



# Social Media: Creating an Effective Policy

Richard B. Lapp  
Joe V. Marra, III  
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# Social Media: Background

# A Network of Applications and Options

## ▶ Available social media:

- Existing major players in social media space seek to expand functionality
- New players enter social media scene
- Businesses are increasingly active in establishing brand equity through social media

## ▶ Points of access: “Three Screens” and counting

- Tech companies talk about reaching consumers through TV, internet (PC), and mobile (phones & tablets)
- **Increasingly, these environments are becoming more integrated**
- Most employers provide PC equipment – only 1 of the 3 screens.
- Many employees are utilizing personal smartphones and tablets for both personal and professional use, further blurring lines

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# Today's Shifting Landscape & What It Means for You

- ▶ Facebook & Twitter are still leading in user base & use
- ▶ However, new platforms emerge & gain traction quickly
- ▶ Pinterest launched March 2010
  - 70 million users by July 2013
- ▶ Consider functionality – both for the individual user and in terms of aggregate user-base behaviors – when examining new social media platforms for policymaking
- ▶ Functionality impacts employee use and customer access



**You**Tube



Instagram  
Fast beautiful photo sharing

Vine



twitter

tumblr

Pinterest

MEDIA SHARING

MICRO BLOGS

SOCIAL BOOKMARKING

BLOG COMMENTS & FORUMS

SOCIAL NETWORKS

SOCIAL NEWS

DISQUS

livefyre 

facebook

Google+

LinkedIn

digg



reddit

# Social Media Categories Are Malleable

- ▶ Existing major players in social media space seek to expand functionality
  - While Facebook started as a social networking site, it is competing actively as a blog comment hosting service
  - While Pinterest leads the social bookmarking category, Facebook and Google+ are pushing similar feature sets within a different context
  - LinkedIn is expanding to content sharing and bookmarking functionality, but with a narrower content focus on professional and business news
- ▶ These shifting categories impact employers by further blurring the lines between personal and professional uses of social media

# PERSONAL

Personal feed of a public figure/celebrity/user



Profile card for George Takei (@GeorgeTakei). The card features a profile picture of George Takei, his name with a verified badge, his handle, a bio, and a website. It also displays statistics for tweets, following, and followers, along with a follow button.

TWEETS	FOLLOWING	FOLLOWERS
3,395	81	1.04M

[Follow](#)



Profile card for Condé Nast (@CondeNast). The card features the Condé Nast logo, the name with a verified badge, the handle, a bio, and a website. It also displays statistics for tweets, following, and followers, along with a follow button.

TWEETS	FOLLOWING	FOLLOWERS
3,827	136	48.2K

[Follow](#)





**Bill Simmons** ✓

@BillSimmons

Grantland boss + columnist, @30for30 co-creator, NBA Countdown co-host, BS Report host, author of thebookofbasketball.com. On Facebook: facebook.com/billsimmons

Los Angeles (via Boston) · grantland.com

TWEETS  
12.3K

FOLLOWING  
247

FOLLOWERS  
2.5M

 Follow

# PERSONAL?

Identifies affiliated brands but feed includes personal commentary, off-color jokes, and potentially offensive content



**David Brooks** ✓

@nytdavidbrooks

New York Times Op-Ed columnist and author.  
nyti.ms/67uFG3

TWEETS  
123

FOLLOWING  
0

FOLLOWERS  
33.9K

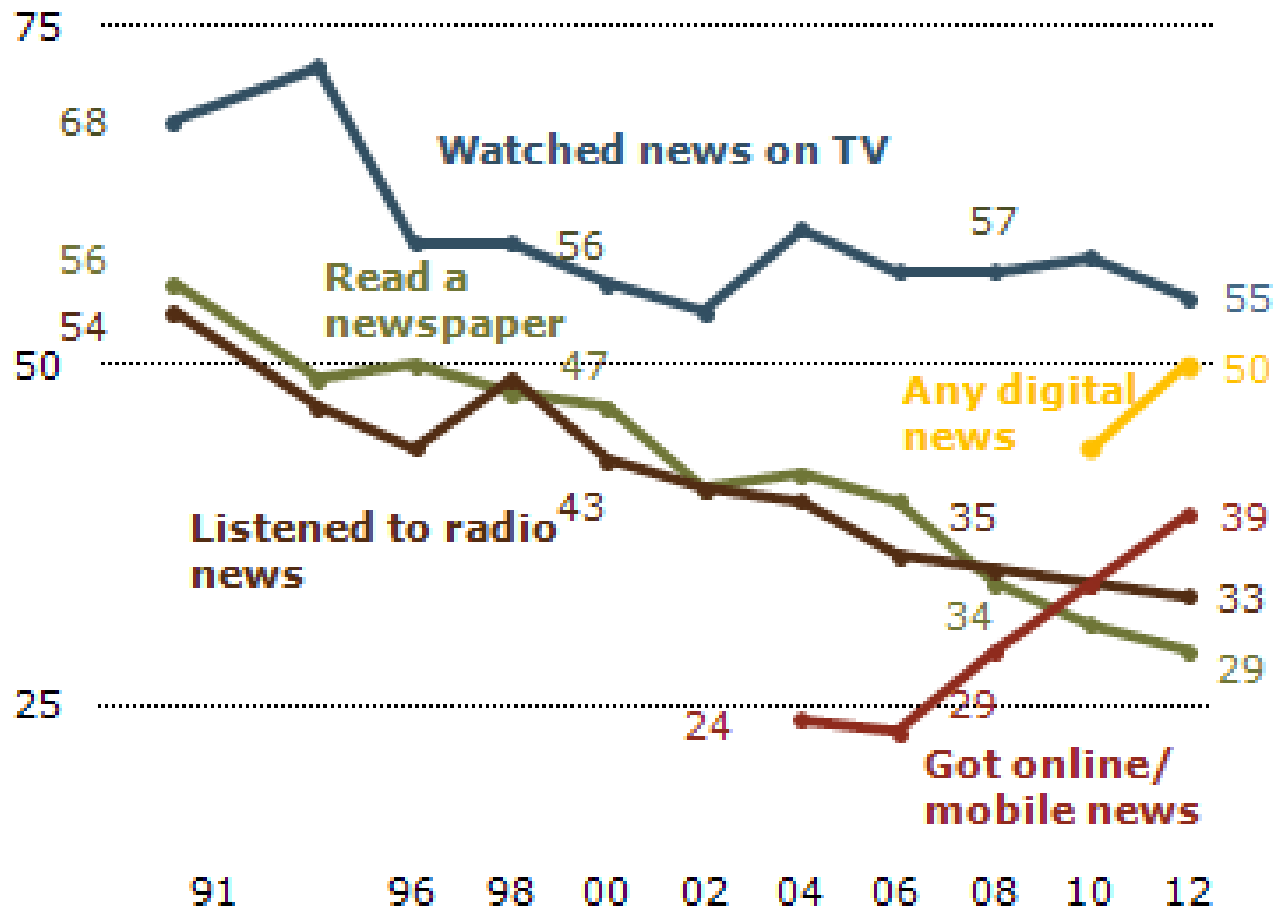
 Follow

# Social Media in the Media Industry

- ▶ Media companies' business requires at least some of their employees to use social media on a daily basis.
- ▶ Increasingly, consumers get their news online.
- ▶ Consumers interact socially and access news through Web 2.0 functionality on **news sites** and **social networking platforms** like Facebook and LinkedIn
- ▶ Consumers also share content and links through **social bookmarking** and **microblogs**
- ▶ **Comments sections** underneath articles published online, blog entries, as well as **forums** and **discussion/message boards**, all constitute social media.

# 2012 Pew Research Center Study: Digital content delivery is here to stay

## Where People Got News Yesterday



# Social Media and the Workplace: Strength, Weakness, Opportunity, or Threat?

# Social media can be a double-edged sword

- ▶ Strategic potential for customer/reader engagement, audience development
  - Social media provides new avenues of communication between publications and readership
  - New avenues of outreach to untapped customer bases
- ▶ Employer risks
  - Social media use on the job can negatively impact productivity
  - Source of legal exposure to employers
  - Excessive restrictions attract regulatory scrutiny of policies/enforcement
  - Insufficient restrictions may lead to lost productivity, risk exposure, brand dilution, bad publicity

# PR Executive Justine Sacco's Pre-flight Tweet



**Justine Sacco**

@JustineSacco



Going to Africa. Hope I don't get AIDS. Just kidding. I'm white!



**2,678**

RETWEETS

**1,206**

FAVORITES



10:19 AM - 20 Dec 13  from Hillingdon, London

# Sacco's Twitter Profile



A screenshot of a Twitter profile card for Justine Sacco. The profile picture shows a woman with blonde hair smiling. The name 'Justine Sacco' is displayed in large white text, with the handle '@JustineSacco' below it. The bio text reads 'CorpComms at IAC. Troublemaker on the side. Also known for my loud laugh.' and 'NYC'. The bio text is partially enclosed in a red rectangular box. At the bottom, there are three statistics: '407 TWEETS', '175 FOLLOWING', and '1,526 FOLLOWERS'. A 'Follow' button with the Twitter bird icon is located in the bottom right corner.

**Justine Sacco**  
@JustineSacco

CorpComms at IAC. Troublemaker on the side. Also known for my loud laugh.  
NYC

407 TWEETS    175 FOLLOWING    1,526 FOLLOWERS

 Follow

# During Sacco's flight to South Africa...

- ▶ Her inflammatory tweet started trending, along with the hashtag “#hasJustinlandedyet”...
- ▶ She gained thousands of Twitter followers..
- ▶ Reporters gathered to meet her at the airport..
- ▶ And IAC acted quickly:
  - ““There is no excuse for the hateful statements that have been made and we condemn them unequivocally... The offensive comment does not reflect the views and values of IAC. We take this issue very seriously, and we have parted ways with the employee in question.”



# Bad publicity

- ▶ Hiroko Tabuchi, a New York Times reporter, expressed her anger with Toyota's press operation by railing against the automaker on Twitter in a way that is generally not acceptable in reporter copy.
  - "Akio Toyoda took very few questions, ignored reporters incl me who tried to ask a follow-up. I'm sorry, but Toyota sucks," she wrote on Twitter after a news conference.
  - Her tweet was widely picked up and caused the business editor to consider pulling her off the Toyota story at the time, which he didn't.

# More Bad Publicity

- ▶ CNN's Senior Editor of Mideast Affairs, Octavia Nasr, tweeted condolences for a virulently anti-American Hezbollah sheikh.
  - "Sad to hear of the passing of Sayyed Mohammed Hussein Fadlallah. One of Hezbollah's giants I respect a lot," she wrote.
  - Her explanation was that she appreciated his support for women's rights and encouragement of men to not beat their wives.
  - Only after an uproar did she clarify that she didn't respect his support for terrorism or suicide bombers. She lamented later that she couldn't express all the nuances in 140 characters.
  - CNN didn't care. They fired her in July 2010.

# Pitino: Social Media “Poisons” Minds

abc NEWS HOME VIDEO U.S. WORLD POLITICS ENTERTAINMENT TECH HEALTH

NOW SOCHI OLYMPICS UKRAINE SARAH HYLAND WORLD ENDING ANNE FRANK

ESPN

## Rick Pitino critiques social media

February 19, 2014

ESPN.com news services



SMITH 2 ROBER 0

0 Comments

Rick Pitino doesn't mince words when it comes to social media and sports.

The image shows a screenshot of an ESPN news article. At the top is the ABC News navigation bar with categories like HOME, VIDEO, U.S., WORLD, POLITICS, ENTERTAINMENT, TECH, and HEALTH. Below that is a secondary navigation bar with 'NOW' and various news topics. The main content area features the ESPN logo, the article title 'Rick Pitino critiques social media', the date 'February 19, 2014', and the source 'ESPN.com news services'. A large photograph shows Rick Pitino, a basketball coach, in a dark suit and tie, speaking animatedly to a group of basketball players. The players are wearing dark jerseys with red accents; one player's jersey has 'SMITH 2' on the back, and another has 'ROBER 0'. To the left of the article is a social media sharing sidebar with buttons for Like (5), share (4), Tweet (5), and g+1 (1), along with a '0 Comments' section. Below the photo is a short caption: 'Rick Pitino doesn't mince words when it comes to social media and sports.'

# Broad Bans Tend to Have Unintended Consequences

- ▶ Resist the inclination to issue a widespread prohibition on the use of social media.
  - Blocking social media sites from company-owned computers can have the adverse effect of decreasing productivity due to employees spending time on their mobile devices or designated “break time” computers
  - A blanket social media restriction can hinder company growth and employees’ ability to expand your company’s online footprint.
  - It can also land you in trouble if it’s too restrictive on employees’ freedom of expression.

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# Three Simple Rules for Using Social Media

1.

2.

3.

Source: John Paton, CEO of the Journal Register

# Social Media in the Workplace: Take a Balanced Approach

# Pitfalls of Not Instituting a Policy

- ▶ Negative co-employee interactions – harassment, discrimination, defamation
  - Even worse when these interactions involve a supervisor.
  - Consider that even if a supervisor isn't engaging in the unlawful conduct, a supervisor seeing the online activities between employees could come back to the Company in the end.
- ▶ Unauthorized use of company or client logos, trademarks, etc.
  - If you don't want your employees speaking for your brand online, including attaching your logo to web content that is unrelated to or in conflict with your purposes as an organization, you should give them guidelines.

# Pitfalls of Not Instituting a Policy (Cont.)

- ▶ Misrepresentations made about company, client, or competitor.
  - Discoverability of social media content applies here as well.
  - Not only does a policy serve to guard against misrepresentations, but it's also a reminder to employees that the confidentiality of information extends to the internet – once it's out there, it's almost impossible to claw it back.
- ▶ FTC endorsement rule violations
  - The Federal Trade Commission has guidelines that address professional bloggers and other deceptive practices in used on social media sites
  - The guidelines require an endorser of a product or service to fully disclose any material connection with the Company.



# Pitfalls of Not Instituting a Policy (Cont.)

- ▶ Online statements can be imputed to or negatively associated with the Company, resulting not only in publicity problems, but potential issues of tort liability and unintended regulatory violations.
- ▶ In addition, state law may protect certain types of speech (in addition to what's noted above) – consider laws protecting political speech, for example.

# Protected Activity on Social Media

- ▶ National Labor Relations Act protects concerted activity
  - Does not just apply to unionized workplaces; workers have a right to discuss working conditions, whether it's online or in person
  - From the NLRB's fact sheet on employers social media policies:
    - *Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.*
    - *An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees.*
  - NLRB has referred to social media as “the new water cooler”
- ▶ Case Study: Best Buy water cooler program
  - Best Buy has an online forum for its employees
  - Facilitates interaction between corporate and store employees
  - Provides a forum for the Company to hear and respond to employee concerns

# Protected Activity on Social Media (Cont.)

- ▶ Policy language must not infringe on employee rights
  - Protected whistleblower activities
    - Whistleblower laws are in place to protect employees from retaliation for exposing alleged organizational misconduct, dishonesty, or illegal activity.
    - While the instinct is to protect your business, keep in mind that employees' online expression, depending on the content, could be considered protected under whistleblower law.
- ▶ Cautionary tale: the restaurant chain Golden Corral
  - When an employee posted a video online showing food stored outside near a garbage dumpster, the video went viral
  - The company did not terminate the employee, fearing the post may have constituted protected whistleblower activity.

# Increasing NLRB Enforcement

- ▶ NLRB enforcement in this area has increased in recent years
  - The NLRB claims that its enforcement practices are just changing with the times, evolving to keep up with technology.
- ▶ To avoid being a target of NLRB enforcement, keep some recent examples in mind:
  - Hispanics United of Buffalo
  - The Arizona Daily Star

# NLRB enforcement can include policy review

- ▶ General Motors' policy found to be too broad - it contained a provision prohibiting the posting of “offensive, demeaning, abusive, or inappropriate remarks.”
  - “We found unlawful the instruction that ‘offensive, demeaning, abusive or inappropriate remarks are as out of place online as they are offline.’ ”
  - “This provision proscribes a broad spectrum of communications that would include protected criticisms of the employer’s labor policies or treatment of employees.”
- ▶ The board approved Wal-Mart’s policy, particularly the prohibition of “discriminatory remarks, harassment and threats of violence.”

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# Lessons Learned

- ▶ **Broad bans can have unintended consequences.**  
Excessive restrictions can limit business opportunities and risk infringing on protected activity.
- ▶ **Operating without a policy carries its own risks,**  
including liability for negative employee interactions, unauthorized use of company logos, and misrepresentations of the company.

# Social Media Policy: Limits on Enforcement

# Distinguish between business and personal use of social media

## ▶ Business use

- Customer interaction is an important part of keeping readers engaged and growing your following.
- Encourage discourse with your customer base, but set guidelines to maintain the proper balance.

▶ Blanket bans on social media use on the job fail to distinguish between business and personal purposes.

▶ **A strong social media policy draws a distinction between business and personal use.**



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# Take care not to invade upon employees' reasonable expectation of privacy

- ▶ Employees' use of privacy settings must be respected.
- ▶ **Desk drawer analogy:** the traditional example used in drawing the line in the sand between an employee's privacy and an employer's property interest is that of the desk

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# Any enforcement efforts must be consistently applied to minimize risk of discrimination claims

- ▶ A social media policy that is not consistently enforced (e.g. against certain employees or certain groups of employees, without a legitimate business purpose) could subject the employer to a claim that the policy is being enforced in a manner in a discriminatory manner

# Crafting Your Social Media Policy

# Identify and involve all stakeholders when crafting social media policy



# Policy drafting should be collaborative

- ▶ Consult your legal department or outside counsel
- ▶ Seek input from the business side
  - Ask which employees need access to which sites, and for what purpose?
- ▶ The best policies contain carve-outs for different categories of employees
  - For example, marketing employees may be encouraged to get involved online to engage in customer outreach; applicable guidelines will be different than those in place for accounting department employees
  - Similarly, HR employees recruiting and posting jobs online should receive appropriate guidance

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# Important provisions to include

- ▶ Define proper use in a position-specific manner and include carve-out provisions
- ▶ Journalists and other content creators are particularly well-suited for a carve-out due to the importance of their interaction with readers and their high visibility
- ▶ Connect your social media policy to existing conduct and ethics policies: all public statements made within a professional capacity, online or otherwise, should comply with the Company's code of ethics

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# Important provisions to include (Cont.)

- ▶ Scope: make it clear that the policy extends to all Company technology resources (desktops, laptops, iPads, BlackBerries, etc.)
- ▶ Most companies use software to gain access to its resources and monitor internet usage – explain that there is no expectation of privacy when using Company resources
- ▶ Compliance with the law – it seems intuitive, but important to remind employees that illegal usage, including violation of intellectual property laws, criminal law, etc., is prohibited
- ▶ Transparency; disclaimers and disclosures – remind employees that they should not speak on behalf of the Company unless authorized to do so, and to use disclaimers when appropriate

# Examples of Carve-Outs

- ▶ **Orlando Sentinel:** Be aware of perceptions. “Friending” or “following” people is fine. But if you “friend” a source or join a group on one side of a debate, you should do so with those on the other side, as well. Understand that users or sources may view your participation in a group as your acceptance of its views; be clear that you’re looking for story ideas or collecting information.



# Examples of Carve-Outs

- ▶ **The Wall Street Journal, Dow Jones Newswires, and MarketWatch:** Avoid giving highly tailored, specific advice to any individual on Dow Jones sites. Phrases such as, “Travel agents are saying the best deals are X and Y,” are acceptable while counseling a reader. “You should choose X,” is not. Giving generalized advice is the best approach.

# Examples of Carve-Outs

- ▶ **The New York Times:** Bloggers may write lively commentary on their preferences in food, music, sports, or other avocations, but as journalists, they must avoid taking stands on divisive public issues. A staff member's Web page that was outspoken on the abortion issue would violate our policy in exactly the same way as participation in a march or rally on the subject. A blog that takes a political stand is as far out of bounds as a letter to the editor supporting or opposing a candidate. The definition of a divisive public issue will vary from one community to another; in case of doubt, staff members should consult local newsroom management.

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# Contact Information

- ▶ Richard B. Lapp

- [rlapp@seyfarth.com](mailto:rlapp@seyfarth.com)

- ▶ Joseph V. Marra, III

- [jmarra@seyfarth.com](mailto:jmarra@seyfarth.com)