

Are you Socially Awkward?

Social Media Presentation

Types of Social Media



How Does Social Media Impact Local Governments

- Use of social media to communicate with the public
- Employee use of social media during work hours or on town owned property
- Use of social media in the hiring process
- Records

Pew Research Center – Internet and Technology

- Today around seven-in-ten Americans use social media to connect with one another, engage with news content, share information and entertain themselves.
- Facebook is the most-widely used of the major social media platforms, and its user base is most broadly representative of the population as a whole. Smaller shares of Americans use sites such as Twitter, Pinterest, Instagram and LinkedIn.



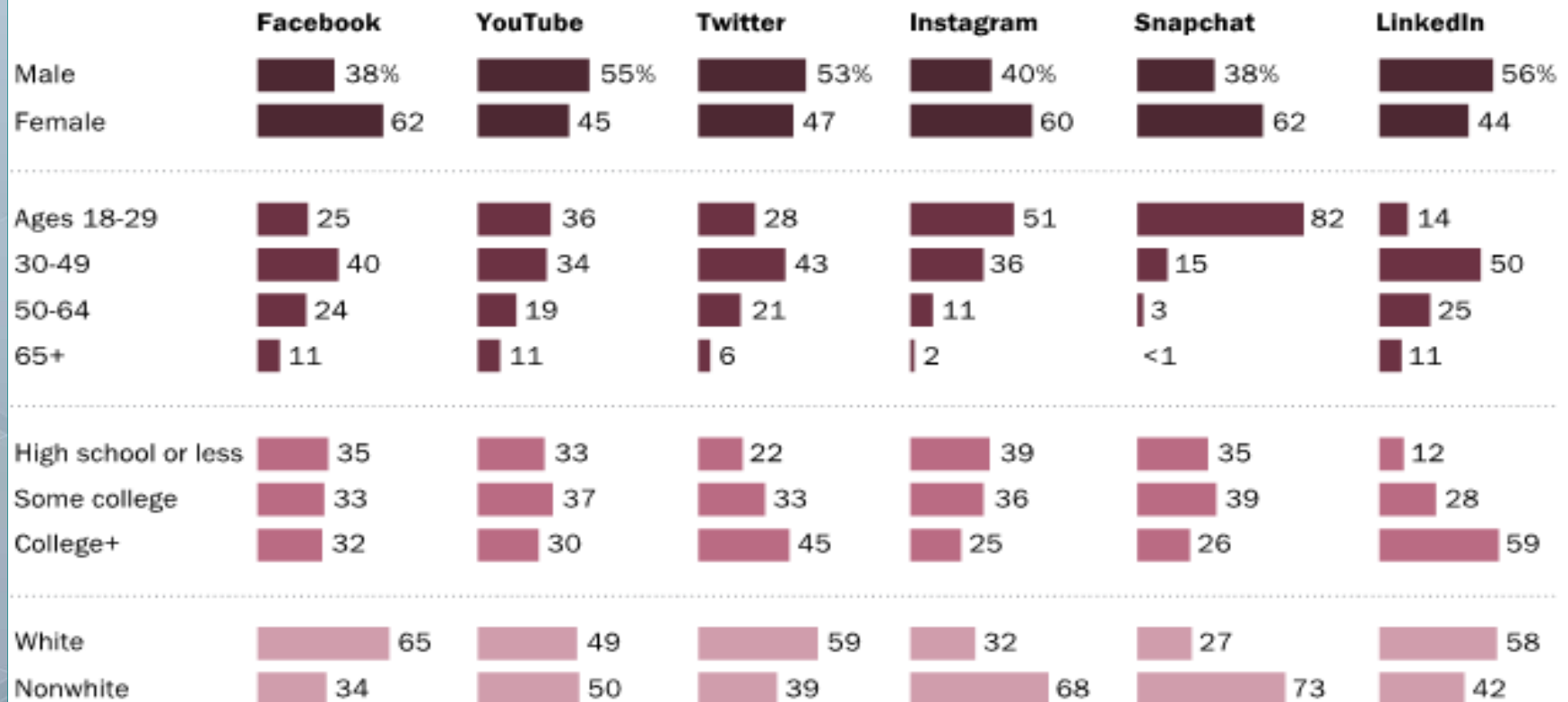
Importance of Social Media in Our Daily Lives

- Not only have Americans grown somewhat in their use of social media for news overall, but now they are more likely than ever to get news from multiple social media sites. About one quarter of all U.S. adults (26%) get news from two or more of these sites, up from 18% in 2016 and 15% in 2013.
- For many users, social media is part of their daily routine. Roughly three-quarters of Facebook users – and around half of Instagram users – visit these sites at least once a day.

Social Media User Profiles

Social media news user profiles

% of each social media site's news users who are ...



Note: Tumblr, Reddit, and WhatsApp not shown. Nonwhite includes all racial and ethnic groups, except non-Hispanic white.

Source: Survey conducted Aug. 8-21, 2017.

"News Use Across Social Media Platforms 2017"

PEW RESEARCH CENTER

Using Social Media to Communicate with the Public

- What is the purpose of the page and the targeted audience?
- Is it for all departments and services? Do any already exist?
- Who will manage the site?
- Are there guidelines for what will be posted?
- Will comments by the public be allowed?



Using Social Media to Communicate With the Public

- Construction Notices
- Service Interruptions
- Emergencies
- Upgrades and New Services
- Reminders and Tips
- Public Meetings
- Minutes

Blogs and Interactive Websites

- Journals or forums with a public comment feature
 - Twitter, Reddit, open threads on websites
- Be wary of reflection on the public entity
 - Is the blog a “public forum” ?
 - “condoning” speech
 - “adopting” speech
 - “banning” free speech
- CAUTION
 - Risk versus reward

Decide If You Are Creating a Semi-Public Forum

- Open Meetings Law
- First Amendment Free Speech
- Clearly Advise "Page not to be used for official communication, please contact _____"
- Establish and display content neutral restrictions: no ads, spam, expletives, threats
- Reserve the right to delete comments or posts in violation of the law or policy

Legal Ramifications

- Copyright Law
- Children's Online Privacy Act
- Americans with Disabilities
- First Amendment
- F.O.I.L.

Resources For Setting Up Government Sites

- HHS.Gov - <https://www.hhs.gov/web/social-media/getting-started/twitter/index.html>
- Social Media for Water Utilities - <http://www.waterrf.org/PublicReportLibrary/4638A.pdf>
- How to set up a Governmental Face book page - <http://www.njslom.org/99thconf/conf-presentations/Enyeart-Facebook-Nov19-2014.pdf>

Employee Use of Social Media

- Who owns the Equipment?
- Do you have a policy that has been distributed to employees? Does it inform employees that all sites are subject to monitoring?
- Do they need to access social media for their job?
- Does your IT department prohibit access to certain sites?

The Laws of Social Media Regarding Employment

- Case law and statutes regarding the use of social media in employment decisions is evolving.
- Many issues have not yet been addressed by courts, in part because technology continues to change rapidly.
- In many cases, balancing tests have to be applied, and there are not always clear answers.
- There are several federal statutes that may apply to employment decisions involving social media. It is always a good idea to consult your attorney and have legal assistance when developing policies on social media.

The Laws of Social Media Regarding Employment

Municipality acts as both a government and an employer

- Regulating employee speech vs regulating citizen speech
- First Amendment protections differ when speaking as citizen vs as a public employee
- Must show decision to terminate was substantially related to speech

On Duty or Off Duty

- As an employer do you have a “right of access”?
- Can an employee be disciplined for the content of their speech?
- Does the speech contain “public interest value”?
- Is the speech detrimental to the functions of the employer?

Strong Policy

- Define e-messaging, social network services and enumerate technologies such as email, texting, instant messaging, Facebook and Twitter. Make it clear the policy is not limited to those services.
- Policy should state that all electronic messaging systems and devices are employer owned, must be used only for business and clearly prohibit personal use.

Strong Policy

- Provide all users with the notice regarding employer monitoring and policy access. Policy should make it clear that the employee has no expectation of privacy.
- Policy should indicate that the employer's anti-harassment policy applies to email, texting, social media posts and other electronic communication mediums.

Strong Policy

- Policy should make it clear that any social network activity cannot be reflective of the employer or reflective of the individual as an employee.
- Policy should explain that any violations of the policy will be subject to discipline up to and including termination.
- Should require a log of all approved municipal sites along with a list of authorized personnel and their passwords maintained by management

Enforcement of Policy

Remember:

- Be Consistent
- All Policies Must Be Enforced In A Neutral Manner
- Cannot Take Action To Thwart Or Discourage Union Activity Including Free Speech



Using Social Media In the Hiring Process

- How to, or should you, use Social Media in the pre-employment phase
- Using Social Media to post job openings

Hiring

Social media platforms may require some content to be public

- What are lawful considerations?
 - Racist, discriminatory, or other foul language
 - Poor writing and communication skills
 - Poor judgment
 - Illegal drug and alcohol use
- What are unlawful considerations?
 - Lawful, off-duty activities
 - Information regarding the applicant's status in a protected class
 - Race, color, national origin, religion, sex, disability, age, citizenship, marital status, sexual orientation, criminal records/accusations
 - New York more protective of rights than Federal Government

Hiring

- Create an applicant screening policy
 - Provide for uniform application
 - What social media sites will be screened?
 - Will we screen ALL applicants, or a non-discriminatory subset?
 - How will observations be communicated or documented?
 - Create lists of proper considerations
 - Easy reference for screeners
 - Have a non-hirer conduct social media screenings
 - Filter out protected class information and irrelevant/unlawful considerations
 - DON'T "friend" applicants to gain access to non-public social networking profiles
 - DO make a legitimate, non-discriminatory hiring decision based on documentation

Records Retention and FOIL

- What constitutes a “record”? Two definitions:
 - Arts & Cultural Affairs Law (Article 57-A)
 - Addresses record management (i.e. retention, storage and disposal)
 - Public Officers Law/FOIL (Article 6)
 - Addresses public access to government records

Both definitions are extremely broad and should include a municipally run social media site.

Social Media and Records Retention

Arts & Cultural Affairs Law § 57.17 (4)

- "Record" means any:
 - book, paper, map, photograph, or other information-recording device, regardless of physical form or characteristic.
 - made, produced, executed, or received by any local government or officer pursuant to law or in connection with the transaction of public business.
 - DOES NOT include library materials, extra copies created for convenience, and stocks of publications.

Social Media and Records Retention

- Can only dispose of or destroy records in accordance with the MU-1 Records Retention Schedule (available at http://www.archives.nysed.gov/common/archives/files/mr_pub_mu1.pdf)

Records Management Officer

- The Records Management Officer (RMO) responsible for:
 - Helping to develop and apply record management practices
 - Coordinating disposition of obsolete records in accordance with MU-1
 - Coordinating storage of records

Records Management Officer

Who is the RMO? (NY ART & CULT AFF § 57.19)

- Town clerk (towns)
- Village clerk (villages)
- Fire district secretary (fire district)
- As designated by local law or governing body (counties and cities)

Retaining Requirements for Social Media Pages

- Depending on the content, some social media sites may be equivalent to a government publication or press release and thus subject to retention requirements for publications.

How to Retain Social Media Page

Coordinate preserving social media page with RMO and IT

- Schedule regular backup / "capturing page"
- Keep log of when site last captured
- Medium to preserve records (keep electronic or print out)

How to Retain Social Media Page

- State Archives recommends managing emails/direct messages and other communications sent or received via social media sites according to existing policies on email management
- For more information and guidance on records retention and social media visit:
 - http://www.archives.nysed.gov/records/mr_social_media.shtml
 - <http://www.archives.nysed.gov/workshops/description/managing-social-media-records>

Social Media and FOIL

Public Officers Law § 86

- “Record” means any:
 - information kept, held, filed, produced or reproduced;
 - by, with or for a municipality;
 - in any physical form whatsoever.
- A municipal social media page would fall under definition of record and thus be subject to FOIL.

Social Media and FOIL

- FOIL provides the guidelines for public access to municipal records – presumption of access.
- FOIL requires all agency records be made available for public inspection or reproduction unless a record falls under a specifically designated exception.

Social Media and FOIL

- Records access officer, as designated by the municipality, is responsible for coordinating responses to FOIL requests (often the town or village clerk).
- When an agency maintains the requested records on the internet, the response must inform the requester that the records are accessible via the internet and in printed form either on paper or other information storage medium (see 21 NYCRR 1401.5).

Social Media and FOIL

The NYS Committee on Open Government (COOG) provides guidance on FOIL and Open Meeting Law Questions:

www.dos.state.ny.gov/coog/

Use of internet archival tools can help to capture a previous listing in your webpage's history: <https://archive.org/web/>