Social Media / Digital Communications and Civic Engagement

Cal Cities’ Mayors and Council Members Academy

January 2024
Information Sources 20 Years Ago
Today’s Information Diet

San Francisco Chronicle | YouTube | reddit | AP | Spotify
---|---|---|---|---
npr | Los Angeles Times | Huffington Post | LinkedIn
---|---|---|---
Twitch | TikTok | Google | FOX News
---|---|---|---
The Sacramento Bee | USA Today | POLITICO | HBO
---|---|---|---
yahoo! | Netflix | BBC | The New York Times
---|---|---|---
NETFLIX | hulu | The Wall Street Journal | Amazon
---|---|---|---

PUBLIC AFFAIRS
Bicker, Castilo, Farbanks & Spitz
We’re Addicted to Media!

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

Americans check their phones... 144 ...times per day!

Source: Fortune, July 19, 2023, "Americans check their phones 144 times a day. Here’s how to cut back."
Attention Span & Digital Media

Source: Muck Rack, July 14, 2020, “How declining attention spans impact your social media.”
Members of Generation Z lose active attention for ads after...

1.3 Seconds!

Source: MNTN Research, August 2023, “Audience Deep Dive: Generation Z.”
Digital Devices: #1 Way to Consume News

Total % of U.S. adults who say they prefer ___ for getting news...

- Digital Devices: 52%, 50%, 53%, 58%
- Television: 35%, 36%, 33%, 27%
- Radio: 7%, 7%, 7%, 6%
- Print: 7%, 7%, 7%, 6%

Source: Pew Research Center, November 15, 2023, “News Platform Fact Sheet.”
Television: Streaming Increasing in Popularity

July 2023

Source: Nielsen, August 2023, “Streaming grabs a record 38.7% of total TV usage in July, with acquired titles outpacing new originals.”
Facebook is Still the Most Used Platform

Source: Statista, November 23, 2023, “Social network usage by brand in the U.S. as of September 2023.”
News Intake Across Social Platforms

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

- Facebook: 30%
- YouTube: 26%
- Instagram: 16%
- TikTok: 14%
- X/Twitter: 12%
- Reddit: 8%
- LinkedIn: 5%
- Snapchat: 4%
- WhatsApp: 3%
- Twitch: 1%

Source: Pew Research Center, November 15, 2023, “Social Media and News Fact Sheet.”
Average Time Spent Per Day on Social Platforms

Source: Statista, September 12, 2023, “Average time spent per day on select social media platforms in the United States in 2023.”
One of the most popular social platforms among Gen Z

143 million monthly active users in the U.S.

Platform is increasingly being used as a news source

32% of U.S. adults aged 18-29 reported using the app regularly as a news source
• 52% of U.S. voters sought out information about elections and candidates online
• 33% visited a candidate’s website or social media

Elected Officials & Government Shifting Online

You can watch your @LACityCouncil session starting at 10 AM.

Tune in to: lacityview.org/live
Facebook: facebook.com/CityofLosAngeles
Website: clerk.lacity.org/calendar

Let your voice be heard. Submit written comments at LACouncilComment.com or call in.
Elected officials are increasingly using live, online platforms to engage constituents.

Officials are also using video to post statements, make announcements and activate voters.
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

- Develop **engaging content** focused on **issues people care about**
  - Videos
  - Photos
What This Means for Elected Officials

- **Build an audience** gradually over time
  - Paid Strategies
  - Organic
- **You’re always “on the record”**
- Privacy **does not** exist – *even on personal pages*
- **Be transparent and open** – all the time
- Remember that **everything online lives forever**
Be Proactive

• 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
• Have an established social media policy for elected officials, department heads and staff

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

• Post over-informing, long press releases

• Weigh in on everything
LEGAL GUIDANCE ON SOCIAL MEDIA FOR LOCAL AGENCY OFFICIALS
Gena is a partner with Burke, Williams & Sorensen, LLP. She is a public law and labor and employment attorney. She has worked as an advisor, trainer, negotiator, and investigator for public agencies for over a decade. She has a passion for the preventive side of the practice of law and is a trusted advisor to public agencies throughout California.
PRIVACY & THE INTERNET

(not really a thing)
Social Media Users Love to Share

- Birthdate
- Place of Employment
- Relationship Status
- Family Members
- Places Visited
- Home, Email Addresses, 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
Review Your Posts Carefully

Voting in #JCMO this morning. Make sure to cast your ballot & make your voice heard #Election2014
Conflicts & Bias
Conflicts And Bias

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

Due Process

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

Disclosure of “ex parte” communications when item is on Agenda for discussion or action
First Amendment

Free Speech and Public Forums
LEGAL CONCERNS

Social media in the public sector raises numerous First Amendment issues:

- Establishment of a public forum
- Limiting Speech
FREEDOM OF SPEECH

Did the Government fine, censor, or imprison you for something you said?

Yes. First Amendment rights may have been violated.

No. But, I was banned by Facebook or people made fun of me!

First Amendment rights were not violated.
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
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.”

IS MY “PERSONAL” PAGE A PUBLIC FORUM?

Do you...
... identify as a government official?
... use it to address constituents?
... use it to share information of importance to the community?
... post photos of community events?
... use it to acknowledge your colleagues or Agency employees?
... use it to discuss your work as an official?
... use any Agency resources?
... link to the Agency’s website or social media pages?
... provide access to constituents?
• 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
A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.
Agency 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 Agency Officials Can Likely Prohibit

- Obscenity
- Pornography
- True threats
- Public safety
- Incitement of violence
- Commercial speech
- Confidential information
- Encouragement of illegal activity
ALL COUNTY OFFICES WILL BE CLOSED MONDAY, FEBRUARY 13, 2023 IN OBSERVANCE OF THE HOLIDAY.

NORMAL OPERATION HOURS WILL RESUME TUESDAY, FEBRUARY 14, 2023.
The Right to Free Tweet
• Ninth Circuit Issues Binding Decision Relating to Blocking Constituents’ Comments

• First time in Ninth Circuit we now have a clear holding that:

  • Trustees of School District blocked critics of their decisions from making comments on social media pages

  • In a designated public forum “the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions” are “narrowly tailored to serve a significant governmental interest” and “leave open ample alternative channels for communication of the information.”
Lindke v. Freed

- City Manager maintained a Facebook page
- “Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Office for the citizens of Port Huron, MI.”
- Designated the Port Huron official website as his page’s website
- The city’s general email address for “City Administration and Staff” as his page’s contact information, and the city hall address as his page’s address.
- Pictures of his daughter’s birthday party
- Family picnics
- Visits to community events
- City’s policy relating to the pandemic
“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.”
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 RECORDS ON PRIVATE DEVICES?

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

PRIMARY FOCUS
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?
The Brown Act prohibits a majority of members of a legislative body from engaging in a “series of communications,” directly or through intermediaries, to “discuss, deliberate, or take action on an item” that is within the legislative body’s subject matter jurisdiction.
A public official may communicate on social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body’s subject matter jurisdiction. However, the latter types of communications are only allowed as long as a majority of the members of the legislative body do not use any social media platform to “discuss among themselves” official business.
It prohibits a member of a legislative body from responding “directly to any communication on an Internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.”
Social Media & The Brown Act

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

Must have public notice and access to the meeting

A member may not respond directly to any communication posted or shared by another member regarding agency business on an internet-based social media platform.

Does not prevent individual members from publishing their own comments and opinions.
Prohibited Communications Via Social Media

- 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?
It's sleepy time so we're off to hit the hay! See you at 8am for more #TescoTweets
"Liking" is pure speech and symbolic expression fully protected by the First Amendment.

Bland v. Roberts (4th Cir. 2013)
The use of emojis can establish a party’s intent or context and can be used as evidence in litigation and other proceedings.
They are only getting more garbage trucks because Gus needs more tires to sell to get more money for his pockets!

South West Terminal Ltd. v Achter Land & Cattle Ltd. (2023 SKKB 116)

Contract Acceptance by Emoji
Applicant who replied with sexual innuendos and kissing emoji could not establish claim for emotional distress