

**PUBLIC FORUM 2.1: PUBLIC HIGHER EDUCATION INSTITUTIONS
AND SOCIAL MEDIA**

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Like the rest of us, public colleges and universities increasingly are using Facebook, Second Life, YouTube, Twitter, and other social media communications tools.¹ Yet public colleges and universities are government actors, and their creation and maintenance of social media sites or forums create difficult constitutional and administrative challenges.² Our separate experiences, both theoretical and practical, have convinced us of the value of providing guidance for public higher education institutions wishing to engage with their constituents—including prospective, current, and former students and many others—through social media.³ One of us (Professor Lidsky) has previously offered a broad outline of how courts might interpret First Amendment principles to foster government engagement with constituents through social media,⁴ and the other (Dean Jerry) has been responsible for directing the design and development of social media strategies for a major public

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¹ Scott Jaschik, *Study Documents Social Networking on College Websites*, INSIDE HIGHER ED (Aug. 14, 2012, 3:00 AM), <http://www.insidehighered.com/news/2012/08/14/study-documents-social-networking-college-websites>.

² See Lyrissa Lidsky, *Public Forum 2.0*, 91 B.U. L. REV. 1975, 1984-85 (2011) (discussing constitutional challenges that public colleges and universities may encounter in establishing social media sites or presences).

³ Related issues exist in the K-12 component of public education. For a commentary on considerations relevant to social media in that context, see generally Mary-Rose Papandrea, *Social Media, Public School Teachers, and the First Amendment*, 90 N.C. L. REV. 1597 (2012) (discussing the regulation of teachers' use of social media in K-12).

⁴ See Lidsky, *supra* note 2.

university law school.⁵ Together, we seek to guide public university officials through the complex body of law governing their social media use and help them engage their constituencies through social media in ways that both advance their institutional missions and promote public discourse.

Currently public colleges and universities cater to student bodies that combined represent more than 4% of the United States population.⁶ This statistic alone attests to the need for close examination of the law governing public colleges and universities' social media use.⁷ But the importance of First Amendment jurisprudence as it may be applied in the higher education setting goes well beyond the statistics.⁸ Universities' dual missions of teaching and research (i.e., transmitting knowledge and adding to the reservoir of knowledge by discovering it) depend on robust encouragement of critical thinking and free expression of ideas.⁹ Social media can aid universities to fulfill these missions.¹⁰

⁵ See generally *Robert H. Jerry, II*, U. OF FLA., LEVIN C. OF LAW (Feb. 8, 2012), http://www.law.ufl.edu/_pdf/resumes/jerry_r_resume.pdf (describing Dean Jerry's accomplishments and qualifications).

⁶ This percentage was derived from statistics provided by the U.S. Department of Education and the U.S. Census Bureau. See *Current Tables: Table A-10-1*, NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., <http://nces.ed.gov/programs/coe/tables/table-hep-1.asp> (last visited Nov. 12, 2012) (indicating that in 2012, approximately 1,700 public two-year or four-year U.S. higher education institutions had over 14 million students); *National Totals: Vintage 2011*, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE (Dec. 2011), <http://www.census.gov/popest/data/national/totals/2011/index.html> (follow "Annual Population Estimates" table hyperlink) (showing that the U.S. population in July, 2011, was 311.6 million). The inclusion of graduate schools causes the percentage to rise to 6.8%. See Sara Lipka, *As Typical Student Changes, So Do Worries About Costs*, CHRON. OF HIGHER EDUC., Aug. 31, 2012, at 21, 24 (showing that total undergraduate and graduate enrollment nationally in 2010 was approximately 21 million).

⁷ For information about this statistic, see *Current Tables: Table A-10-1*, *supra* note 6, and *National Totals: Vintage 2011*, *supra* note 6.

⁸ See Lidsky, *supra* note 2, at 1985 (discussing First Amendment issues that arise in higher education).

⁹ See Randy E. Barnett, *Reinventing the First Amendment in the University*, in AN ETHICAL EDUCATION: COMMUNITY AND MORALITY IN THE MULTICULTURAL UNIVERSITY 163, 167 (M.N.S. Sellers ed., 1994).

¹⁰ See CONNIE VARNHAGEN & ALLISON HUSBAND, SOCIAL MEDIA: USE AND USEFULNESS AT THE UNIVERSITY OF ALBERTA REPORT OF THE TLAT SUBCOMMITTEE ON SOCIAL MEDIA 5 (Sept. 2011), [http://ctl.ualberta.ca/sites/default/files/files/Social%](http://ctl.ualberta.ca/sites/default/files/files/Social%20Media%20Report.pdf)

Social media can promote critical discourse within the university community.¹¹ Universities can use social media to transmit information quickly, easily, and inexpensively to their varied constituencies, who, in turn, can respond by sharing thoughts and ideas within the university community and, at times, by galvanizing beneficial reforms.¹² Social media, however, can also be a disruptive force within the university community. The same characteristics¹³ that help foster discourse—accessibility, interactivity, connectivity¹⁴—also magnify the potential for conflicts with other important values, such as civility, privacy,¹⁵ and administrative efficiency. Social media may also conflict with a university's ability to convey its own message without disruption or distortion.¹⁶

20Media-%20Use%20and%20Usefulness%20at%20the%20University%20of%20Alberta-Report%20of%20TLAT%20Subcommittee%20on%20Social%20Media.pdf (stating that students who use social media for school-related purposes are more likely to be in classes that require critical thinking skills).

¹¹ See *infra* text accompanying notes 166-68.

¹² See VARNHAGEN & HUSBAND, *supra* note 10.

¹³ See *infra* text accompanying notes 166-68.

¹⁴ Anonymity also magnifies the potential for disruptive speech. See Lyriisa Barnett Lidsky & Thomas F. Cotter, *Authorship, Audiences, and Anonymous Speech*, 82 NOTRE DAME L. REV. 1537, 1539, 1559 (2007) (discussing anonymity's disinhibiting effect on speakers and how it contributes to an increase in abusive speech).

¹⁵ See, e.g., *Byrnes v. Johnson Cnty. Cmty. Coll.*, No. 10 2690 EFM DJW, 2011 WL 166715 (D. Kan. Jan. 19, 2011) (involving a college that disciplined a nursing student who posted a picture of a patient's placenta on Facebook); *Tatro v. Univ. of Minn.*, 816 N.W.2d 509 (Minn. 2012) (involving discipline of a student who discussed her human cadaver in an irreverent way using social media, in violation of university policies); Mel Evans, *Times Topics: Dharun Ravi*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/people/r/dharun_ravi/index.html (last updated June 21, 2012) (involving a student who filmed his dorm roommate kissing another man, and the roommate later committed suicide); *Making Your Settings Easier to Find: Dig into the Details*, FACEBOOK, <https://www.facebook.com/about/details> (last visited Nov. 12, 2012) (noting that tagging others in photos and comments can cause privacy issues if the user has not modified the security settings appropriately).

¹⁶ See *Social Media Protocol*, MOUNT VERNON NAZARENE UNIV., 1, <http://mvnu.edu/policies/Social%20Media.pdf> (last visited Nov. 12, 2012) (stating that guidelines for social media use are needed because it can be hard at times to distinguish between one's personal voice and the institution's voice).

How public higher education institutions resolve these conflicts is of critical importance.¹⁷ Indeed, how these institutions relate to their “constituents” (students, faculty, and staff) has close similarities to how the government relates to its citizens in other arenas.¹⁸ Like other government leaders, those who manage universities act at a distance from those subject to their institution’s regulation.¹⁹ And like other government departments or agencies, public universities are “political” in the sense that they allocate values authoritatively, with all of the risks of abuse that this entails, including the ability to impose severely punitive sanctions on constituents.²⁰ Thus, higher education institutions should give sustained consideration to how these other government departments or agencies generally resolve First Amendment jurisprudential issues.²¹ As with many matters of human rights and individual freedoms, if we are unable to sort out these issues correctly in our institutions of higher learning, one has little reason to hope we can sort them out any better in our larger society.²²

To that end, this Article first examines current and likely future uses of social media in higher education and then provides both a map of the complex terrain of First Amendment doctrine and practical guidance for navigating it. As part of that guidance, we examine how different social media policies and practices affect public universities’ attempts to maintain civility and decorum in the forums they create. Our ultimate goal is to assist and encourage social media use that improves the governance of public universities and colleges, promotes

¹⁷ See VARNHAGAN & HUSBAND, *supra* note 10, at 6 (discussing the need to develop clear and useful guidelines for appropriate communication with social media).

¹⁸ Barnett, *supra* note 9, at 167.

¹⁹ *Id.*

²⁰ See DAVID EASTON, *THE POLITICAL SYSTEM: AN INQUIRY INTO THE STATE OF POLITICAL SCIENCE* 131 (1953) (articulating his widely used definition of politics as including “every way in which values are allocated for a society, whether formally enunciated in a law or lodged in the consequences of a practice”; Easton’s definition has been particularly influential in the discipline of political science); Barnett, *supra* note 9, at 163-70.

²¹ See Barnett, *supra* note 9, at 163-64 (discussing the implications of First Amendment issues in university settings).

²² See *id.* at 164-69 (discussing the importance of First Amendment rights in universities).

their institutional missions, and fosters public discourse with and among their constituents.

I. SOCIAL MEDIA USE IN HIGHER EDUCATION

A. *Defining Social Media*

“Social media” is an evolving term that refers both to dynamic and often mobile-based technological platforms like Facebook and Twitter as well as the distinctively interactive pattern of information exchange they inspire.²³ A 2011 survey of social media, marketing, and public relations professionals produced thirty different definitions for “social media,” including one response from a “long-term practitioner” that “he was not sure what social media was anymore.”²⁴ Marketing professors Andreas Kaplan and Michael Haenlein offer an excellent working definition, branding social media as “a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of User-Generated Content.”²⁵ Wikipedia, itself a social media platform maintained by the contributions of perhaps 100,000 regularly active individuals,²⁶ echoes

²³ According to Merriam-Webster Dictionary, “social media” was a term that first appeared in 2004 and is now defined in that dictionary as “forms of electronic communication (as Web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (as videos).” *Social Media*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/social%20media> (last visited Nov. 12, 2012). Dictionary.com defines “social media” as “Web sites and other online means of communication that are used by large groups of people to share information and to develop social and professional contacts: Many businesses are utilizing social media to generate sales.” *Social Media*, DICTIONARY.COM, <http://dictionary.reference.com/browse/social+media> (last visited Nov. 12, 2012).

²⁴ Heidi Cohen, *30 Social Media Definitions*, HEIDI COHEN (May 9, 2011), <http://heidi-cohen.com/social-media-definition>.

²⁵ See Andreas M. Kaplan & Michael Haenlein, *Users of the World, Unite! The Challenges and Opportunities of Social Media*, 53 BUS. HORIZONS 59, 61 (2010) (discussing the widespread use of social media in today’s society).

²⁶ *Wikipedia*, WIKIPEDIA, THE FREE ENCYCLOPEDIA, <http://en.wikipedia.org/wiki/Wikipedia> (last modified Nov. 8, 2012, 3:51 AM) (self-describing Wikipedia as containing “23 million articles . . . in 285 languages” with over 4 million articles in English alone, “ranking sixth globally among all websites[,] . . . having an estimated 365 million readers worldwide,” and receiving “2.7 billion monthly pageviews from the United States alone”).

this definition and refers to social media as “web- and mobile-based technologies” that can be used to turn communication into interactive dialogue among “organizations, communities, and individuals.”²⁷ Under these definitions, the threshold characteristics of social media are *interactivity* and *accessibility*.²⁸ Traditional mass media such as newspapers, magazines, radio, and television disseminate information but give readers or listeners very limited opportunities to engage in meaningful dialogue within the medium.²⁹ A letter to the editor, for example, is an asynchronous communication that is hardly interactive: very few newspaper readers write and submit letters to the editor, and those who do are unlikely to constitute a representative sample of the audience.³⁰ Social media can also be used primarily as one-way, static communication tools,³¹ but in this usage, such platforms fall outside our definition of social media.³² Social media blend modern technology and social interaction to create a community of shared communications within the participating audience.³³ The essence of social media, then, resides in connectivity, interactivity, accessibility, and a culture that fosters spontaneous and informal information sharing, and it is this essence that makes social media such an attractive communication tool for universities and their many diverse audiences.³⁴

²⁷ *Social Media*, WIKIPEDIA, THE FREE ENCYCLOPEDIA, http://en.wikipedia.org/wiki/Social_media (last modified Nov. 12, 2012, 8:21 PM).

²⁸ See Kaplan & Haenlein, *supra* note 25, at 60-61 (contending that the interactive and accessible features of social media have revolutionized online communications).

²⁹ See *id.*

³⁰ See *id.*

³¹ For example, for a time in the late 2000s, the Levin College of Law at the University of Florida had a Facebook page in its Center for Career Development which was noninteractive; the Center’s staff posted on the site information about placement opportunities, speakers, and programs, and students could read the information, but no feedback or interaction was possible. Relatively few students accessed this site; we believe a primary reason was that the lack of interactivity was so contrary to the culture of social media that students found the page to be uninteresting and, at best, duplicative of the static information distribution sources otherwise available.

³² See *id.* at 60-62.

³³ See *id.* at 61.

³⁴ See *id.*

B. Current and Future Uses in Higher Education Institutions

Social media are, of course, everywhere.³⁵ Statistics about the penetration of social media into our daily lives lose their currency so quickly that it is almost pointless to recite them, reflecting the constant growth and evolution of online communications.³⁶ Less than two decades ago, e-mail was a new communication technique with an uncertain future; today, e-mail is a vast communications system that provides at least 3.3 billion accounts to users around the world.³⁷ E-mail, however, is already passé to millennial and postmillennial generations,³⁸ who primarily use text messaging,³⁹ Facebook, and social media as their platforms for electronic conversation.⁴⁰ Though many higher education

³⁵ The rise of social media has resulted in an explosion in academic interest in the study of the impact of social media on society. *See, e.g.*, Rey Junco, *About, Soc. MEDIA IN HIGHER EDUC.: DR. REY JUNCO'S BLOG*, <http://blog.reyjunco.com/about> (last visited Nov. 12, 2012) (Dr. Junco has dedicated his blog to researching the effects of social media on college students); *Social Media and Higher Education Literature Review*, ASS'N FOR INFO. COMM. TECH. PROFS. IN HIGHER EDUC., <http://www.acuta.org/wcm/acuta/donna2/Handout/SC10/SC10SemerLitReview.pdf> (last visited Nov. 12, 2012) (providing various resources, compiled for survey research, that discuss the use of social media among higher education institutions).

³⁶ *See* Joanna Brenner, *Pew Internet: Social Networking (Full Detail)*, PEW RESEARCH CENTER (Sept. 17, 2012), <http://www.pewinternet.org/Commentary/2012/March/Pew-Internet-Social-Networking-full-detail.aspx#> (showing that social networking use for all age groups has grown from below 10% in 2005 to anywhere from 34%, for ages sixty-five and above, to 86%, for ages eighteen to twenty-nine, in 2012).

³⁷ SARA RADICATI, *EMAIL STATISTICS REPORT, 2012-2016*, at 2 (2012), *available at* <http://www.radicati.com/wp/wp-content/uploads/2012/04/Email-Statistics-Report-2012-2016-Executive-Summary.pdf> (“The total number of worldwide email accounts is expected to increase from 3.3 billion accounts in 2012 to over 4.3 billion accounts by year-end 2016.”).

³⁸ Richard L. Marcus, *E-Discovery & Beyond: Toward Brave New World or 1984?*, 25 *REV. LITIG.* 633, 635-36 (2006).

³⁹ *See* AMANDA LENHART, *TEENS, SMARTPHONES & TEXTING*, PEW RESEARCH CENTER 10-11 (2012), *available at* http://pewinternet.org/~media/Files/Reports/2012/PIP_Teens_Smartphones_and_Texting.pdf (discussing that in 2011 63% of all teens utilized text messaging daily, and those teens sent a median of sixty messages on a typical day).

⁴⁰ *See* RADICATI, *supra* note 37, at 4 (“Social [n]etworking sites have shown explosive growth in the last couple of years. In 2012, the total number of worldwide social networking accounts is over 2.7 billion. This figure is expected to grow to over 4.3 billion by year-end 2016.”).

administrators are blithely unaware that younger generations are spurning e-mail, even the most traditional and staid individuals in the higher education establishment cannot have missed Facebook's extraordinary reach to prospective students, current students, and alumni.⁴¹ Thus, colleges and universities in very large numbers have sought to project themselves through this medium.⁴² Although it is possible to find universities and colleges without a Facebook presence, a study conducted by the University of Massachusetts Dartmouth Center for Marketing Research found that by 2009-10 98% of colleges and universities reported having a Facebook page.⁴³ Among larger universities, it appears to be common to host many different Facebook pages at school, college, and department levels.⁴⁴

⁴¹ See, e.g., Rachel Reuben, *The Use of Social Media in Higher Education for Marketing and Communications: A Guide for Professionals in Higher Education*, <http://doteduguru.com/wp-content/uploads/2008/08/social-media-in-higher-education.pdf> (last visited Nov. 12, 2012) (discussing survey findings that show that a great number of higher education institutions are using social media, as well as providing information for how institutions can use and implement various social networking sites).

⁴² *Id.* at 6-7 (stating that of the 148 schools that responded to the survey, among various forms of social media reportedly used, 60% reported using some form of a blog, just over half reported using Facebook, and just over half reported using YouTube).

⁴³ Nora Ganim Barnes & Ava M. Lescault, *Social Media Adoption Soars as Higher-Ed Experiments and Reevaluates Its Use of New Communications Tools*, UMSS DARTMOUTH, <http://www.umassd.edu/cmrr/socialmedia/socialmediaadoptionsoars/> (last visited Nov. 12, 2012).

⁴⁴ The University of Florida is one of the largest public universities in the United States; as of 2012, it had about 50,000 undergraduate, graduate, and professional students. *IPEDS Data Center*, NAT'L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/ipeds/datacenter/Ranking.aspx?hfSelectedIds=23360%7c10%7c%7c%7c> (last visited Nov. 12, 2012) (ranking the University of Florida in the top twenty educational institutions for its twelve-month headcount of 58,626 students); *Stats and Facts for Prospective Students*, UNIV. OF FLA., ADMISSIONS, <http://www.admissions.evl.edu/ufprofile.html> (last visited Nov. 12, 2012) (enrollment for fall 2012 was 49,785 students). A 2012 inventory discovered eight different "official" Facebook group sites and 119 different "official" Facebook page sites managed by colleges, departments, and auxiliaries on the Gainesville, Florida, campus. See *Marketing Communications: Social Media at UF*, UNIV. OF FLA., UNIV. RELATIONS, <http://www.urel.ufl.edu/social-media/official-uf-social-media-accounts/> (last visited Nov. 12, 2012).

Although the largest and arguably most important of the social media websites, Facebook⁴⁵ is not the only social medium through which colleges and universities speak and in which they create interactive space.⁴⁶ In recent years, Twitter sites have become much more common as official college and university mediums for sharing information and for creating forums in which subsets of the university community with shared interests can communicate in virtual space.⁴⁷ In the most recent University of Massachusetts Dartmouth study, 84% of colleges and universities reported that they had created a Twitter account,⁴⁸ 66% had a blog, 41% used podcasts, 86% used YouTube, and 20% used Foursquare, a location-based application, for student recruiting purposes.⁴⁹ The pace of change is underscored by the finding that in 2007-08 61% of the responding colleges and universities reported using at least one form of social media, but by 2009-10, that figure had risen to 100%.⁵⁰

The social media landscape for colleges and universities continues to evolve. Consider, for example, their experiments with reaching out to students in Second Life,⁵¹ also known as “SL,” which is an online, immersive virtual world created in 2003 by Linden Labs in Cali-

⁴⁵ See Robert E. Lemons, *Protecting Our Digital Walls: Regulating the Privacy Policy Changes Made by Social Networking Websites*, 6 J.L. & POL’Y FOR INFO. SOC’Y 603, 606-07 (2011) (discussing activity on Facebook, which the author describes as “the largest and fastest growing online social networking website”).

⁴⁶ See Barnes & Lescault, *supra* note 43 (discussing various forms of social media used by higher education institutions).

⁴⁷ See *id.* (stating that 84% of universities reported using Twitter in 2010-11).

⁴⁸ *Id.* According to one report, “the total number of Twitter accounts utilized by any one college ranged from 24 (University of Florida) to 1 (University of Denver and SUNY College of Environmental Science and Forestry).” *The Top 100 Colleges on Twitter*, US. & CS. BLOG, <http://www.universitiesandcolleges.org/blog/top-100-colleges-twitter/> (last visited Nov. 12, 2012). “The average number of Twitter accounts per school is 8.4. 71% of the top 100 colleges have 10 Twitter accounts or fewer. Only 7% have over 15 accounts.” *Id.*

⁴⁹ *The Top 100 Colleges on Twitter*, *supra* note 48.

⁵⁰ *Id.*

⁵¹ See NEW MEDIA CONSORTIUM & EDUCAUSE LEARNING INITIATIVE, THE HORIZON REPORT 8-20 (2007), http://www.nmc.org/pdf/2007_Horizon_Report.pdf (discussing campuses and businesses establishing a presence on Second Life).

fornia.⁵² SL became immensely popular very quickly, with universities and colleges creating, on an almost daily basis, virtual campuses where they could hold lectures, seminars, concerts, medical simulations, and courses in digital classrooms and auditoriums built with SL's three-dimensional modeling tool.⁵³ This highly interactive space on the Internet initially relied on text messaging and chat room technologies for communication among participants, but by 2007 it was possible to engage in real-time voice chat in either a group or one-on-one.⁵⁴ Eventually millions of people and businesses around the world created avatars, homes, and commercial enterprises on SL.⁵⁵ In 2007, there were more than one hundred higher education institutions with active projects in SL.⁵⁶ According to Linden Labs, by 2008 the number of universities and colleges around the world conducting research or teaching on SL exceeded three hundred,⁵⁷ and this number grew to more than seven hundred by 2011.⁵⁸

⁵² *About Linden Lab*, LINDEN LAB, <http://www.lindenlab.com/about> (last visited Nov. 12, 2012).

⁵³ See Jeffrey Allen, *Anyone Up for a Second Life?*, EXPERIENCE, Winter 2009, at 43 (discussing colleges and universities that have a presence on SL); Diane Murley, *What Second Life Taught Me About Learning*, 100 LAW LIBR. J. 787, 788-90 (2008) (discussing the author's experience with university education on SL).

⁵⁴ Kathleen Craig, *Voice Chat Comes to Online Games*, WIRED (Aug. 7, 2006), <http://www.wired.com/gaming/gamingreviews/news/2006/08/71540>; Michael Erard, *A Boon to Second Life Language Schools: New Technology Will Allow High-Quality Audio in a Virtual World*, MIT TECH. REV. (Apr. 10, 2007), <http://www.technologyreview.com/news/407667/a-boon-to-second-life-language-schools/>; *The Top 100 Colleges on Twitter*, US. & CS. BLOG, <http://www.universitiesandcolleges.org/blog/top-100-colleges-twitter/> (last visited Nov. 12, 2012).

⁵⁵ See Axel Andersen, Emil Hristov & Hamid Karimi, *Second Life: New Opportunity for Higher Educational Institutions* 7 (2008) (unpublished bachelor thesis, Jönköping International Business School, Jönköping University), <http://hj.diva-portal.org/smash/record.jsf?pid=diva2:3785> (stating that over twenty million SL accounts existed as of 2008).

⁵⁶ Karine Joly, *A Second Life for Higher Education?*, UNIV. BUS., Jun. 1, 2007, available at <http://www.universitybusiness.com/article/second-life-higher-education>.

⁵⁷ Patrick Michels, *Universities Use Second Life to Teach Complex Concepts*, GOV'T TECH., Feb. 25, 2008, available at <http://www.govtech.com/education/Universities-Use-Second-Life-to-Teach.html> ("In Texas alone, academics at some schools are finding SL can help teach complicated concepts with 3-D models, build collaborative networks for projects and explore the possibilities of virtual worlds.")

⁵⁸ Linden Lab, *Second Life Education: The Virtual Learning Advantage* (2011), <http://lecs-static-secondlife-com.s3.amazonaws.com/work/SL-Edu-Brochure-010411.pdf>;

Today, however, SL's rapid growth appears to have stalled. On-line gambling may have been the most significant economic activity on SL until, after Congress banned this activity in virtual space in 2006,⁵⁹ Linden Labs decided to ban virtual gaming on its platform in 2007.⁶⁰ It was not long after this decision that general participation in SL began to wane.⁶¹ By 2010, the race to build virtual SL campuses had ended, and many universities were exploring how to create alternative, education-friendly virtual worlds.⁶² Although SL has not lived up to its lofty expectations, many educators remain deeply interested in developing virtual worlds that they can integrate into their teaching and research agendas, and a number of experiments with virtual space that might compete with SL are underway.⁶³ To the extent these virtual worlds function as a space where faculty, students, and the public interact, First Amendment questions regarding the scope of free speech rights and the

Second Life Education/FAQs, SECOND LIFE WIKI, http://wiki.secondlife.com/wiki/Second_Life_Education/FAQs (last modified Aug. 19, 2011, 12:57 PM) ("Hundreds of educational institution [sic] use Second Life for education, and we recommend new organizational users to leverage the existing community to learn how to get the most from their Second Life experience. There are many ways to communicate with other organizations using Second Life, but the most direct is using the Second Life Education (or SLED) mailing list.").

⁵⁹ See generally Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. §§ 5361-67 (2006) (prohibiting the transfer of financial instruments for unlawful Internet gambling).

⁶⁰ Frederick Lane, *Linden Lab Bans Gambling in Second Life*, NEWSFACTOR (July 27, 2007), http://www.newsfactor.com/story.xhtml?story_id=031002UKBJ1L.

⁶¹ See Father Jones, *Second Life High Roller Gam(bl)ing—Part 2*, ALPHAVILLE HERALD (Sept. 23, 2009), <http://alphavilleherald.com/2009/09/second-life-high-roller-gambling-part-2.html> (illustrating that online gambling was a significant part of SL's business and that the general business and participation decreased due to the gambling ban); see also *Linden Lab Official: Policy Regarding Wagering in Second Life*, SECOND LIFE WIKI, http://wiki.secondlife.com/wiki/Linden_Lab_Official:Policy_Regarding_Wagering_in_Second_Life (last modified Feb. 8, 2012, 5:11 PM) (discussing the gambling ban imposed by SL). The implementation of a ban on gambling in SL may have been a key factor leading to the failure of a "virtual bank" in SL that resulted in the evaporation of \$750,000 of customer assets. Jeremy Hsu, *Bank Run: How Ginko Financial Went Down*, LIVESCIENCE (Nov. 21, 2008), <http://www.livescience.com/7603-bank-run-ginko-financial.html>.

⁶² See Jeffrey R. Young, *After Frustrations in Second Life, Colleges Look to New Virtual Worlds*, CHRON. OF HIGHER EDUC., Feb. 14, 2010, <http://chronicle.com/article/After-Frustrations-in-Second/64137>.

⁶³ See *id.*

constraints on government regulation of those rights exist as fully in these virtual spaces as in the nonvirtual world.⁶⁴

As a result of the landscape changing so quickly, any description of colleges' and universities' use of social media is destined to become outdated extremely rapidly.⁶⁵ Despite this extraordinary pace of digital obsolescence, we are confident about two predictions. First, social media will be a permanent part of every higher education institution's communication plan, either explicitly or implicitly, for the indefinite future.⁶⁶ It is hard to imagine a college or university in the predigital age operating without some kind of written, hard-copy newsletter or newspaper that disseminates information among the members of the campus community; likewise, it is hard to imagine a contemporary college or university failing to invest in or use social media.⁶⁷ Second, colleges and universities will deploy social media in ways designed to attain the benefits of the media's interactive capabilities.⁶⁸ Although universities and colleges can deploy social media as a one-way, static communication tool, the benefits of using social media inhere in its core characteristics of interactivity and connectivity, and most colleges and universities will use social media in ways that build on these characteristics.⁶⁹

⁶⁴ See Marc Jonathan Blitz, *A First Amendment for Second Life: What Virtual Worlds Mean for the Law of Video Games*, 11 VAND. J. ENT. & TECH. L. 779, 811-12 (2009) (discussing the difference between the real world and the virtual world); Lidsky, *supra* note 2, at 1976-77 (discussing the impact that the forum determination can have on the level of government editorial control).

⁶⁵ See *supra* note 50 and accompanying text.

⁶⁶ See CHARLES H.F. DAVIS III ET AL., SOCIAL MEDIA IN HIGHER EDUCATION: A LITERATURE REVIEW AND RESEARCH DIRECTIONS 9, available at http://www.academia.edu/1220569/Social_Media_in_Higher_Education_A_Literature_Review_and_Research_Directions (last visited Nov. 12, 2012) (illustrating the dramatic increase in social media use by colleges and universities).

⁶⁷ *Id.* at 19 (discussing the changing expectations of incoming students and the need for colleges to adapt).

⁶⁸ Barnes & Lescault, *supra* note 43 (discussing how universities are evolving toward more interactive and conversational uses of social media).

⁶⁹ See DAVIS III ET AL., *supra* note 66, at 21; Barnes & Lescault, *supra* note 43; *supra* notes 31-33 and accompanying text.

II. FIVE FIRST AMENDMENT CATEGORIES: PUBLIC FORUMS AND GOVERNMENT SPEECH

A labyrinthine body of constitutional doctrine—known as public forum doctrine—governs the extent to which citizens can make “expressive use of a government place or resource,”⁷⁰ including government-sponsored social media sites.⁷¹ Public forum doctrine, as the Supreme Court has developed it over the last two decades, consists of a “complex maze of categories and subcategories”⁷² that courts must apply to determine whether government speech restrictions within a “forum” are subject to strict or lax First Amendment scrutiny.⁷³ Every public higher education administrator contemplating entering the social media arena should be aware of these constitutional categories and subcategories.⁷⁴ The forum categories determine what degree of editorial control public higher education officials may exercise over speech within the social media sites they maintain or create.⁷⁵ The categories include the traditional public forum, designated public forum, limited public forum, nonpublic forum, and government speech.⁷⁶

“The first [forum] category is the ‘quintessential’ or traditional public forum.”⁷⁷ The standard illustrations of such forums are public streets, parks, or sidewalks that the government “owns” or controls but has devoted to public expressive use “by long tradition or by government fiat.”⁷⁸ Speech restrictions within traditional public forums receive strict scrutiny, which means that the government “may not close the forum or enforce content-based restrictions on speech there unless the restriction is ‘necessary to achieve a compelling state interest and . . . narrowly drawn to achieve that end.’”⁷⁹ The government may,

⁷⁰ See Lidsky, *supra* note 2, at 1980.

⁷¹ *Id.*

⁷² *Id.* (quoting MELVILLE B. NIMMER, NIMMER ON FREEDOM OF SPEECH: A TREATISE ON THE THEORY OF THE FIRST AMENDMENT § 409[D], 4-71 (2d ed. 1984)).

⁷³ *Id.*

⁷⁴ *Id.* at 1978.

⁷⁵ *Id.* at 1976-77.

⁷⁶ *Id.* at 1981-93.

⁷⁷ *Id.* at 1981.

⁷⁸ See *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (noting the common examples of a traditional public forum and its formation).

⁷⁹ See Lidsky, *supra* note 2, at 1982 (quoting *Perry Educ. Ass’n*, 460 U.S. at 45).

however, impose content-neutral restrictions that are “narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication.”⁸⁰ The traditional public forum is “defined by the objective characteristics of the property.”⁸¹ Although in theory the government could declare any space to be a traditional public forum, the Court’s jurisprudence has limited this category to government property historically used for public expression, thereby closing it to online forums.⁸² Thus, a public square will often be a traditional public forum, but a public university’s Facebook page will not.⁸³

Although some public forums exist by tradition or fiat, the Supreme Court’s jurisprudence contemplates that government actors can create public forums by designation.⁸⁴ The Court has defined the “designated public forum” as “public property which the state has opened for use by the public as a place for expressive activity.”⁸⁵ A designated public forum, however, exists only when the government manifests clearly an intention to open the forum, though courts can discern such an intention from the government’s “policy and practice” with regard to the forum and the property’s compatibility with use for expressive activity.⁸⁶

Designated public forums come in two types: the designated open public forum and the designated limited public forum.⁸⁷ Each is

⁸⁰ *Perry Educ. Ass’n*, 460 U.S. at 45.

⁸¹ *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998); Lidsky, *supra* note 2, at 1982.

⁸² *See Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939) (recognizing that public forums typically originate from property utilized by the public since “ancient times”).

⁸³ *Id.* (noting that public places, such as streets and parks, fall into the category of a traditional public forum).

⁸⁴ *See Ark. Educ. Television Comm’n*, 523 U.S. at 677 (stating that the government can intentionally create a public forum for the purpose of public discussion).

⁸⁵ *Perry Educ. Ass’n*, 460 U.S. at 45.

⁸⁶ *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985) (discussing the various factors and attributes considered by the Court regarding a public forum that the government created).

⁸⁷ *See Int’l Soc’y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992) (demonstrating the different classifications of the designated public forum).

subject to different constitutional restrictions.⁸⁸ When the government designates a forum as open to the public, courts will judge speech restrictions there identically to those in the traditional public forum.⁸⁹ However, when a government actor creates a forum limited to certain speakers or topics, the speech restrictions it imposes within this “limited public forum”⁹⁰ are subject to less exacting constitutional scrutiny.⁹¹ In the limited public forum, “the government may engage in *some* types of content-based discrimination to define the (limited) range of subjects to be discussed in the forum and to preserve those limits once established.”⁹² These limitations must be “reasonable and viewpoint neutral.”⁹³ As an example of the limited public forum, a public university can limit campus meeting rooms for use by student groups.⁹⁴ If the university subsequently excludes a speaker who is not a student, a court is likely to uphold the university’s exclusion as reasonable and viewpoint neutral.⁹⁵ If, on the other hand, the university excludes a student, a court is likely to strike down its exclusion absent a compelling justification for the exclusion that the university could not accomplish by other means.⁹⁶ By the same token, if a university opens a forum for

⁸⁸ See Matthew D. McGill, Note, *Unleashing the Limited Public Forum: A Modest Revision to a Dysfunctional Doctrine*, 52 STAN. L. REV. 929, 935 (2000) (comparing the different standards courts use to analyze the constitutionality of restrictions within public forums).

⁸⁹ See Lidsky, *supra* note 2, at 1984 (demonstrating that the standards for evaluating restrictions in a designated open public forum are the same as the standards for evaluating restrictions in a traditional public forum).

⁹⁰ See *Perry Educ. Ass’n*, 460 U.S. at 46 n.7 (describing the formation of a limited public forum and its purpose); see also Lidsky, *supra* note 2, at 1984 (discussing the law governing the limited public forum).

⁹¹ See McGill, *supra* note 88, at 934 (recognizing the decreased constitutional restrictions of a limited public forum compared to the heightened constitutional restrictions of a traditional public forum).

⁹² Lidsky, *supra* note 2, at 1984.

⁹³ See *id.* at 1985 (discussing the limits placed on the government when attempting to regulate limited public forums).

⁹⁴ See *id.* (noting the various restrictions that a university can place on a forum that it has created).

⁹⁵ See *Perry Educ. Ass’n*, 460 U.S. at 46 (discussing the circumstances under which the government may impose restrictions on a limited public forum).

⁹⁶ See *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998) (“If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny.”).

students to discuss environmental topics but excludes a student on the grounds that his topic is not really “environmental,” a court will uphold the university’s exclusion as long as it is reasonable and viewpoint neutral.⁹⁷

The final forum category is the “nonpublic forum,” which the Supreme Court has defined as any property owned or controlled by the government “which is not by tradition or designation a forum for public communication.”⁹⁸ The nonpublic forum is the default category and includes government property such as military bases⁹⁹ or light posts.¹⁰⁰ Within the nonpublic forum, the government has broad leeway to restrict speech to preserve the property for its intended use.¹⁰¹ The government may regulate speech through time, place, and manner restrictions and may also exclude speakers as long as doing so is “reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”¹⁰²

The line between the designated limited public forum and the nonpublic forum is blurry¹⁰³ and perhaps even inconsequential, despite the distinct and seemingly diametrically opposed labels created by the Supreme Court.¹⁰⁴ The Court has indicated that what distinguishes the nonpublic forum from the limited public forum is that in the former the government grants selective access on a case-by-case basis,¹⁰⁵ whereas in the latter the government holds its property generally open for a limited class of speakers or for limited topics only.¹⁰⁶ In both categories,

⁹⁷ See *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971, 2978 (2010) (upholding a state school’s conditional access to student forums as constitutional because the restriction was reasonable and viewpoint neutral).

⁹⁸ *Perry Educ. Ass’n*, 460 U.S. at 46; see also *United States v. Kokinda*, 497 U.S. 720, 730 (1990) (holding that a sidewalk providing access to a post office parking lot was not a public forum because the Postal Service had not “expressly dedicated its sidewalks to any expressive activity”); see *Lidsky*, *supra* note 2, at 1989-92.

⁹⁹ *Greer v. Spock*, 424 U.S. 828, 837-38 (1976).

¹⁰⁰ *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814 (1984).

¹⁰¹ *United States v. Grace*, 461 U.S. 171, 177 (1983).

¹⁰² *Perry Educ. Ass’n*, 460 U.S. at 46.

¹⁰³ See *Lidsky*, *supra* note 2, at 1990-91.

¹⁰⁴ Dennis Olson, *First Amendment*, 38 TEX. TECH L. REV. 791, 798 (2006).

¹⁰⁵ *Perry Educ. Ass’n*, 460 U.S. at 47.

¹⁰⁶ *Widmar v. Vincent*, 454 U.S. 263, 279 (1981) (Stevens, J., concurring).

however, the government must maintain viewpoint neutrality¹⁰⁷ and must be reasonable in setting initial limits on classes of speakers or topics for discussion.¹⁰⁸

One further constitutional category bears mentioning.¹⁰⁹ Most universities' noninteractive uses of social media fall into the category of "government speech."¹¹⁰ Government speech is a relatively new category in the Supreme Court's First Amendment jurisprudence.¹¹¹ This category acknowledges that the government must sometimes speak in order to govern, and requiring the government to accommodate opposing viewpoints every time it speaks would destroy the government's ability to function efficiently.¹¹² Thus, under the government-speech doctrine, a government actor may use a media platform to communicate its message, and it need not share the platform with other speakers who might distort the message.¹¹³ Constraints on government speech come from the political process rather than the First Amendment, and citizens

¹⁰⁷ See *id.* at 280; Lidsky, *supra* note 2, at 1991.

¹⁰⁸ Another possible difference between the designated limited public forum and the nonpublic forum is as follows: in dicta, the Supreme Court has said that when the government excludes from a limited public forum speakers who fall within the class for whom the government opened the forum, strict constitutional scrutiny will apply. See *United States v. Grace*, 461 U.S. 171, 179 (1983). Whereas, in the nonpublic forum, such exclusion must only be reasonable and viewpoint neutral. *Id.* It is also possible that courts will apply the reasonableness inquiry with more "bite" to speech restrictions in the limited public forum than in the nonpublic forum. See Lidsky, *supra* note 2, at 1990-91.

¹⁰⁹ *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 481 (2009) (Stevens, J., concurring) (referring to government speech as "recently minted" and controversial).

¹¹⁰ See, e.g., Helen Norton & Danielle Keats Citron, *Government Speech 2.0*, 87 *DENV. U. L. REV.* 899, 921 (2010) (discussing government uses of noninteractive websites that provide valuable information to citizens but do not allow comments from the public).

¹¹¹ *Summum*, 555 U.S. at 481 (Stevens, J., concurring) (referring to the government speech doctrine as "recently minted"). The government-speech doctrine originated with *Rust v. Sullivan*, 500 U.S. 173, 193 (1991), though the decision does not use the term "government speech." See Andy G. Olree, *Identifying Government Speech*, 42 *CONN. L. REV.* 365, 374 (2009) (stating that "accepted wisdom" attributes the origin of the doctrine to the *Rust* case).

¹¹² See Lidsky, *supra* note 2, at 1992-94.

¹¹³ See *Summum*, 555 U.S. at 467 (finding the government's selection of the monuments erected on public property to constitute the government's own "expressive conduct," and therefore concluding "the Free Speech Clause has no application").

who do not like the government's messages are free to take their complaints to the voting booth.¹¹⁴

III. APPLYING PUBLIC FORUM DOCTRINE TO SOCIAL MEDIA SITES CREATED OR MAINTAINED BY PUBLIC HIGHER EDUCATION INSTITUTIONS

No case law currently exists on how the Supreme Court's public forum analysis applies to social media sites created or maintained by public universities and colleges. However, a Hawaii police department that excluded critics from its Facebook page is already facing one suit,¹¹⁵ and it would seem to be only a matter of time before a public university's exclusion of a speaker from its social media site prompts First Amendment litigation.¹¹⁶ Because the interstices of the Supreme Court's forum jurisprudence are complex and nuanced, predicting how courts will resolve such future cases is no easy task.¹¹⁷ We suggest the following as a plausible, reasonable template for future analysis.¹¹⁸ Because Facebook is the most common interactive social medium universities currently deploy, we will use it as our example for this analysis.¹¹⁹

From an objective standpoint, most university-maintained, interactive Facebook pages operate as digital spaces where public conversations can occur; the "communicative" nature of such pages is apparent from the structure of the Facebook "wall" and the devices on the pages that promote "postings" and comments.¹²⁰ Because these pages are in-

¹¹⁴ Bd. of Regents of Univ. of Wis. Sys. v. Southworth, 529 U.S. 217, 235 (2000).

¹¹⁵ See *Hawaii Gun Group Sues Police Over Deleted Facebook Posts*, ASSOCIATED PRESS (Aug. 23, 2012), <http://www.firstamendmentcenter.org/hawaii-gun-group-sues-police-over-deleted-facebook-posts>.

¹¹⁶ See, e.g., *Christian Legal Soc'y v. Martinez*, 130 S. Ct. 2971, 2978 (2010) (involving student claim of access to school electronic communications system and student organization funds); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 822-23 (1995) (involving a claim by students wishing to establish a newspaper or newsletter about religious topics that they were denied access to funds because their publication promoted beliefs about a deity).

¹¹⁷ Steven G. Gey, *Reopening the Public Forum—From Sidewalks to Cyberspace*, 58 OHIO ST. L.J. 1535, 1555 (1998).

¹¹⁸ See *infra* notes 119-70.

¹¹⁹ Barnes & Lescault, *supra* note 43.

¹²⁰ See JULIUS D. DODDS, USING SOCIAL NETWORKING TECHNOLOGIES TO COMMUNICATE WITH THE N-GENERATION (PROS AND CONS), 2009-2010 MAXINE

herently expressive spaces, the university's "policies and practices" with regard to them become critical in determining whether the pages are public forums.¹²¹ If the university opens the comment portion of its Facebook site to other speakers, courts may view the site as a designated public forum open to comments from the public as a whole, as a limited public forum for commentary related to the conduct of the university, or perhaps even as a nonpublic forum—all depending on the university's policies and practices.¹²²

One thing, though, is certain: a public university Facebook page is not a "traditional public forum."¹²³ Digital spaces arise, by definition, from deployment of new technologies, and speakers within these spaces cannot point to a "long tradition" of public use for communicative purposes.¹²⁴ In this respect, the Supreme Court is likely to treat digital spaces like airport terminals, which it has deemed too new to be a "traditional" place for unfettered expressive activity.¹²⁵ Indeed, the Supreme Court's narrow construction of the traditional public forum with its focus on a "long tradition" of public use for expressive purposes means as a practical matter that no "cyberspace" of any kind could fit

SMITH FELLOWS PROGRAM 8-9 (June 2010), available at http://tbr.edu/uploadedFiles/TBR_Offices/Office_of_Access_and_Diversity/Programs_and_Services/Smith_Fellows/Julius%20Dodds.pdf.

¹²¹ *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985). Although most public forum cases involve government-owned physical property, the Supreme Court has held that a forum may be "metaphysical" in nature. See *Rosenberger*, 515 U.S. at 830 (finding the University of Virginia's funding program for student publications to be "a [limited public] forum more in a metaphysical than in a spatial or geographic sense"). The Court has also applied the public forum doctrine in a case involving a privately owned theater that had been leased long term to the City of Chattanooga, Tennessee. See *Se. Promotions Ltd. v. Conrad*, 420 U.S. 546, 547 (1975).

¹²² *Christian Legal Soc'y v. Martinez*, 130 S. Ct. 2971, 2984 n.11 (2010); *Cornelius*, 473 U.S. at 802.

¹²³ Lidsky, *supra* note 2, at 1983.

¹²⁴ *Id.*; see also *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983) (stating that areas that have a long tradition of harboring discussion or debate are only subject to government limitations on expression in very limited circumstances).

¹²⁵ See *Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 680 (1992) (holding that airports are not public forums given the "lateness with which the modern air terminal has made its appearance").

within the traditional public forum category.¹²⁶ The question then becomes which of the remaining categories applies.¹²⁷

Courts are likely to treat university social media sites that do *not* permit user comments as government speech.¹²⁸ The government speech doctrine gives universities and colleges a wide zone of authority within which they can speak to members of the university community without being required to give members the opportunity to offer different or competing views.¹²⁹ This doctrine most obviously applies when, for example, administrators issue directives to carry out university operations; announce management decisions or information; or address students or faculty in meetings, retreats, convocations, or academic ceremonies.¹³⁰ Because the speech in these settings is “government speech,” administrators need not concern themselves with enabling the First Amendment rights of other speakers by sharing their chosen communicative platform.¹³¹

The government speech doctrine does not, however, give universities complete editorial control over all speech within university publi-

¹²⁶ Lidsky, *supra* note 2, at 1983. The Supreme Court’s jurisprudence instructs that a state actor typically may not impose content-based restrictions on speech unless the restriction is “necessary to serve a compelling state interest and . . . narrowly drawn to achieve that end.” *Perry Educ. Ass’n*, 460 U.S. at 45. Thus, the ability of the university to regulate the content of speech in the social media site would be extremely limited and subject to strict scrutiny. *Id.*

¹²⁷ See *Christian Legal Soc’y*, 130 S. Ct. at 2984.

¹²⁸ See Norton & Citron, *supra* note 110, at 922.

¹²⁹ See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995).

¹³⁰ See, e.g., DODDS, *supra* note 120, at 7 (stating that the University of Maryland uses its Facebook page to alert students in times of crisis and that Mira Costa College uses many social media platforms to inform students of on-campus events and general information).

¹³¹ Lidsky, *supra* note 2, at 1994. Courts will almost certainly treat a purely informational, noninteractive social media site that a college or university established as “government speech,” and the college or university need not worry about violating the First Amendment rights of its constituency when it uses social media solely to communicate its own message. *Id.* (citing *Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 467 (2009)). To use Facebook solely as a one-way medium, however, would sacrifice its potential to unite academic communities around shared interests or concerns and to foster critical discourses that may improve the ability of public higher education institutions to fulfill their missions.

cations.¹³² A university or college *usually* can speak to its alumni through magazines, newsletters, and electronic communications such as Tweets without giving other members of the university community the opportunity to place content in those media;¹³³ even so, when a university does allow some speakers access to an expressive medium it controls, the boundaries of its authority to exclude others depends on what forum designation attaches to the medium.¹³⁴ The forum designation depends, in turn, on how the university has set or applied its access policies.¹³⁵ If the stated policy or unstated practice is to make the expressive medium open to all comers, the university has almost certainly established a designated (open) public forum.¹³⁶ If, on the other hand, the university clearly states that the expressive medium is not a public forum and it vigorously removes or edits third-party content that interferes with the forum's stated purpose, then the forum is probably a non-public one, and the university need only apply its policy in a reasonable and viewpoint-neutral manner.¹³⁷

To understand how a university's policies and practices can affect forum status and constitutionally limit its subsequent attempts to exercise editorial authority, consider *Rutgers 1000 Alumni Council v. Rutgers*.¹³⁸ The *Rutgers* case involved an alumni council that contended that the editors of a state university's quarterly magazine violated the council's First Amendment free speech rights when the magazine rejected its proffered advertisement.¹³⁹ The editors excluded the council's advertisement, which criticized "professionalized" college athletics, on the grounds that it violated the magazine's unwritten policy

¹³² *Summum*, 555 U.S. at 468.

¹³³ See generally *Rutgers 1000 Alumni Council v. Rutgers*, 803 A.2d 679 (N.J. Super. Ct. App. Div. 2002) (discussing the usage of an alumni-targeted university publication to reach alumni, students, benefactors, and friends of the university).

¹³⁴ *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985).

¹³⁵ *Id.* at 800, 802.

¹³⁶ See Lidsky, *supra* note 2, at 1983-84.

¹³⁷ *Id.* at 1989-90; see also *Christian Legal Soc'y v. Martinez*, 130 S. Ct. 2971, 2984 (2010) (stating that "the Court has permitted restrictions on access to a limited public forum . . . with this key caveat: Any access barrier must be reasonable and viewpoint neutral").

¹³⁸ See generally *Rutgers 1000 Alumni Council*, 803 A.2d 679 (explaining how the University rejected "issue-oriented advertisements").

¹³⁹ *Id.* at 682-83.

against accepting “issue-oriented” or “advocacy” advertisements.¹⁴⁰ A New Jersey appeals court held that the university’s exclusion of the ad violated the council’s First Amendment rights.¹⁴¹ The court reasoned that the advertising section of the magazine was a limited public forum because the university had opened it to those wishing to offer “goods and services that might benefit and be of interest to” the Rutgers community, so long as such ads were consistent with the magazine’s “stated purpose” of promoting “Rutgers and its programs.”¹⁴² Although the university’s policy of rejecting issue-oriented advertisements from its limited public forum was facially reasonable as a means to avoid exposing the university to “controversy and criticism,”¹⁴³ the university had ceded its right to reject the council’s advertisement by publishing a previous article and advertisement in support of the university’s decision to participate in the Big East athletic conference.¹⁴⁴ The university’s rejection of the council’s ad therefore constituted viewpoint discrimination.¹⁴⁵

The lesson of the *Rutgers* case for universities wishing to establish interactive social media forums is clear: when a university or college creates a space in which speech occurs—whether it be a newspaper, newsletter, alumni magazine, Facebook page, or other social media site—the university or college controls the terms of the designation and, ultimately, the nature of the forum.¹⁴⁶ The only reason the Rutgers alumni council had a viable First Amendment claim to “speak” in the pages of the university magazine was because the university had designated the advertising section as a space for speech.¹⁴⁷ Even then, the university could have excluded the alumni council had its actual practices in granting access to speakers not conflicted with its stated policy of excluding issue advertisements.¹⁴⁸ Inconsistency in Rutgers’ application of forum limitations turned what would otherwise be a “rea-

¹⁴⁰ *Id.* at 683.

¹⁴¹ *Id.* at 681.

¹⁴² *Id.* at 690.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 693.

¹⁴⁵ *Id.*

¹⁴⁶ *See id.* (citing *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

¹⁴⁷ *Id.* at 690.

¹⁴⁸ *Id.*

sonable” exclusion of speakers to preserve the parameters of the limited public forum into unconstitutional viewpoint discrimination.¹⁴⁹ What the *Rutgers* case teaches is that consistent application of established policies is key to a university’s preservation of editorial discretion within a forum it has created.¹⁵⁰ Rutgers could have decided to reserve the advertising section of its magazine solely for students and alumni; it could have adopted a policy of only allowing purely commercial advertisements proposing a transaction for the sale of goods; and it could have excluded ads that had grammatical errors.¹⁵¹ What it could not do consistently with the First Amendment was to exclude issue ads by some speakers and not by others.¹⁵²

As the previous discussion suggests, courts are likely to treat many public university Facebook pages as designated public forums, at least where universities permit public comments and postings on their pages with little editorial intervention.¹⁵³ Courts are likely to find that the nature of the space and any practice of allowing spontaneous commentary severely limit the university’s ability to subsequently exclude speakers or content it finds objectionable.¹⁵⁴ However, universities can preserve a degree of editorial freedom by limiting the Facebook page for use by approved speakers (such as students or alumni) or explicitly limiting the types of discussion allowed there.¹⁵⁵

¹⁴⁹ *Id.* at 690-91.

¹⁵⁰ *Id.* at 691-92.

¹⁵¹ *Id.* at 693. The “letters to the editor” feature in an alumni magazine has characteristics of a forum in that the space is open for participation by readers, but the editors of the magazine retain the authority to decide which letters are published and which are not. *Editorial Policies*, U. OF DENV. MAG., <http://blogs.du.edu/today/about/policies> (last visited Nov. 12, 2012). The editors can exercise their discretion based on the editors’ assessment of which letters have content worth printing, the letters’ believability, and how many letters to devote to particular topics. *Id.*

¹⁵² *Rutgers 1000 Alumni Council*, 803 A.2d at 693.

¹⁵³ Lidsky, *supra* note 2, at 1983-84.

¹⁵⁴ *See* *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 547 (1975) (involving a privately owned theater with a long-term lease to the City of Chattanooga, Tennessee, that refused to show a controversial rock musical); *see also* Gey, *supra* note 119, at 1610-11 (discussing government regulation on the Internet and suggesting that the Internet in its entirety should be characterized as a public forum).

¹⁵⁵ *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971, 2984 (2010) (holding that government entities may restrict speech in a limited public forum so long as “[a]ny access barrier” is “reasonable and viewpoint neutral”).

The Supreme Court's decision in *Hazelwood School District v. Kuhlmeier* suggests another possible means that public universities may use to preserve their own editorial freedom within a social media site.¹⁵⁶ This decision suggests that courts may not treat a university Facebook page established purely for "curricular" purposes as a public forum, and it gives some insight into the factors that might influence that determination.¹⁵⁷ *Hazelwood* involved a high school principal who refused to permit the publication of articles on teen pregnancy and divorce in the school newspaper.¹⁵⁸ The Supreme Court held that such censorship was permissible and that schools may exercise control over speech that a reasonable observer would view as the school's own speech "as long as [the school's] actions are reasonably related to legitimate pedagogical concern."¹⁵⁹ In addressing the nature of the forum that the high school created in *Hazelwood*, the Court cited school board policy with regard to the newspaper and the high school's curriculum guide,¹⁶⁰ which stressed the role of the high school newspaper in the school's academic program.¹⁶¹ Signaling that written policies alone are not enough to limit a forum, however, the Court also referred to the district court's findings that the actual practices of school officials implemented the articulated policies.¹⁶² Essentially, the calculus was that the more that school policy reserves control of the newspaper to the school, the more the newspaper moves toward becoming a nonpublic forum.¹⁶³ Yet articulated policy is not determinative; courts should consider the actual prac-

¹⁵⁶ See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988).

¹⁵⁷ See *id.* at 269-70 (finding that the evidence was insufficient to establish that school officials had a "clear intent to create a public forum" (citing *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985))).

¹⁵⁸ *Id.* at 263.

¹⁵⁹ *Id.* at 273.

¹⁶⁰ *Id.* at 268.

¹⁶¹ *Id.*

¹⁶² *Id.* at 268-69.

¹⁶³ See generally *id.* at 270.

tices.¹⁶⁴ If school officials are vested with control but do not exercise it, then a limited public forum may be established by practice.¹⁶⁵

Hazelwood gives school officials wide discretion to dictate the style and content of any speech that a reasonable observer would associate with the school, explicitly allowing officials to bar speech “unsuitable for immature audiences.”¹⁶⁶ Although the Supreme Court famously limited the reach of the holding to the high school setting,¹⁶⁷ *Hazelwood*’s logic could easily extend to a university setting.¹⁶⁸ If, for example, the dean of a public university law school created a Facebook page limited to law students and faculty and established and applied a policy of editing comments that interfered with this hypothetical site’s stated purpose of “creating a model of civil discourse on topics directly affecting the law school community,” it seems likely that courts would treat the site as a nonpublic forum and defer to reasonable, viewpoint-neutral exclusions of speech or speakers.¹⁶⁹

This discussion emphasizes that public higher education institutions creating social interaction space on the web should not only establish and articulate policies that regulate behavior on the space but also should act overtly and visibly to establish a record of proactive conduct to enforce these policies.¹⁷⁰ By doing so, the university or college

¹⁶⁴ See *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985) (“[T]he court has looked to the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum.”).

¹⁶⁵ See, e.g., *Kincaid v. Gibson*, 236 F.3d 342, 352-55 (6th Cir. 2001) (holding that a university yearbook was a limited public forum for First Amendment purposes, and university officials did not impose reasonable time, place, and manner restrictions upon speech in the forum by confiscating all copies of the yearbook).

¹⁶⁶ *Hazelwood*, 484 U.S. at 271.

¹⁶⁷ *Id.* at 273 n.7 (“We need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level.”).

¹⁶⁸ See, e.g., *Hosty v. Carter*, 412 F.3d 731, 735 (7th Cir. 2005) (holding that *Hazelwood*’s framework for free speech analysis applied to subsidized student newspapers at colleges).

¹⁶⁹ See generally *Hazelwood*, 484 U.S. 260 (holding that a school newspaper was not a public forum because the school had a stated policy limiting the content of the newspaper, which it actively enforced).

¹⁷⁰ See *infra* text accompanying notes 236-40.

“designates” the comments portion of the social media space as a limited public forum, at a minimum, and preserves a significant degree of editorial control over content posted by third parties.¹⁷¹

IV. CURRENT EXAMPLES OF UNIVERSITY REGULATION OF SOCIAL MEDIA SPACE

As noted above, a public university’s stated social media policy will heavily influence whether courts deem the university to have created a public forum, and, consequently, how much editorial control the university can exercise within that forum.¹⁷² Yet as of fall 2012, universities have adopted a variety of policies with regard to their Facebook pages.¹⁷³ At one extreme are the many public universities and colleges that have created Facebook pages with no apparent terms or conditions of use.¹⁷⁴ Given Facebook’s nature as an expressive forum and the apparent lack of editorial control exercised by the universities establishing these sites, courts might treat them as designated public forums, or perhaps as nonpublic forums if the universities’ intent to establish a forum is deemed unclear.¹⁷⁵ These universities and colleges may be relying on their ability to use the general terms and conditions of Facebook to reg-

¹⁷¹ See *infra* text accompanying notes 186-90.

¹⁷² See *supra* text accompanying notes 146-47.

¹⁷³ See, e.g., *Social Media*, U. OF ARK., <http://socialmedia.uark.edu/> (last visited Nov. 12, 2012); City Colleges of Chicago, *City Colleges of Chicago Social Media Policy*, FACEBOOK, <http://www.facebook.com/notes/city-colleges-of-chicago/city-colleges-of-chicago-social-media-policy/401467699901795> (last visited Nov. 12, 2012); HARVARD UNIVERSITY, GUIDELINES FOR USING SOCIAL MEDIA (2012), available at http://provost.harvard.edu/policies_guidelines/Social_Media_Guidelines_FINAL_Version_1_0_effective_080112.pdf.

¹⁷⁴ See, e.g., *University of Arizona*, FACEBOOK, <http://www.facebook.com/uarizona> (last visited Nov. 12, 2012); *University of California-Irvine*, FACEBOOK, <http://www.facebook.com/UCIrvine> (last visited Nov. 12, 2012); *University of Kentucky*, FACEBOOK, <http://www.facebook.com/universityofky> (last visited Nov. 12, 2012); *Ohio State University*, FACEBOOK, <http://www.facebook.com/osu> (last visited Nov. 12, 2012); *Rutgers University*, FACEBOOK, <http://www.facebook.com/RutgersU> (last visited Nov. 12, 2012).

¹⁷⁵ See generally William Freivogel, *Free Speech, Facebook and a Public University*, STL BEACON, https://www.stlbeacon.org/#!/content/14813/free_speech_facebook_and_a_public_university (last updated Nov. 8, 2011, 5:04 PM) (discussing the local reaction to a university deleting comments from its Facebook page and whether courts would treat the page as a public forum).

ulate speech on their sites,¹⁷⁶ but this approach ultimately depends upon Facebook as a corporate entity to take action in response to requests of the universities or colleges, which is not a reliable basis for regulating the site.¹⁷⁷

The colleges and universities that do impose restrictions on participation in their Facebook pages occupy spaces on a continuum ranging from “soft regulation” to “heavy regulation.”¹⁷⁸ Most of these pages have either an explicit link on their front page to a “Terms of Use,” “Comments,” or equivalent policy¹⁷⁹ or use the Facebook template “About” link to refer the user to a statement of terms or conditions on a second page.¹⁸⁰ An example of soft regulation is Syracuse University’s Facebook page, where the link titled “About” takes the user to a second page that appends a sentence to one that exists on the front page.¹⁸¹ The additional information on the second page is titled “General Information” and reads: “We strive to foster a community of open communication and constructive dialogue. We reserve the right to delete posts or comments that are profane, obscene . . . , or combative in nature.”¹⁸² Although it is impossible to predict with certainty how a court might view the impact of this extremely succinct policy statement, we suggest that it is likely a court would read it as creating a designated open public forum with limited authority to remove posts.¹⁸³ The language of the policy manifests an intent to foster “open communication,” which might

¹⁷⁶ See *infra* text accompanying notes 215-20.

¹⁷⁷ See, e.g., Terri Thornton, *Facebook Sometimes Slow to Remove Offensive Content, Fake Profiles*, PBS, Apr. 14, 2011, <http://www.pbs.org/mediashift/2011/04/facebook-sometimes-slow-to-remove-offensive-content-fake-profiles104.html> (discussing examples of the difficulties that individuals face in getting Facebook to respond to complaints and to regulate activity online).

¹⁷⁸ See *infra* text accompanying notes 180-86.

¹⁷⁹ See *infra* Appendix A (providing a separate set of terms and conditions on the school’s Facebook page).

¹⁸⁰ See *infra* note 181 and accompanying text.

¹⁸¹ *Syracuse University*, FACEBOOK, <http://www.facebook.com/syracuseuniversity> (last visited Nov. 12, 2012).

¹⁸² *About Syracuse University*, FACEBOOK, <http://www.facebook.com/syracuseuniversity/info> (last visited Nov. 12, 2012).

¹⁸³ See discussion *infra* notes 184-86. This analysis, however, is controversial, because the law with regard to preserving decorum and eliminating profanity in public forums is unclear. For extended analysis of this topic, see Lidsky, *supra* note 2, at 1999-2003.

seem to indicate the page is open to all comers to discuss any topic.¹⁸⁴ However, this intent is arguably qualified by the language about “constructive dialogue” within a “community,” and the university explicitly states its intent to “limit” the parameters of discussion by deleting “profane, obscene . . . , or combative” speech.¹⁸⁵ Courts might interpret this as a limited public forum and allow reasonable editing to preserve decorum in the online forum, so long as the editing remains neutral as to viewpoint.¹⁸⁶

Contrast this policy with the more robust editorial policy of the University of Texas at Austin, set forth in what can fairly be described as “plain meaning, non legalistic” language.¹⁸⁷ After clicking on the “About” link on the front page, the user is taken to a second page where under the heading “General Information” the user can click on a link appearing immediately following this instruction: “Visit our comments moderation guidelines in our Notes section at [link].”¹⁸⁸ Clicking on this link then takes the user to a page titled “We Heart Facebook: Guidelines for Posting Comments,”¹⁸⁹ which contains these policies that designate the rules of the forum:

¹⁸⁴ See *supra* note 181 and accompanying text.

¹⁸⁵ See *supra* note 181 and accompanying text.

¹⁸⁶ See *supra* note 169 and accompanying text.

¹⁸⁷ The primary field of scholarship for one of the authors (Dean Jerry) is insurance law, where the accessibility and clarity of standardized text is frequently a question for state regulators, courts, or both. For example, statutes in some states mandate minimum standards for the language used in policies, sometimes using “reading ease tests” to determine whether a policy’s language is sufficiently “plain.” See, e.g., IV National Association of Insurance Commissioners, Model Insurance Laws, Regulations, and Guidelines 575-1, §5 (2011) (Life and Health Insurance Policy Language Simplification Model Act; requires the text of an insurance policy to achieve “a minimum score of 40 on the Flesch reading ease test or an equivalent score on a comparable test”). The University of Texas at Austin’s terms and conditions demonstrate a considered effort by the drafter(s) to make the protocols easily understandable by a reader. *About the University of Texas at Austin*, FACEBOOK, <http://www.facebook.com/UTAustinTX/info> (last visited Nov. 12, 2012).

¹⁸⁸ *About the University of Texas at Austin*, *supra* note 186.

¹⁸⁹ *We Heart Facebook: Guidelines for Posting Comments*, FACEBOOK, https://www.facebook.com/note.php?¬e_id=359759738028 (last visited Nov. 12, 2012).

You love The University of Texas at Austin. And we love having your comments about this amazing place posted on the university's Facebook page.

Let's keep the comments *civil, cordial and relevant to the topic*, so that we can have this open space *for all Longhorns* to share.

Here are the comments rules we'll play by:

Comments are monitored. They'll stay up if they stick to the topic and contribute to the conversation. We'll have to delete them if they contain or link to abusive material, personal attacks, profanity or spam. Keep it clean, please.

The comments also can't be used as ad space, so please don't endorse, promote or solicit on behalf of a product or service.

We're thrilled we get to interact with you on Facebook as a part of our day jobs, and we'd love to keep it that way.¹⁹⁰

The University of Texas's policy likely creates a limited public forum and gives the university somewhat broader latitude than that of Syracuse University to remove comments and otherwise reasonably regulate the forum to preserve it for its intended purpose.¹⁹¹

An even more robust policy, perhaps creating an even more limited forum or even a nonpublic forum, is that of the University of Wisconsin-Madison (UWM).¹⁹² A link for "Community Standards" appears on UWM's Facebook page, and the link connects to a page on the UWM website¹⁹³ containing this statement expressing the policies applicable to all UWM social media sites:

¹⁹⁰ *Id.* (emphasis added).

¹⁹¹ Compare *supra* note 189 and accompanying text, with *supra* text accompanying notes 180-85.

¹⁹² See discussion *infra* notes 194-95.

¹⁹³ *University of Wisconsin-Madison*, FACEBOOK, <https://www.facebook.com/UW-Madison> (last visited Nov. 12, 2012).

The social media sites represented on the University of Wisconsin-Madison home page (Facebook, YouTube, Twitter, Flickr and iTunes U) are produced and maintained by University Communications at UW-Madison. Links to content or other Internet sites should not be construed as an endorsement of the organizations, entities, views or content contained therein. UW-Madison is not responsible for the content of those external web sites.

While UW-Madison does not regularly review content posted to social media sites, it shall have *the right to remove any content for any reason, including but not limited to, content that it deems threatening, profane, obscene, a violation of intellectual property rights or privacy laws, off-topic, commercial or promotion of organizations or programs not related to or affiliated with the university, or otherwise injurious or illegal*. Users are fully responsible for the content they load on any of UW-Madison's social media sites.

By submitting content to any of UW-Madison's social media sites, users understand and acknowledge that this information is available to the public, and that UW-Madison may use this information for internal and external promotional purposes. Please note that other participants may use posted information beyond the control of UW-Madison. Users who do not wish to have information they have made available via these sites used, published, copied and/or reprinted, should not post on the social media sites.¹⁹⁴

On one hand, the UWM policy takes care to distinguish between its own speech and the speech of third parties on its Facebook page, indicating that the university does not endorse the comments portions and thus those portions are not government speech.¹⁹⁵ On the other hand, the university expresses intent to severely limit commentary within the

¹⁹⁴ *Social Media Statement*, U. OF WISCONSIN-MADISON, www.wisc.edu/social-media-statement.php (last visited Nov. 12, 2012) (emphasis added). For other examples of public university Facebook page policies, see APPENDIX A.

¹⁹⁵ See *Social Media Statement*, *supra* note 193.

forum to serve its own, arguably reasonable, purposes of maintaining a certain level of decorum on its page.¹⁹⁶

We suggest that this policy creates a more rigorously bounded public forum, where the university has broader power to restrict access to and regulate the forum.¹⁹⁷ However, policies like this one raise a question not fully answered by existing forum cases: at what point do a government actor's initial restrictions on a forum become so restrictive, or so vague, as to be unreasonable?¹⁹⁸ Is it reasonable, in a forum for adults, for a university to eliminate anything it deems to be profane or otherwise injurious?¹⁹⁹ If a university's social media policy imposes unduly broad and vague limits on expression, courts might deem these limits unreasonable, particularly where they could easily cloak censorship of disfavored speech.²⁰⁰ However, it is not clear when a government actor's forum limitations might cross this constitutional line.²⁰¹

¹⁹⁶ See *id.*

¹⁹⁷ See Norman T. Deutsch, *Does Anybody Really Need a Limited Public Forum?*, 82 ST. JOHN'S L. REV. 107, 123 (2008); Lidsky, *supra* note 2, at 1998; Jonathan Winters, *Thou Shall Not Exclude: How Christian Legal Society v. Martinez Affects Expressive Associations, Limited Public Forums, and Student's Associational Rights*, 43 U. TOLEDO L. REV. 747, 754 (2012).

¹⁹⁸ See Lidsky, *supra* note 2, at 1999-2000; Note, *Strict Scrutiny in the Middle Forum*, 122 HARV. L. REV. 2140, 2147-48 (2009).

¹⁹⁹ See *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 242 (3d Cir. 2010); Lidsky, *supra* note 2, at 1999-2002.

²⁰⁰ See *Se. Promotions, Ltd., v. Conrad*, 95 S. Ct. 1239, 1244 (1975) (“[T]he danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum’s use.”); *Grayned v. City of Rockford*, 92 S. Ct. 2294, 2299 (1972) (“[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.”) (footnote omitted); *Rutgers 1000 Alumni Council v. Rutgers*, 803 A.2d 679, 690 (N.J. Super. Ct. App. Div. 2002); Brad A. Greenberg, *A Public Press? Evaluating the Viability of Government Subsidies for the Newspaper Industry*, 19 UCLA ENT. L. REV. 189, 219 (2012); Benjamin C. Zipursky, *Snyder v. Phelps, Outrageousness, and the Open Texture of Tort Law*, 60 DEPAUL L. REV. 473, 517 (2011).

²⁰¹ See Lidsky, *supra* note 2, at 1999; *Strict Scrutiny in the Middle Forum*, *supra* note 197, at 2161.

Furthermore, even if a court finds the limits imposed by the policy to be “reasonable,” a court nonetheless might deem the policy barring “injurious” speech unconstitutionally vague.²⁰² As the Supreme Court recently noted, “[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”²⁰³ The application of vague standards to punish speech violates due process,²⁰⁴ and courts have struck down many university “speech codes” on vagueness grounds for this reason,²⁰⁵ although speech codes typically impose penalties on speakers

²⁰² See *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2318 (2012) (quoting *Reno v. ACLU*, 521 U.S. 844, 870-71 (1997) (“The vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect”)); *UWM Post, Inc. v. Bd. of Regents of Univ. of Wis. Sys.*, 774 F. Supp. 1163, 1178-80 (E.D. Wis. 1991); Zipursky, *supra* note 199, at 495.

²⁰³ See *FCC*, 132 S. Ct. at 2317 (“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”).

²⁰⁴ See *id.* (stating that “[w]hen speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech”). Vague statutes violate due process because they fail to provide fair notice of what conduct is prohibited and give law enforcement undue discretion in the determination of whether an offense has been committed. See *Coates v. City of Cincinnati*, 91 S. Ct. 1686, 1688 (1971). A statute is vague, and therefore facially invalid, if persons of “common intelligence must necessarily guess at its meaning.” See *id.* (holding an ordinance that made it a crime for three or more people meeting on a sidewalk to “annoy” others was unconstitutionally vague). Vagueness is especially problematic in statutes that restrict First Amendment liberties because it chills speech and gives law enforcement undue discretion to prosecute defendants for unpopular speech. See Zipursky, *supra* note 199, at 494 (“[V]agueness critiques in free speech cases are simply a special application of the vagueness doctrine more generally, with special solicitude for the substantive liberty—freedom of speech—that is, in effect, restricted by overly vague law.”).

²⁰⁵ See, e.g., *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 252 (3d Cir. 2010) (hazing or harassment policy and prohibition on emotional distress); *DeJohn v. Temple Univ.*, 537 F.3d 301, 317 (3d Cir. 2008) (sexual harassment policy); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995) (discriminatory harassment policy); *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1016 (N.D. Cal. 2007) (civility policy); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 872 (N.D. Tex. 2004) (policy against “insults, epithets, ridicule, or personal attacks”); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357, 362 (M.D. Pa. 2003) (policy against “[a]cts of intolerance”); *UWM Post, Inc.*, 774 F. Supp. at 1180 (discriminatory harassment policy); *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 867 (E.D. Mich. 1989) (discriminatory harassment policy).

who violate them rather than simply removing their speech.²⁰⁶ Moreover, a person whose posting was removed under such a vague policy also might be able to claim that the university had imposed a prior restraint on her speech.²⁰⁷ In *Southeastern Promotions, Ltd. v. Conrad*, for example, the Court held that a municipality had imposed an unconstitutional prior restraint when it excluded a speaker from a public forum on the grounds that the controversial play the speaker wished to perform would not be “in the best interest of the community.”²⁰⁸ The Court stated,

Invariably, the Court has felt obliged to condemn systems in which the exercise of such authority was not bounded by precise and clear standards. The reasoning has been, simply, that the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have *unbridled discretion over a forum’s use*.²⁰⁹

Although the exclusion of the speech technically takes place after its publication (posting) rather than before, the Supreme Court previously has looked past such technicalities at the actual operation of the exclusion.²¹⁰ Here, that exclusion would prevent all future visitors to the

²⁰⁶ In *FCC*, 132 S. Ct. at 2318, the Supreme Court struck down the Federal Communication Commission’s (FCC) policy of imposing forfeitures on broadcasters who aired fleeting expletives even though the FCC did not impose a sanction on a broadcaster who lacked notice of its policy; this “policy of forbearance” did not “make the issue moot” because the FCC had authority to consider it in setting subsequent forfeiture amounts, and its order deeming the broadcast indecent could have reputational consequences for the broadcaster.

²⁰⁷ This argument holds weight even though the penalty technically takes place after the speech is posted rather than before because removing the offending speech arguably operates as a prior restraint in preventing subsequent visitors to the university’s social media site from accessing the speech. *See, e.g., Near v. Minnesota*, 51 S. Ct. 625, 633 (1931) (finding an unconstitutional prior restraint where a newspaper was subject to “abatement” in the future based on its past publications of materials that were deemed a “public nuisance”).

²⁰⁸ *See Se. Promotions, Ltd. v. Conrad*, 95 S. Ct. 1239, 1242 (1975).

²⁰⁹ *Id.* (emphasis added).

²¹⁰ *See Near*, 51 S. Ct. at 633 (“[T]he constitutional protection may not be regarded as resting on mere procedural details”); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1182 (6th Cir. 1995) (“A statute is unconstitutional on its face on overbreadth

university's Facebook page from viewing the speech removed by a government "censor" under vague standards, a result that courts would likely find troubling on First Amendment grounds.²¹¹

V. VIRTUAL PUBLIC UNIVERSITIES: SOME UNANSWERED QUESTIONS

Other important questions about public universities' social media use remain unanswered. The government does not own Internet sites generally²¹² and social media in particular²¹³ in the same sense that it owns real property on which it might create speech forums, and the differences between social media spaces and traditional physical spaces may shape future applications of public forum jurisprudence.²¹⁴ When one creates a Facebook page, as a condition of creating the page, one must agree to "Facebook Community Standards"²¹⁵ and to a "Statement

grounds if there is 'a realistic danger that the statue itself will significantly compromise recognized First Amendment protections of parties not before the court'" (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984)).

²¹¹ See *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1, 27 (1986) (Rehnquist, J., dissenting) ("Our cases cannot be squared, however, with the view that the First Amendment prohibits governmental action that only *indirectly* and *remotely* affects a speaker's contribution to the overall mix of information available to society.").

²¹² The simple question of who owns the Internet has no simple answer. "There are many organizations, corporations, governments, schools, private citizens and service providers that all own pieces of the infrastructure, but there is no one body that owns it all." *Who Owns the Internet?*, WEBOPEDIA.COM (last updated Feb. 22, 2012), <http://www.webopedia.com/DidYouKnow/Internet/2002/WhoOwnstheInternet.asp>.

²¹³ Users of social media sites, such as Twitter and Facebook, retain ownership of the content they submit via the site; however, in exchange for the license to use the sites, users grant to the social media sites a nonexclusive license to that content. *Terms of Service*, TWITTER, ¶ 5 (June 25, 2012), <https://twitter.com/tos>; *Statement of Rights and Responsibilities*, FACEBOOK, ¶ 2, <http://www.facebook.com/legal/terms> (last revised June 8, 2012).

²¹⁴ See Lidsky, *supra* note 2, at 1994-97 (asserting that "neither the fact that a social media forum is 'metaphysical' nor the fact that the government does not 'own' the social media it uses should prevent social media sites from becoming public forums" of some kind).

²¹⁵ *Facebook Community Standards*, FACEBOOK, <https://www.facebook.com/communitystandards> (last visited Nov. 12, 2012).

of Rights and Responsibilities,”²¹⁶ the latter of which is sometimes referred to as the “Terms,” the “Statement,” or the “SRR.”²¹⁷ To post on Facebook, one must be a Facebook subscriber, which means that one has already consented to the “Facebook Community Standards” and the “Terms.”²¹⁸ Under these agreements, the corporate entity Facebook can regulate speech that occurs on any Facebook page, including a university or college page.²¹⁹ These agreements include removing a Facebook user at will for violating “the letter or spirit of this Statement.”²²⁰ As a subscriber, the university or college is also entitled to invoke Facebook’s procedures for regulating usage, but no sanction would apply (including removal of a post) unless Facebook decided to take action in response to the complaint.²²¹

Thus, Facebook is a private space occupied by both private and public actors, but all actors agree to comply with the terms and standards that Facebook creates.²²² Within that context, does a government entity occupying digital space through Facebook have an obligation to allocate a portion of its space to unrestricted free speech?²²³ For example, the court in *University of Cincinnati Chapter of Young Americans for Liberty v. Williams* held that the University of Cincinnati, a public university, violated the First Amendment when it restricted all “demonstrations, picketing, and rallies” to a free speech area that constituted less than 0.1% of the campus.²²⁴

Although there are many ways to analyze this question, at some point, fundamental, tangible differences between cyberspace and physi-

²¹⁶ *Statement of Rights and Responsibilities*, *supra* note 213.

²¹⁷ *Id.*

²¹⁸ *Welcome to Facebook—Log In, Sign Up or Learn More*, FACEBOOK, <http://www.facebook.com/> (last visited Oct. 3, 2012).

²¹⁹ *Statement of Rights and Responsibilities*, *supra* note 213, ¶¶ 5, 15.

²²⁰ *Id.* at ¶ 15.

²²¹ The “Facebook Community Standards” page contains this instruction: “Reporting Abuse: If you see something on Facebook that you believe violates our terms, you should report it to us. Please keep in mind that reporting a piece of content does not guarantee that it will be removed from the site.” *Facebook Community Standards*, *supra* note 213.

²²² *See supra* text accompanying notes 212-21.

²²³ *See infra* notes 226-37 and accompanying text.

²²⁴ *Univ. of Cincinnati Chapter of Young Americans for Liberty v. Williams*, No. 1:12-cv-155, 2012 WL 2160969, at *1 (S.D. Ohio June 12, 2012).

cal space should lead courts to treat the two spaces differently with regard to some applications of public forum doctrine.²²⁵ “Traditional” public universities must have physical space to exist, and those who work and live on the campus must use this physical space.²²⁶ That some of this space should be allocated, and, in the view of the judge deciding *Williams*, *must* be allocated, for particular uses, including free speech zones, inheres in the nature of the space.²²⁷ Universities are not required, however, to create Facebook pages, and thus it does not follow that once a university creates a Facebook space, the university must allocate a portion of it in a particular way.²²⁸

Yet if the entire university is a virtual, online institution, is it possible that the answer could change? If one conceives the online university as a virtual substitute for what is traditionally understood as a university, an argument exists for requiring the university to devote a portion of its digital space to forums for free interaction in the tradition of “free speech zones” on physical campuses.²²⁹ However, if one conceives the online university as simply a collection of for-credit courses accessible through a portal, the lack of the degree program’s resem-

²²⁵ See *infra* notes 226-34 and accompanying text.

²²⁶ Traditional public universities generally have expansive campuses, which consist of such facilities as classrooms, libraries, faculty and administrative offices, student centers, dormitories, roads, parking areas, and quadrangles. See, e.g., *Ask U.F.—What is the University of Florida Campus Like?*, UNIV. OF FLA., <http://www.questions.ufl.edu/admissions/94/> (last visited Nov. 12, 2012); *U.F. Campus Map*, UNIV. OF FLA., <http://campusmap.ufl.edu/> (last visited Nov. 12, 2012); *UGA by the Numbers*, UNIV. OF GA., <http://uga.edu/profile/facts> (last visited Nov. 12, 2012); University Architects, *Current Campus Maps*, UNIV. OF GA., <http://www.architects.uga.edu/sites/default/files/pdf/maps/current/campusmap2012colorlarge.pdf> (last visited Nov. 12, 2012).

²²⁷ *Williams*, 2012 WL 2160969, at *5; see also *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981) (noting that a public university campus has “many of the characteristics of a public forum”); *Hays Cnty. Guardian v. Supple*, 969 F.2d 111, 116-17 (5th Cir. 1992) (finding that the characteristics of the university, as a place where students live and work, create a community and suggesting that the campus’s role is “more akin to a public street or park than a nonpublic forum”).

²²⁸ University officials may choose to create a noninteractive Facebook page, using the page as a one-way communicative tool, rather than as a means of soliciting remarks from other users. See *supra* notes 128-31 and accompanying text.

²²⁹ Cf. *supra* note 226-27 and accompanying text (explaining the need for free speech on public university campuses due to their nature as communities).

blance to a traditional, residential college experience would seem to cut against the need to set aside a virtual free speech zone.²³⁰ Currently there is no “virtual” public university, but the concept has been proposed previously²³¹ and is now under active consideration in Florida.²³² There is frequent debate as to whether the same First Amendment constraints that bind public universities should also bind private universities.²³³ Whether courts should require a virtual public university to adhere to First Amendment constraints may be equally controversial.²³⁴

VI. CONCLUSION

Web 2.0 technologies enable public universities to engage in dynamic discourse with those they serve.²³⁵ These discourses have the potential to improve the governance of higher education institutions and help these institutions fulfill their complex missions. The complex

²³⁰ Cf. *supra* note 226-27 and accompanying text.

²³¹ See, e.g., Marc Beja, *Online Campus Could Solve Many U. of California Problems, a Dean Says*, CHRON. OF HIGHER EDUC. (July 22, 2009), <http://chronicle.com/article/Online-Campus-Could-Solve-Many/47432> (discussing a proposal by Christopher Edley, Jr., dean of Boalt Hall, the University of California, Berkeley, Law School, to create an eleventh campus, entirely online, within the University of California system).

²³² See Angela Chen, *Florida Ponders Opening an Online-Only Public University*, CHRON. OF HIGHER EDUC. (Sept. 14, 2012), <http://chronicle.com/article/Florida-Ponders-Opening-an/134482> (discussing the Florida Board of Governors’ consideration of creating the state’s thirteenth public institution as an entirely online university).

²³³ See *Key v. Robertson*, 626 F. Supp. 2d 566, 580 (E.D. Va. 2009) (holding that a student had no First Amendment claim against a private law school whose dean required the student to remove from his Facebook page a picture of the dean scratching his nose with his middle finger); see, e.g., Julian N. Eule & Jonathan D. Varat, *Transporting First Amendment Norms to the Private Sector: With Every Wish There Comes a Curse*, 45 UCLA L. REV. 1537, 1574 (1998); Kelly Sarabyn, *Free Speech at Private Universities*, 39 J.L. & EDUC. 145 (2010).

²³⁴ See *supra* notes 229-33 and accompanying text.

²³⁵ See Reynol Junco et al., *The Effect of Twitter on College Student Engagement and Grades*, 27 J. OF COMPUTER ASSISTED LEARNING 119, 130 (2011), available at <http://blog.reyjunco.com/pdf/JuncoHeibergerLokenTwitterEngagementGrades.pdf> (concluding, from experiment data, that the use of Twitter may increase student engagement through communication outside the classroom); Papandrea, *supra* note 3, at 1604-05 (stating teachers that utilize social media as a pedagogical tool find an increase in communication with their students and in dialogue between classmates).

body of public forum jurisprudence should not deter public universities from social media use, but neither should public universities enter the social media arena without appreciating how their policies and practices influence their ability to bar problematic speech or speakers from their sites.

Given the expressive nature of interactive social media, courts are likely to treat sites established or maintained by universities as some type of public forum,²³⁶ but the exact designation of the forum and the degree of editorial control the university subsequently may exercise depends on the university's policies and practices.²³⁷ If the public university uses clear language to place reasonable limits on the use of its social media site, courts are likely to defer to its editorial judgments, so long as the university exercises this judgment judiciously and without favoring some viewpoints over others.²³⁸ If, on the other hand, public universities simply rush headlong into the Facebook arena with no "boundary statement" or only a causal one, they risk losing the ability to preserve civility in a space they have created and maintained.²³⁹ Clearly the judicious approach for colleges and universities is to adopt and consistently enforce thoughtful social media policies designed to promote discourse among and with their constituents without compromising their institutional missions.²⁴⁰

²³⁶ See *supra* Part II (explaining the different types of public forums).

²³⁷ See *supra* notes 121-23 and accompanying text.

²³⁸ See Lidsky, *supra* note 2, at 1984-85 (explaining that a clear indication is necessary if the institution wishes to have its social media forum considered a limited public forum, which allows some limitations on content).

²³⁹ See *supra* notes 79-80, 89 and accompanying text (adapting traditional public forum speech restrictions to designated open public forums).

²⁴⁰ See *supra* notes 169-70 and accompanying text.

VII. APPENDIX A

A. *University of Michigan*

A statement of terms and conditions appears on the University of Michigan “About” page, which a user can reach by clicking on a link on the University of Michigan Facebook page.²⁴¹ Under “General Information,” the page reads:

We welcome your opinions, and encourage open discussion about the topics we post. If we become aware of messages that contain advertising, are off-topic, use of-fensive or inappropriate language, are intended to de-fame, infringe someone’s rights, or are a violation of law, we reserve the right to remove them.²⁴²

B. *University of Minnesota - Twin Cities*

Another succinct statement of terms and conditions is on the University of Minnesota - Twin Cities Facebook page.²⁴³ A link on the front page takes the user to a web page titled “Facebook House Rules” with these comments:

This is your Fan Page and we encourage you to leave comments, photos, videos and links here that are relevant to the University and the topics being discussed, and appropriate in light of the University’s status as a public not-for-profit institution. Comments that are inappropriate or offensive are subject to removal without notice. They include comments that:

- promote commercial enterprises;

²⁴¹ *University of Michigan*, FACEBOOK, <https://www.facebook.com/universityofmichigan> (last visited Nov. 12, 2012).

²⁴² *About University of Michigan*, FACEBOOK, <https://www.facebook.com/universityofmichigan/info> (last visited Nov. 12, 2012).

²⁴³ *University of Minnesota*, FACEBOOK, <https://www.facebook.com/UofMN> (last visited Nov. 12, 2012).

- sell, or solicit offers to sell, goods or services for personal gain; or
- promote a specific political candidate or political party.

We ask also that you be civil and refrain from personal attacks. [Comments posted to Facebook pages do not represent the opinions of the University of Minnesota.]²⁴⁴

C. University of California, Los Angeles

A different but equally robust set of terms and conditions is found on the University of California, Los Angeles (UCLA), Facebook page.²⁴⁵ A link on the front page to “Comments Policy” connects to a page with the following policies:

All content and posts on UCLA’s Facebook page are bound by the following:

Facebook’s Statement of Rights and Responsibilities

UC’s Electronic Communications Policy

Campus Policy

*UCLA reserves the right to block the content of any post that violates campus policy, including but not limited to the use of language to create a hostile and intimidating environment.

*The Regents shall have the right to remove the content from UCLA’s Facebook page at any time without prior notice for any reason deemed to be in The Regents’ best interest.

We want to remind readers that while UCLA supports free speech, posts and comments by individuals do not

²⁴⁴ *Facebook House Rules*, REGENTS OF THE U. OF MINN., <https://www.ur.umn.edu/brand/requirements-and-guidelines/social-networking/house-rules.php> (last modified June 18, 2012).

²⁴⁵ *UCLA*, FACEBOOK, <https://www.facebook.com/uclabruins> (last visited Nov. 12, 2012).

reflect the opinions or policies of the College or University. This page is intended to be a forum for civil discussion of topics related to UCLA and the University of California, and we expect that remarks will be on-topic and respectful of the rights and opinions of others.

Students are also encouraged to embrace True Bruin values when posting on the site.

Reporting violations of Facebook’s Statement of Rights and Responsibilities on UCLA’s Wall or Discussion Board

Report abusive content to Facebook. According to Facebook procedures:

“The best way to flag abusive content on the site is to use the “Report” links that appear near the content itself. When a report is submitted, we will review it and take any action warranted by our Statement of Rights and Responsibilities.”

To report violations of the UCLA Student Code of Conduct, see here. To report violations of the UC Faculty Code of Conduct, see here.²⁴⁶

D. University of Florida Levin College of Law

The Levin College of Law Facebook page also contains a robust version of the designations with some additions²⁴⁷ not found on the UCLA²⁴⁸ or the University of Wisconsin—Madison pages.²⁴⁹ The front page contains a prominent link to “Our Facebook Policy,” and this link takes the user to a page with the following content²⁵⁰:

²⁴⁶ *UCLA Comments Policy*, FACEBOOK, https://www.facebook.com/uclabruins/app_6009294086 (last visited Nov. 12, 2012).

²⁴⁷ *University of Florida Levin College of Law*, FACEBOOK, <https://www.facebook.com/uflaw> (last visited Nov. 12, 2012).

²⁴⁸ See *infra* Part VIII.A.

²⁴⁹ See *supra* notes 191-93 and accompanying text.

²⁵⁰ *Terms and Conditions of the UF Law Facebook Site, Including Policy on Posting Comments*, FACEBOOK, https://www.facebook.com/uflaw/app_4949752878 (last visited Nov. 12, 2012).

Terms and Conditions of the UF Law Facebook Site, including Policy on Posting Comments

Overview

The contents of the Wall, Discussion Board, and other areas available for posts on the UF Law Facebook page are the result of text submitted by individual Facebook members and University of Florida (UF) alumni, students, faculty and staff, and do not reflect in any way the opinions or policies of UF or any of its colleges or departments.

UF does not prescreen comments. At the same time UF reserves the right to block the content of any post that violates any UF policy, rule, or regulation. UF shall also have the right to remove content from this Facebook page at any time, without prior notice, whenever it is deemed to be in University's best interest to do so.

Please be aware that all content and posts are bound by the following:

Facebook's Terms of Use and Code of Conduct[;]

UF's policies, rules and regulations, including without limitation UF's Acceptable Use of Computing Resources Policy[;]

UF campus policies, rules, and regulations[;]

Florida has a very broad public records law. As a result, comments received are public records subject to disclosure to the public upon request unless otherwise exempt.

Expiration Date

Each post will expire approximately four weeks after posting, at which point it and all associated replies may be removed from this page.

Digest

If a topic generates more than 100 posts, UF reserves the right to select a few representative posts to remain on the Wall or Discussion Board and place the rest in a digest on this page. The same expiration dates apply.

Reporting Violations of Facebook's Code of Conduct on UF Law's Wall or Discussion Board

Report abusive content to Facebook. According to Facebook procedures: "Facebook encourages all users to utilize the 'Report' links if they find abusive content. In most cases, you will find a 'Report' link below the piece of content. Selecting this link takes you to a form where you can specify the type of abuse and make a detailed report. Facebook investigates these reports and makes a determination as to whether or not the content should stay up. All abuse reports on Facebook are confidential. If you have witnessed abuse on the site that you are unable to report using these links, please tell us more here."

To report violations of a UF policy, rule, or regulation, please refer [sic] the policy, rule, or regulation in question for reporting instructions.²⁵¹

E. University of Georgia

Another robust page belongs to the University of Georgia, whose Facebook page is apparently maintained by the University of Georgia Office of Admissions.²⁵² The front page has a link titled "Comment Policy" which takes the user to a page titled "Comment Policy."²⁵³ When the user takes this route to reach the "Comment Policy" page, the user finds this text:

The University of Georgia Office of Admissions (UGA) welcomes the community's contributions to its Facebook Page (e.g. comments, photo tagging, wall posts, etc.). Community-contributed content on the Page is the opinion of the specific author and does not represent UGA.

²⁵¹ *Id.*

²⁵² *University of Georgia*, FACEBOOK, <https://www.facebook.com/uga.edu> (last visited Nov. 12, 2012).

²⁵³ *University of Georgia Comment Policy*, FACEBOOK, https://www.facebook.com/uga.edu/app_4949752878 (last visited Nov. 12, 2012).

UGA Admissions abides by Facebook's Statement of Rights and Responsibilities and asks its Facebook Fans to do the same. In particular, please do not "post unauthorized commercial solicitations (such as spam)"; "bully, intimidate, or harass any user"; "post content that is hateful, threatening, pornographic, or that contains nudity or graphic or gratuitous violence"; or "do anything unlawful, misleading, malicious, or discriminatory" on UGA's Facebook Page.

UGA reserves the right, but is not obligated, to remove comments that contain commercial solicitations; are factually erroneous/libelous; are wildly off-topic; that cannot be translated into English by Google Translate or other free online translation software; or that otherwise violate Facebook's Statement of Rights and Responsibilities or at the discretion of this page's administrators. Facebook encourages all users to utilize the "Report" links when they find abusive content.

The University of Georgia Office of Admissions thanks you in advance for your contributions to the university's Facebook Page, and for your help in creating a safe and vibrant online community.²⁵⁴

²⁵⁴ *Id.*