

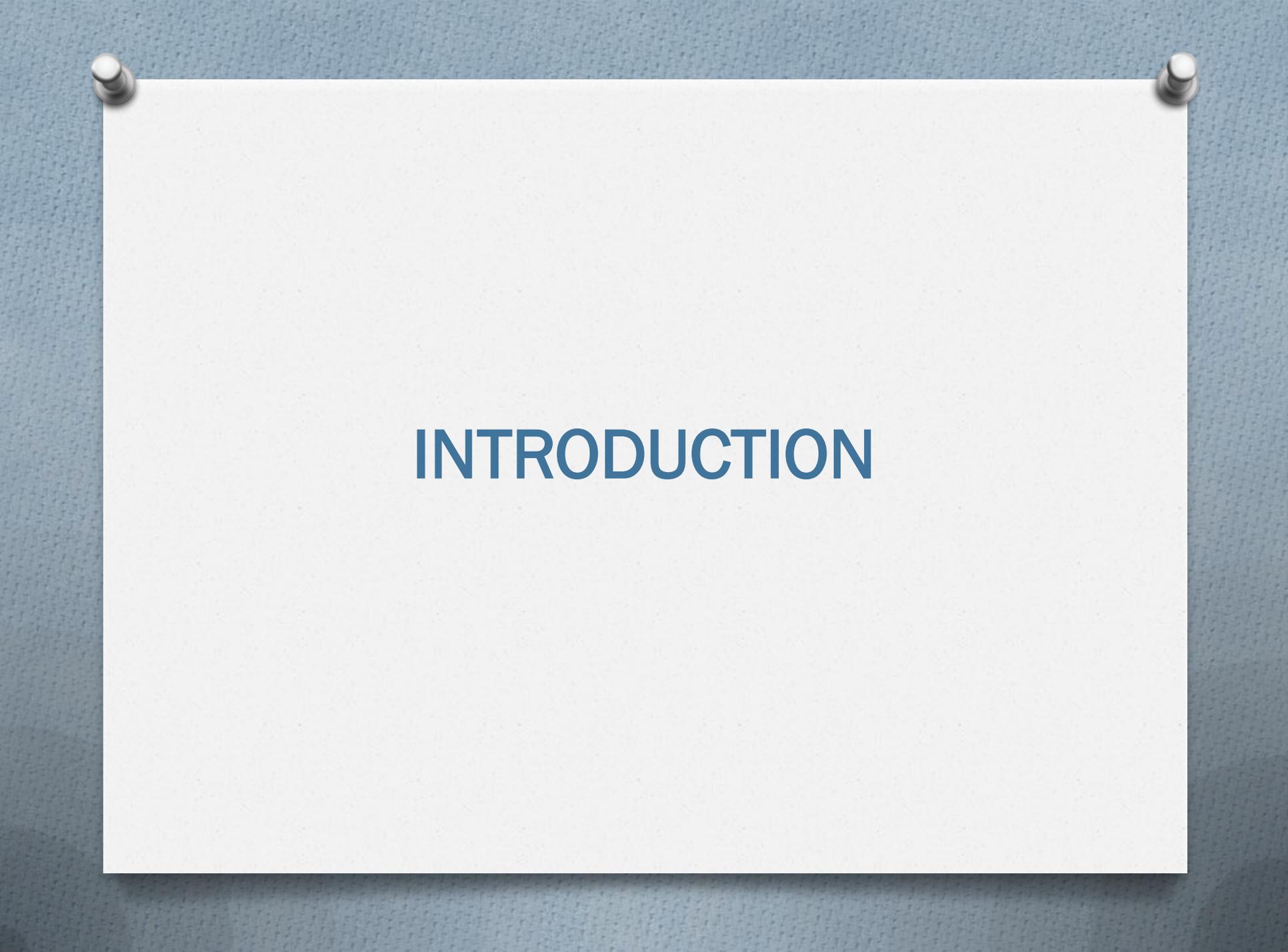


Social Media Legal Considerations for Government

Engaging the Public through Social Media:
Government Best Practices

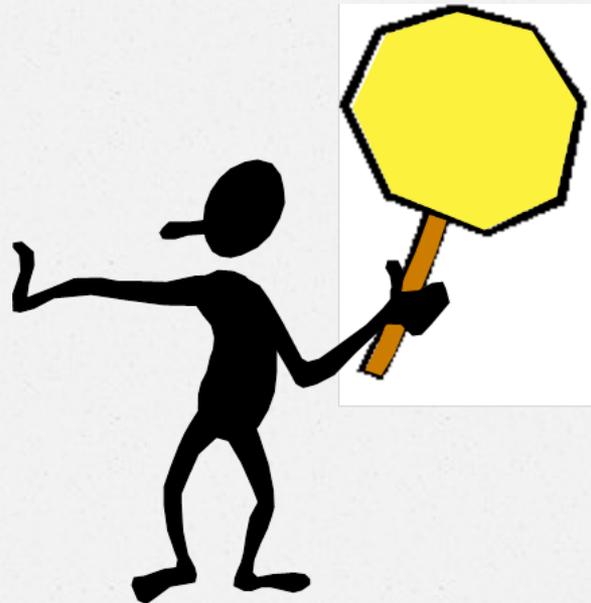
June 21, 2013

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INTRODUCTION

[Insert disclaimer here]



What I'm talking about

- o Government and social media
(It's the same only different)
- o Three top issues unique to government
- o Resources
- o Open forum

What I'm not talking about

- o Legal issues related to
 - o Employment
 - o Certain government operations, like investigations

It's different for government

- o General social media legal issues - privacy, employee behavior, human resources use, intellectual property, etc.
- o Unique legal constraints on governments
 - o Records retention requirements
 - o Public records law
 - o Statutory limitations and contract law
 - o First amendment/free speech

Hitting the top three

- o Managing public records
- o Managing public comments
- o Provider terms of service (click-throughs)



MANAGING PUBLIC RECORDS
POSTED ON SOCIAL MEDIA

A “public record” is

- o Any “writing”
- o Relating to the conduct of government or the performance of any governmental or proprietary function
- o Prepared, owned, used, or retained by any state or local agency
- o regardless of physical form or characteristics

RCW 42.56.010(3)

Obligation to disclose public records

- o State and local agencies must provide access to or copies of records in response to a public records request.

– See RCW 42.56.070

- o Significant financial penalties for failure to comply

Public records considerations

- o Are social media posts and comments public records?
- o Do they have a retention value?
- o How does my agency comply with retention requirements for social media?
- o Can the agency respond effectively to public records requests that touch on social media?
- o Litigation holds?



**MANAGING PUBLIC
COMMENTS**

Social media is interactive

- o Communication via social media is not intended to be one way
- o Is the public able to comment on your Facebook page, YouTube channel, Flickr group, or blog?
- o Capitalizes on what social media does best, but poses special considerations

The First Amendment and social media

- o Government is restrained in how it controls speech
- o Sites that allow comments may be a limited public forum for purposes of First Amendment
- o Does the page include a comment policy?
- o Do knowledgeable staff monitor comments?

TERMS OF SERVICE



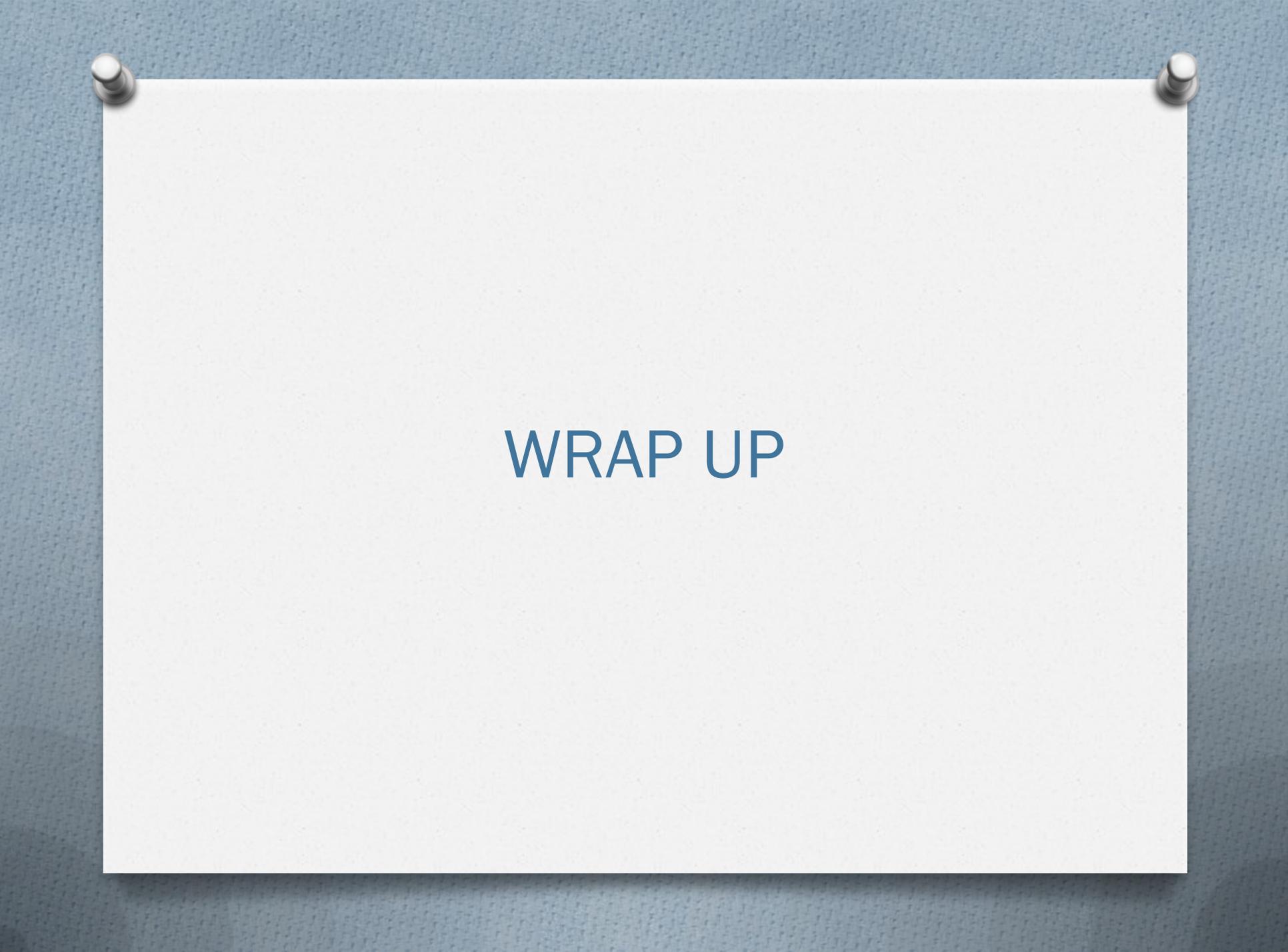
“CLICK-THROUGH” AGREEMENTS

About click-throughs

- o Who clicks to open an account?
- o Who reads the terms of service?
- o Who decides which social media providers to use?
- o Terms of service (TOS) agreements are binding
- o Some terms are a bad fit for the purpose

More on click-through terms

- o Some terms are problematic for government
 - o Indemnification
 - o Venue and jurisdiction
 - o Choice of law
 - o Others, depending on use
- o Terms differ widely
- o Terms may pose unexpected risks



WRAP UP

Lowering legal risk

- o Establish a policy and develop check lists
- o Ensure records requirements are met
- o Let business needs drive - make it a good fit
- o Read terms of service (TOS) before clicking
- o Weigh the risks and benefits
- o Educate relevant employees
- o Maintain your social media sites

References

- o State of Washington Social Media Best Practices and sample policies

<http://www.governor.wa.gov/news/media/guidelines.aspx>

- o City of Seattle Social Media Use Policy

<http://www.seattle.gov/pan/SocialMediaPolicy.htm>

Reference

o Examining State Social Media Policies: Closing the Gaps

National Association of State Chief Information Officers (NASCIO), June 2013

o Includes legal and policy issues checklist

http://www.nascio.org/publications/documents/NASCIO_2013SocialMediaIssueBrief.pdf

Reference

o Public Forum 2.0

Professor Lyrissa Lidsky, University of Florida College of Law, 2011

Available for download at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1787962

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Thank you!



Questions?

Points to take to the speed round?