

# SOCIAL MEDIA

# 2.0 ■ The Next Generation of Hyperconnectivity

**LEARN ABOUT THE  
KEY DRIVERS OF  
SOCIAL MEDIA AND  
HOW YOU MIGHT  
USE THEM IN YOUR  
PRACTICE.**

By Daniel A. Schwartz

So you've done it. You've finally taken the leap into social media and signed up for an account on LinkedIn and Facebook. Congrats.

Before you start celebrating, let's temper that with some reality. You're running late by a few years. That's not to say that the reign of Facebook or LinkedIn is over. But there are subtle (and not-so-subtle) signs that both social media websites are peaking in various ways.

Take Facebook, for example. According to a recent Piper Jaffray report on the habits of American teens, in autumn 2012, 42 percent of teenagers said Facebook was their most important social media site. By autumn 2013, that number had dropped to just 23 percent. In contrast, Instagram—a popular photo-sharing app—was rated the most important site by 23 percent of the respondents. And, notably, 17 percent of teenagers picked an “other” site—as their most important, such as the lesser-known Vine or Snapchat.

You don't need to understand the Internet to understand that where teens go, others

will soon follow. Teen migration caused the demise of MySpace (remember?), and it will happen again.

LinkedIn doesn't quite share this problem. By late 2013, LinkedIn had nearly 260 million active users with a 38 percent increase in overall growth year over year. However, its usability has been criticized, particularly on its mobile apps, and it is still viewed primarily as a way for people to look for jobs.

For lawyers, the uncertainty of the future of social media makes it challenging to plant your roots. For marketing, what site(s) should you focus on to grow your practice? For litigation, where will you find that key piece of social media evidence to use? For staying current, how do you keep up? In my view, the single most important attribute a lawyer can have when it comes to social media is knowledge. Understand what's out there, and understand how people are using it. Keep up on the trends. While you need not embrace social media as closely as a college-age relative, ignoring it will not make it simply go away.



©JOHN LAMB, GETTY IMAGES

How can you gain knowledge? Experiment with some of these newer platforms. Download a few of their apps to your smartphone. Have your kids or work colleagues help you along. One reason these sites are popular is because they are easy to use. Don't be intimidated. And most of all, don't give up.

#### STATISTICS DON'T LIE

For those who still believe that social media is just a fad that will pass the way of the hula hoop, it's time to face reality. Social media—in one form or another—is here to stay. The statistics from a recent Pew Internet study in August 2013 are pretty amazing:

- Seventy-two percent of online adults use social networking sites. In 2005, just 8 percent of online adults said they used such sites.
- The growth among older users (age 65 and up) is striking, from 13 percent in 2009 to more than 43 percent.
- Eighty-nine percent of those between 18 and 29 years old use social networking sites. Even among 30- to 49-year-olds, that percentage only drops to 78 percent.

Clearly, users aren't going to wake up tomorrow and decide to just ignore social media. Indeed, like email and other communication methods before it, social media is now seen as an integral part of day-to-day life.

Smartphones are driving this growth even more. Sixty-three percent of all cell phone users now use their phones to go online, and the majority of Americans now own a smartphone such as an iPhone or Droid device.

We've come a long way in a very short amount of time.

So, with knowledge being key, let's talk about the key drivers of social media and how you might use them in your practice.

#### THE BIG THREE—OR IS IT FOUR?

**Facebook.** It's still the king of social media. Why? Because it has the most users—more than 725 million each day. Lawyers can use the site to “like” everyone from the ABA to local businesses to real-life friends as well. As a place to see and be seen, Facebook is tops.

It now provides a wealth of information for litigators as well. How? Well, it used to be difficult for people to access their own Facebook data, and Facebook routinely fought subpoenas. Now it's easy for a party to download his or her own Facebook data—making it easy for an opposing party to request the information without too much fear that such a request could be viewed as unduly burdensome.

First, go to Account Settings. Then click on the text that says Download a Copy of Your Facebook Data. Once there, click on Start My Archive; Facebook will download a copy of everything you've done in your account.

For litigants, Facebook is routinely viewed as a gold mine of information because people tend to post lots of personal information under the veil of privacy that Facebook seems to provide. Of course, those privacy settings do little good when a lawsuit involves discovery requests that are easy to comply with. In addition, don't forget that people now use Facebook to send messages directly on the site (no more email or text messages), so be sure to request those messages, too.

**LinkedIn.** LinkedIn is, to many people, the modern day equivalent of a Rolodex. “Connect” with clients, former co-workers, counsel or even organizations. While LinkedIn has adopted some of Facebook's style—with updates, comments and “likes”—LinkedIn's strengths remain in the job seeking and networking areas.

As a marketing tool, it's a little clunky. You can participate in groups, but some of those groups are filled with spam. It's hit or miss on whether that feature will be useful to you. But you can also send messages to your connections by forwarding an interesting tidbit or just saying hello. See that a connection has a new job? Congratulate them.

For litigation, the site is less helpful than most. It may be useful when you want to see if a person under a noncompete agreement has been making connections with former customers, but because LinkedIn is still pretty locked down—that is, sharing photos or personal information is not the primary purpose—its usefulness is limited.

Nevertheless, people may use LinkedIn to send messages, so it's probably worth requesting messages there as well. Unfortunately, LinkedIn does not have the same Download All feature as Facebook, so there may be more of a burden argument in the context of litigation.

**Twitter.** This site has quietly (or not so quietly) become the go-to source for news information and gathering. It even launched an initial public offering last fall. It's quick and efficient and growing. For lawyers, it is probably the single best place to collect and share information about current trends. Want to know about recent developments at the U.S. Department of Justice? Follow @TheJusticeDept. Interested in U.S. Supreme Court cases? The key handle is @SCOTUSblog. There are also useful hashtags—or Twitter “subjects” you can search for—such as #ediscovery or #employmentlaw.

Twitter is also a useful information-gathering tool and marketing tool when used at conferences and events. For example, the hashtag for ABA TECHSHOW is #ABATechShow and the ABA Annual Meeting is #ABAAnnual. Search for those hashtags and connect with others at the Conference or, if you can't be there, just learn remotely from people who will tweet key points of presentations they are attending.

Of course, Twitter presents some downsides, too. It can be a bit intimidating to get started; these “@” addresses and hashtags sound like a foreign language, for example—not to mention other Twitter shorthand. But just search YouTube—I'll be getting to that below—for videos explaining Twitter and you can become a pro in no time. Another downside is that Twitter—which is limited to 140 characters—is pretty lousy for marketing. It's tough to have meaningful conversations with contacts. And contacting clients on Twitter seems to have limited utility.

For litigation, Twitter can be hit or miss. What people share on that platform varies wildly. Some people share comments; others just share links to news articles. Thus, as a place to focus on, Twitter would probably rank lower on the “needs” scale. And like LinkedIn and Facebook, Twitter has the ability for members to send each other “direct messages.” People may use

that instead of text messages or email to try to avoid detection. Make sure to ask for such communications in discovery.

**Google+.** If you've heard of Google+—which is Google's version of a social networking site—it's because Google is pushing it heavily in its search results and in its other applications. It's everywhere.

But that doesn't mean it is being used by a lot of people.

Bottom line? If you are counting on using Google+ for development purposes, you may want to understand what you are getting yourself into. It's a smaller network. For litigators, Google now collects lots of information, not only on Google+ but on its search engine, too. So, want to see if a litigant has been searching for “ways to void a contract”? That might be uncharted territory for discovery, but there's no good reason why it couldn't and shouldn't be tried.

#### THE CONTENDERS

Just beyond the Big Four are a whole host of other sites that are typically more specialized. Want to just share photos? Instagram may be for you. Want to share where you are? Foursquare is there.

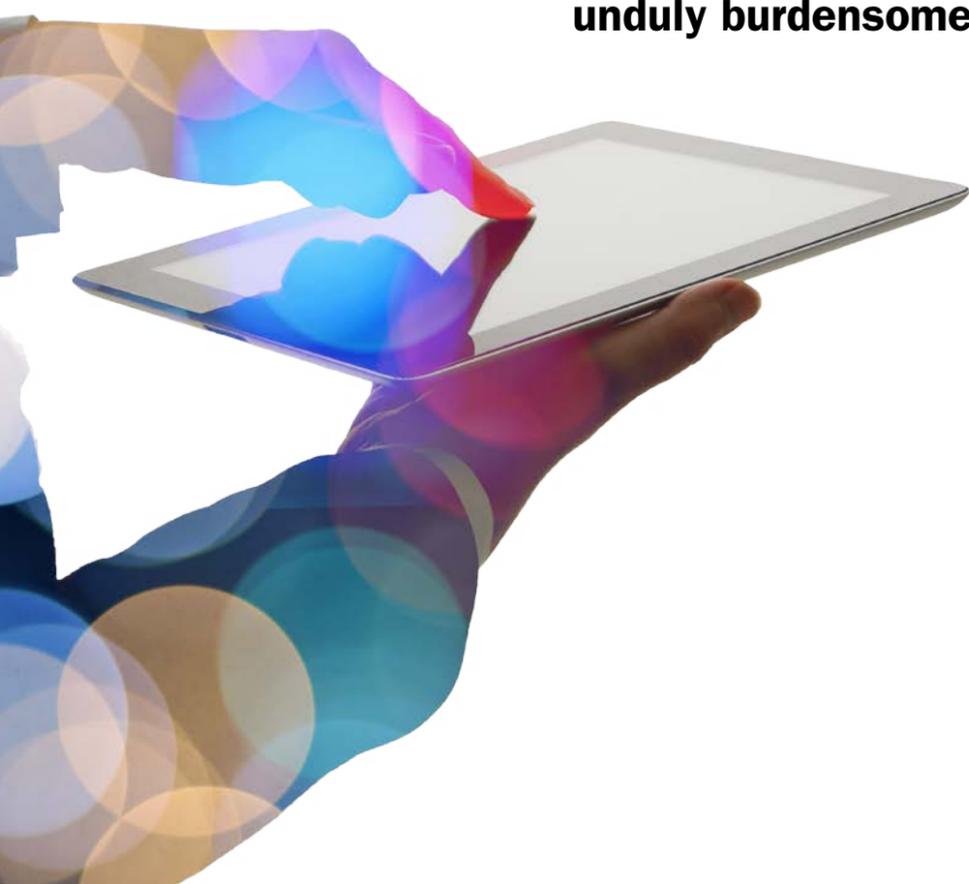
**YouTube.** I know what you're thinking. “You mean that site where I can see videos of cute kittens or the latest Internet meme?” Yes, that YouTube. But understand a few facts before you discount it.

First, and most important, it's the third most visited website in the U.S. That's a lot of eyeballs. Google has also been integrating YouTube into its blueprint more deeply. Don't underestimate the power that Google has to drive traffic.

Second, video is an increasingly popular way to share information. Why? In part because smartphones have become more powerful. Now anyone with a phone can video any event, anywhere, at any time. It is a tremendous way to get your message out there unfiltered.

How can lawyers use this? Kevin O'Keefe, the CEO of LexBlog, suggested a

**Now it's easy for a party to download his or her own Facebook data—making it easy for an opposing party to request the information without too much fear that such a request could be viewed as unduly burdensome.**



few ways in a blog post, including videos that (1) respond to common questions you receive from prospective clients, (2) focus on a niche area, (3) educate clients on recent developments and (4) show you as a “real” person.

And for litigation? Well, certainly if people are posting videos on the site, be sure to ask for them. (And don’t forget about YouTube’s popular competitor, Vimeo, as well.) But ask for a litigant’s “video history” too; you can see channels they may have subscribed to, or their “friends” or even comments that they may have left on the site. It’s amazing the fingerprints people leave even on sites like this.

**Instagram.** Instagram is an extraordinarily popular photo-sharing app that’s owned by Facebook. People share photos of themselves (known as selfies), of things that they are doing and even motivational phrases. More than 55 million photos are uploaded each day, and there are 1.2 billion “likes” each day as well. That’s a lot of interaction. Recently the service also rolled out video uploads.

For lawyers, Instagram can be a terrific way to show a personal side yet still maintain some level of professionalism. I’ve seen lawyers posting pictures of courthouses that they visit, which reminds followers that lawyers actually go to court. Others may post pictures of their office or of other law-related activities. Creativity reigns supreme here.

For litigators, Instagram can be a gold mine. If a picture is worth a thousand words, an Instagram picture might be worth more in litigation. People share places they’ve been and people that they’ve been with. They may also leave comments about them. In discovery, litigators should definitely ask for the party’s Instagram photos. Keep your eye on Instagram.

**Vine.** Vine is a video-sharing app created by Twitter, so it shares some of the same features. It’s similar to Instagram except in one important way as of the time I am writing this: You can only create and view

videos that are six seconds long, which will then play in a continuing loop.

That’s it? Yes, that’s it. And since its launch in 2013, it has also become incredibly popular. Like Twitter, people can use hashtags to make their videos more searchable. Check out #wakeandbake and you’ll find (somewhat strange) videos of people waking up and, yes, using marijuana. You may even see people in their company uniforms before work taking a bong hit. Others use hashtags like #hatework or #mybosssucks. Again, as a vehicle for discovery, it’s a brave new world.

For marketing, the medium hasn’t quite developed into something usable for lawyers. Perhaps you’ll be creative. But as a marketing site for lawyers, you can probably do better.

**Foursquare.** Foursquare, a location-based social network, has been around for a while. While it isn’t “dead,” it hasn’t been thriving of late, either. Instead of sharing a photo with your friends, you can share your “location.” Foursquare helped to usher in the “game-ification” of social networks as well, awarding people points for checking in at a certain site. Foursquare even gives out badges—think Boy Scout badges—for various accomplishments, such as eating at five greasy spoons.

As a marketing and networking tool, it’s not very effective. Yes, it’s fun to see that your friends are near the same place as you,

**In my view, the single most important attribute a lawyer can have when it comes to social media is knowledge. Understand what’s out there, and understand how people are using it. Keep up on the trends.**



©JOHN LAMB, GETTY IMAGES

but those types of events probably happen far less than you might expect.

As a tool for litigation, I suppose that if people were reckless enough to check in to a place that could later be used against them, this site might have some use, but I’ve yet to see any court cases that have relied on such check-ins.

#### THE NOT-SO-SMALL SITES

**Snapchat.** This photo-sharing startup made headlines last fall for rejecting a multibillion-dollar offer by Facebook to buy the business.

Snapchat is a photo-sharing app that allows you to send “snaps” (basically, photos) to people with whom you are connected. The quirk with this app is that the sender’s photos self-destruct shortly after being opened by the recipient. It’s a *Mission Impossible*-like creation. Photos are typically “destroyed” within six to 10 seconds.

Why would people use this? For the obvious reasons: They don’t want embarrassing photos to be shared with others, or they don’t want others to know about these photos. Oftentimes (most of the time?), the photos are—how do we put this delicately?—of a sexual nature.

Are people using it? You bet. In droves. Indeed, by the fall of 2013 more than 400 million photos were shared—every day. For people concerned about leaving a digital footprint, Snapchat provides their solution.

As a marketing tool, Snapchat is very low on the totem pole. If you are trying to reach out to a college-age audience, this is one place they are flocking to. But the vast majority of attorneys will probably find a better place to spend their marketing resources.

As a litigation tool, however, Snapchat is the mother lode. People share their most intimate thoughts and photos, all under the guise of absolute privacy. So how private are these “disappearing” photos? Computer experts have had differing opinions on how easy it is to try

to recover these “snaps.” These experts haven’t said it’s impossible, but it’s not nearly as easy as Facebook’s Download All feature. Companies should work closely with any forensic experts to determine the cost-effectiveness of trying to obtain such data. And litigants should certainly ask for this information in discovery.

Other new “disappearing” social media sites have sprung up as well. A relatively new application called Ansa promises off-the-record communication through messages that self-destruct, and Skim is an app that markets itself as “making history, by erasing your history.” Far from “disappearing,” these social media sites bear close watching.

**Yelp.** What is it? It’s a review-based network that allows users to be a critic on everything from the neighborhood pizza parlor to their local doctor or lawyer.

Yelp is routinely one of the most visited sites in the U.S. It is increasingly being used as a networking tool. You can connect with other reviewers and share your thoughts on message boards as well.

“Yelpers” are also using the site to review professionals. Yes, there are other sites such as Avvo, but Yelp is more widely used. Thus, rather than let the conversation about you or your business be dictated by others, it behooves an attorney to take an active approach to his or her identity on the site.

How so? By responding to criticism—either publicly or in a private message—and by encouraging others to do the same. It’s important to note that I’m not suggesting “gaming” the Yelp system by

“buying” reviews. Moreover, there may be ethical obligations that are implicated by even requesting “reviews” from others, regardless of compensation. But leaving your profile to your most disgruntled contacts isn’t something that most marketing professionals would advocate.

**WeChat and WhatsApp.** As Facebook has been losing some interest among teens, there has been a comparable increase in the rise of cross-platform messaging services. This allows people to send group text messages via an application rather than their phone. These applications, such as WhatsApp or WeChat, allow people to communicate using non-SMS (and costly) text-messaging services. Because the younger generation is increasingly using text messages to communicate, sites and apps like these are growing rapidly. People can send multiple messages to multiple people but in a more “private” and direct fashion than, say, a Facebook update.

For litigation, you should request data from these sites in discovery. Just like email, text messages (both directly on a device and through sites like these) are being used with increasing frequency. Other texting services that have shown some staying power include Viber, Line, Skype, GroupMe, Kik and Facebook Messenger.

Technology has come a long way in a short period of time. There’s still no time like the present, though, for lawyers to understand what is out there and to keep up with recent developments in social media. **LP**



**Daniel A. Schwartz** is a partner in the Hartford, Conn., office of Shipman & Goodwin LLP, where he represents employers in matters involving employment discrimination, restrictive covenants, human resources, retaliation and whistle blowing, and wage and hour issues. He is also the author of the *Connecticut Employment Law Blog* ([ctemploymentlawblog.com](http://ctemploymentlawblog.com)), recently named by the *ABA Journal* to its blog hall of fame. **[dschwartz@goodwin.com](mailto:dschwartz@goodwin.com)**