

# **Social Media: Rules to Minimize Legal Risk for Transit Agencies**

American Public Transportation Association —  
Legal Affairs Seminar  
Monday, February 25, 2013  
Austin, Texas



Julie Veit, Senior Counsel  
415-995-5887  
jveit@hansonbridgett.com



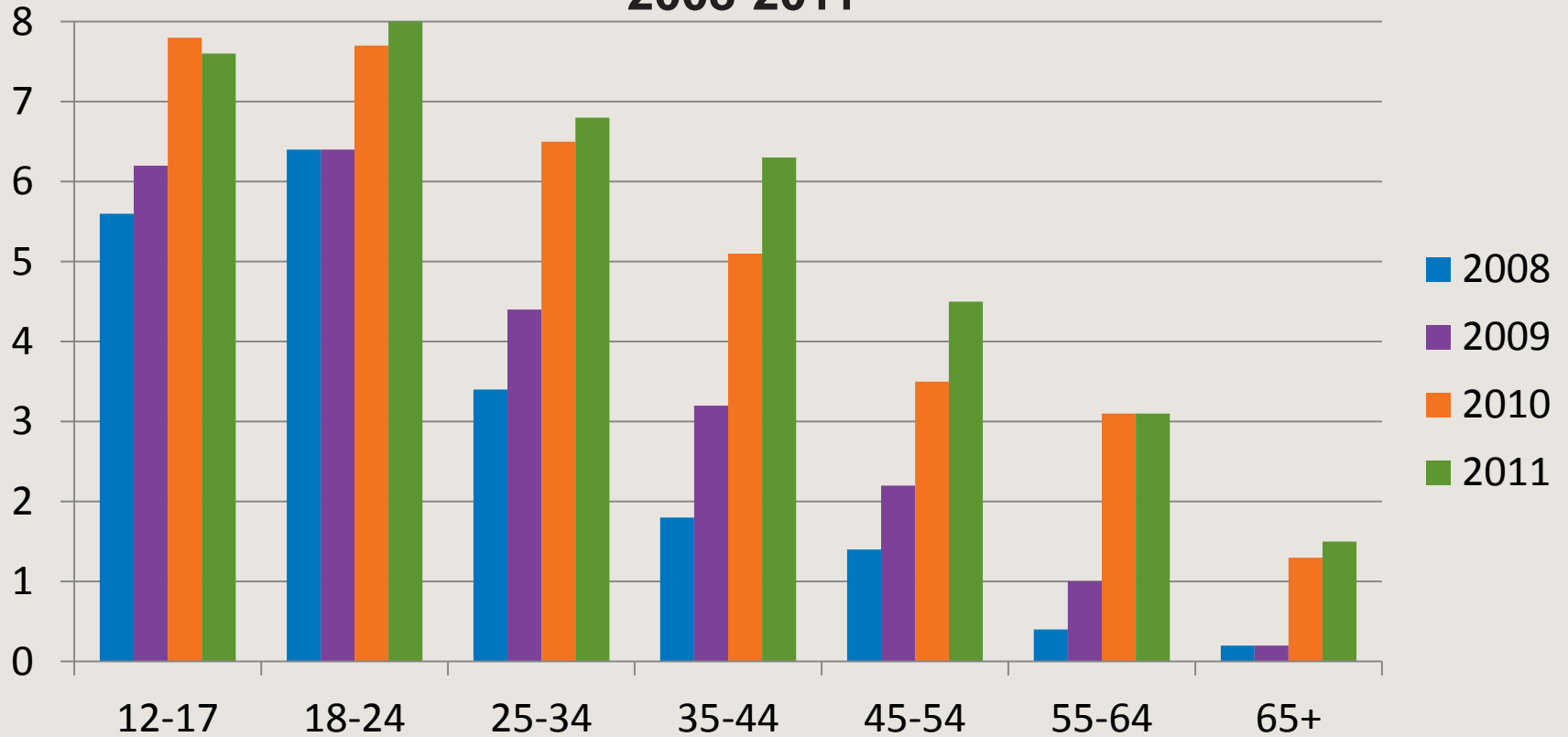
# What is Social Media?

- Web 2.0
- Facebook
- Twitter
- YouTube
- Tumblr



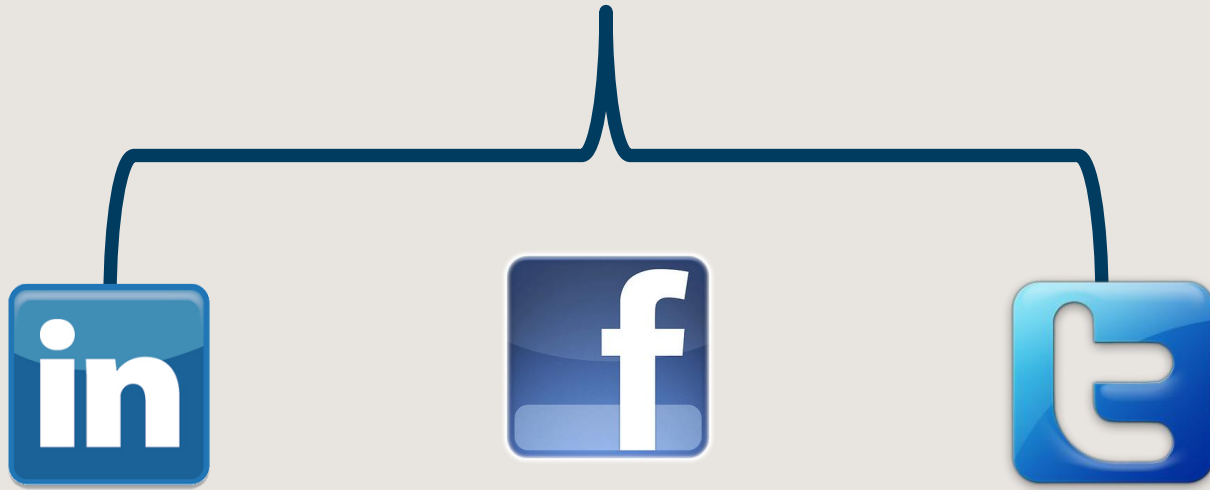
# Who Uses Social Media

Percent by Age Group with a Profile on a Social Networking Site  
2008-2011



Transit Cooperative Research Program Synthesis 99, *Uses of Social Media in Public Transportation, A Synthesis of Transit Practice*, 2012.

# Demographics are Changing



The average LinkedIn user is **44 years old**

The average Facebook user is **40 years old**

The average Twitter user is **37 years old**

65% of Facebook's users are 35 or older

55% of Twitter's users are 35 or older

DoubleClick Ad Planner (Google). U.S. Demographics, June 2012.

# Use of Social Media by Transit Agencies

- Timely updates
- Public information
- Citizen engagement
- Employee recognition
- Entertainment

Transit Cooperative Research Program Synthesis 99, *Uses of Social Media in Public Transportation, A Synthesis of Transit Practice*, 2012.

# Type of Information Provided By Social Media Application

Platform	Twitter	Facebook	Blog	YouTube	LinkedIn
Agency News	86%	80%	37%	23%	3%
Service Alerts (real time)	77%	49%	9%	3%	0%
Contests & Promos	69%	77%	23%	17%	0%
Meetings & Event Notices	66%	71%	31%	3%	3%
Service Info (static)	63%	69%	29%	20%	9%
Press Releases & Statements	63%	60%	23%	9%	3%
Other News	57%	63%	31%	14%	3%
Feature Stories	31%	57%	40%	29%	10%
Job Listings	20%	23%	3%	0%	14%
Public Hearing Comments	11%	26%	20%	9%	0%
Other	11%	17%	6%	14%	3%

# Concerns About the Use of Social Media

- Resource requirements
- Employee access management
- Responses to online criticism
- Accessibility
- Security
- Archive and record retention
- User privacy
- Changes to social media landscape

Transit Cooperative Research Program Synthesis 99, *Uses of Social Media in Public Transportation, A Synthesis of Transit Practice*, 2012.

# Pros of Social Media:

- Simple
- Fun
- New Audience
- Word of Mouth
- Immediate Results
- Free Technology



# Cons of Social Media:

- Lack of Control
- Word of Mouth
- Immediate Results
- No Context
- Technology Dependent
- New Legal Risks



# How Can You Have Control?

- Adopt a Policy
  - Internal Controls
    - Who tweets
    - Monitors Facebook
    - Posts on YouTube
  - External Controls Provide guidelines for those who post
- Display policy on sites
- Encourage civility

# Legal Issues:

1. First Amendment
2. Open Meeting Laws
3. Public Record Requirements

# First Amendment Issues:

- What Speech is Allowed Depends on Type of Forum
  - Three Types
    - *Public Forum*: sidewalks, parks, traditionally open to public discourse
    - *Limited Public Forum*: open by government for certain speakers or topics
    - *Non-Public Forum*: not open to discourse

# Rules Government Must Follow For Each Type of Forum

- *Public Forum*: Government must narrowly tailor restrictions to serve a compelling government interest
- *Limited Public Forum*: Government restriction must be reasonable and viewpoint neutral
- *Non-Public Forum*: Government does not need to allow any speech

# What Type of Forum is a Social Media Page?

- No comments = “Non-Public” Forum
- Allows comments = unclear
  - Could be “public” or “limited-public” forum
- Look at rules of each site to see if you can control
  - Example: Facebook

# Benefits of Having a Policy

- Create a Policy
  - Make clear what topics are allowed
  - Prohibit political speech if unrelated
  - Prohibit Unprotected Speech:
    - Inciting violence
    - Profane
    - Illegal conduct
    - Safety or security risk
- Provides Basis to Remove:
  - Unrelated posts
  - Unprotected speech

# What About Open Meeting Laws?

- Check open meeting laws in your jurisdiction
- In CA, Brown Act requires public notice when a legislative body deliberates
  - Is social media a place to deliberate?
    - More than a quorum comments.
    - AG Opinion: serial email discussions violate.
  - *Don't be the first to find out:*
    - Create a policy instructing members about rules



# Public Record Rules:

- Is information on social media a public record?
  - Under CA Public Records Act, probably yes
  - Address in Retention Policy
- Are *comments* to government actions public records?
  - Also unclear
  - Post disclaimer
- Agency may not own the records

# Recap on Social Media Policy Benefits:

- Provides rules about who can speak for agency
- Limits what public can post
- Reminds Board members about Open Meeting Laws
- Creates process for identifying/preserving Public Records



**HansonBridgett**