

**Seymour Technology Committee**  
**Tuesday, January 10, 2012 – 5:30 PM – Flaherty Room**  
**Minutes**

**In attendance:** Christine Conroy, Jason Weaving, Deirdre Caruso, Evan Islam

- 1. Jason Weaving called meeting to order at 5:41 PM**
- 2. Pledge of Allegiance.**
- 3. Approve Minutes from Seymour Technology Committee meeting on 12/27/11.**
  - a. Jason Weaving made the motion to accept the minutes with the revision that Public Comment be #8 on the agenda so that there are not two number 9's.
  - b. Deirdre Caruso made the motion, Second by Christine Conroy. Motion carries 3-0-0
- 4. Discussion regarding the approval of the Seymour Technology Committee By-Laws (Charter).**
  - a. Motion made by Dee, second by Christine. Motion carries 3-0-0.
  - b. Discussion: Jason switched the chosen "charter" to "by-laws" since we are just a committee. Everyone was in agree-ance.
- 5. Discussion regarding the approval of the Seymour Technology Committee Deliverables.**
  - a. Jason Weaving provided a spreadsheet of deliverables prioritized based on discussion from the last meeting.
  - b. Christine Conroy made a motion to present the deliverables to the BOS at their next meeting on 1/17/12. Second by Deirdre. Motion carried 3-0-0.
  - c. Discussion: Social media is first on the list because it is something happening now.
    - i. Contact George Zapherson about web based email client.
    - ii. Wi-Fi - nobody has the Wi-Fi password for the first floor. Dee & Christine will follow up to find out if there can be public Wi-Fi upstairs as well.
    - iii. Universal Naming Convention - this is something Jason wants to work on right away during the site redesign
    - iv. #14 Virtual/Visual Communication - overhead display for use during meetings to allow for teleconferencing – for eventual meeting use for all boards & commissions
    - v. (Deliverables attached to minutes)
- 6. Jason Weaving would like to entertain a motion to add to the agenda discussion with Tom Hennick from CT FOI.**
  - a. Christine motioned to add the item to the agenda as agenda item #6, Dee seconded. Motion carries 3-0-0.
  - b. Jason contacted Tom Hennick to ensure that everything we are doing is fine by FOI. Jason explained that a lot of work that we will be doing will be outside of meetings and wanted to ensure that we would be following the provisions of FOIA. While we may have email communication about agenda items, as long as no action is taken, it is fine by FOIA. Tom Hennick also approves the use of Google Docs.  
Thomas Hennick - 860-566-5683 - [thomas.hennick@ct.gov](mailto:thomas.hennick@ct.gov)

**7. Updates concerning legal and ethical considerations regarding social media sharing.**

- a. Christine Conroy discussed the legal issues of social media sharing with Town Counsel Rich Buturla.

**8. Discussion regarding the use of legal disclaimer drafted by Town Counsel.**

- a. Rich Buturla drafted a legal disclaimer for the Seymour, CT and Office of the First Selectman Facebook pages and Kurt Miller & he made the decision to include it on the info section of the Facebook pages.
- b. The emails and legal disclaimer will be filed with the minutes.
- c. Since ads pop up on the internet, we have no control over them. There are ads on Facebook and other websites beyond our control, therefore the legal disclaimer was revised to contain language to protect us from any ads that visitors may encounter when on our own Facebook pages or in clicking to outside links.
- d. Jason would like to entertain a motion that we approve of Town Counsel's legal disclaimer.
- e. Christine Conroy motions to accept the legal disclaimer, Dee seconds. Motion carries 3-0-0.

**9. Discussion regarding (social media and site comment) Censorship Policy.**

- a. Discussion:
  - i. No personal attacks on anyone will be tolerated. However, everyone has the right to an opinion and their right to post it in a public forum.
  - ii. Negative or positive comments are welcome because they allow us to grow and fix things within the town.
  - iii. No profanity will be tolerated.
  - iv. Jason thinks that people should be able to say negative comments with merit. As long as there is explanation to back up a negative (possibly derogatory) statement, it should be tolerated.
  - v. For example, if someone says "Person X sucks because" we would not censor it because it technically is not profanity and has merit behind it.
  - vi. A comment or posting cannot be slandering, personal attacks on one's personal life, or contain profanity.
  - vii. A motion to table discussion and have further discussion at the next meeting was made by Christine Conroy. Second by Dee. Motion carries 3-0-0.

**10. Discussion concerning grant research.**

- a. Updates:
  - i. Christine & Dee have not had time to look into grants yet.
  - ii. Paul Thompson updated Jason Weaving via email on 1/10/12 AM with his grant research. He was able to find a few federal grants that Seymour could apply for.
    - 1. Computing in the Cloud - it could help fund technology to develop a cloud system for your town or business
    - 2. Small Business Technology Transfer Program  
-While we cannot use it for our committee, but Paul thinks it might be beneficial for the town.
    - 3. Disaster Resilience for Rural Communities
    - 4. Follow-up with Paul Thompson for more details about these grants.

- iii. Jason Weaving: He is still waiting on Rosa DeLauro and how she can help. He will also be applying for the Katherine Matthies grant and his deadline is the end of the month per Kurt Miller.
- iv. Christine Conroy talked to Len Greene Jr. and he submitted a research request to his team to find out what technology grants are available to municipalities.
- v. Christine will email our Grants person, Christine Battis, to ask permission to find and write our own grants.

**11. Discussion regarding social media strategies.**

- a. We need to make Facebook more viral!!
- b. Both pages are non-political and we need to publicize that more. They are informational pages.
- c. As page administrators, we are unable to see who "likes" the page due to new Facebook privacy policies.
- d. Kurt Miller & Christine Conroy's cell phones are now hooked up to the @SeymourTownHall twitter account so if they are out at town events they are able to instantly post to social media sites.
- e. Christine Conroy will immediately link the @SeymourTownHall twitter account with the Facebook page.
- f. Jason emphasizes that we need more photos on the Facebook pages.

**12. Discussion regarding web development and duties.**

- a. Jason Weaving calls for a special meeting to focus on web development and design so we can figure out exactly what we want.
- b. In order to facilitate more discussion we will schedule a workshop to discuss the town website needs. The workshop will be at 5:45 PM on Thursday, January 19th in the Norma Drummer Room.
- c. Jason requests that all members come up with the top 5 site designs - any sites like Amazon, Zappos, Netflix, etc. And 1 municipal site. Print out the home page & keep in mind a future vision of what we want the town of Seymour's website to look like. Think of pages that the site will need to have. Think of a skeleton first and then design function later.
- d. As a group we need to think about how the user is going to get to certain areas.

**13. Correspondence**

- a. Jason will file all documents about items 8 & 9.

**14. Other Business**

- a. Christine Conroy made a motion to put a report from the Technology Committee on the Board of Selectman agenda for January 17th. Seconded by Dee. Motion carries 3-0-0.
- b. Dee says in talking to employees of Town Hall there are many needs that should be addressed. Christine & Dee will be asking for technological needs by department just to get an idea of what we can try to achieve in the future.

**15. Public Comment**

- a. Evan Islam, 53 Scott, Naugatuck, CT
- b. Evan voiced his opinion that in order to plan a website you should think about the functions of the website first, then the design. In order to think about function, each

department needs to have the technology in order to have that functionality. Having functionality online would be very convenient for business owners. Having applications and forms online would be very beneficial.

- c. Evan's job at Basement System is search engine optimization. He is head of their web development section and can provide great insight to the committee.
- d. Jason would like to entertain the motion that we discuss the needs of the residents and business owners on the website.
- e. Christine makes the motion to add the item as #16, Dee seconded. Motion carries 3-0-0.

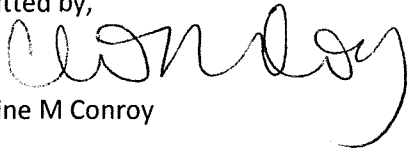
**16. Discussion of the needs of residents for the website**

- a. Having forms online would make processes much easier for residents
- b. It would provide better functionality when Town Hall is closed

**17. Adjournment**

- a. Motion made by Christine Conroy at 7:50. Second by Dee. Motion carries 3-0-0.

Submitted by,

A handwritten signature in black ink, appearing to read 'Conroy', written over the printed name.

Christine M Conroy

## **Town of Seymour Technology Committee By-Laws**

**Type:** This Committee will serve as an Ad Hoc Committee

### **Purpose**

- Identify, make recommendations, and/or implement systems/processes related to technology, including but not limited to: software, hardware, and the Internet, as well as communication to residents via social media, per approval of the First Selectman and the Board of Selectmen.

### **Authority**

- Advisory board to the First Selectman
- Reporting to the Board of Selectmen for action by them

### **Current Membership**

- Deidre Caruso
- Christine Conroy
- Joe Matusovich
- Paul Thompson
- Jason Weaving
  
- Kurt Miller (Ex Officio)
- Other members as appointed by the Board of Selectmen

### **Meeting Arrangements**

- 2nd Tuesday, Monthly at Town Hall at 5.30pm

### **Reporting**

- Agendas & Minutes will be filed with the Town Clerk by Committee Secretary
  - Secretary will send electronic copies of Agenda and prior Meeting Minutes to all committee members prior to meeting (when the Agenda has been filed)
- Quarterly reports will be provided to the Board of Selectmen
- The committee will use Google Docs for meeting Minutes/Agendas/Notes/Files
  - Individuals can request viewing access of the Committee's Google docs
  - Most current document updated will be attached to Meeting Minutes to be filed at Town Hall

### **Resources & Budget**

- Grants will be pursued as priority, and can be pursued by Committee Members
- Use of interns and various volunteers for projects as needed
- Citizen outreach for feedback and participation in creating content
- Technology line item within the budget to be determined in conjunction with Board of Finance and Board of Selectmen approval

### **Deliverables**

*(defined as: system(s)/process(es)/action(s) to be provided/delivered)*

- Attached in separate document and to be updated as needed
- Determined in conjunction with Board of Finance and Board of Selectmen approval, where applicable

**Review**

- Plan reviewed on a monthly basis at meetings
- Quarterly updates presented at Board of Selectmen meetings

## Town of Seymour Technology Committee Deliverables

COPY RECEIVED  
DATE: 1/11/15  
TIME: 2:10 PM  
TOWN CLERK'S OFFICE

*Deliverables -- defined as: system(s)/process(es)/action(s) to be provided/delivered  
To be prioritized in a hierarchy of needs*

#	DELIVERABLE	DESCRIPTION
1	Social Media	Synergy with social media networks (i.e. Facebook, Twitter, Google+, ...)
2	Website	Town website redesign
3	Transparency	Develop system for better transparency/access to public information (i.e. Google Docs)
4	City/Town Case Study	Locate & use other cities and towns as case studies to study/replicate design for site and business processes
5	Grants	Inquire about and apply for grants for projects
6	Email Client	Web-based email client (i.e. Google Apps for Government: <a href="http://www.google.com/apps/intl/en/government/index.html">http://www.google.com/apps/intl/en/government/index.html</a> )
7	Wi-Fi	Secured Wi-Fi access and passwords available to upper floor
8	Universal Naming Convention	Common naming convention for links, files, etc. (to be implemented during site redesign)
9	Equipment	Identify needs of equipment upgrades
10	Software/Hosted ASP	Identify needs to provide more efficient operations
11	Paperless Environment	Document scanning, paperless work environment, forms available online
12	Online Bill Pay	Ability for users (citizens) to pay taxes, permits, etc. online through the website
13	Video Recording of Meetings	Town sponsored video recording of Board and Committee/Commission Meetings
14	Virtual (Visual) Communication	Overhead display to showcase agendas, proposals, and any other public information during public meetings
15	Online Filing	Business filing, etc. online through the website
16	Laptops/Netbooks	Laptops/Netbooks available to staff and secretaries for the use of recording meeting minutes with web access only (i.e. Chrome books)



Jason Weaving <corpus.callosum@gmail.com>

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## FW: Seymour Facebook

4 messages

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Christine Conroy <cconroy@seymourct.org>

Tue, Jan 3, 2012 at 12:12 PM

To: "jason.weaving@gmail.com" <jason.weaving@gmail.com>

-----Original Message-----

From: Richard Buturla [mailto:[rbuturla@bmdlaw.com](mailto:rbuturla@bmdlaw.com)]

Sent: Friday, December 30, 2011 1:26 PM

To: Christine Conroy

Cc: Kurt Miller

Subject: FW: Seymore Facebook

Christine

Attached please find a disclaimer that is a little more comprehensive.

I would put the disclaimer on the main page.

A municipal Facebook page raises a host of interesting First Amendment issues dealing with public forums and free speech. As of now, there have not been any cases that we could identify addressing those issues. There are a number of Connecticut communities that have reserved Facebook pages but have not implemented them because they do not want to become the test case.

I will forward a separate email attaching an article from the Minnesota analogue to CCM discussing the issues.

Please let me know if you or anyone else wishes to discuss this matter further.

Rich

Richard J. Buturla, Esq.

Berchem Moses & Devlin, P.C.

75 Broad Street

Milford, CT 06460

Telephone: [203-783-1200](tel:203-783-1200)

Facsimile: [203-878-4912](tel:203-878-4912)

email: [rbuturla@bmdlaw.com](mailto:rbuturla@bmdlaw.com)

[www.bmdlaw.com](http://www.bmdlaw.com)

My Profile: <http://www.bmdlaw.com/Bio/RichardButurla.asp>

-----Original Message-----

From: [XC5735@bmd-law.com](mailto:XC5735@bmd-law.com) [mailto:[XC5735@bmd-law.com](mailto:XC5735@bmd-law.com)]

Sent: Thursday, December 29, 2011 6:10 PM

To: Richard Buturla

Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF



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Jason Weaving <jason.weaving@gmail.com>  
Reply-To: jason.weaving@gmail.com  
To: Christine Conroy <cconroy@seymourct.org>

Tue, Jan 3, 2012 at 12:19 PM

Thanks Christine,

I will look over the docs when I get home and add it to the agenda for our meeting for discussion and possible action for implementation.

Best,  
Jason

[Quoted text hidden]

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Best, Jason

--

"What matters in life is not what happens to you but what you remember and how you remember it." — Gabriel García Márquez

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Christine Conroy <cconroy@seymourct.org>  
To: "jason.weaving@gmail.com" <jason.weaving@gmail.com>

Wed, Jan 4, 2012 at 4:31 PM

Jason,

I added the one sentence difference to the facebook page already. We are not responsible for either of those problems.

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**From:** Richard Buturla  
**Sent:** Wednesday, January 04, 2012 4:06 PM  
**To:** Christine Conroy  
**Cc:** Kurt Miller  
**Subject:** FW: Seymour

Christine

We added a sentence regarding the content of adds in the Disclaimer. Once the Town goes down this road we are not in control of what can popup. For example, the adds next to the BOS meeting reflect lingerie and burlesque show.

Rich

Richard J. Buturla, Esq.

Berchem Moses & Devlin, P.C.

75 Broad Street

Milford, CT 06460

Telephone: [203-783-1200](tel:203-783-1200)

Facsimile: [203-878-4912](tel:203-878-4912)

email: [rbuturla@bmdlaw.com](mailto:rbuturla@bmdlaw.com)

[www.bmdlaw.com](http://www.bmdlaw.com)

My Profile: <http://www.bmdlaw.com/Bio/RichardButurla.asp>

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**From:** Bryan LeClerc  
**Sent:** Wednesday, January 04, 2012 3:57 PM  
**To:** Richard Buturla  
**Subject:** Seymour

Bryan L. LeClerc, Esq.  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, Connecticut 06460  
Tel: [203-783-1200](tel:203-783-1200)  
Fax: [203-878-2235](tel:203-878-2235)  
[bleclerc@bmdlaw.com](mailto:bleclerc@bmdlaw.com)  
<http://www.bmdlaw.com/Bio/BryanLeClerc.asp>blocked::<http://www.bmdlaw.com/>

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IRS CIRCULAR 230 DISCLOSURE: Although this written communication may address certain tax issues, it is not a reliance opinion as described in IRS Circular 230 and, therefore, it cannot be relied upon by itself to avoid any tax penalties. If you would like a reliance opinion letter, please contact us and we will discuss our procedures for preparing one. Thank you.



**Facebook Disclaimer (00429235-3.2).DOCX**

21K

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**Jason Weaving** <[jason.weaving@gmail.com](mailto:jason.weaving@gmail.com)>  
Reply-To: [jason.weaving@gmail.com](mailto:jason.weaving@gmail.com)  
To: Christine Conroy <[cconroy@seymourct.org](mailto:cconroy@seymourct.org)>

**Wed, Jan 4, 2012 at 4:49 PM**

Christine:

Thank you for following up on that.

We should be all set until we need a "Driver's Belief" for the website. I have a generic template (it's typical

language used on most sites that I've used on my own sites) which we can specify to the Town. When we meet and if we agree, we can send the copy to legal to review/make any necessary changes, rather than having them spend the time researching and drafting one for us.

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Best, Jason

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[Quoted text hidden]

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The intended purpose of the site is to serve as a mechanism for communication between the Town of Seymour and members of the public. The Town reserves the right, at its sole discretion, to change, modify, add, or delete comments or posts, photos, and videos at any time, without prior notice.

It is expected that users and visitors treat each other with respect. Users and visitors agree not to post comments containing the following, and any such posts or comments shall be removed: vulgar, offensive, demeaning, threatening, or harassing language; obscenities; pornography; personal attacks of any kind; comments that target specific ethnic or racial groups; comments that make unsupported accusations; inaccuracies; comments in support of or opposition to political campaigns; encouragement of illegal activity; information that may tend to compromise public health or safety or which incite violence; and any other comment deemed inappropriate. Comments that are spam, are clearly off topic or that promote services or products will be deleted.

The Town does not control or guarantee the accuracy, relevance, timeliness or completeness of information contained on any linked website or in any third party post, and does not endorse the organizations sponsoring linked websites or the views they express or the products/services they offer.

The Town has the right to reproduce any pictures or videos posted to this site in any of its publications or websites or any other media outlets.

The Town may take requests from people wanting events, videos, or pictures posted to this social media site or the Town's website. The Town has the right, at its sole discretion, to accept or deny any such requests.

The Town does not endorse any product, service, company or organization advertising on its social media pages. The ads that appear on Facebook pages are sold, posted and maintained by Facebook.

This policy is subject to amendment or modification at any time to ensure its continued use is consistent with its intended purpose.

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Please note that any information that is posted on this site by a user or visitor may be subject to disclosure pursuant to the Connecticut Freedom of Information Act, or other applicable law.

# FACEBOOK DISCLAIMER.DOCX

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The Town does not control or guarantee the accuracy, relevance, timeliness or completeness of information contained on any linked website or in any third party post, and does not endorse the organizations sponsoring linked websites or the views they express or the products/services they offer.

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Jason Weaving <corpus.callosum@gmail.com>

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## Re. Tech Committee & Questions for Legal

1 message

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Jason Weaving <jason.weaving@gmail.com>

Tue, Jan 3, 2012 at 9:38 PM

Reply-To: jason.weaving@gmail.com

To: Christine Conroy <cconroy@seymourct.org>

Cc: Kurt Miller <kmiller@seymourct.org>

Hi Christine:

Can you please pass these screenshots on to Town Counsel and Kurt to review.

**Embedded\_Example.pdf** - is a screenshot of an example of an embedded video (such as a YouTube video) that is posted on Facebook which can be viewed within the service itself through an applet. The issue with the embedded videos is that users can (and do) click on the videos to be redirected to the hosted site (i.e. YouTube) to view the video. My question for Town Counsel is (again): In this instance, whether we embed files on the Town site, on Facebook, or other social media, are we held responsible for instances where end-users navigate from the site and might be presented with inappropriate links/advertisements?

**Sponsored\_Ads.pdf** - is from [blip.tv](http://blip.tv), the site where the independent videographer who tapes some of our Town Meetings hosts his videos. The sponsored/keyword-based ads are to the right of the video, which I had highlighted in red. Again, to what extent are we held liable for inappropriate ads when sharing social media?

Thanks for your help. I will see you soon.

--  
Best,  
Jason  
--

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### 2 attachments

 **Embedded Example.pdf**  
46K

 **Sponsored Ads.pdf**  
406K

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# Sponsored Ads

Firefox File Edit View History Bookmarks Tools Window Help CS 87 Tue 8:58 PM Jason Weaving

GUP Tabs - BOS Meeting - 12-21-11 | Seymour Videos On Demand on Blip

GetUsedP... Twitter / ... Home Pag... Task: C/C... Deposits ... Small Busi... Earth Clas... PayPal Ma... The NYPD... AnotherH... BOS M... x +

blip.tv/seymour-videos-on-demand/bos-meeting-12-21-11-5840340

Google

Amazon.com Ameritrade AMEX BAMS Bank of America Google Adwords EarthClassMail FreshBooks GUP Gmail GUP Team Site Lockbox Bookmarks



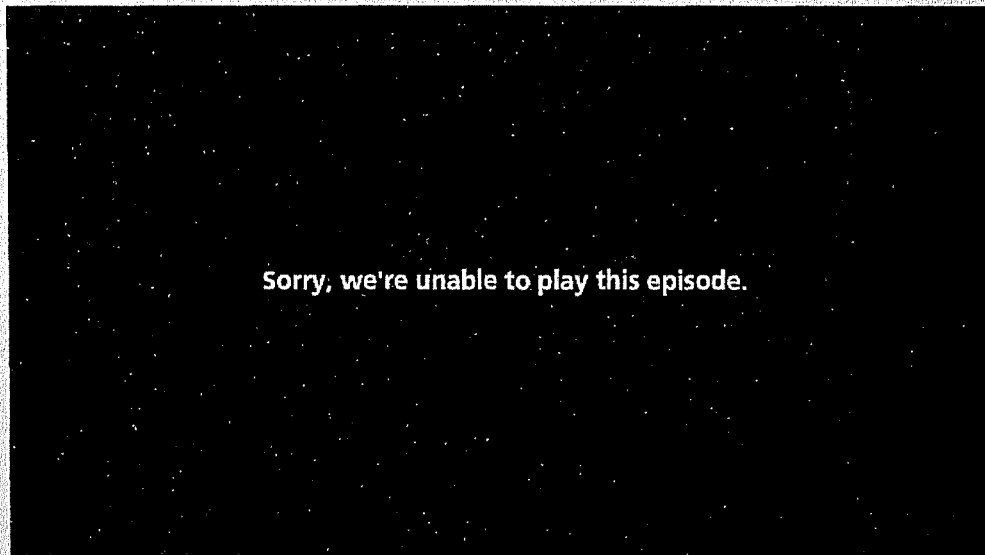
Browse ▾



About subscriptions

## BOS Meeting - 12-21-11

Seymour Videos On Demand



### Best of Blip



Lingerie and  
Burlesque Show - Mint  
Leaf Lounge, London /  
FTV  
from Fashion TV



Top 10 Best  
Non-Violent iPhone  
Games  
from Feminist  
Frequency



The Best of EyeHandy  
2011  
from EyeHandy

## Embedded Ads



Mashable

Did you give or receive the popular mobile game this holiday season?



**Rovio Reports 6.5 Million Downloads of Angry Birds on Christmas**  
mashable.com

Angry Birds, Angry Birds Rio, and Angry Birds Seasons combined for 6.5 million downloads on Christmas Day, said game-maker Rovio. That's more than three times the amount of downloads it had in 2010.

Like - Comment - Share - 127 34 45 - 4 hours ago -





Jason Weaving <corpus.callosum@gmail.com>

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## FW: Scan from a Xerox WorkCentre

1 message

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Christine Conroy <cconroy@seymourct.org>

Tue, Jan 3, 2012 at 12:13 PM

To: "jason.weaving@gmail.com" <jason.weaving@gmail.com>

—Original Message—

From: Richard Buturla [mailto:[rbuturla@bmdlaw.com](mailto:rbuturla@bmdlaw.com)]

Sent: Friday, December 30, 2011 1:29 PM

To: Christine Conroy

Cc: Kurt Miller

Subject: FW: Scan from a Xerox WorkCentre

Christine

Attached please find the article pertaining to social media. The discussion on First Amendment issues begins on page 8.

All the best.

Rich

Richard J. Buturla, Esq.

Berchem Moses & Devlin, P.C.

75 Broad Street

Milford, CT 06460

Telephone: [203-783-1200](tel:203-783-1200)

Facsimile: [203-878-4912](tel:203-878-4912)

email: [rbuturla@bmdlaw.com](mailto:rbuturla@bmdlaw.com)

[www.bmdlaw.com](http://www.bmdlaw.com)

My Profile: <http://www.bmdlaw.com/Bio/RichardButurla.asp>

—Original Message—

From: [XC5735@bmd-law.com](mailto:XC5735@bmd-law.com) [mailto:[XC5735@bmd-law.com](mailto:XC5735@bmd-law.com)]

Sent: Thursday, December 29, 2011 6:12 PM

To: Richard Buturla

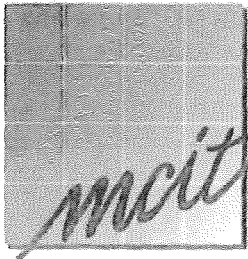
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

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 DOC.PDF  
1324K



# Minnesota Counties Intergovernmental Trust Resource Briefing

April 2011

## Social Media for Public Entities

### Background

Without question, the internet has had a profound effect on today's society. Communication over long distances has become fast, easy and relatively inexpensive. People have become accustomed to, and often demand, immediate access to information. In recent years, the use of the internet to exchange information and ideas has exploded with the advent of social media and social networking websites and applications.

The term "social media" is a broad term commonly used to refer to online applications or platforms which facilitate communication and interaction amongst groups of individuals through information sharing and collaboration via the internet. Some examples of social media include social networking websites, such as Facebook and MySpace; professional networking websites, such as LinkedIn; blogging sites, such as Blogger, LiveJournal, and Twitter; video or photo sharing websites, such as YouTube, Vimeo or Flickr. Social media can also include applications which permit an individual or organization to publish a blog (an online journal or chronicle with reflections, commentary and information); provide podcasts or webcasts (audio or video content that can be viewed or downloaded); and/or host an online forum as a medium for open discussion and expression of ideas.

While social media can greatly facilitate the sharing of information, there are exposures for public entities that enter this new world unaware of the potential risks. The purpose of this resource is to provide public entities a foundation when considering the use of social media and to examine aspects of social media use that may expose them to risk.

### Developing a Strategy for Social Media Use

While there are benefits to be gained from social media, the public entity should consider whether those benefits outweigh the risks before taking action. For some public entities, a "traditional" website, without the expansion into social media, may be a sufficient and appropriate internet presence.

When making this decision, a public entity should consider what it hopes to achieve by participating in social media. In other words, what is the business reason for the public entity (or for a particular department in the public entity) to use social media applications? Similarly, the public entity should consider the audience that it is trying to reach. Having an articulated business reason for using social media and a defined audience will assist in determining whether social media is appropriate and what type of social media is appropriate for the organization.

The key feature of social media applications is the ability to easily provide information and to communicate with a targeted audience. With this in mind, the public entity should consider whether it has the resources, particularly personnel time, to maintain a dynamic presence using their chosen social media medium. Likewise, can the public entity generate enough new content to maintain continued interest in its participation in the chosen medium? If new content is not developed and provided on a regular basis, the public is likely to lose interest which diminishes effectiveness.

Once the decision to venture into social media is made, the public entity should consider whether to take a centralized or decentralized approach to the entity's social media participation. Under a centralized approach, one individual or a group of individuals must be responsible for all aspects of the public entity's social media presence. This includes choosing social media applications, setting up and implementing the sites or applications and providing content and editorial control. With a decentralized approach, each division or department in an entity has the authority to take on these social media responsibilities with no centralized oversight. The entity should consider to what extent it may want its social media participation to be a coordinated effort by all departments or divisions in the entity. In many cases a combination of the two approaches may best suit an organization. For example, in a large public entity, the governing board may permit departments or divisions to develop and use social media within established guidelines and some degree of oversight.

The public entity will want to consider what measure of oversight and general standards will be given to social media use, particularly with a more decentralized approach. The public, as well as the press, will likely consider everything that is posted on a social media site (i.e. blog, Facebook, Twitter) as an official communication from the public entity. In essence, this makes the content posted by a public entity similar to a press release, albeit less formal. Public entities should consider implementing the same or similar controls for its social media content as it has for issuing press releases or for posting information on its website or in newspapers. Moreover, given that public entities must act within the limitations of the Minnesota Government Data Practices Act (MGDPA), some oversight or direction to ensure compliance with the MGDPA is advisable.

The public entity should also consider what general standards will guide the use of social media applications and sites. For example, does the public entity want the look of its social media presence to be consistent through the use of logos, links back to its website, use of disclaimers and notices, etc? Will there be guidelines for setting privacy controls on Facebook or other third party sites? Will there be editorial standards (grammar, punctuation, tone and style) for materials to be posted?

It is prudent for public entities to establish and articulate guidelines and standards in advance to guide employees who may be tasked with developing and posting content for the public entity and to ensure that the public entity's goals for social media use are met.

## Choosing a Social Media and Social Networking Site

Not all social media platforms and applications may be suitable or useful for all public entities (or their departments and divisions). The type of social media site or application that a public entity uses will greatly depend on what it hopes to achieve by participating in social media and the audience it is trying to reach. For example, if the goal is to get short spurts of information about road construction, traffic or emergency notices out to the public quickly, the public entity may wish to consider websites such as Twitter or Facebook. If the public entity wishes to provide more detailed information on particular issues of interest, a blog may be more suitable. If the purpose is to promote or explain the entity's programs, a combination of sites or applications, including photo or video sharing, may be optimal.

The increasing popularity of social media has led to an increase in the number of different social media sites and applications which essentially provide the same function. For example, YouTube, Yahoo Video, and Vimeo are all competing video hosting sites that will publish user videos. Facebook, MySpace and Friendster are competing social networking sites. Some measure of prestige and importance is conferred upon a social media site when it is chosen to publish a public entity's content. Indeed, the fact that a public entity has chosen the social media application or social networking site to communicate its message can confer a certain legitimacy, thus providing value to their sites. While the likelihood of there being a question or dispute over a public entity's choice of one site/application over another, the entity may wish to have articulated reasons for the decision to choose a particular site.

Another consideration when viewing third party social media sites is to what extent content provided by the site may distract or detract from the content posted by the public entity. For example, many social media sites place advertisements on their pages in order to maintain the free access they provide to their subscribers. Public entities may not have any control over the type of advertisements that are placed near government content. Similarly, public entities may not have any control over other content placed on the page by the third party social media site. For example, YouTube provides viewers suggestions for "related videos" based upon the video that the viewer is currently watching. If the video was accessed from the YouTube site itself, rather than linked through the public entity's YouTube page, links to the suggested "related videos" are placed directly below the list of videos submitted and sponsored by the public entity. The inexperienced viewer may not immediately realize that the "Related Videos" were not submitted or vetted by the public entity.

## **Terms of Service**

Even though many social media sites and applications are provided free to the public, most, if not all, social media sites require users and account owners to agree to comply with and be bound by Terms of Service (TOS) as a condition of use or participation. Terms of Service essentially constitute a contract entered into by the user or account owner and the social media site or application provider. For example, Twitter's Terms of Service specifically note that the services may be used only by persons who can form a binding contract with Twitter. Because of this, the governing body may need to grant the authority to contract to the individual responsible for establishing the entity's account on social media sites.

When determining whether to use a particular social media site or application, public entities may wish to carefully review the Terms of Service. Generally speaking, Terms of Service are non-negotiable. There may be provisions in the Terms of Service which are unacceptable to the public entity.

One provision of which to be aware is choice of law and jurisdiction. Many Terms of Service require that the user agree that a certain state's laws and courts, usually California, apply to any disputes. By agreeing to the Terms of Service, the public entity, as the user, may lose any advantages it would have under Minnesota law. This may include protection under Minnesota's tort caps and statutory and common law immunities. Moreover, the public entity would have to pursue or defend any claims it may have with the social media site in another state's courts and with legal counsel licensed to practice in that state. (This is especially important when considering that MCIT coverage excludes breach of contract. The cost to defend the case would be paid by the entity.)

Most Terms of Service also contain waiver and indemnification language. The user agrees not to sue the social media site for any claims and damages arising out of the user or a third-party's use of the site and/or greatly limits damages in any suit against the social media site for its own actions. These Terms of Service generally also include language which requires that the user indemnify and hold harmless the social media site from and against all damages, losses and expenses of any kind, including the social media site's legal fees,

for any claim brought against the social media site related to the user's use of the service, content or information posted, or violation of the Terms of Service.

When looking at waiver and indemnification language, the public entity should consider whether it is agreeing to accept risks or exposures that it would not otherwise expect to have. The public entity may wish to review the various claims (discrimination, violation of constitutional rights, data practices, etc.) that could possibly be brought by a third party and determine whether the waiver and indemnification language would preclude the public entity from bringing a claim against the social media site or serving the claim on the social media site if necessary. The public entity may also want to review the waiver and indemnification language carefully to determine whether it is agreeing to accept risks or exposures that may not be covered by MCIT or may exceed the coverage limits provided by MCIT.

Public entities should be aware of any provisions in the Terms of Service which govern content, including photos or videos, that is posted on the social media sites. While ownership to the posted content and information generally stays with the user, the Terms of Service may provide that by posting, the user grants the social media site a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use the content. This license may or may not expire after the user removes the content from the social media site. On the whole, this may mean that the user (in this case, the public entity) is giving the social media site permission to use the content posted for any purpose it chooses, without asking for additional permissions, and without having to pay or necessarily even credit the user for the use. Some social media sites have asserted that this language is necessary in order for it to maintain and display the content on behalf of the user. Whether or not the social media site would take advantage of this clause to use the content posted for its own purposes is unknown.

## Considerations for Developing and Posting Content

There are additional considerations that come into play when developing and posting content to social media sites.

### **The Minnesota Government Data Practices Act (MGDPA)**

As with many other aspects of government, one of the primary considerations must be compliance with the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chpt. 13. The MGDPA regulates all government data collected, created, received, maintained, disseminated, or stored by state agencies, political subdivisions, or statewide systems irrespective of the data's physical form, storage, media, or conditions of use. Although public entities maintain a great deal of public information, not all data is available to the public. Data that is classified as not public, whether it is on individuals or other entities, may only be released under certain conditions. Liability for violating the MGDPA may not only take the form of civil damages, it could also result in criminal penalties as well as disciplinary action for employees.

Employees maintaining the public entity's social media presence should take care that only public data is posted. Unless the requisite informed consent or permissions have been granted, posting any not public data on social media sites could open the public entity and the employee who posted the data to liability. For example, a public entity should consider getting informed consent before posting photos or videos of employees taken within the course and scope of the employee's duties. These items would likely be classified as private data pursuant to Minnesota Statutes § 13.43 (Personnel Data). The exception to this may be if the video or photo was taken at a public event, such as an open board meeting. Similarly, the public entity may also want to get written consent before posting any photos of a member of the public, particularly if the photos include minors, even if the photos are taken in a public place. When developing policies or guidelines

for implementing social media, public entities should make clear that its policies related to data privacy and the MGDPA apply to social media.

## **Invasion of Privacy and Defamation**

Employees posting on behalf of the public entity should be cautioned to avoid posting any statements that could lead to an invasion of privacy or a defamation claim.

Minnesota courts recognize three causes of action for an invasion of privacy claim: intrusion upon seclusion, appropriation, and publication of private facts. Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231, 236 (Minn. 1998). Of these invasion of privacy claims, publication of private facts is the cause of action that most likely would be raised with respect to statements posted on the Internet. Publication of private facts constitutes an invasion of privacy when the:

- publication is a matter related to a claimant's private life;
- publication of this matter would be highly offensive to a reasonable person; and
- matter is not of legitimate concern to the public.

(*Id.* at 233). The publication element of an invasion of privacy claim can be met when private information is posted on a publically accessible internet site, regardless of the number of people who have actually viewed the information. Yath v. Fairview Clinics, N.P., 767 N.W.2d 34, 42 (Minn. Ct. App. 2009).

To establish a claim of defamation, a claimant must prove that the:

- allegedly defamatory statement was communicated to a third party;
- statement is false; and
- statement tends to harm the claimant's reputation and to lower the claimant in the estimation of the community.

(Bahr v. Boise Cascade Corp., 766 N.W.2d 910, 920-921 (Minn. 2009)). If an allegedly defamatory statement, however, affects the claimant in his business, trade, profession, office or calling, includes false accusation of committing a crime, or attributes serious sexual misconduct to the person, the statement is classified as defamation per se and damage to reputation is presumed. *Id.* at 921; Richie v. Paramount Pictures Corp., 544 N.W.2d 21, 25 n. 3 (Minn. 1996). While there are several defenses to a claim of defamation, including that the statements made were true or merely the speaker's opinion but the impact on the public entity to defend against the claim can be burdensome and can, in most situations, be avoided.

Defamation and invasion of privacy claims could be brought against both the employee and the public entity. Abiding by the MGDPA and the entity's data privacy policies may reduce the likelihood of an invasion of privacy or defamation claim. To further reduce the possibility of a claim, public entities may wish to establish and implement editorial control over the content that is posted on social media sites.

## **Accessibility**

The Americans with Disabilities Act (ADA) requires that state and local governments provide qualified individuals with a disability equal access to their programs, services and activities, unless doing so would fundamentally alter the nature of these programs, services and activities. Likewise, the Minnesota Human Rights Act has similar access requirements unless it is an undue hardship. For public entities receiving federal funding, Section 504 of the Rehabilitation Act of 1973 may also impose similar obligations.

As more information is being provided through the internet, public entities must consider how the content posted will be accessible to persons with disabilities. The public entity should ensure that the website and social media have accessible features for individuals with disabilities or provide an alternative accessible way for citizens to access any programs and services provided through the internet. For example, videos posted by a public entity may need to have open captioning or alternatively be accompanied by information on where a transcript of the video can be obtained.

Resources that may be helpful when evaluating accessibility:

- United States Department of Justice provides guidance on accessibility of state and local government websites to people with disabilities at [http://www.ada.gov/websites2\\_prnt.pdf](http://www.ada.gov/websites2_prnt.pdf).
- Section508.gov provides guidance on compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d, et al.), which requires federal agencies to ensure that their procurement of electronic and information technology takes into account end user needs, including people with disabilities. (<http://www.section508.gov/index.cfm>) While Section 508 only applies to federal agencies, the guidance on accessibility is helpful.
- The World Wide Web Consortium (W3C) is an international community that develops standards to ensure the long-term growth of the Web. W3C has published Web Content Accessibility Guidelines (WCAG) 2.0 (<http://www.w3.org/TR/WCAG20/>) that covers a wide range of recommendations for making Web content more accessible to a wider range of people with disabilities.
- The Minnesota Department of Human Rights has implemented a number of accessibility features on its website (<http://www.humanrights.state.mn.us/accessibility.html>).

## Copyright

Public entities must also be aware of possible copyright issues when posting materials not created by the public entity. Copyright is a form of legal protection granted by law to the authors or owners of "original works of authorship," including literary, dramatic, musical, pictorial, audiovisual, and other intellectual works. 17 U.S.C. § 101, *et seq.* Copyright law gives an author or owner particular exclusive rights, including the right to reproduce, distribute copies display the work. Copyright law allows an owner or author to recover damages against anyone who infringes upon the owner or author's copyright by reproducing or displaying the copyrighted work without permission and in violation of the law.

The Copyright Act contains several limitations on the exclusive rights held by an author or owner. One of these limitations is "fair use" (17 U.S.C. § 107). The doctrine of fair use is based upon the belief that there are certain purposes for which the reproduction of a copyrighted work is desirable and beneficial to society. Such purposes include criticism, comment, news reporting, teaching, scholarship or research. Where the fair use limitation applies, the work (or portion thereof) can be copied without permission. Fair use is a defense to copyright infringement. The Copyright Act sets forth four factors to be considered when determining whether a use is fair:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

(17 U.S.C. § 107.) This determination is to be made on a case-by-case basis.

Unless clearly covered by the fair use limitation in the federal Copyright Act, the public entity should always get written consent from the author or owner of the work (such as a photo, video or written article) prior to posting it on the entity's website or social media site. This written consent should confirm that individual signing the written consent holds the copyright on work. The written consent should also grant the public entity a non-exclusive license to use the work on its website or social media site. The public entity may also wish to confirm that the owner or author understands that by posting the work, it may become public data under MGDPA, although the owner or author's copyright protections remain the same.

## **Records Retention**

The Minnesota Official Records Act provides that public entities "shall make and preserve all records necessary to a full and accurate knowledge of their official activities." Minn. Stat. § 15.17. Minnesota Statutes § 138.17 of the Records Management Act defines government records to include: memoranda, reports, and "other data, information or documentary material, regardless of physical form or characteristics, storage media or conditions of use, made or received by an officer or agency of the state and an officer or agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity within the state pursuant to state law or in connection with the transaction of public business by an officer or agency." In short, an official record includes all information, created or used in the course of carrying out government business, regardless of format.

Data posted on a public entity's website or social media site may be official records. Accordingly, the public entity should consider how it will store, maintain, and preserve these records. For example, the public entity may need to determine who will be responsible for archiving content on the website or social media site and what procedures will be used. The public entity may also need to decide who will have the authority to authorize changing or removing content from the website or social media site and how that will be integrated into the archiving process.

The public entity may need to update its record retention schedule to include website and social media records. Records not currently listed on an approved record retention schedule cannot be destroyed except by submitting and having approved either an "Application for Authority to Dispose of Records" (PR-1 form) or a "Minnesota Records Retention Schedule" form by the Minnesota State Archives.

In considering both archiving records and its record retention schedule, public entities should be aware of the data storage and maintenance policies of any social media sites used. Social media sites may not maintain data for the length of time or in the same format as needed by the public entity for its archiving purposes. The public entity may have limited access to any content posted on third-party social media sites which could limit retrieval for a MGDPA request or litigation purposes.

Electronic records on the whole provide some unique problems for record retention. The Minnesota Historical Society has published Electronic Records Management Guidelines, which provide information on a variety of topics, including e-mail and web content management. These guidelines can be found at [www.mnhs.org/preserve/records/electronicrecords/erguidelines.html](http://www.mnhs.org/preserve/records/electronicrecords/erguidelines.html).

## **Minnesota Statutes §10.60 – Public Web Sites and Publications**

When developing and posting content, public entities should keep Minnesota Statutes § 10.60 in mind. Minnesota Statutes § 10.60 generally prohibits the use of public websites and publications to promote individuals in public office and for campaign purposes. To accomplish this, the statute sets forth the type of information that may and may not be included on a web site or in a publication that is paid for or maintained



with public money. While the statute's definition of "web site" does not specifically reference social media and social networking, the statute would likely be interpreted to include it.

## Interactive Communications and the Public

The main appeal of social media applications is their interactive nature. For example, most blogs have a comment feature that allows readers to immediately post their reactions to the subject matter presented, thus permitting and encouraging a dialogue among the author and the readers. Similarly, Facebook permits individuals who "like" an entity's Facebook page to add comments on "wall" posts, photographs and videos posted; allows an entity to permit individuals to post their own comments on the "wall" or to add photos or videos; and allows the entity to host discussions on its Facebook page. Many websites incorporate comment features as a means of promoting online discussion on topics of interest.

Comments can range from a thoughtful commentary on the issue at hand to a short expression of agreement or disagreement to a diatribe on the subject matter. Personal attacks and off topic statements are common. In many cases, the owners of the blog, page or forum can choose to permit comments to come from anyone anonymously or from only registered users, that is, individuals who have submitted some personal information and have obtained a user id and password; or from both. For some websites or applications, such as Facebook, the site itself will require that individuals become registered users or members prior to permitting comment. Comments generally can be moderated by the owners of the blog, page or forum if they so choose. With some applications, owners are able to moderate or preview comments in advance of posting and choose which comments they will permit to be posted. Most, if not all, applications permit the owners of the blog, page or forum to moderate or delete comments that are unacceptable after the comments have been posted.

Private companies, non-profit organizations, and individuals with a blog, Facebook page, internet forum, or the like generally retain full editorial control over the content that is posted by outside persons. In other words, if a private company, non-profit organization, or individual does not agree with the comment or finds the comment unacceptable, they may remove the comment without recourse. This level of editorial control may not extend to public entities as additional legal considerations and restrictions apply.

## First Amendment

Unlike private companies, non-profit organizations and individuals, public entities need to be mindful of the constitutional restrictions placed upon their ability to retain editorial control. The First Amendment, applied to states and local public entities through the Fourteenth Amendment, states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

A public entity's ability to restrict public speech depends on the type of "forum" at issue. Generally, there are three types of forums:

- Traditional public forum
- Designated public forum
- Non-public forum

### **Traditional Public Forum**

A traditional public forum consists of places which have, by tradition, been devoted to open assembly and debate. Streets, sidewalks and parks are typically included in this category. If the government is regulating speech in a traditional public forum, the government's ability to do so is limited. Reasonable time, place and manner restrictions are permitted, but any restriction based on the speech's content must be narrowly tailored to serve a compelling government interest.

### **Designated Public Forum**

Public entities can create a designated public forum in places where the government property has not traditionally been regarded as a public forum, but where the public entity creates the forum. In these situations, the government's ability to restrict speech is the same as in a traditional public forum. An example of a restriction is restricting street protesters during certain times to avoid legitimate societal concerns such as traffic congestion and crowd control. The restriction is content neutral, i.e., it applies equally to all protesters versus protesters with a certain view point and/or message.

### **Non-Public Forum**

Public entities may also create non-public forums that are limited to use by certain groups or dedicated solely to the discussion of certain subjects. Examples of nonpublic forums are street-light posts, prisons, military bases, polling places, a school district's internal mail system and airport terminals. In these forums, a public entity has greater ability to place restrictions on the use of such forums. The public entity may impose restrictions on speech that are reasonable and viewpoint neutral. An example of a valid restriction may be to restrict information pertinent to a public entity's established "official business." The restriction is content neutral, i.e., it does not discriminate based on the viewpoint of the information.

If the public entity's website or social media site permits a free exchange of ideas, such as through an internet forum or an open blog, the public entity has likely created a designated public forum. In this case, the public entity would be extremely restricted in its ability to regulate the speech on that website. It could only impose viewpoint neutral reasonable time, place and manner restrictions. It would likely have very limited ability to restrict the subject matters discussed. Subsequently, the public entity may be prohibited from removing or refusing to post any public comment or content that was not clearly unprotected by the First Amendment.

For example, public comments expressing personal opinions or criticism about public officials or employees, unless defamatory, are likely protected under by the First Amendment. Likewise, personal information posted by an individual on him or herself or a third party may also be protected speech, unless defamatory. Public comments containing profanity are also likely to be protected by the First Amendment.

### **Requiring Users to Register**

It has been suggested that public entities hosting a blog or internet forum could require that individuals register for an account, using their real name and address, prior to posting comments, photos, or videos as a means of managing or controlling postings. For example, only registered users would be allowed to post content directly to the public entity's site; all other users would either be prohibited from posting content entirely or would have their content screened by a moderator prior to posting. Leaving aside the issue of whether screening of content is permissible under law, there is an open question of law as to whether a public entity could require users to register in order to post content.

First Amendment free speech protections extend to any government action that could have a "chilling effect" on free speech. The United States Supreme Court has held that the First Amendment right to free speech includes the right to speaker anonymity. See McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995). An

argument could be made that by requiring individuals to register, the individuals may choose not to express their views freely out of concern and fear that the public entity could identify them and retaliate for any criticisms they levy against the public entity. It is unclear how this argument would translate to the public entity's use of a private third party site, such as Facebook, which itself requires individuals to register in order to use the site.

Not requiring users to register may preclude the public entity from being able to take advantage of the protections of the Digital Millennium Copyright Act (discussed below) which requires, among other things, that a service provider "adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of subscribers who are repeat infringers."

If the public entity does require registration, it should provide the user with a Tennessean Warning pursuant to Minnesota Statutes § 13.04, subd. 2 of the Minnesota Government Data Practices Act, prior to collecting any private data such as name or address.

## **Other Considerations**

Apart from the free speech concerns, public entities must be mindful of other rules and regulations, such as the requirement to comply with the United States Constitution's Establishment Clause (e.g., separation of church and state.) Public entities permitting public comments cannot restrict this comment on the basis of religious views.

As with any open forum, there is the possibility that it could be used by members of the public to broadcast statements that may be defamatory or an invasion of another person's privacy. It is unclear at this time whether public entities would have a legal obligation to remove such content or incur liability for failing to remove.

Public officials using social networking should be careful that they do not unintentionally violate the Open Meeting Law, Minn. Stat. Chpt. 13D. It is well established that members of a public body (e.g., county commissioners, SWCD supervisors, boards of joint powers entities) are not to hold serial meetings in groups less than a quorum in order to avoid public hearing or to reach an agreement on a particular issue outside a duly noticed public meeting. Social networking sites and applications, such as forums and comments, lend themselves to discussion. Comments made by public officials, even if permissible, could give the perception that official business is being improperly conducted.

## **Limitations on Liability**

### **Section 230 of the Communication Decency Act (CDA) of 1996**

Some commentators have opined that public entities should be able to rely upon Section 230 of the federal Communication Decency Act (CDA) of 1996 (47 U.S.C. § 230) to provide immunity from claims related to regulating blog comments, forum postings and other interactive communications on their websites or other social networking sites. The law is still developing in this area.

Section 230 of the CDA provides protection for private blocking and screening of offensive internet materials including protection to online service providers from claims relating to being the publisher of speech. In essence, Section 230 protects online service providers and others from torts, such as defamation, that are committed by users over their system unless the online service provider itself is involved in the creation or development of the offending content. Section 230 protects an online service provider from liability both from the publication of a defamatory or false statement by a third party user as well as the failure to remove

such a statement. Section 230 will also protect an online service provider from liability for choosing to restrict access to third party material that it in good faith determines to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected. There are exceptions to this immunity for federal criminal liability (specifically related to obscenity or the sexual exploitation of children over the internet) and intellectual property law.

On its face, it appears that this law would protect any owner or provider of a blog, page or forum, including a public entity. However, at least one court has found that Section 230 applies only to private content providers. In Mainstream Loudon v. Board of Trustees of the Loudon County Library (Loudon I), the Federal District Court held that Section 230 "was enacted to minimize state regulation of Internet speech by encouraging *private* content providers to self-regulate against offensive material; § 230 was not enacted to insulate government regulation of Internet speech from judicial review." 2 F.Supp.2d 783 (E.D.Va. 1998). The Court noted that Section 230's title itself provided "Protection for private blocking and screening of offensive materials." As such, there is open question on whether Section 230 was intended and will protect public entities from First Amendment constitutional claims based upon regulation or removal of internet speech from a forum or blog comment. Moreover, there is an open question of whether the Section 230 immunities would bar an action for declaratory and injunctive relief.

In any case, the immunities found in Section 230 would not apply to a public entity's own conduct. For example, Section 230 would not protect a public entity from suit due to the posting of defamatory information by the entity's employees on behalf of the entity or where the public entity requires the posting or collection of information that would violate the law. See, e.g., Fair Housing Council of San Fernando Valley v. Roommates.com LLC, 521 F.3d 1157 (9<sup>th</sup> Cir. 2008).

## **The Digital Millennium Copyright Act of 1998 (DMCA)**

Another concern regarding interactive communications is the possibility that a public entity could be liable for copyright infringement based upon a third party's improper posting of copyrighted material on the public entity's website. Congress addressed this concern in passing Title II of the Digital Millennium Copyright Act of 1998 (DMCA), which added section 512 to the Copyright Act (17 U.S.C. § 512) and created four new limitations of liability for copyright infringement. When applicable, these limitations completely bar any monetary damages for copyright infringement against online service providers and restrict the availability of injunctive relief under certain circumstances.

A public entity providing online services, such as a website, will likely qualify as a "service provider" under the law. To be eligible for any of the limitations, the public entity (as a service provider) must:

- "adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of subscribers who are repeat infringers"; and
- "must accommodate and not interfere with 'standard technical measures,' as defined by law.

(17 U.S.C. § 512(i).) The term "standard technical measures" refers to measures that copyright owners typically use to identify or protect copyrighted works, such as the use of the © symbol imbedded in a photograph.

Of the four new limitations, the limitation most likely to apply to public entities is found in Section 512(c) of the DMCA. Public entities that permit the public to post comments or videos or photos on their websites may be eligible for protection by this limitation. Section 512(c) limits the liability of service providers for infringing material on websites hosted on their systems.

To be eligible for the Section 512(c) limitation, the service provider must not have the requisite knowledge of infringing activity, that is:

- the service provider must not have actual knowledge that the material or an activity using the material on its system or network is infringing; or
- in the absence of such actual knowledge, the service provider is not aware of facts or circumstances from which infringing activity is apparent; or
- upon obtaining such knowledge or awareness, the service provider acts expeditiously to remove, or disable access to, the infringing material.

Additionally, if the service provider has the right and ability to control the infringing activity, it must not receive a financial benefit directly attributable to the infringing activity.

To take advantage of the limitation, the service provider must promptly remove or disable access to the material that is claimed to be infringing or to be the subject of infringing activity when provided notification of claimed infringement, as set forth in Section 512. As a part of this notification procedure, the service provider must have an individual who will be responsible for receiving notifications of claimed infringement and file a "designation of agent" with the United States Copyright Office.

The failure to qualify for a Section 512 limitation of liability does not necessarily mean that a public entity will be found liable for copyright infringement based upon a third party's posting of copyrighted materials. A copyright owner must still prove that the public entity has infringed upon the copyright. All other copyright infringement defenses, such as fair use, are still available to the public entity. Regardless of liability, the public entity will be obligated to defend its actions.

Like Section 230 of the Communications Decency Act, the limitations of liability found in Section 512 will not protect a public entity where it is the entity's own employees who infringed upon a copyright during the course and scope of their duties.

## Developing Policies, Procedures and Guidelines

As the public entity enters the world of social media, it should first consider developing policies, procedures and/or guidelines designed to implement the entity's strategy for social media use.

When drafting policies, procedures and/or guidelines, the public entity should address the following points, where applicable:

- Include the mission and goals for the entity's use of social media sites or identities.
- Coordinate the responsibilities for the entity's social media use.
  - Determine who will be responsible for choosing the social media sites and applications to be used.
  - Determine who will be responsible for setting up and maintaining social media applications.
  - Delineate who is responsible for posting and who (if anyone) will have final approval of information posted.
  - Determine who will handle any conflicts or complaints that may arise, particularly if permitting third party posting on the public entity's blog or social networking sites.
- Establish guidelines and/or editorial controls for employees managing and implementing the entity's social media.
  - Incorporate any existing computer acceptable use policy, codes of conduct or ethics, and data practices or privacy policies.

- Encourage respect for others when posting.
- Prohibit employee use of threats, harassment or discriminatory speech when posting.
- Prohibit employee use of the entity's social media sites for political purposes, private personal business or private commercial transactions.
- Distinguish between an employee's work related use of social media applications on behalf of the entity and personal use of social media sites or identities. The individual who is responsible for official postings should take care not to blur the lines between his/her official duties and personal postings.
- Comply with the requirements of Minn. Stat. § 10.60 regarding the use of public websites.
- Remember the permanent nature of all posts.
- Provide a procedure for admitting and correcting mistakes where necessary.
- Require the use of disclaimers, where necessary.
  - If allowing comments or submissions by the public, consider informing the public that anything they post is public data, could be used by anyone who has access to the internet and their posting, and disclaim any liability for such use.
  - If using a third party site that includes advertising, disclaim any official sponsorship of those ads.
- If allowing comments or submissions by the public, particularly if moderated, establish rules or guidelines for the entity's management of user contributions. For example, describing to the user the process used for moderating comments and any criteria used for comment posting.
- Maintain confidentiality and address privacy concerns.
  - Incorporate existing MGDPA and data privacy policies into social media policies or guidelines.
  - Prohibit posting of not public data or defamatory information on social media sites.
  - Provide training or direction on what constitutes defamation and invasion of privacy.
  - Establish and implement some type of editorial control over the content that is posted on social media sites.
  - Develop a procedure for obtaining consent prior to publishing photographs and video.
    - Obtain written consent from employees if a photo or video is of the public entity's employee is taken in course and scope of his/her duties.
    - Obtain written consent from member of the public if posting photo or video that is not taken at a public event or location or if the photo or video is of a minor child.
- Observe records retention/data practices requirements.
  - Review and revise the public entity's record retention policy as needed.
  - Develop procedures for maintaining copies of government data created through the use of social media, as needed.
- Follow copyright law and understand the limitations for using copyrighted materials
  - Prohibit the posting of any copyrighted materials without consent of the copyright holder, unless otherwise permitted by copyright law.
  - Develop a procedure for obtaining written consent when using content not developed by the public entity. Consent should:
    - Grant permission to use any submitted item.
    - Confirm that the person holds the copyright on the photograph, video, etc.
    - Grant the public entity a non-exclusive license to use the photograph, video, etc. on its website or a third-party social media site.
    - Confirm that the person understands that by submitting the item, the item may become public data.
  - If allowing comments or submissions by the public, consider adopting any procedures needed to take advantage of the limitations of liability under the DMCA.

- Provide accessibility.
  - Determine how accessibility issues will be coordinated.

Once the policies, procedures and/or guidelines are established, training should be given to those employees who will be responsible for implementing the entity's social media plan.

As this is a complex subject, MCIT highly recommends thoroughly discussing the implementation of social media with legal counsel and information technology professionals prior to taking any action.

## Helpful Resources

- MCIT Resource, Acceptable Website Use  
[http://www.mcit.org/resources/ResourceLibrary/acceptable\\_website\\_use.pdf](http://www.mcit.org/resources/ResourceLibrary/acceptable_website_use.pdf)
- Center for Technology in Government, Designing Social Media Policy for Government: Eight Essential Elements, May 2010  
[http://ctg.albany.edu/publications/guides/social\\_media\\_policy/social\\_media\\_policy.pdf](http://ctg.albany.edu/publications/guides/social_media_policy/social_media_policy.pdf)
- United States Government, Social Media and Web 2.0 in Government  
[http://www.usa.gov/webcontent/technology/other\\_tech.shtml](http://www.usa.gov/webcontent/technology/other_tech.shtml)