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@LocalGovernment
Social Media Lessons for Municipalities

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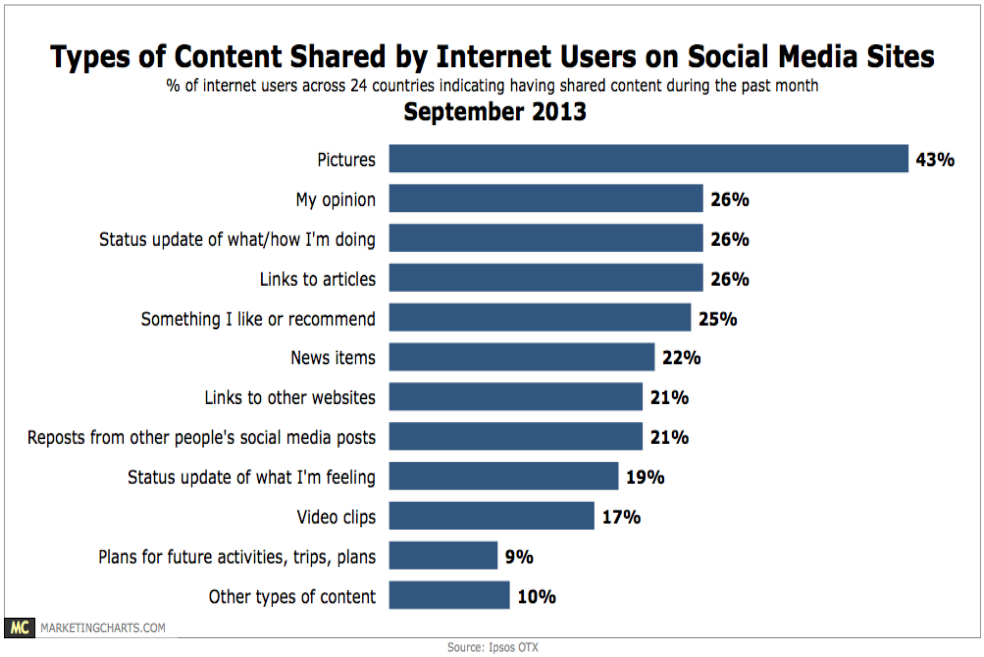
The world's use of social media is increasing all the time, and it is displacing many forms of "traditional" communication. As of 2012, Nielsen reported that "people continue to spend more time on social networks than any other category of sites—20% of their time spent on PCs and 30% of their mobile time." Importantly, more than half of people aged 25-34 use social networking in the office.

Understanding how social media works—and how it differs from "traditional" forms of communication—is vital to crafting an effective policy to manage its risks and maximize its benefits in the office. Social media can also enhance public outreach and engagement, and can provide a significant advantage in the courtroom, but its use raises legal and ethical concerns that every lawyer must be aware of.[1]

Social is Sharing

We can define social media as any means of electronic communication that replicates social networks by giving each user an identity, allowing the user to share information, and and allowing the user to control what information they receive from others. People now use social media to share and discuss everything from personal pictures to world events. And social media accounts now serve as individuals' and groups' online identities, letting them make dinner reservations, build professional reputations, transact business, and communicate with the public quickly and easily.

[1] The author would like to thank Jordan Gray for her assistance in researching and drafting this paper.



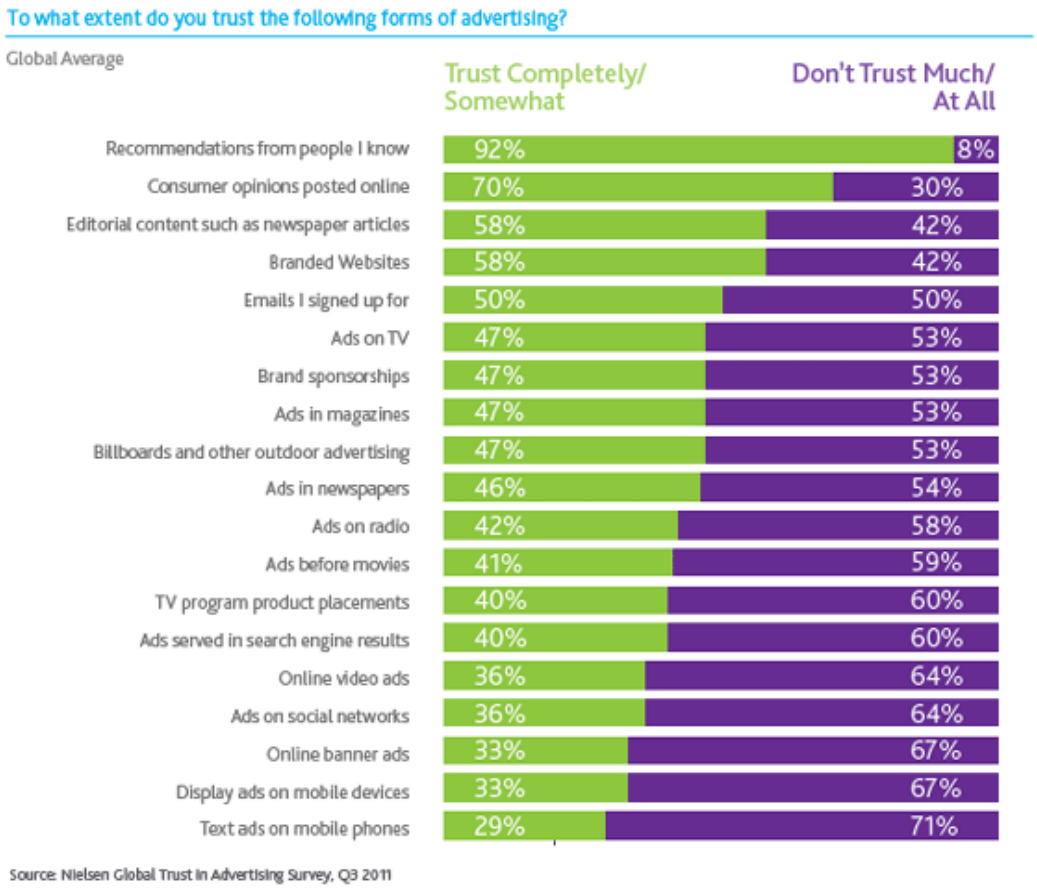
Social media users share many different kinds of information, in various forms.

Two of the best-known examples of social networks are Facebook and LinkedIn, where users create online profiles to share and discover a broad array of information about themselves and others, both personal (Facebook) and professional (LinkedIn). Other sites offer more limited means of sharing information. For example, YouTube is strictly video, Instagram allows only pictures, and Quora allows only questions and answers. And beyond that, Vine serves up seven-second videos to the chronically impatient, and Twitter allows text posts of only 140 characters. There is, in short, a vast array of social networks and media sites.

Social is Identity

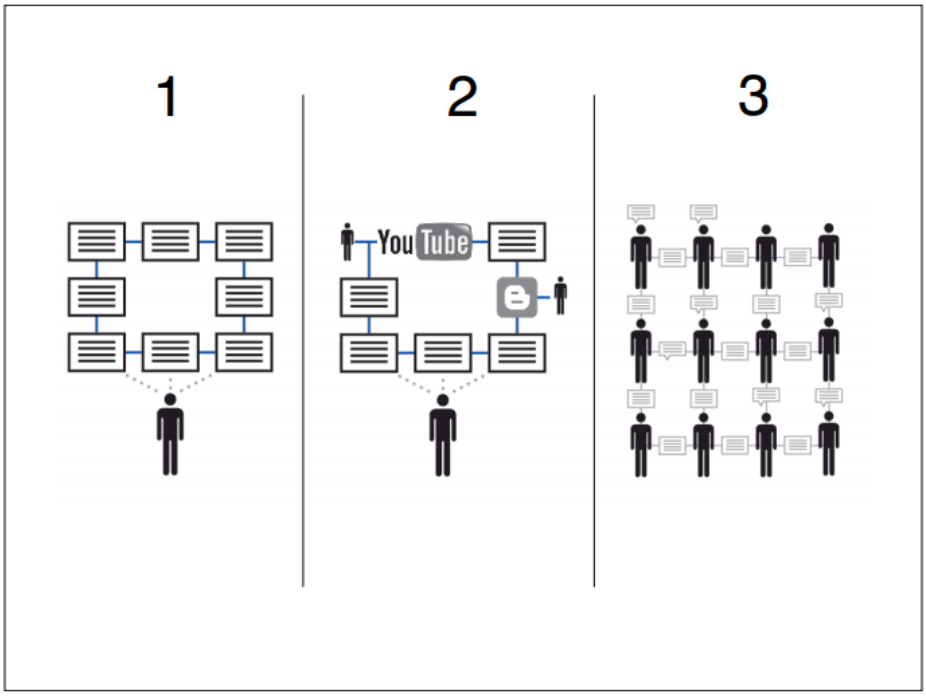
Nearly any website on which there is some form of communication can now have a social component. So, comments on New York Times articles, discussion among Wikipedia's citizen-editors, and seller ratings on eBay are all "social" because they allow users to interact, share content, and build reputations. Driving this trend is the fact that people are far more likely to trust information and recommendations from friends than they are from unknown parties. According to a 2012 Nielsen survey of more than 28,000 respondents in 56 countries, 92 percent of consumers trust recommendations from their network, above all other forms of advertising.[2]

[2] This had increased 18 percent since 2007.



People trust their network far more than anything else.

Social media thus relies on identities, which in their most distilled form are simply information about the individuals using the network. And increasingly, that information is drawn from the real world, rather than simply accumulated piecemeal on various sites. For example, Yelp is one of many websites where people can use their Facebook accounts to attach an identity to their reviews (in this case, for restaurants). This allows the user to receive improved suggestions, and if they wish to contribute, the user can build their online reputation as a trusted source of information.



The web was originally built to link static documents (1), then evolved to incorporate social media using separate accounts (2), and now our information is moving with us as we visit different websites (3).[3]

Across the internet, sites and their users are shifting from maintaining disconnected accounts on various websites, to one in which a user's reputation is portable, and each user brings and shares personal information on whatever website he or she visits. In doing so, people are sharing more and more information online, and allowing their activities to be recorded and associated with their online identities in social networks—whether they know it or not.

Social is Easy

While municipalities do not necessarily need to share videos, court customers, or update their relationship status, the public is increasingly calling for government participation in social media, and its ease of use makes it especially well suited for rapid communication.[4] Last year, Oreo created and posted an advertisement riffing on the Super Bowl power outage within minutes of the lights going out in New Orleans, and that single tweet likely brought them more business than their multi-million dollar, on-air commercial.

While the Super Bowl power outage was a marketing opportunity for Oreo, it was a crisis for the parties who were responsible for the power. But with the right

[3] "The Real Life Social Network" by Paul Adams.
[4] They may be on to the fact that companies respond faster in a public forum.

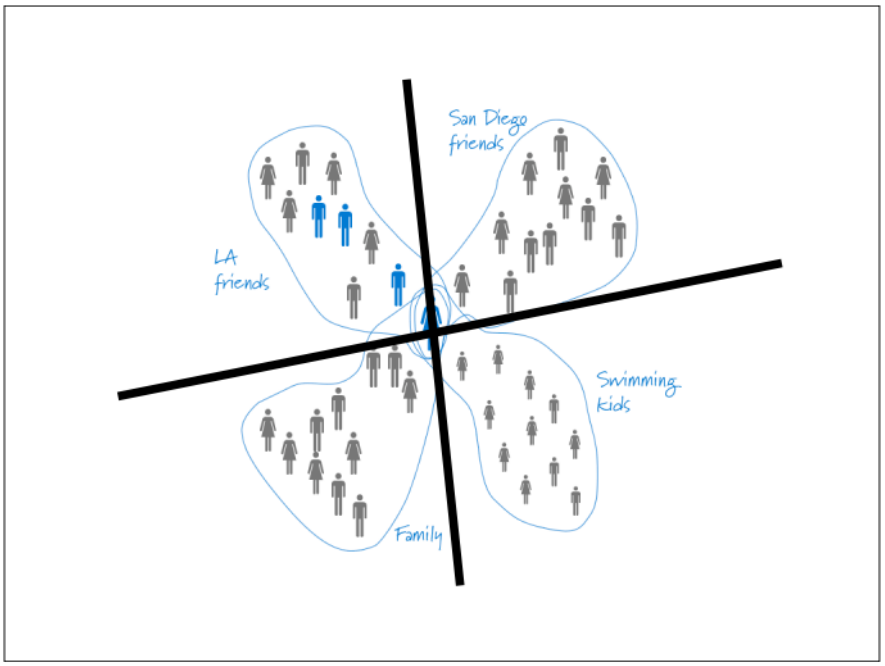
structure in place, the features of social media that allow opportunistic profits can be used for disaster response. Social media opens two-way communication channels with the public that can be used for for disaster preparedness, early detection, response, and recovery. This is, of course, in addition to more traditional types of community outreach.

Social is Risky

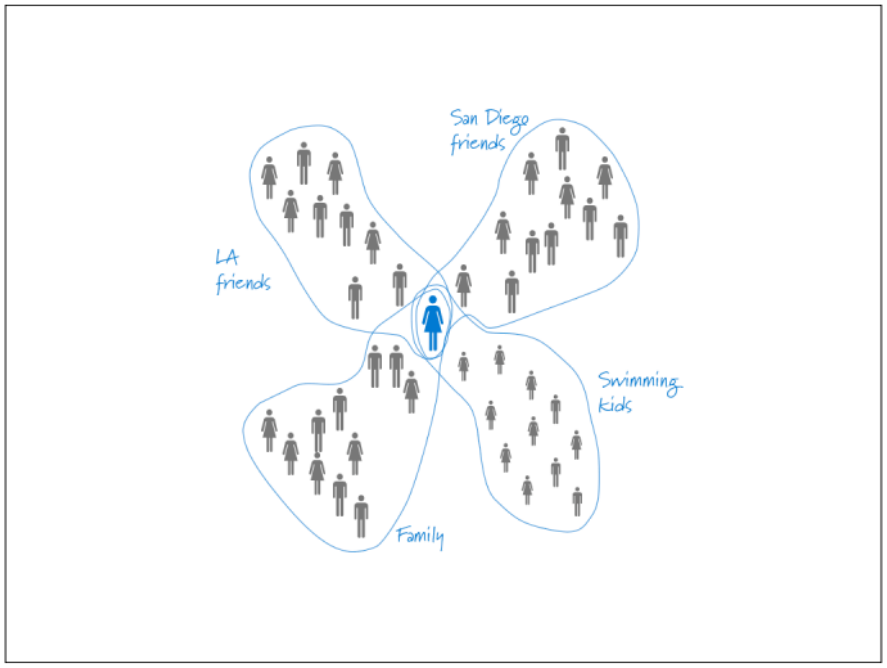
The information we share "behaves" differently online, which creates the opportunity for confusion and embarrassment (or worse). In one study, Google's "User Experience Team" had subjects describe the ways that they share information online. One of the participants, whom they called "Debbie," had a number of Facebook friends from her old neighborhood in Los Angeles that worked in a bar. Those friends would often post racy pictures from their work and "tag" Debbie, so that she would receive an alert and could comment on the photos.

Debbie also coached swimming in her new city, San Diego, and had become Facebook friends with a number of her swimmers, all of whom were in elementary school. Unfortunately, it was only *during the Google study* that Debbie realized these children could see her other friends' racy pictures, and she was—not surprisingly—very upset.

The lesson to be learned from Debbie is that we are accustomed to natural communication barriers in the physical world that do not exist online. In the real world, Debbie's school-aged friends would never find themselves in the same place as her older friends; and if they did, the children's conspicuous physical presence would alert Debbie and her friends not to discuss "adult" topics, much less show the children inappropriate photos. But Facebook caused those circles to intersect and allowed information to flow between them, much to Debbie's surprise and consternation.



The real world has barriers to communication.



Social media sites remove them.[5]

Even if users are aware of who can see their content, there is room for mistakes, and they will be amplified by the very nature of social media. In one famous example, the employee administering Chrysler's official Twitter account accidentally mused to the public: "I find it ironic that Detroit is known as the #motorcity and yet no one here knows how to f**king drive." In another

[5] "The Real Life Social Network" by Paul Adams.

instance, the American Red Cross informed its Twitter followers that "Ryan found two more 4 bottle packs of Dogfish Head's Midas Touch beer" and that it would be getting "slizzerd" that night.[6] And in one final, spectacular example, US Airways accidentally responded to a customer comment with a shockingly pornographic image involving a model airplane. The common thread to these mistakes is that organizations often delegate the actual work of updating social media accounts to their younger, technically-savvy employees or interns, who may be inexperienced and error-prone.

As often seems to be the case, spectacular failures will arise from an accumulated series of smaller errors. In one of the most infamous scandals to date, social media aficionado and former U.S. Representative Anthony Weiner inadvertently shared a lewd photograph of himself. Mr. Weiner's first mistake was, obviously, to fall into the habit of finding young women on Twitter and then carrying on libidinous conversations with them. His first *technical* mistake, however, was to confuse a counter-intuitively public "reply" with a private "direct message." Mr. Weiner meant to send a semi-nude picture of himself only to the woman who had most recently messaged him, but a *single character* was his undoing. Mr. Weiner typed "@" to begin his message instead of "D," and in doing so shared his photo with with all 24,000 of his Twitter followers. To make matters worse, that now-very-public message was *specifically marked* with a young woman's Twitter username.

But this was not the end of the affair (as it were). Mr. Weiner at first asserted the plausible defense that his account had been hacked, but this was belied by Twitter itself. In order to send direct (private) messages to another user, one must "follow" (subscribe to) that other user's Twitter messages. Crucially, the site's designers made "following" lists permanently public, so that users can find new Twitter feeds by seeing whom others are subscribed to. What this meant for Mr. Weiner was that—unbeknownst to him—the entire world could see that he followed a number of reporters, authors, politicians, and other popular figures, plus one pornographic film actress and several young women from far-flung places. Needless to say, Mr. Weiner's story quickly unraveled, along with his career in government.[7]

Another, more recent, example of vanity gone awry on social media involved a Russian soldier obsessed with posting "selfies" (pictures of himself). The soldier took his phone to war with him and continued to post photos, but failed to realize that his phone was recording the location of each picture. When the

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[6] Notably, the Red Cross's gaffe occurred in spite of—and perhaps because of—the fact that its social media manager was using an online platform to manage the organization's multiple social media accounts.

[7] Mr. Weiner resigned from Congress in the wake of this scandal, but it took another "sexting" scandal in the 2013 New York mayoral race to finally end his political career.

soldier shared them on Instagram, it revealed to the world that he and fellow troops had illegally crossed the Ukraine border.

Social has Consequences

Regardless of who is responsible for such over-sharing, the information can tarnish not only the individual's reputation, but that of any organization the person is associated with online. Hence, the TSA fired one of its agents over a series of racist, anti-Muslim, and homophobic Facebook posts. And in another incident, a waitress who felt that a customer had stiffed her offered a sarcastic "Thanks for eating at Brixx" on Facebook, and was promptly fired.

We noted, above, that certain natural barriers to communication do not exist online, and the trend of online "shaming" reveals an important one: *the world ignores almost everyone, almost all of the time*. Thus, an average teenager's online communications generally stay within their circle of friends, even if the posts are technically visible to the public. But saying the wrong thing can attract the world's attention, and if it does, the social media carrying will have been instantly indexed and archived. This makes offensive statements ripe for specialty blogs and media outlets such as Jezebel, which reproduced racist tweets and identifying information (warning: racism) that teens posted in the wake of President Obama's 2012 reelection.

Whether Jezebel treated these minors appropriately is the subject of much debate, and it will undoubtedly have lasting consequences for the teenagers involved. But perhaps the most famous and tragic instance of online "shaming" was the public outing of Rutgers freshman Tyler Clementi. Clementi had come out to his family just three days before he left for college. Only a few weeks after arriving at school, Clementi's roommate, along with a friend, secretly videotaped Clementi's intimate encounter with another young man and broadcast the video to a private audience. Clementi's roommate then wrote on Twitter: "Roommate asked for the room till midnight. I went into molly's room and turned on my webcam. I saw him making out with a dude. Yay." Three days later, Clementi committed suicide. He wrote his final words on Facebook: "Jumping off the gw bridge sorry."

In his New Yorker article, Ian Parker surmised that Clementi's roommate failed to consider both the reach and impact of his posting:

> Before Ravi locked down his Twitter account, a few days later, he had about a hundred and fifty followers, the bulk of them friends from high school. It's possible that he still thought of his Twitter audience as a group no larger than those followers. In truth, his audience could have included anyone who searched on Twitter for "Dharun." Perhaps Ravi expected Clementi to read his tweet; or perhaps he didn't bother to consider that he might.

Lessons for the Municipal Lawyer

One hopes that the municipal lawyer will never have to deal with anything as serious as a suicide, but the risks of social media should not be underestimated. Social media is leveraging our tendency to share information and fundamentally changing the way we communicate. But mistakes and misuse can cause serious damage. Municipal attorneys must recognize that the benefits and risks of social media will not always be within the municipality's control, and users can leave a trail of breadcrumbs to their employer, for better or for worse.

Social Media in the Office

From a liability standpoint, a municipal attorney should ensure first of all that the client has protocols for administering and communicating via official social media accounts (which may need to be tailored by agency or particular use). These policies should state what authority is required to create, access, maintain, and destroy accounts and content, and they should be drafted in cooperation with information technology specialists to address security concerns.

A municipality also should have in place policies governing official communications and moderation of third party comments, as well as policies governing its employees' conduct on "personal" and "professional" social networks, with the latter being more restrictive. These policies should explain what kinds of personal social media uses will result in official discipline.

Social Media in the Courtroom

If and when your municipality becomes involved in litigation, social media will inevitably affect trial in a number of ways, and a working knowledge of these sites is vital to ensure effective representation of your municipal client.[8]

If your municipality uses social media "officially,"[9] then you must consider whether you are adequately preserving[10] and disclosing social media content, as

[8] For an excellent and wide-ranging discussion of social media in the courtroom, see Marisa A. Trasatti and Anna C. Horevay, "Litigation and Social Media: Using Social Media to Your Advantage at Every Step of the Trial, 63 FED'N DEF. & CORP. COUNS. Q. 252 (2013). And for a thorough discussion of social media under Texas's open government laws, see Alan J. Bojorquez and Damien Shores, *Open Government and the Net: Bringing Social Media into the Light*, 11 Texas Tech Administrative Law Journal 45 (2009).

[9] It is important to note that "official" social media communications may be interpreted differently by your client for administrative purposes, versus courts enforcing public information and open government laws.

required by open government laws and the rules of discovery. Because social media is ephemeral, it is vitally important to ensure that? an adequate legal hold is in place, lest seemingly minor changes be considered spoliation of evidence. Understanding social media will also help you navigate arguments concerning a person's right to privacy, which depends on more than simply whether a user has applied a social network's "private" setting to their information.

Social media records can be used to gather important information about all persons involved in a dispute, including potential jurors. But because social media sites track and sometimes report each action that you take, attorneys *must exercise extreme caution*, because even passive viewing of another's profile may alert that user and constitute a prohibited communication. Of course, social media is a two-way street, and jurors themselves are now prone to discussing and researching ongoing proceedings. Because this may result in a mistrial, attorneys should be sure that the court's preliminary jury instructions adequately cover social media use.

It may even be possible to gather information on members of the judiciary and determine whether an undisclosed conflict of interest exists. Some states have gone so far as to prohibit judges from having social network connections to members of the bar.

Finally, the results of social media research will almost inevitably be proffered as evidence at trial. There, even a basic understanding of its nature and enabling technology will benefit you greatly when it comes time to argue whether it is admissible as authentic, non-hearsay, and the best evidence.

Social is Evolving

Regardless of whether advances in social media are yielding real benefits, communications technology continues to evolve at an exponential pace. Because information in large part drives the practice of law, all attorneys must be concerned with communication in its various forms. And as these communications are increasingly created, shared, and stored online, it is vital for legal professionals to maintain a working knowledge of communication technology, especially social media.

[10] Technology vendors such as Nextpoint offer services that preserve social media and other information stored in "the cloud" (*i.e.*, on third party servers).