



Social Media Use and Ethics Law

Ethics Law Update eLearning
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Trask Daigneault LLP



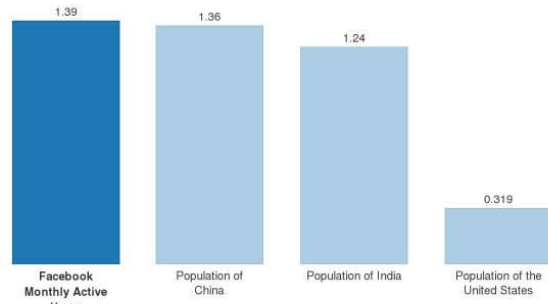
Social Media: Reality, Benefits and Challenges



The Social Media Nation

How Big Is Facebook?

Facebook has more active users than China has people (figures in billions)



Source: Facebook, CIA World Factbook

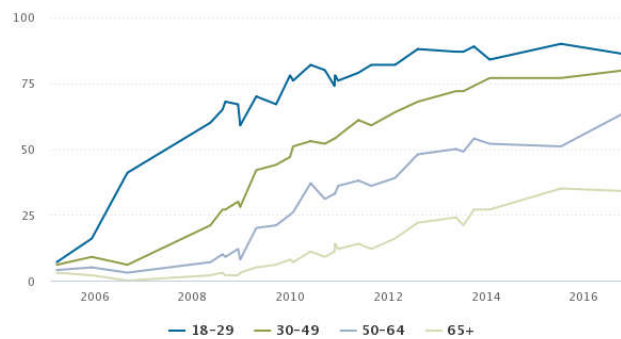
http://www.huffingtonpost.com/2015/01/28/facebook-biggest-country_n_6565428.html

The Huffington Post



Everybody's Doing It . . .

% of U.S. adults who use at least one social media site, by age



<http://www.pewinternet.org/2016/11/11/social-media-update-2016/#fnref-17239-1>



Social Media: Benefits to Local Government

- Enhanced capacity to disseminate and receive information
- Excellent means of fostering greater transparency
- Improved marketing of municipal events and services
- Increased reach to public for emergency messaging
- Broad reach at a low cost



Social Media: Challenges for Local Government

Increased risk of running afoul of
Florida's Government in the Sunshine
Laws

- Chapter 119 – Public Records
- Chapter 286 – Open Meetings





Social Media and Public Records Law



Florida's Public Records Laws –Broad Definition

F.S. 119.011(12)

“All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, **regardless of the physical form, characteristics, or means of transmission**, made or received pursuant to law or ordinance or in connection with the transaction of official business by any City.” (emphasis added)



Florida's Public Records Laws – Broad Definition

Florida Supreme Court (1980)

“All materials made or received by a city in connection with official business which are used to perpetuate, communicate or formalize knowledge.”



Florida's Public Records Laws – Broad Right

Florida Constitution, Art. I, sec. 24(a)

“Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting in their behalf . . . This section specifically includes . . . counties, municipalities and districts;”

•To be inspected or copied, they must be retained . . . regardless of the form they are in.



Cities May Engage in Social Media

Under Home Rule, municipalities have the authority to create (or not to create) a social media presence

Municipalities also have the authority to establish policies related to social media use for their elected officials and staff

- *May* include rules about participation
- ***Should*** include rules related to retention of records



Social Media Activity is a Public Record . . .

Regardless of the platform, if the post/tweet/image or other material otherwise meets the standards for a public record,

- It ***is*** a public record
- It ***must*** be retained
- It ***must*** be producible for inspection or copying if requested



Practices to Consider

1. Print hard copy of social media posts
2. Only post content on social media which exists elsewhere
 - An electronic or print document
 - An email already captured by in the city's servers
3. Retain a service that specializes in capturing and retaining social media records
 - Municipalities **are not required** to hire an outside service for this purpose



Social Media and Florida's Sunshine Law



Florida's Sunshine Law – Broad Right

With limited exceptions, the public has a right to attend any and all meetings

- Requires notice of date/time/location of meeting
- Requires that the meeting be open to the public
- Requires that minutes be taken



Florida's Sunshine Law – Broad Right

A 'meeting' is broadly defined

- 2 or more individuals
- Discussion of a matter on which potential action by the board is foreseeable
- The 'venue' does not affect the right to attend
 - e.g., a conversation via Facebook *is a meeting*



Consequences of Violating Sunshine

- Void specific actions of the board
- Fines and penalties, including attorneys' fees
- Criminal sanctions



Social Media and Sunshine

Board/commission members **must not** engage on social media in an exchange or discussion of any matter that might foreseeably come before the board/commission for action . . .

Period.

- To engage in such an exchange is to violate the Sunshine Law

The courts frown upon any communication activity between board members that appears to be an attempt to evade Sunshine requirements



The Comment Trap

Board/Commission members must be wary of commenting on *any* social media platform about matters that foreseeably may come before the board/commission for action

- The danger arises from the potential for two or more board members to exchange comments, intentionally or inadvertently



Managing the City's Social Media Presence

On a site belonging to the municipality, the city may:

- Regulate what it posts (it's official 'speech')
- Regulate *other people's 'speech'*, but only in a content-neutral fashion and consistent with clearly defined policies
- Can't keep the favorable comments and delete or hide the negative ones, for example



Social Media and Local Government: Questions that Need Answers



Policy Questions for Municipal Social Media

- What is the scope of the policy?
- Who will the records custodian be for the various social media platforms and users?
- Who will generate content?
 - What training will they receive?
- How will the city protect against violations of copyright/trademark?



Policy Questions for Municipal Social Media



All of these policy questions must be answered consistent with Florida's Public Records and Sunshine Laws



Questions???



Upcoming FLCU Online Learning Opportunities

- April 27 – ZIKA: Live with Dr. Connelly
- May 11 – Leadership: Against All Odds
- May 18 – Post-Session Update: Passed, Failed, Returning
- May 25 – Preparing Budget Requests: Innovative Ideas that Work
- June 8 – What Our Citizens are Thinking: Current Public Opinion



Upcoming FLCU and FLC Events

- April 28-30 – Advanced Institute for Elected Municipal Officials
- May 12-14 – CMRI MuniMod
- May 19 – FLCU Active Shooter Workshop
- June 2-4 – Institute for Elected Municipal Officials [CLOSED]
- June 15 – Institute for Civic Leadership
- June 16 – 2017/18 Legislative Policy Committees Meeting



4/13/2017

Join the Conversation #InspiringLeaders

- Blog – DrScottPaine.com
- Twitter - [@DrScottPaine](https://twitter.com/DrScottPaine)
- Facebook – [Dr. Scott Paine](https://www.facebook.com/Dr.Scott.Paine)



Thank you

Jay Daigneault, Esq. and Randy Mora, Esq.,
Trask Daigneault LLP
Holly McPhail, Florida League of Cities
and

You!

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4/13/2017

