you choose that setting)*, BUT:

  – Messages can be forwarded, screen-grabbed, or otherwise distributed by another user to a larger audience

  – Messages are discoverable in litigation if relevant to the claims
APPROPRIATE USE BY
LOCAL AGENCIES & ELECTED OFFICIALS
BE CAREFUL
THIS MACHINE HAS NO BRAIN
USE YOUR OWN
• The Internet never forgets
• Mistakes are magnified
• Line between public and private is often blurred
• Your critics will be your closest followers
DON’T FEED THE TROLLS

• Not everyone will love you. Get over it.
  • Use caution when responding with “humor.”

• If you MUST respond, stick to the facts – never personal attacks.
  • Move the conversation offline.
DOING IT WRONG

• Don’t start Twitter wars with sports teams, celebrities, etc.
• Don’t attack people based on looks or protected characteristics
  • Don’t post false or misleading content
• Don’t mistake parody for real life and retweet it with great sincerity
  • No PUI
INTANGIBLE COSTS OF BAD JUDGMENT

- Reputational Damage: 1,650,000,000
- Unfavorable media coverage and scrutiny
- Distraction, disruption, and polarization
- Litigation
- Deplatforming
Conflicts & Bias

01 Duty to make decisions motivated by the public good, not personal interests

02 Duty of loyalty

03 Duty to treat all members of the public in a fair & unbiased manner

04 Disclosure of “ex parte” communications when item is on Agenda for discussion or action
Social media in the public sector raises numerous First Amendment issues:

- Establishment of a public forum
- Take down policies
- Banning/blocking users
A traditional website pushing out information in one direction—to the public—does not establish a public forum, and that means the entity does not risk violating First Amendment rights when it excludes content.

Vargas v. City of Salinas
(Cal. 2009) 46 Cal.4th 1
Social media has become a vital platform for speech of all kinds. Social media may now be “the most important” modern forum “for the exchange of views.”

Packingham v. North Carolina,
137 S. Ct. 1730 (2017)
**SPEECH RESTRICTIONS**

**PUBLIC FORUMS**
- Highest level of scrutiny
- Restrictions must be narrowly tailored to achieve compelling government interest.

**LIMITED PUBLIC FORUMS**
- Moderate level of scrutiny
- Restrictions must be reasonable and viewpoint neutral
• Political speech and advocacy are at the core of the First Amendment
  • Online speech is the same as the town square
  • Offensive, obnoxious and even hateful speech and hyperbole are protected
    • Anonymous speech is protected
  • Criticism of government and public officials is protected
    • Prior restraints are not permitted
PUBLIC AGENCIES (AND OFFICIALS) CANNOT PROHIBIT

• Comments based on the viewpoint expressed
• Comments critical of the Official or Agency based on policy, management, and other political issues
GRAY AREAS OF PROHIBITED CONTENT

- Profanity
- “Defamatory” Statements
- Personal attacks
- “Offensive” statements
- Implied threats
- Off-topic comments
WHAT YOU CAN LIKELY PROHIBIT

- Obscenity
- Pornography
- True threats
- Public safety
- Incitement of violence
- Commercial speech
- Confidential information
- Encouragement of illegal activity
THE RIGHT TO FREE TWEET
Public entities face litigation for deleting comments and banning users who are critical of the entity.
Civil rights organizations are now bringing lawsuits on behalf of members of the public who have comments deleted or are blocked/banned from a public entity page.
My use of social media is not Presidential - it’s MODERN DAY PRESIDENTIAL. Make America Great Again!

3:41 PM - 1 Jul 2017

55,437 Retweets  194,865 Likes
Questions considered by the Court:

• May a public official, consistent with the First Amendment, “block” a person from his Twitter account in response to the political views that person has expressed? NO

• Is the analysis different if that public official is the President of the United States? NO
“The First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from an otherwise-open dialogue because they expressed views with which the official disagrees.”
Donald J. Trump
@realDonaldTrump

@realDonaldTrump is blocked

Jules Suzdaltsev
@jules_su

First order of business now that I've been #unblocked.
5:15 PM - Aug 28, 2018
472 50 people are talking about this

J.D. Durkin
@jiveDurkey

NEW -- important update to this -- thanks to @KatieFallow and @knightcolumbia, I've been officially UNBLOCKED by @realDonaldTrump after 14 months
did I miss anything
WHAT ABOUT MY SPEECH RIGHTS?
NEW: Twitter permanently suspends Rep. Marjorie Taylor Greene's personal account after "repeated violations" of the Covid-19 misinformation policy, the company says.
The First Amendment provides that “Congress shall make no law...abridging the freedom of speech, or of the press...”

Social Media platforms are private companies, not the government.

The Terms of Service are a legally binding contract in which the user agrees to adhere to the platform’s rules in exchange for the right to use their services.

Lawsuits raising First Amendment claims by individuals have not been successful.
TWITTER TERMS OF SERVICE

- Abusive/harassing content
- Threats or glorification of violence
- Violent extremism
- Hateful conduct
- Doxing
- Sensitive media
- Non-consensual nudity
- Civic integrity
You may not use Twitter's services for the purpose of manipulating or interfering in elections or other civic processes. This includes posting or sharing content that may suppress participation or mislead people about when, where, or how to participate in a civic process. In addition, we may label and reduce the visibility of Tweets containing false or misleading information about civic processes in order to provide additional context.

WHAT CONSTITUTES A VIOLATION?

- Misleading information about how to participate
  - Suppression and intimidation
- Misleading information about outcomes
  - False or misleading affiliation
• Inaccurate statements about an elected or appointed official, candidate, or political party;
• Organic content that is polarizing, biased, hyperpartisan, or contains controversial viewpoints expressed about elections or politics;
• Discussion of public polling information;
• Voting and audience participation for competitions, game shows, or other entertainment purposes; and
• Using Twitter pseudonymously or as a parody, commentary, or fan account to discuss elections or politics.
WHAT HAPPENS IF YOU VIOLATE THE POLICY?

- Tweet deletion
- Profile modifications
- Labeling
- Account locks and permanent suspension

We consider content to be in the public interest if it directly contributes to understanding or discussion of a matter of public concern.

At present, we limit exceptions to one critical type of public-interest content—Tweets from elected and government officials—given the significant public interest in knowing and being able to discuss their actions and statements.

What Content Moderation Looks Like

Donald J. Trump
@realDonaldTrump

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

Get the facts about mail-in ballots

Account suspended
Twitter suspends accounts that violate the Twitter Rules.

Donald J. Trump
@realDonaldTrump

Some or all of the content shared in this Tweet is disputed and might be misleading about how to participate in an election or another civic process. Learn more

Big problems and discrepancies with Mail In Ballots all over the USA. Must have final total on November 3rd.

Learn how voting by mail is safe and secure

11:43 PM - Oct 26, 2020 - Twitter for iPhone

Donald J. Trump
@realDonaldTrump

This Tweet violated the Twitter Rules about glorifying violence. However, Twitter has determined that it may be in the public’s interest for the Tweet to remain accessible. Learn more

....These THUGS are dishonoring the memory of George Floyd, and I won’t let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!

12:53 AM - May 29, 2020 - Twitter for iPhone
Users may create parody and fan accounts. Twitter will review accounts under this policy based on trademark or impersonation complaints.

- **Bio must make non-affiliation with the subject clear**
- **Account name must make clear that user is not affiliated with subject**

Hanging out on the dairy in Iowa looking for the liar treasonous cowpoke.

United States  gofundme.com/f/21x5q5a4ao  Born October 1, 1973
Joined July 2017

129.8K Following  771.7K Followers
Followed by Republicans against Trumpism, Prez, and 52 others you follow

Peoria, Illinois

Peoria, Illinois is a city and the county seat of Peoria County, Illinois, United States. It is the largest city on the Illinois River. Established in 1891 by the French explorer Henri de Tore, Peoria is the oldest European settlement in Illinois, and is named after the Peoria tribe. As of the 2010 census, it was the fifth-most populous city in Illinois, with a population of 110,983 in 2020. It was also included in the Peoria Metropolitan Area.

Real Peoria Mayor
@JimArdisMayor

Completely Real Mayor of Peoria AND I WILL HUNT YOU DOWN IF YOU PRETEND TO BE ME

Devin Nunes’ Mom
@mum_nunes

I’m gonna sue my son for being too sensitive
Washington, DC  devinnunescow.com  Joined March 2019
8 Following  9,251 Followers
Followed by Devin Nunes’ cow and Patricia Arquette
You may not use Twitter’s services to share false or misleading information about COVID-19 which may lead to harm. We’ve observed the emergence of persistent conspiracy theories, alarmist rhetoric unfounded in research or credible reporting, and a wide range of false narratives and unsubstantiated rumors, which left uncontextualized can prevent the public from making informed decisions regarding their health, and puts individuals, families and communities at risk.

COVID-19 POLICY VIOLATIONS

• The pandemic is a hoax or caused by 5G wireless technology
  • Adverse effects of vaccines have been covered up by the government/medical industry
    • Vulnerable groups are being experimented upon
    • Vaccines are untested, experimental, or unsafe
      • Chlorine or iodine can be used for treatment
      • Vaccines contain deadly or harmful ingredients
    • Promotion of fake vaccine cards or “exemption” cards
Brains behind new 5G data communications networks described below! New Bill Gates sponsored corona virus vaccine, w/nano tech, will run everything and control everyone who are still necessary, like bots to serve the elite? Get your vaccine now?

Get the facts about COVID-19

The Rise of AI
There's an AI revolution sweeping across the world. Yet few people know the real story about where thi...

youtube.com

This Tweet is misleading. Find out why health officials consider COVID-19 vaccines safe for most people.
“Records” include all communications related to public business “regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper...magnetic or other media.”
IS MY CITY’S SOCIAL MEDIA COVERED?

- Content that has to be produced includes anything that relates to the conduct of government
- Polls, surveys, data collection
- Metadata, which shows how and when a document was created or revised and by whom may also have to be produced
- Retention guidelines are based on content, not medium
- What about comments and deleted content?
WHAT ABOUT RECORDS ON PRIVATE DEVICES?

Emails and text messages are subject to the CPRA regardless of location, including personal accounts and devices.

Primary focus is whether the message is related to public business, based upon context, content, purpose, audience, and role of individual when message was written or received.

City of San Jose v. Superior Court

Employees + Officials
May now be required to search personal emails or phones for responsive records if account or phone is used to communicate with others concerning public business, and to provide such responsive records.

Compliance
Claiming that the records are not on entity email accounts, computers or servers is NOT enough for compliance now.
IS MY PERSONAL SOCIAL MEDIA PAGE COVERED?

- Were public resources used?

Is there a definable, well-publicized use for the site, i.e., acting as a candidate, purely personal use, or a separate business use?

Do users visit the site based on personal or official contacts?

Is it being used for any official purpose?
SOCIAL MEDIA & BROWN ACT

Cannot meet to discuss official business unless meeting complies with Brown Act

Does not prevent individual members from publishing their own comments and opinions
A “Serial Meeting” is a series of communications that individually do not include a quorum but collectively involve a quorum.
A local newspaper writes an online article critical of your City’s proposal to build a new community center. Dozens of comments by members of the community are posted on-line in response to the article. One Council Member reads the article and posts her own comment about the issue. A second Council Member also posts a comment. A third Council Member “Likes” the comments of the first two Council Members.

Has the Brown Act been violated?
SOCIAL MEDIA & THE BROWN ACT: AB922

- Do not discuss specific business as a quorum.
- Individual posts are OK.
- Do not respond to directly to posts of other officials.
- "Discuss" includes emojis, GIFs, or "Likes".
- OK to provide information, answer questions, and solicit feedback.
KNOW YOUR POLICIES!
THREE POLICY MUST-HAVES

AGENCY
- Regulating Agency activity and public comments on social media

OFFICIALS
- Compliance with Brown Act, decorum standards, and ethics rules

EMPLOYEES
- Regulating employee social media activity
OFFICIALS POLICY

Online decorum should mirror conduct on the dais

Do not engage with other officials online about City business

Avoid expressions of bias and conflict
Emerging Legal Issues

A SOCIAL MEDIA GUIDE FOR LOCAL AGENCY OFFICIALS