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Impact of Social Media on Open Government

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INTRODUCTION

The Internet is the greatest social change in the history of humans as there are no boundaries of time or geography, and since we still living in this wave of change it is not possible to precisely predict the future. Without question every citizen in Texas and person on earth is being impacted by Social Media, and as result Social Media impacts the Texas Public Information and Open Meetings Acts.

A. BACKGROUND AND PERSPECTIVE

Since 1967 I have worked with computers and devoted my professional career to the information technology (IT) industry. After college I was a computer programmer on IBM mainframes, received a Masters in Computer Science, taught graduate computer science courses, and worked as a computer consultant. Since 1978 I have practiced law in Texas but limited my work to representing buyers and sellers of computer technology and Internet services. At this time I represent the Texas Department of Information Resources (DIR) and among other projects, assisted DIR in 2008 and 2009 in the RFP, selection, and contract negotiations for the eGovernment portal, TexasOnline.com. As well, I have represented a number of Counties, Cities, and School Districts in Texas when they have acquired computer technology and in litigation regarding computer technology and Internet services.

For 12 years I was the Founding Chair of the Texas Supreme Court Judicial Committee on Information Technology (JCIT) whose role is to help automate the Texas Court System and put the Internet on the desktops of all 3,200 Judges. As Chair of JCIT I represented the Supreme Court's technology initiatives before the Senate, House, and a number of State Agencies.

I am a trial partner at the law firm of Gardere Wynne Sewell LLP where I chair the eDiscovery Group and co-chair of the Technology Industry Team.

I have been an Adjunct Professor of Law since 1986 at the SMU Dedman School of Law and since 2000 have taught courses on the Law of eCommerce. http://smu-ecommerce.gardere.com/

In 1994 I was President of the Dallas Bar Association, served on the State Bar of Texas Board of Directors, and was the Founding Chair of the State Bar Computer & Technology Section.

B.   BACKGROUND OF THE INTERNET

Over the years I have developed what I call the Five Big Bang Theory of the Internet which is a good explanation of how we arrived at the topic of the day – Social Media (also referred to as Web 2.0).

FIRST BIG BANG OF THE INTERNET – 1890 US Census

We take for granted that counting the US census every 10 years because it is part of the US Constitution, and is underway at this very moment. However in 1880 census was going slowly so the US Census Bureau hired Dr. Herman Hollerith (a mathematician from Columbia University) to help speed up the 1890 census. Hollerith invented the 80 column punch card:

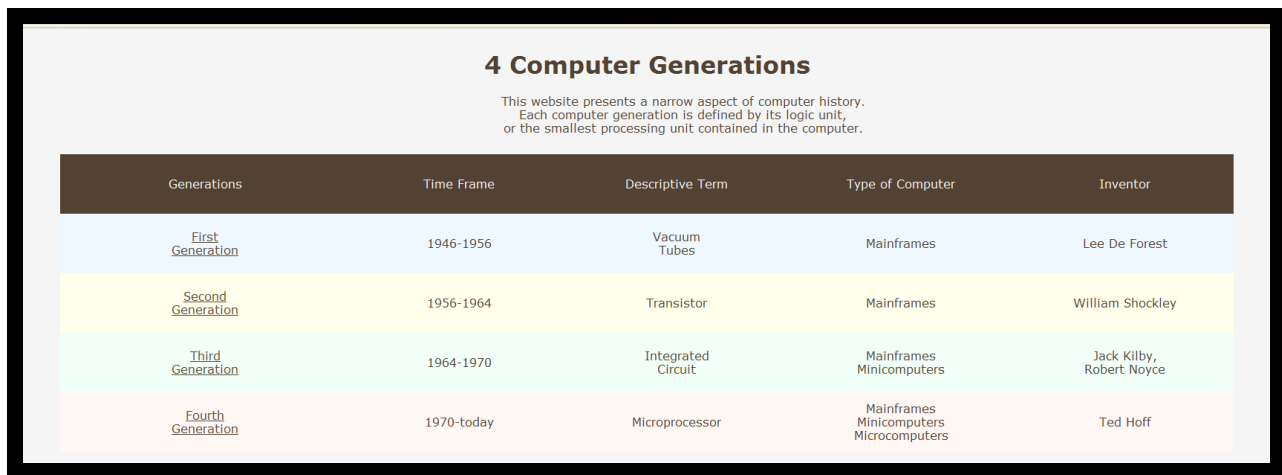Figure 2. Punching Positions in Card
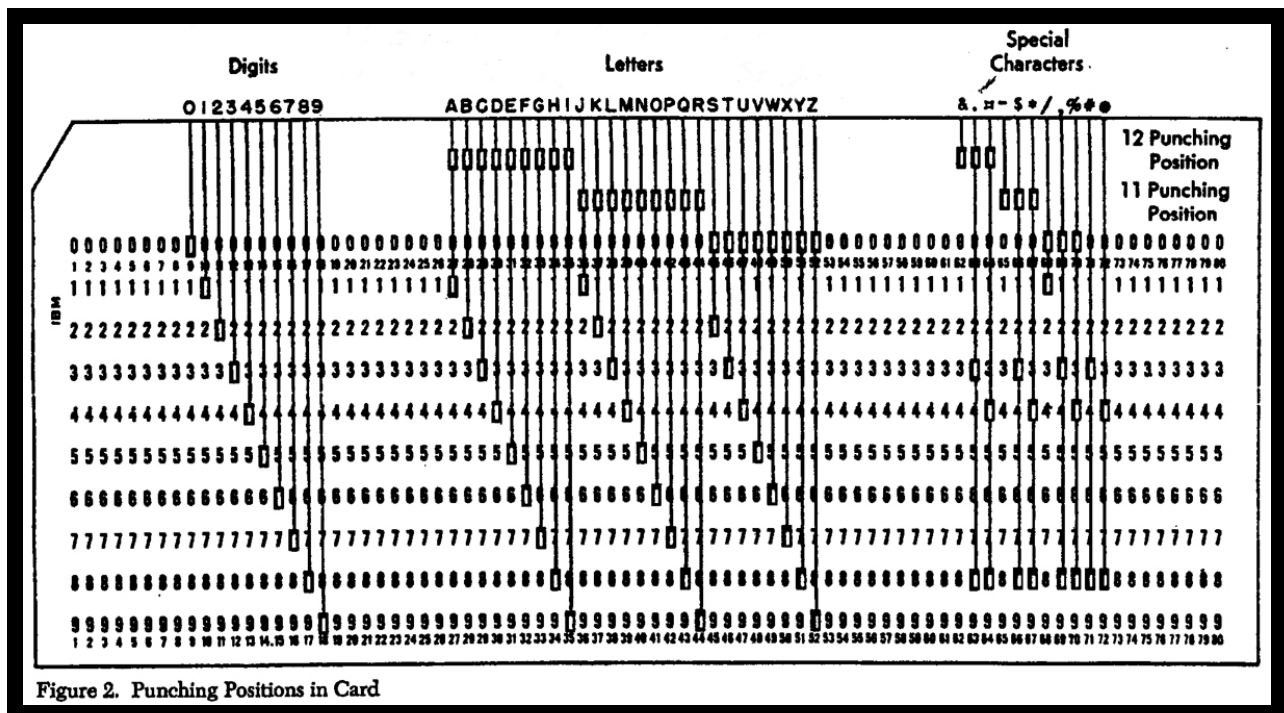
The invention of the 80 column punch card was interesting for many reasons including the fact that Hollerith started a company later named IBM which obviously is still one of the major computer companies in the world. Also the impact the punch card was felt for more than 100

years since all computer information and printers were generally 80 column based until the mouse and Graphical User Interface (GUI) with the Apple Lisa and Microsoft Windows.

SECOND BIG BANG OF THE INTERNET – 1944 WW II Invention of the Modern Computer

When the Allied troops were planning the invasion of France the modern day computer was created to help predict tides along the Normandy coastline. This computer was built using vacuum tubes, was very large, and relatively unsophisticated by today's standards. This was the beginning of the first of four generations of computers:

4 Computer Generations

This website presents a narrow aspect of computer history.
Each computer generation is defined by its logic unit,
or the smallest processing unit contained in the computer.

Generations	Time Frame	Descriptive Term	Type of Computer	Inventor
First Generation	1946-1956	Vacuum Tubes	Mainframes	Lee De Forest
Second Generation	1956-1964	Transistor	Mainframes	William Shockley
Third Generation	1964-1970	Integrated Circuit	Mainframes Minicomputers	Jack Kilby, Robert Noyce
Fourth Generation	1970-today	Microprocessor	Mainframes Minicomputers Microcomputers	Ted Hoff

THIRD BIG BANG OF THE INTERNET – 1981 IBM Personal Computer (PC)

Before the IBM PC there were other PCs in the market, but no company had the market power that IBM did then. So when IBM moved into the PC market many things changed. One significant fact about the IBM PC was that this was the first product that IBM sold that used component parts from other vendors. In 1981 the most popular operating system in the PC market was a product called CP/M which was owned by Digital Research. IBM negotiated with Digital Research to use the CP/M operating system for the IBM PC, but when those negotiations ultimately failed IBM found another operating system. The operating system for the IBM PC was that of a fledgling company from Redmond, Washington named Microsoft.

Although Apple was an important PC company in 1981 IBM's entry in the market changed the game dramatically. IBM originally planned to control the PC market, but the clone companies ultimately drove the market. Companies like Dell, Compaq, Hewlett-Packard, and a myriad of no-names dominated the PC market and still do today. As well, the new IBM PC helped launch Microsoft which of course, is one of the largest IT companies in the world.

FOURTH BIG BANG OF THE INTERNET – 1995 Microsoft Browser Internet Explorer (IE)

After the Russian launch of Sputnik in 1957 the US decided it needed to get with technology as many of us remember. In 1962 to allow sharing of research on various college campuses, the US government funded ARPANET (Advanced Research Projects Agency NETwork) later Defense Advanced Research Projects Agency (DARPA). Ultimately DARPA became the modern day Internet, but until the advent of the GUI technology and general availability of the browser the public really did not use the Internet because it was much too complicated. It operated much like the old DOS operating system that every user

had to know the exact instructions in code to navigate. So with the advent of the browser using the Internet became intuitive. However, until 1995 browsers were sold and relatively expensive.

Ultimately when Microsoft launched its new operating system in 1995 called Windows 95, Microsoft gave away its browser called Internet Explorer (IE). So once millions of users had a free browser from Microsoft use of the Internet exploded.

FIFTH BIG BANG OF THE INTERNET – 2002 Web 2.0

Tim O'Reilly coined the term Web 2.0 which generally describes the Social Media that we are considering at this hearing. Simply, Web 2.0 refers to the interaction of the Internet where information is sent to users rather than website just passively waiting for visitors. The term Social Media has many different meanings as I will describe.

C. SOCIAL MEDIA

We are awash in social communications in proportions that are astonishing. The currents daily estimates are unbelievable – +210 billion emails and +50 million tweets (on Twitter), not to mention an estimated 1.5 trillion text message in 2009. It is unlikely these numbers will decline until they are subsumed by new communication media.

I thought it would be informative to see how members of this Committee are currently using various Social Media, and the following table identifies what I found:

Senator	Facebook +425 million friends	MySpace +100 million members	Google Buzz	Wikipedia +3.2 million articles	YouTube	LinkedIn +65 million members	Twitter
Robert Duncan	NO	NO	NO	YES	YES	NO	126 followers
Robert Deuell	1,961 friends	NO	NO	YES	YES	10 connections	15 followers
John Carona	NO	NO	NO	YES	YES	NO	191 followers
Rodney Ellis	4,379 friends	YES	NO	YES	YES	1 connection	657 followers
Troy Fraser	NO	NO	NO	YES	YES	NO	NO
Chris Harris	NO	NO	NO	YES	NO	NO	NO
Mike Jackson	NO	NO	NO	NO	NO	NO	NO
Eddie Lucio, Jr.	1,924 friends	NO	NO	YES	YES	NO	NO
Leticia Van de Putte	3,296 friends	NO	NO	YES	YES	NO	996 followers

FACEBOOK

Facebook started in February 2004 and by August 2008 reached 100 million friends. By August 2009 the number of friends increased to 300 million. By Facebook's 6th birthday in February 2010 reached 400 million friends. The last estimates indicated that there are about +425 million friends. Facebook most recent statistics indicate that about 70% of the users are outside of the US and each month Facebook friends share more than 25 billion pieces of content (weblinks, news stories, blogs, notes, photos, etc). Initially Facebook started on college campuses for students, but the fastest growing segment today are people over 35. Many new Facebook friends are grandparents as Facebook is a popular medium to share photographs of grandchildren.

MYSPACE

Much like Facebook, MySpace has its own audience, however smaller than Facebook. MySpace started in January 2004 and quickly grew to 1 million members in one month. In 2005 when MySpace had about 20 million users Rupert Murdock's News Corporation bought MySpace which brings it into mainstream media in an interesting way. Current estimates are that about MySpace has about 113 million active users.

BUZZ

In February 2010 Google entered the Social Media space with a technology called Buzz to integrate its gmail to share links, photos, videos, messages, and comments. Google decided that it would automatically align friends together because Google's software decided that certain people should be friends on Buzz. Unfortunately for Google this was a big mistake since Social Media users want to decide who their friends are, and Google reversed this strategy almost immediately. As a result Buzz is really just in the early stages of its life. But given Google's size and marketing power it is likely that Buzz will be a significant Social Media site when all is said and done.

WIKIPEDIA

Wiki is Hawaiian for "quick," and wikis are collaborative software tools that allow groups of individuals to develop ideas and materials. For instance IBM, Microsoft, and most software companies have thousands of wikis for development of new products.

Wikipedia is a non-profit site that started in 2001 now has over 3.2 million English articles, but a total of more than 15 million of articles in Dutch, French, and many other languages. There are an estimated 68 million visitors each month to Wikipedia. The articles on Wikipedia are written by anyone who has an interest in writing on the subject currently estimated to be more than 91,000 contributors. These articles are edited by Wikipedia staff, and as a result many scholars and Judges are skeptical about the authenticity of Wikipedia. However to put things in the proper perspective the Encyclopedia Britannica which widely regarded as very authoritative was started in 1768 but has fewer than 250,000 articles. Yet the articles have come under criticism for bias and inaccuracy just like Wikipedia.

A few years ago Wikipedia stopped allowing updates from Capitol Hill when Wikipedia concluded that certain US Members of Congress were changing information about how they voted on certain legislation or what they said during election campaigns after the fact.

YOUTUBE

Most every person who uses the Internet eventually see videos on YouTube, so it is no wonder that 430 Members the US Congress have YouTube pages. YouTube started in February 2005 and was acquired by Google in November 2006 for $1.65 billion. YouTube provides procedures for copyright owners to request take-down of infringing video. Notwithstanding the take-down procedures there is a $1 billion lawsuit against YouTube for copyright infringement by Viacom and others. In the meantime, YouTube has partnership deals with CBS, BBC, and many media companies. YouTube prohibits uploading of videos that contain defamation, pornography, and material that encourages criminal conduct.

LINKEDIN

LinkedIn is a business network that began in May 2003 and within a month had 4,500 members and by the end of 2003 had 81,000 members. Current estimate are that more than 65 million members currently use LinkedIn. Since LinkedIn is for business its members do not share information like users of Facebook

or MySpace, but rather use LinkedIn for business networking to find jobs, and specialists to help one another.

TWITTER

Twitter provide 140 character microblogs to followers that began in 2006, and even though Twitter has never made a profit there are estimates that more than 50 millions tweets are sent daily. When Twitter got $35 million in its third round of financing in February 2009 it had no business plan. The latest report that Twitter has 50 million tweets a day (6,000 per second) is amazing. However, to put things in perspective the Doonesbury cartoon character Roland Hedley has +14,000 people who follow his tweets, and Governor Perry has +24,000 followers. Twitter recently announced that it has a number of advertisers including Sony, Red Bull, Best Buy, and Starbucks.

D. SEARCH ENGINES

Most Internet users rely on a search engine to help locate information and websites. Generally the higher the search engine results the more likely someone will chose to follow that link. The latest estimates for US search engines show that Google accounts for about 71%, Yahoo! 15%, Bing 9%, Ask 2%. (http://www.hitwise.com/us/press-center/press-releases/google-searches-apr-10/). One reason search engines are significant is that Google (and other search engines) retain and monetize all searches for 18 months in the US and 12 months in the EU. As matter of fact, when Eric Schmidt (CEO of Google) was interviewed recently he advised that one should not do anything on the Internet and expect any privacy. As a matter of fact, under the US Patriot Act the federal government can get search engine data pretty freely.

From a Social Media perspective there was a report that Facebook had more traffic than Google's search engine in the US in February 2010.

E. EMAIL

With an estimate of +210 billion emails a day clearly we are awash whether they are on our desktop computers, laptops, iPhone, BlackBerry, or whatever we use. As well, there are a number of free webmail services including gmail, Microsoft's hotmail, AOL, or others. Facebook is developing its own email system which seems the likely direction for Social Media. That is, the blending of the Social Media sites with email, and to be sure Google developed a technology called Wave along with Buzz for the same purpose to merge all of the gmail, Google services, with Social Media.

F. BLOGS

Blog is a contraction of "web log" and as virtually everyone knows, blogs provide a venue for individuals and companies to express views on all kinds of issues and news reports. Blogs may be posted by groups or individuals, and under the First Amendment to the Constitution blogs may be posted anonymously. However anonymous blogs may cause problems if the blogs are slanderous and/or violate rights of others. Blogs are a part of Social Media that permit discourse on topics of interest, or may have no value and are merely a means where individuals may vent or attack others.

G. PRIVACY LAWS

Generally in the US the Federal Trade Commission (FTC) oversees privacy for citizens on the Internet, however there is no obligation for websites to have privacy policies in the US. But if a website has a

privacy policy then the site must adhere to the policy. So for instance if the privacy policy of a website says that there will be no use of any personal identifiable information then the FTC will fine the site if they violate the policy.

On April 7, 2010 the White House released a memo about social media which specifically states that "interactive meeting tools—including but not limited to public conference calls, webinars, blogs, discussion boards, forums, message boards, chat sessions, social networks, and online communities—to be equivalent to in-person public meetings." How this impacts Social Media is still to be determined. However this seems significant since most people who post information on Facebook, MySpace, or LinkedIn do not think they are posting as if it is a public meeting.

On April 8, 2010 a complaint was filed at the FTC by the Center for Digital Democracy, US PIRG, and the World Privacy Forum against Google, Yahoo!, PubMatic, TARGUSinfo, MediaMath, eXelate, Rubicon Project, AppNexus, Rocket Fuel, and others. Among other allegations in the complaint is a charge of "massive and stealth data collection apparatus." They asked the FTC to investigate "Internet ad exchanges… are basically markets for eyeballs on the Web. Advertisers bid against each other in real-time for the ability to direct a message at a single Web surfer. The trades take 50 milliseconds to complete."

On April 21, 2010 Facebook announced a new service that allowed about 100 websites to share Facebook member "likes" with their friends on Facebook under a new concept of "Open Graph." Facebook changed its policy regarding friend information and although some complained about the invasion of privacy within a few weeks more than +40,000 websites have this Facebook "like" feature. At least one US Senator complained to the FTC about the new Facebook privacy policies for the "like" feature, so it remains to be seen about how the new Facebook service will evolve.

Privacy on the Internet is different outside the US. In the EU and Canada privacy laws are very different than the US. In the EU and Canada citizens may access any computer that has information about them and change that information if the citizen is dissatisfied. As well, for the most part emails in the US are considered private to employers since the email services are provided by employers, and in the EU emails are private to the employees. Who owns the email becomes an issue when residents of the EU or Canada send emails outside of their countries.

If a Texas citizen is residing in the EU while on business sends an email to a Texas government employee, what privacy laws apply? Does the Public Information Act apply?

H. INTERNET JURISDICTION

What laws apply to Internet activity is not so simple and the courts around the world have struggled with these issues for the past 15 years (since the Fourth Big Bang) with a great lack of consistency. Just like trying to determine where a taxable activity occurs on the Internet is a challenge to figure out what law applies. For instance if I purchase a book from Amazon.com from my office in Texas, but Amazon's server is in California, Amazon's offices are in Washington state, and the book ships from Kansas. What law applies? To help solve the problem most website state in their terms of service which law applies even though few individuals ever review terms of service. However courts around the world generally enforce terms of service and jurisdiction.

In 2001 Texas and more than 45 other states adopted the Uniform Electronics Transaction Act (UETA) which helps clarify how parties can create contracts electronically. The Texas Library and Archives Commission and DIR established guidelines in 2002 for how the state government deals with UETA.

Courts follow the general laws of jurisdiction for Internet jurisdiction and a body of case is pretty well developed, but not regarding particularly about Social Media. But given the growth and development of Social Media one might expect the courts to establish the law in this area.

I. GUIDELINES FOR SOCIAL MEDIA

State and local government employees have certain obligations under the Public Information and Open Meetings Acts. But what about their activities not in the course of their work? It seems clear that during working hours and using state and local computer technology and Internet services that the Public Information and Open Meetings Acts apply.

However, what about activities for state and local government employees on their own time? Or using their private computers? Or their own private Internet access? Or using webmail?

When employees post blogs, participate in Social Media, or use webmail their words and materials can impact state and local governments. It is not entirely clear about the impact for each instance, but it is likely that the courts will consider these issues sooner rather than later.

In the meantime it makes sense that state and local government establish guidelines about what Social Media activities are acceptable and which are not. For instance, should a state agency or local government have a blog? Facebook page? MySpace page? Buzz page? If so, what do the guidelines, policies, and laws say?

J. TEXAS PUBLIC INFORMATION AND OPEN MEETINGS ACTS

In 2010 Social Media is changing our culture but it seems pretty clear that the Public Information and Open Meetings Acts are affected. The White House memo from April 2010 that declares all Social Media to be public meetings probably broadens the impact of the Public Information and Open Meetings Acts. Establishing clear legislation is not so simple because Social Media is not static and changes relatively quickly.