Social Media, the First Amendment, and Citizens
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Now that local governments have embraced social media as a means to generate citizen engagement, there are some associated legal issues that should be addressed. One issue is how social media relates to constitutional freedom of speech.

It is the interactive nature of social media that raises this concern. While the whole point of social media is in the interaction, this is also what creates possible First Amendment issues for government entities. Questions that local governments might have include issues related to citizen posts, such as:

- something bad about our city?
- profanity on our Facebook page?
- something bad about an elected official?
- incorrect information?
- commercial information for their business?

Although there are no legal precedents at this time for issues regarding social media and the First Amendment, there are many legal opinions about it. Some legal entities say that the risk for lawsuits is not worth the communication payoff. Others say that there are similar situations with legal precedents that will protect government entities from lawsuits. One similar situation is the idea of a “designated or limited public forum”.

From Merriam Webster Law Dictionary:

limited public forum
: a public forum created by the government voluntarily for expressive activity that may be restricted as to subject matter or class of speaker (called also limited forum, limited open forum) (compare open forum public forum)

Note: The restriction of a limited public forum must be able to withstand strict judicial scrutiny of its effect on First Amendment rights.

A key component of this limited public forum is the communication of a purpose statement and the forum policies. One aspect of a limited public forum is that your agency must be viewpoint neutral, meaning that you must allow posts that have a different viewpoint or are critical of your agency. Keep in mind that people will still share information online whether on your agency’s social media site or on their own or other community sites.

There are ways to deal with these posts that can have a positive outcome, if you:

- publish the purpose and mission of the social media (forum)
- publish social media (forum) policies
- designate a social media (forum) moderator
- be aware of supporting policies that the social media service already has in place

http://www.imakenews.com/eletra/mod_print_view.cfm?this_id=1848924&u=cppa&show... 8/26/2010
Examples of social media (forum) purpose and/or policies

City of Seattle
Users and visitors to social media sites shall be notified that the intended purpose of the site is to serve as a mechanism for communication between city departments and members of the public. The City of Seattle social media site articles and comments containing any of the following forms of content shall not be allowed:

1. Comments not topically related to the particular social medium article being commented upon;
2. Comments in support of or opposition to political campaigns or ballot measures;
3. Profane language or content;
4. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation;
5. Sexual content or links to sexual content;
6. Solicitations of commerce;
7. Conduct or encouragement of illegal activity;
8. Information that may tend to compromise the safety or security of the public or public systems; or
9. Content that violates a legal ownership interest of any other party.

On Seattle’s Facebook page
Comments posted to this page will be monitored. Under the City of Seattle blogging policy, the City reserves the right to remove inappropriate comments including those that have obscene language or sexual content, threaten or defame any person or organization, violate the legal ownership interest of another party, support or oppose political candidates or ballot propositions, promote illegal activity, promote commercial services or products or are not topically related to the particular posting.

State of Utah’s Social Media Policy on Moderating Comments
In some social media formats such as Facebook, Blogs, Twitter responses, etc., you may encounter comments which cause you concern as a moderator or responsible party. If user content is positive or negative and in context to the conversation, then the content should be allowed to remain, regardless of whether it is favorable or unfavorable to the State. If the content is ugly, offensive, denigrating and completely out of context, then the content should be rejected and removed.

Social Media Moderation
If you turn off the interactive comment or discussion areas, you will lose the ability to have positive interaction, and even though they are not able to post on your social media site, they will still talk and complain. When given the chance to interact, you can be part of the conversation and turn it around. You can address negative comments by:

- "listening" to what they are saying without taking it personally
- acknowledging the issue
- providing more context and information that may be missing
- fixing what's "wrong"
- suggesting a phone conversation when needing to take it "offline"
- banning "trolls" who are just trying to stir things up

Other community members may come to the rescue. Let them. It’s amazing how much support you actually have out there.
**What if a poster says something bad about our city?**
If the topic is within the purpose of the forum, then do not delete the posting or ban the user. This is where you must be viewpoint neutral. Remember, these folks are going to talk anyway. By addressing this directly on your site, you have the opportunity to turn the conversation around.

**What if a poster uses profanity on our Facebook page?**
Your policy and purpose statements should address this, if not, then you should leave the profane words up.

**What if a poster says something bad about an elected official?**
If you have not addressed this in your published policy and purpose statements, then you should leave the posting UNLESS it is libelous. Libel is not condoned or protected by the First Amendment. In fact, a poster may be sued for libel. This is something you could remind them about so that they can retract their posting.

**What if a citizen posts incorrect information?**
Perhaps the best way to address this is to join the conversation and provide more information and sources of information.

**What if a citizen posts commercial information for their business?**
Commercial speech has less constitutional protections than public free speech. Unless the commercial posting advances the published purpose of the forum, you may delete the posting.

**Associated Social Media Service Company Policies**

From Facebook

- You will not bully, intimidate, or harass any user.
- You will not post content that: is hateful, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.

From Twitter

- You may not publish or post direct, specific threats of violence against others.
- You may not use our service for any unlawful purposes or for promotion of illegal activities. International users agree to comply with all local laws regarding online conduct and acceptable content.

From YouTube

- We encourage free speech and defend everyone's right to express unpopular points of view. But we don't permit hate speech (speech which attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and sexual orientation/gender identity).
- Things like predatory behavior, stalking, threats, harassment, intimidation, invading privacy, revealing other people's personal information, and inciting others to commit violent acts or to violate the Terms of Use are taken very seriously. Anyone caught doing these things may be permanently banned from YouTube.

**Associated Laws**
First Amendment of the U.S. Constitution
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.

State of Utah Code

Article I, Section 1.
All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Article I, Section 15.
No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

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