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## **Governments use social media — with caution**

Denver Business Journal - by [Renee McGaw](#)

As local and state governments tiptoe into the new world of social media, they're finding it can be a legal minefield.

"Anybody with Internet access has the ability to screw it up for the organization, and if they do screw it up, it goes out more widely," said Ken Fellman, a partner in the law firm of **Kissinger & Fellman** in Denver, who specializes in local government and telecommunications law. "In some ways, cities are asking the same questions that they asked 20 years ago when they were starting to get their government cable channels on the air, and 10 years ago when they were starting to get their websites up, and four years ago when they were asking themselves 'should we do a blog?'"

In participating in online social media networks such as MySpace, Facebook or Twitter, governments face challenges that private companies don't, Fellman said.

"If you have three city council members that are tweeting about an issue or communicating through Facebook, is that a meeting?" Fellman said. "If somebody comes into city hall and says, 'I want a copy of every comment that was made about the road project at this location,' is that a public record? Facebook, Twitter, LinkedIn — they all have different terms of service about who owns content, who controls it, who monitors it, if it gets monitored at all."

Cities are adapting social media at varying speeds. The City and County of Denver, for instance, created a Facebook page last year, but hasn't posted any content on it except a link to the city's website.

But it functions as a placeholder, and ensures that nobody else can usurp the City and County of Denver name on Facebook and post content that appears to represent the city, said Eric Brown, communications director for Denver Mayor John Hickenlooper's office.

Hickenlooper has his own Facebook page, on which his staff posts news of his doings and events of citywide interest. It was Hickenlooper's personal page until late June, when staff learned that under Facebook rules, he could have a maximum of only 5,000 "friends." So the page was converted to a "fan" page, which allows unlimited followers — the mayor currently has nearly 7,000 fans — and frees staffers from having to individually accept or reject each friend request.

"Whether there's a legal implication there, I don't know," Brown said. "Quite simply, it was a resource issue."

The city of Arvada is further along than most cities in adopting interactive media. It has a presence on Facebook, MySpace, Twitter, Flickr, YouTube, Friendfeed, LinkedIn and Indeed. The Arvada Center for the Arts and Humanities and the Arvada Police Department are on some of those networks, too.

"Our big goal in rewriting our website several years ago was really to make it an open forum for our community," said Michele Hovet, IT director for the city of Arvada. "We have community partners."

"For instance, while some cities provide full services, which might include trash removal, Arvada does not. So we wanted to make sure that trash companies, if they wanted to put information about what they do for our community, that they had an opportunity to put a link out to their business; same thing with churches and all the different businesses that make our community complete."

Boulder County government has disabled the commenting function on its Facebook page, which frees it from having to deal with content it can't control. But Arvada takes a more laissez-faire approach.

Comments are frequent and often enthusiastic, ranging from praise for the city, questions about tree-limb removal, criticism of public projects and advertisements for users' businesses.

"The city does have the right, if it's vulgar — profanity, those types of things — to take it down," Hovet said.

The city does its best to archive content on its own website, but has less control over outside social media sites, she said. "There are tools out there that would allow us to archive Twitter, Facebook and MySpace, but ... we're not there yet. We're not promising anyone that we're archiving any of that information."

Another issue that has gotten little attention up to now is indemnification, Fellman said. Colorado law doesn't allow governments to sign contracts indemnifying third parties, which many social media sites routinely require in order to open an account, he said.

Many federal government agencies have negotiated separate terms of use with Facebook, which don't grant indemnity.

"But I haven't heard yet of any local government negotiating separate terms of service," Fellman said. "I think it makes sense, though."