



Tips and Pitfalls on Social Media

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Before You Post, Tweet, or Upload: Tips and Pitfalls of Social Media

- **Social Media Third Party Sites: Legal Terms**
- **Entity's Website Policies: Clarify for User**
- **Social Media Application as a Public Space**
- **Employee Use of Social Media**





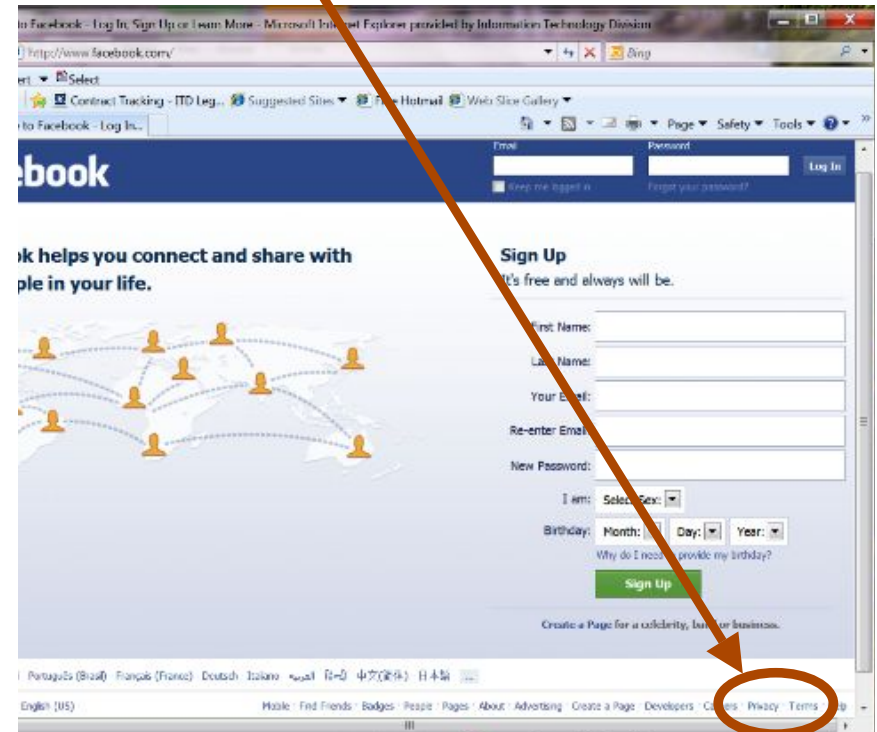
Social Media Third Party Provider Terms

- **Terms of Service**

- Privacy policies – cross reference privacy policy
- User conduct – limits
- License rights -- to posted content
- **Pitfall:** Indemnification – user indemnifies application provider
- Disclaimer of warranties
- Limitation of liability
- Modifications to service or TOS – when TOS may change, notice given
- **Pitfall:** Jurisdiction and governing law
- Copyright infringement procedures

- **Privacy Policy**

- collection, dissemination and protection of personally identifiable information and other sensitive data





Tip: *Some* Providers are Amending Their Terms for States/Munis

- **Facebook (amended “Pages” terms applies to munis and states)**
 - January 2011 announced amended “Pages” terms (via negotiations with NASCIO and NAAG)
 - Strikes the indemnity clause except to the extent indemnity is allowed by state law;
 - Strikes the California venue and choice of law provisions;
 - Requires a public agency maintaining a Facebook page to include language directing consumers to the agency’s official Web site prominently on any Facebook page; and
 - Includes a term that encourages amicable resolution of disputes that arise between public entities and Facebook.
- **YouTube (only applies to states)**
 - Content Hosting Agreement for Branded Channels
- **Twitter: in negotiations**



Pitfall: How do Citizens Know the Rules of the Game?

Tip: Giving Notice Helps

- **Terms of Use**

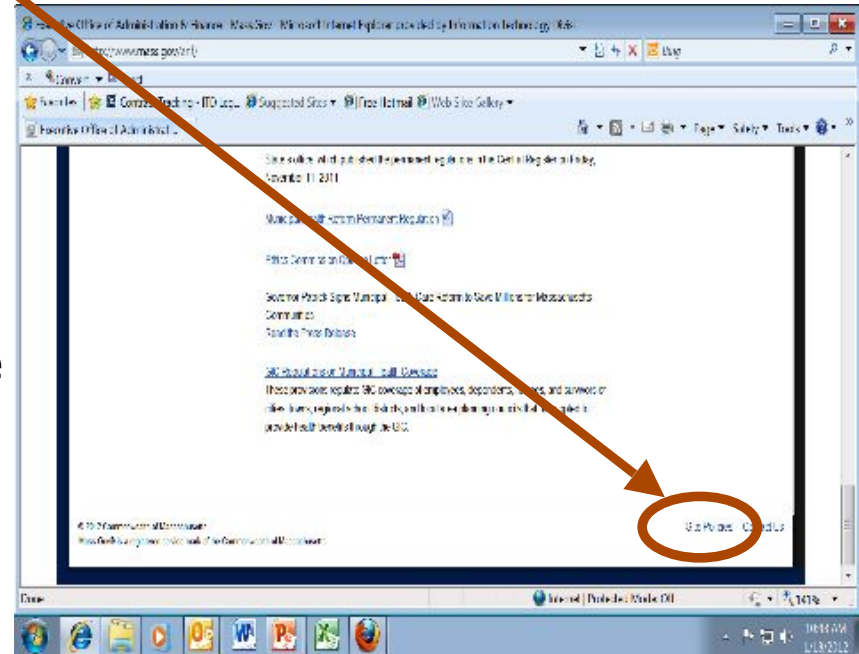
- Intellectual property over content submitted (e.g. creative commons license)
- Copyright infringement claims (safe harbor under the DMCA)

- **Privacy Policy**

- Give notice that some third party providers might collect information through their site (not controlled by the agency), and such data is subject to different policies.

- **Social Media Policy**

- Describes how the agency uses social media tools
- Describes how a social media application is used by the agency
- Cross references each social media site's own policies





Giving Notice on Social Media Application – Not a Government Application



Send a direct message.140

send

Direct messages sent only to you

Inbox Sent

MassAGO Thank you for following MassAGO! Please take a moment to review our web policies: <http://tinyurl.com/c8jyv6>.
8:55 PM Aug 18th

MassGovernor Thanks for following the official Governor's Office account. More on how we use social media: <http://tinyurl.com/9q85k4>
5:34 PM Aug 18th

szlerten
11 following 3 followers 2 tweets

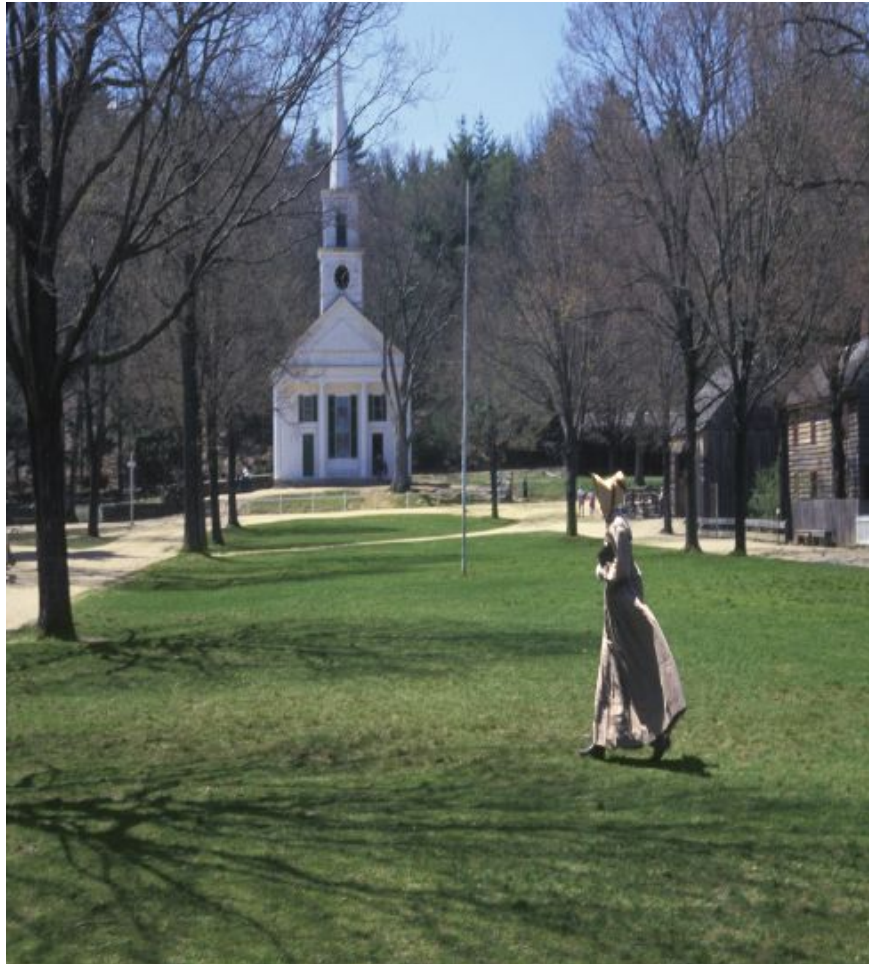
My-Space Sync
a way to sync tweets with MySpace.

Home
@szlerten
Direct Messages 2
Favorites
Search
Trending Topics
#foramilliondollars
Halloween
#openwebawards

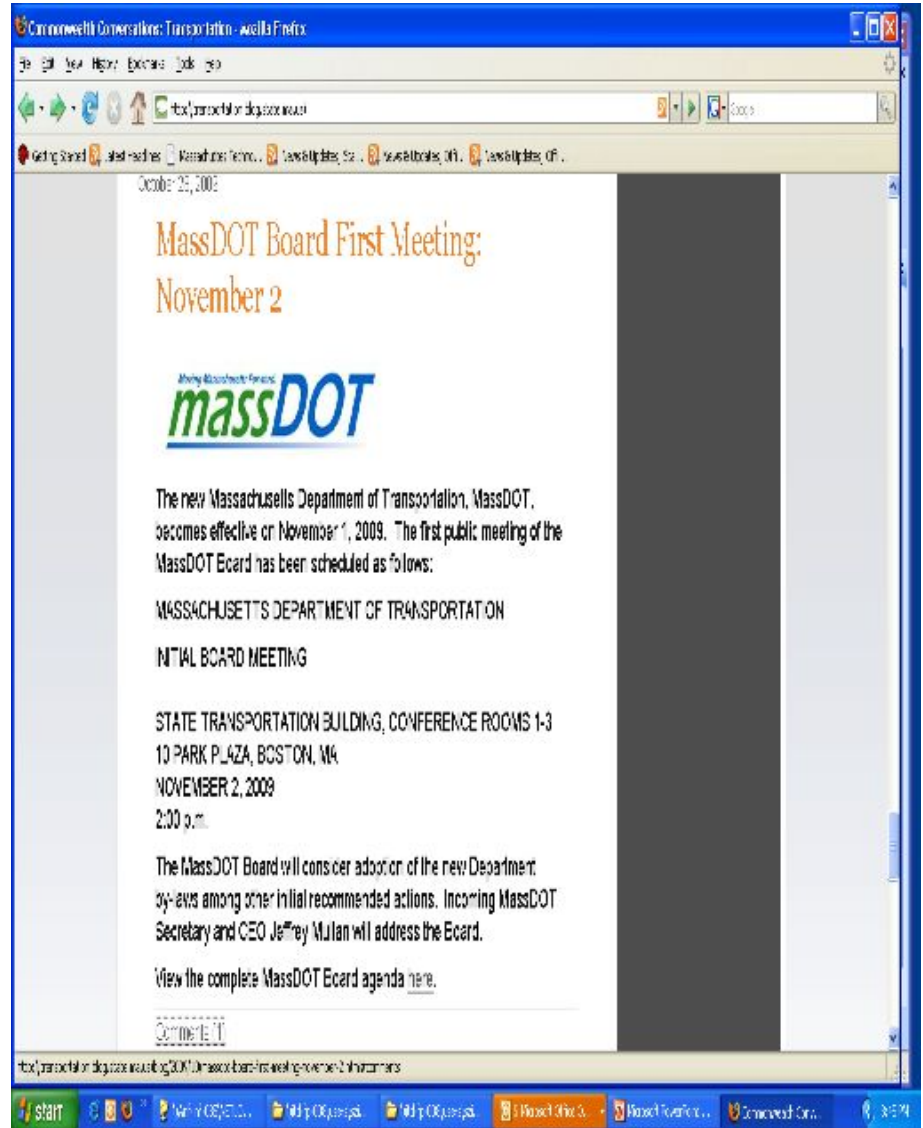
inf-005;NE... Inbox - Microsoft... FW: Price Quote... RE: Massachuset... digital_govt_sun... DigitalGovSummit...



Is a Blog the Town Green?

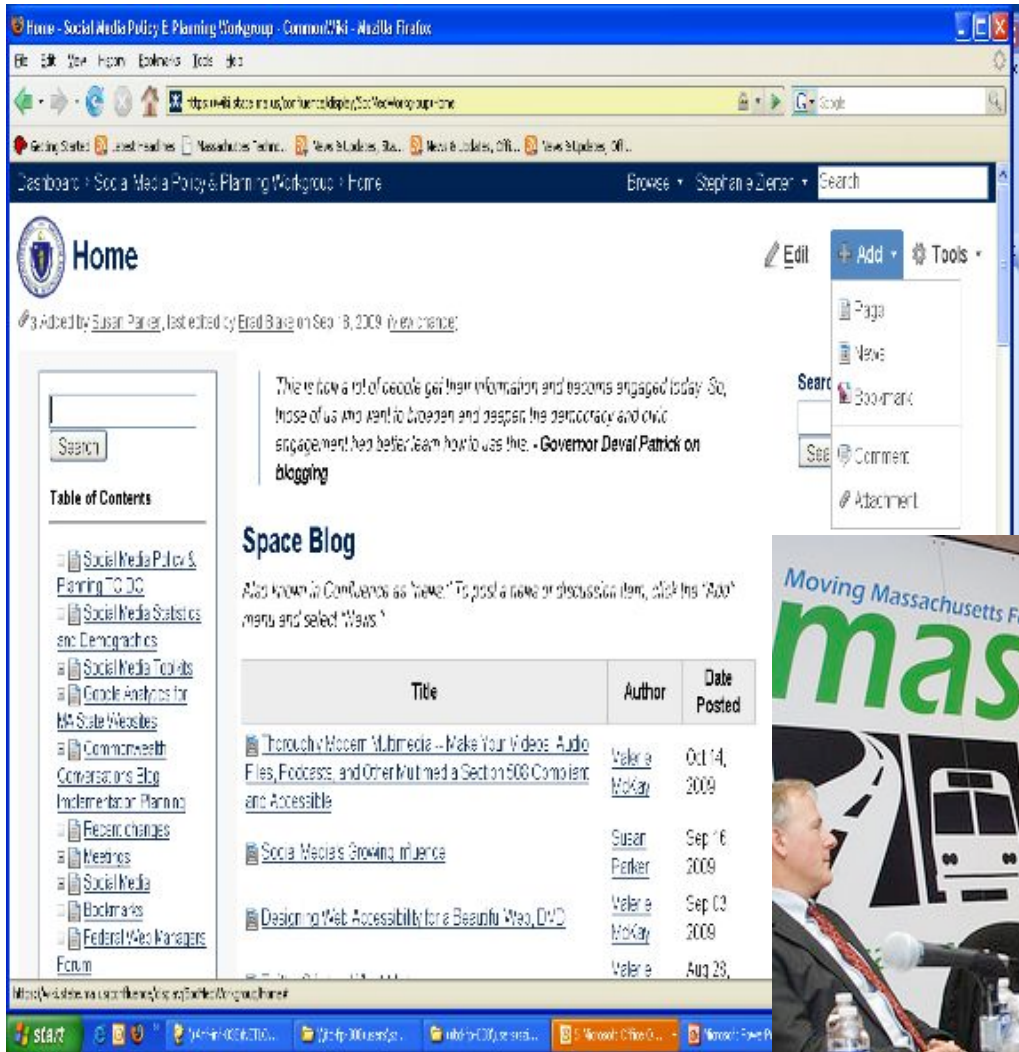


(Photo credit: Sarah Musumeci, MOTT)





Is a Wiki a Public Meeting?



(Photo credit: Eugena Ossi/Governor's Office)



User Generated Content on Social Media Sites (Pitfall: Social isn't always pretty)

- **Government: a special case**
 - 1st Amendment applies on limited public forum
 - Comment Terms on Blog or Website: content neutral, stick to it!
- **Comment Policy (Blog, User Generated Content)**
 - Describe purpose of site (facilitate dialogue about given topic)
 - When are comments welcome
 - Notice that site is moderated
 - Limitations of site
 - Limitations on posting of comments
 - Profane, vulgar etc.
 - Threats
 - Sensitive information
 - Offensive
 - Off-topic
 - Cross reference other entity policies (e.g. entity's privacy, terms of use)





Tip: Moderate the Sites

- **Using the Sites -- Consider:**

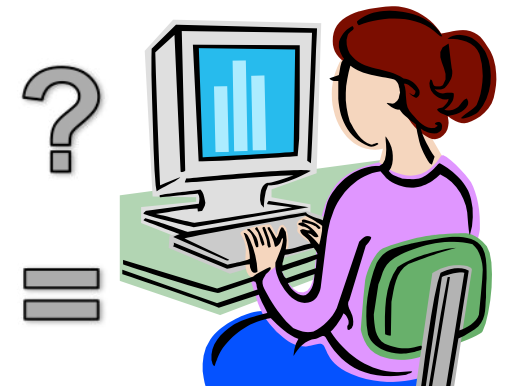
- Open Meeting Law
 - Posting by members of a deliberative body could implicate Open Meeting Law: "When a quorum knows what a quorum thinks."
 - AGO Regs: 940 CMR 29.10 Remote Participation
- Accessibility: meet requirements
- Rules of professional conduct (lawyers, doctors etc.)

- **Legal obligations unique to public sector:**

- Records retention requirements

- **Manage the content:**

- Enforce Comment Policy
- Prevent or mitigate:
 - Copyright infringement
 - Privacy tort claims
 - Defamation





Employee Use of Social Media

- **Foundation: Acceptable Use Policy for Agency IT Resources** (make sure it's up to date: see U.S. v. Szymuszkiewicz, No. 07-CR-171 (7th Cir. Sept). 9, 2010)

(1) Acceptable Use Policy Should

- Describe technology and media covered
- Explain that information employee may believe to be deleted may not be
- State that employee has no expectation of privacy, communications may be monitored
- Explain that information may be disclosed for public records, investigation, litigation, or internal dispute
- State that policy may only be changed by written amendment.

(2) **HR knows they cannot access any systems without proper consent.**

- **Develop Social Media Policies**

- Social Media Use as part of Employees Work
- Employee's Personal Use of Social Media at Work
- Employee's Personal Use Outside of Work

- **Train Managers, Employees on Policy**



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www.mass.gov/itd

- Social Media Legal Toolkit:

<http://www.mass.gov/anf/research-and-tech/it-serv-and-support/application-serv/mass-gov/social-media-guidance-and-best-pract/legal-guidance-toolkit.html>

- Reviewing Third Party Provider’s Terms of Services (TOS)
- Updating Agency Website Policies
- Training Agency Social Media Participants
- Meeting Relevant Legal Obligations
- Exhibits
 - Sample Terms of Use; Social Media Policy; Privacy Policy
 - Sample DMCA Designation Form
 - Sample Terms of Comment
 - Sample Social Media Participation Policy
 - Sample Agreement Regarding Image and Voice Recording