# Social Media and the Federal Government:
# Perceived and Real Barriers and Potential Solutions

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## A. The context for using social media within the federal government

As leaders of the Federal Web Managers Council, we've seen that social media in government has become the number one topic of discussion within our government web manager community over the past year.  The prospect of agencies using social media sites such as YouTube, Facebook, Wikipedia, Twitter, and SecondLife has raised a myriad of legal, contractual, and policy questions.  As the new Administration looks to leverage these new tools to create a more effective and transparent government, it's an opportune time for us to share what we've learned and propose solutions for how to best use these new tools across government.  These recommendations are based on our first-hand experience using social media within our own agencies and from hundreds of conversations with web managers across the country.

Some agencies are already using social media tools with great success.  They've shown how these tools can transform how we engage the public, include people in the governing process, and accomplish our agency missions.   (See WebContent.gov for examples of agencies successfully using social media: http://www.usa.gov/webcontent/technology/other_tech.shtml).  But many agencies are not using these tools, either because of perceived or real lack of resources, cultural resistance, or legal or other barriers.  There are varying interpretations around what is allowed across the federal government, and some agencies do not yet understand how these tools will help them achieve their missions.

The purpose of these recommendations is to address the perceived and real barriers to using social media, and to propose solutions that will result in greater consistency and a clearer understanding of what is expected and permitted across federal agencies.

We hope this paper will facilitate dialogue on these important issues, both within and outside the government.  As this topic evolves, we'll use Webcontent.gov and various social media tools to continue the conversation.  We also invite you to read the Federal Web Managers Council white paper, "Putting Citizens First: Transforming Online Government," which offers recommendations for transforming online government beyond social media
(http://www.usa.gov/webcontent/documents/Federal_Web_Managers_WhitePaper.pdf).

## B. Barriers and potential solutions

### 1. Cultural issues and lack of a strategy for using these new tools

Issue:  Many agencies view the use of social media as a technology issue, instead of a communications tool, and management decisions are often based solely on technology considerations.  In many cases, the focus is more on what can't be done rather than what can be done.  The default approach should be openness and transparency.  For this reason, agencies need to be prepared that the decision to use social media will have cultural implications throughout government.  Some agencies have leadership and legal support and have shown that the benefits of using social media outweigh the risks; but many have not.  The result: social media is not consistently applied across government.

Proposed Solution:   The new Administration should communicate a government-wide strategy for using social media tools to create a more effective and transparent government.  The new Administration's Chief Technology Officer (CTO) should require each agency to, within three months, develop their own social media/Web 2.0 communications strategy that describes how it will use their agency website and the larger Web to accomplish its mission, reach new audiences, and engage the public.  The strategy should include resources needed to accomplish these goals.

## 2.  Employee access to online tools

Issue:  Many agencies block their employees from using sites like YouTube, Facebook, and Wikipedia.  They make one of three arguments, all of which can be addressed through effective policies and management controls:
1.  Security:  IT security specialists raise concerns that these high traffic sites pose a greater risk for malware and spyware.  However, agencies can implement security measures to mitigate these risks, just as they do for other high traffic sites such as Google and Yahoo.  Certain agencies may still need to restrict access for specific groups, but this should be the exception, not the rule.
2.  Employees will waste time:  this is the same argument that has been used to say employees shouldn't have access to phones, email, etc.  It's not unique to Web 2.0.  It should be addressed by agency managers as a management issue, not a technology problem.
3.  Bandwidth: this is a legitimate concern for sites such as YouTube that consume considerable bandwidth.  However, agencies need to budget for this, as they do for other infrastructure needs.  If opening all computers to all sites is an issue, agencies should at least provide access to agency staff that need to understand and use these tools to communicate with the public.

Proposed solution:  The new Administration should require agencies to provide access to social media sites unless the agency head justifies blocking certain employees or certain sites.

## 3.  Terms of service

Issue: Most online sites require account owners to agree to terms of service that federal agencies can't agree to, in particular:

1.  Indemnification and defense:  if a federal employee, on behalf of their agency, creates an account on a social media site, they must agree not to sue the site, nor allow the site to be included in suits against the agency.  Many sites also require the account owner to pay the site's legal costs arising from such suits.  Under the Anti-deficiency Act, federal agencies can't commit to either provision.
2.  Applicable law and court jurisdiction:  most terms of service also assert that a certain state's laws (usually California) apply to the terms of use and that the state's courts will adjudicate disputes.  This is problematic since federal agencies follow federal law and go to trial in federal court.

Many companies have been willing to negotiate on these issues, but they don't want to negotiate separate agreements with dozens of different agencies.  Similarly, it's not efficient for agencies to work out agreements with an unending list of potential companies.

Proposed solution:  The new Administration (through the National CTO, GSA, OMB, or some other central organization) should:

a)  Establish a single terms of service that covers all social media sites, which excludes the federal government from the provisions described above.  (If this isn't possible, at a minimum, create a standard federal terms of service with each site and establish a process for adding new agreements as new sites are identified.)
b)  Alert federal agencies that the benefits of using these sites outweigh the risks and that they should use social media sites pending agreements on terms of service.

## 4.  Advertising

Issue: Many vendor sites place ads on all their pages; this is how they earn money from free accounts.  For some agencies, this raises ethical concerns when government content appears near inappropriate

advertisements (pornography, hate, political, etc), because it can give the appearance that the government is endorsing the content.  What constitutes "advertising" is interpreted differently across government.

Proposed solution:  The new Administration should:

1. Issue a memo stating that government agencies should accept this kind of contextual advertising as a byproduct of using social media sites, that advertising online is no different than advertising in a magazine, newspaper, radio, or TV, where you can't control exactly how your content will appear in context.  However, if this is not possible:
2. Set criteria for all agencies for when such ads are acceptable.  For example, ads could be acceptable when:
   - They are ubiquitous, appearing on all similar pages on a site, regardless of the account owner
   - They do not include pornography or violence
   - There isn't confusing language that implies endorsement by the account owner (e.g., "promoted" or "sponsored" material)

## 5. Procurement

Issue: Government procurement rules didn't anticipate the flood of companies offering free tools to anyone who wants to use them.  Attorneys at different agencies interpret the rules differently, leading to confusion and hesitation.  Agencies that want to use these tools face three issues:

1. Gratuitous services and gift authority:  there are rules governing when agencies are allowed to accept free services or gifts.  Some agencies have gift authority and others don't. Potential concerns include giving the offering company inappropriate inside information that lets it tailor a later commercial product or possibly coming back later and billing the government.
2. Choosing winners without competition: the government shouldn't arbitrarily decide which companies will be given the cachet of providing our content, which can provide value to their sites.  For example, federal agencies should have criteria to determine which video sharing sites they will publish their videos to (YouTube, Yahoo Video, AOL Video, etc).
3. Contract authority: Ordinarily, only specific employees are given authority to bind an agency contractually.  This is very cumbersome when trying to establish accounts on social media sites.

Proposed solution:  The new Administration should work with procurement and ethics attorneys to ensure that:
1. Agencies can use free Web products and services.
2. Agencies do not need to use all products and services offered, as long as they have criteria for deciding which ones they use.
3. Employees with a clear business need can create accounts to use free services, as long as they have managerial approval.

## 6. Privacy

Issue: There is no guarantee that social media sites will protect people's privacy to the same degree as federal agencies.

Proposed solution:  The new Administration should direct agencies to use a standard disclaimer to display on social media sites where they publish content (i.e. EPA's Facebook page or Twitter page).  The disclaimer would alert the public that they are no longer on a federal site and that the private sector site's own privacy policy applies, with a link to that policy.

## 7. Persistent Cookies

Issue: Agencies are banned from using persistent cookies without approval from their agency head, which effectively means the federal government isn't using them.  This greatly limits our ability to serve customers' needs because our sites can't remember preferences or settings.  It also means we can't take advantage of sophisticated web services and analytic tools that rely on persistent cookies.

Proposed solution: The National CTO or OMB should immediately rescind the previous guidance prohibiting persistent cookies and replace it with guidance that allows agencies to use persistent cookies to better serve customers' needs. The new guidance should state that it's acceptable for agencies to use social media sites that rely on persistent cookies. However, the government should retain the ban on tracking cookies, since they specifically track where visitors go between sites.

## 8. Surveys

Issue: The Paperwork Reduction Act, subsequent OMB regulations, and OMB draft guidance require that agencies complete a lengthy process to obtain an OMB control number to survey and request information from the public. This requirement is interpreted by most agencies to include voluntary online surveys, polls, and other applications that are intended to improve customer service. The Act predated the Internet and doesn't anticipate the use of social media and other customer service tools.

Proposed solution: The National CTO or OMB should issue immediate guidance that outlines exceptions to the PRA, such as using online surveys to solicit public opinion about federal websites, using social media to have online discussion forums with the public, etc.

## 9. Access for people with disabilities

Issue: Under section 508 of the Rehabilitation Act of 1973, all information provided to the public via agency websites must be equally accessible to people with and without disabilities. Many social media tools are automatically accessible because they are primarily text (e.g., blogs). However, some multimedia sites do not currently provide the opportunity to include transcripts or captioning, and many agencies lack sufficient resources to provide these services on their own.

Proposed solutions:

1. The National CTO should issue guidance requiring agencies to post their materials in accessible formats on their own websites, and that non-governmental sites may not be the sole location where content is posted. This will ensure that people with disabilities always have an accessible version of the content, and that the official version of content is located on a government website.
2. The National CTO and GSA should collaborate on developing a government-wide procurement vehicle to purchase tools that assist with 508 compliance, such as captioning software to make videos and webcasts available to people with disabilities.
3. The National CTO should work with major companies to make Web software, including social media software, fully accessible to people with disabilities.

## 10. Administrative requirements during rulemaking

Issue: The Administrative Procedure Act (APA) of 1946 sets rules for how agencies can communicate with the public during rulemaking, accept public comment on proposed regulations, etc. The Act didn't anticipate the collaborative tools now available, leading to hesitation and confusion as to how to incorporate them during the rulemaking process.

Proposed solution: The National CTO or OMB should issue guidance to help agencies use collaborative social media tools to enhance the rulemaking process, while still complying with the APA.

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We welcome your questions and comments. Please contact the Federal Web Managers Council co-chairs, Sheila Campbell (sheila.campbell@gsa.gov) and Rachel Flagg (rachel.flagg@hud.gov).