Tips and Pitfalls on Social Media

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Before You Post, Tweet, or Upload: Tips and Pitfalls of Social Media

- Social Media Third Party Sites: Legal Terms
- Entity’s Website Policies: Clarify for User
- Social Media Application as a Public Space
- Employee Use of Social Media
Social Media Third Party Provider Terms

• **Terms of Service**
  – Privacy policies – cross reference privacy policy
  – User conduct – limits
  – License rights -- to posted content
  – **Pitfall:** Indemnification – user indemnifies application provider
  – Disclaimer of warranties
  – Limitation of liability
  – Modifications to service or TOS – when TOS may change, notice given
  – **Pitfall:** Jurisdiction and governing law
  – Copyright infringement procedures

• **Privacy Policy**
  – collection, dissemination and protection of personally identifiable information and other sensitive data
Tip: Some Providers are Amending Their Terms for States/Munis

- **Facebook (amended “Pages” terms applies to munis and states)**
  - January 2011 announced amended “Pages” terms (via negotiations with NASCIO and NAAG)
    - Strikes the indemnity clause except to the extent indemnity is allowed by state law;
    - Strikes the California venue and choice of law provisions;
    - Requires a public agency maintaining a Facebook page to include language directing consumers to the agency’s official Web site prominently on any Facebook page; and
    - Includes a term that encourages amicable resolution of disputes that arise between public entities and Facebook.

- **YouTube (only applies to states)**
  - Content Hosting Agreement for Branded Channels

- **Twitter: in negotiations**
Pitfall: How do Citizens Know the Rules of the Game?  
Tip: Giving Notice Helps

- **Terms of Use**
  - Intellectual property over content submitted (e.g. creative commons license)
  - Copyright infringement claims (safe harbor under the DMCA)

- **Privacy Policy**
  - Give notice that some third party providers might collect information through their site (not controlled by the agency), and such data is subject to different policies.

- **Social Media Policy**
  - Describes how the agency uses social media tools
  - Describes how a social media application is used by the agency
  - Cross references each social media site’s own policies
Giving Notice on Social Media Application – Not a Government Application
Is a Blog the Town Green?

(Please credit: Sarah Musumeci, MOTT)
Is a Wiki a Public Meeting?

(Photo credit: Eugena Ossi/Governor's Office)
User Generated Content on Social Media Sites (Pitfall: Social isn’t always pretty)

- **Government: a special case**
  - 1st Amendment applies on limited public forum
  - Comment Terms on Blog or Website: content neutral, stick to it!

- **Comment Policy (Blog, User Generated Content)**
  - Describe purpose of site (facilitate dialogue about given topic)
  - When are comments welcome
  - Notice that site is moderated
  - Limitations of site
  - Limitations on posting of comments
    - Profane, vulgar etc.
    - Threats
    - Sensitive information
    - Offensive
    - Off-topic
  - Cross reference other entity policies (e.g. entity’s privacy, terms of use)
Tip: Moderate the Sites

- **Using the Sites -- Consider:**
  - Open Meeting Law
    - Posting by members of a deliberative body could implicate Open Meeting Law: “When a quorum knows what a quorum thinks.”
    - AGO Regs: 940 CMR 29.10 Remote Participation
      - Accessibility: meet requirements
      - Rules of professional conduct (lawyers, doctors etc.)

- **Legal obligations unique to public sector:**
  - Records retention requirements

- **Manage the content:**
  - Enforce Comment Policy
  - Prevent or mitigate:
    - Copyright infringement
    - Privacy tort claims
    - Defamation
Employee Use of Social Media

• **Foundation:** Acceptable Use Policy for Agency IT Resources (make sure it’s up to date: see [U.S. v. Szymuszkiewicz](https://example.com/07-CR-171), No. 07-CR-171 (7th Cir. Sept). 9, 2010)

1. **Acceptable Use Policy Should**
   - Describe technology and media covered
   - Explain that information employee may believe to be deleted may not be
   - State that employee has no expectation of privacy, communications may be monitored
   - Explain that information may be disclosed for public records, investigation, litigation, or internal dispute
   - State that policy may only be changed by written amendment.

2. **HR knows they cannot access any systems without proper consent.**

• **Develop Social Media Policies**
  - Social Media Use as part of Employees Work
  - Employee’s Personal Use of Social Media at Work
  - Employee’s Personal Use Outside of Work

• **Train Managers, Employees on Policy**
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• Social Media Legal Toolkit:  
  – Reviewing Third Party Provider’s Terms of Services (TOS)  
  – Updating Agency Website Policies  
  – Training Agency Social Media Participants  
  – Meeting Relevant Legal Obligations  
  – Exhibits  
    • Sample Terms of Use; Social Media Policy; Privacy Policy  
    • Sample DMCA Designation Form  
    • Sample Terms of Comment  
    • Sample Social Media Participation Policy  
    • Sample Agreement Regarding Image and Voice Recording