Social Media / Digital Communications and Civic Engagement

Cal Cities’ New Mayors and Council Members Academy
January 2023
Information Sources 20 Years Ago
Today’s Information Diet
We’re Addicted to Media!

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

Source: Insider Intelligence, June 15, 2022, "US Time Spent with Media 2022."
Americans check their phones... 96...times per day!

Attention Span & Digital Media

12 SECONDS
THE AVERAGE ATTENTION SPAN OF A HUMAN IN 2000

8 SECONDS
THE AVERAGE ATTENTION SPAN OF A HUMAN NOW

9 SECONDS
THE AVERAGE ATTENTION SPAN OF A GOLDFISH

AND...

Source: Muck Rack, July 14, 2020, “How declining attention spans impact your social media.”
Consumers Spend Time Across Platforms

Source: Nielsen, May 2022, National TV Panel and Streaming Platform Ratings."
Facebook is Still the Most Used Platform

Source: Shopify, November 1, 2022, “Top 10 Most Popular Social Media Platforms in 2023.”

Facebook: 2.93 Billion
YouTube: 2.52 Billion
WhatsApp: 2 Billion
Instagram: 1.39 Million
WeChat: 1.3 Million
Messenger: 976 Million
TikTok: 945 Million
Telegram: 700 Million

*Monthly active users
Social Media Use By Age

Source: Statista, October 7, 2022, “Distribution of leading social media platform users in the United States as of August 2022, by age group.”
Digital Devices: #1 Way to Consume News

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

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

Source: Pew Research Center, September 20, 2022, “News Platform Fact Sheet.”
News Intake Across Platforms

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

- Facebook: 31%
- YouTube: 25%
- Twitter: 14%
- Instagram: 13%
- TikTok: 10%
- Reddit: 8%
- LinkedIn: 4%
- Snapchat: 4%
- WhatsApp: 3%
- Twitch: 1%

Source: Pew Research Center, September 20, 2022, “Social Media and News Fact Sheet.”
Age Dictates How Digital News is Consumed

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

Source: Pew Research Center, September 20, 2022, “News Platform Fact Sheet.”
- One of the most popular social platforms among Gen Z
- 80 million monthly active users in the U.S.
- Platform is increasingly being used as a news source
  - 52% of U.S. adults aged 18-29 reported using the app as a source for news
• 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.

LOS ANGELES CITY COUNCIL MEETINGS

WATCH LIVE ON:

- CITYVIEW/WEBEX
- CITYVIEW/LIVE

LISTEN AT:

- (213) 68-CITY

9:30 AM - Jan 19, 2023 - Hootsuite Inc.
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
- **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
What This Means for Elected Officials

- 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
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
SOCIAL MEDIA IS AWESOME, BUT

• 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

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Reputational Damage

Unfavorable media coverage and scrutiny

Distraction, disruption, and polarization

Litigation

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

Duty of loyalty

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
FREE SPEECH & PUBLIC FORUMS
LEGAL CONCERNS

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.”

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
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
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
Ninth Circuit Issues Binding Decision Relating to Blocking Constituents’ Comments

Garnier v. O’Connor-Ratcliff (9th Cir. 2022)
WHAT ABOUT MY SPEECH RIGHTS?
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.
Did the US Government fine, censor, or imprison you for something you said?

Yes

Your First Amendment Rights may have been violated.

No, but Facebook, Twitter, Reddit, etc banned me, and/or people made fun of me.

Your First Amendment rights were not violated. You were probably being a jerk.
Abusive/harassing content
Violent 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
WHAT IS NOT A VIOLATION?

• 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.

“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?

City of San Jose v. Superior Court

**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.

**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

Must have public notice and access to the meeting

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

1. Do not discuss specific business as a quorum.
2. Individual posts are OK.
3. Do not respond to directly to posts of other officials.
4. “Discuss” includes emojis, GIFs, or “Likes”.
5. OK to provide information, answer questions, and solicit feedback.

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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
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