

Congressional Oversight of Agency Public Communications: Implications of Agency New Media Use

Kevin R. Kosar
Analyst in American National Government

March 14, 2012

Congressional Research Service
7-5700
www.crs.gov
R42406

CRS Report for Congress
Prepared for Members and Committees of Congress

c11173008

Summary

This report intends to assist Congress in its oversight of executive branch agencies' public communications. Here, "public communications" refers to agency communications that are directed to the public.

Many, and perhaps most, federal agencies routinely communicate with the public. Agencies do so for many purposes, including informing the public of its rights and entitlements, and informing the public of the agency's activities. Agencies spent more than $900 million on contracts for advertising services in FY2010, a figure that does not include all agency communications expenditures.

Congress frequently has investigated agency public communication activities. For example, in late February 2012 the Senate Homeland Security and Governmental Affairs Committee's Subcommittee on Oversight of Government Management began investigating 11 federal agencies' public communications activities and expenditures.

Congressional oversight of agency public communications activities is not new; it has occurred frequently since at least the beginning of the 20th century. Congress has enacted three statutory restrictions on agency communications with the public. One limits agencies' authority to hire publicity experts, another prohibits using appropriated funds to lobby Congress, and a third disallows using appropriated funds for "publicity or propaganda." For a number of reasons, enforcing these restrictions has been challenging, not least of which is that these statutory prohibitions do not well clarify licit from illicit public communications.

Many federal agencies have adopted new electronic communication technologies over the past two decades. These "new media" technologies include e-mail, websites, weblogs (or blogs), text messaging, and social media such as Facebook and Twitter.

Agencies' use of these new media has implications for congressional oversight of agency public communications. Most fundamentally, the ease of use of new media and the nature of digital communications further complicates congressional oversight and enforcement of the public communications restrictions.

This report will be updated in the event of any significant developments.

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Congressional Oversight of Agency Public Communications

In February 2012, the Senate Homeland Security and Governmental Affairs Committee's Subcommittee on Oversight of Government Management began a wide-ranging investigation of executive agencies' public communications activities.[1] The subcommittee is seeking to determine whether any of the agency expenditures were wasteful or propagandistic. The subcommittee has asked 11 federal agencies to provide it with records of their public communications contracts since 2008.

Since 2010, congressional committees have examined agency public communications at least twice before.

- In March 2011, the Senate Homeland Security and Governmental Affairs' Subcommittee on Contracting Oversight held a hearing on the General Services Administration's (GSA's) hiring of a private consulting firm. GSA sought assistance in rebutting criticisms that environmental contamination at one of its facilities had sickened and killed GSA employees.[2]
- On August 16, 2010, the minority staff of the House Oversight and Government Reform Committee released a report faulting seven agencies for engaging in inappropriate public relations and propaganda activities. Among the incidents that drew criticism was a Department of Health and Human Services commercial that spoke well of the Patient Protection and Affordable Care Act (P.L. 111-148, as amended).[3]

As noted in a related CRS report, public communications activities of the Department of Education, Federal Communications Commission, Internal Revenue Service, and other federal agencies have drawn congressional scrutiny during the past decade.[4]

In part, Congress's interest in agency communications flows from its general duty to oversee the agencies it has created and ensure the appropriate use of the funds it appropriates.

But there is a broader context: control. Congressional apprehension about agencies promoting policies and taking political sides is long-standing.[5] This concern is rooted at least partially in the

[1] U.S. Senate, "Subcommittee Continues Oversight of Public Relations and Advertising Contracts," February 28, 2012, at http://mccaskill.senate.gov/?p=subcommittee_on_contracting_oversight_entry&id=1475; and Meredith Shiner, "Senators Will Investigate How Tax Money Is Used for Administration Spin," *Roll Call*, February 29, 2012, at http://www.rollcall.com/issues/57_101/Senators-Will-Investigate-How-Tax-Money-is-Used-for-Administration-Spin-212704-1.html.

[2] U.S. Congress, Senate Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, *Examination of Public Relations Contracts at the General Services Administration's Heartland Region*, 112th Cong., 1st sess., March 1, 2011 S.Hrg. 112-49 (Washington: GPO, 2011).

[3] U.S. Congress, House of Representatives, Committee on Oversight and Government Reform, *Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Activities*, minority staff report, August 16, 2010, pp. 19-20.

[4] CRS Report RL32750, *Public Relations and Propaganda: Restrictions on Executive Agency Activities*, by Kevin R. Kosar, pp. 1-3.

perspective that agencies should be apolitical and play little if any independent role in policy formulation.[6] Thus, from this perspective, agencies have a duty to inform and educate the public, but they should not attempt to persuade it or to engage in political or policy advocacy or elections.[7]

Additionally, agencies have incentives to promote themselves to the public.[8] The author of a 1939 study of government communications activities noted, "It has long been the habit of officials to place the best possible light upon their accomplishments."[9] Agencies frequently seek operational autonomy, that is, they try to distance and insulate themselves from legislative direction. One means for an agency to do this is to develop positive relationships with the public or interest groups through public communications, thereby creating stakeholders who may pressure Congress.[10]

Collectively, then, the statutory restrictions on publicity experts, publicity and propaganda, and lobbying with appropriated funds are tools for congressional control. When enforced, these statutes can serve to counteract agencies' incentives to promote themselves or political causes with public revenue, and to remind agencies that the misuse of agency resources or funds invites a congressional response.

Executive Agency Public Communications

Federal agencies often speak to the public because doing so generally is considered essential to the functioning of representative democracy. If government is to serve the people, then the people must be kept well-informed of the government's activities so that they may judge its work and alter its policies through elections or other means (e.g., advocacy).

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[5] For example, controversy erupted in 1933 over the Food and Drug Administration's public advocacy for a food and drug regulatory bill. For one account, see Ruth deForest Lamb, *American Chamber of Horrors* (New York: Farrar & Rinehart, 1936.) Also, see generally Lee, *Congress vs. the Bureaucracy*.

[6] The somewhat recent development of the unitary executive theory of presidential governance may have further heightened congressional concern over agencies taking political sides. On agencies as tools of the president, see Ryan J. Barilleaux and Christopher S. Kelley, eds., *The Unitary Executive and the Modern Presidency* (Texas A&M University Press, 2010).

[7] Federal statutes forbid civil servants from engaging in certain election-related activities. CRS Report 98-885, *"Hatch Act" and Other Restrictions in Federal Law on Political Activities of Government Employees*, by Jack Maskell; and CRS Report 97-624, *Federal Restrictions on State or Local Government Officer or Employee Political Activities*, by Barbara L. Schwemle. For an effort to detect executive agencies being used for electoral purposes, see Sanford C. Gordon, "Politicizing Agency Spending Authority: Lessons from a Bush-Era Scandal," *American Political Science Review*, vol. 105, no. 4, November 2011, pp. 717-734.

[8] Lee, *Congress vs. the Bureaucracy*, introduction. Government agencies in other democratic republics also tend to tell the public about their good works. Ivan Gaber, "Exploring the Paradox of Liberal Democracy: More Political Communications Equals Less Public Trust," *The Political Quarterly*, vol. 80, no. 1, January-March 2009, pp. 84-91.

[9] McCamy, *Government Publicity*, p. 19.

[10] Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton University Press, 2001), introduction and chapter 1.

Thus, many, and perhaps most, federal agencies routinely communicate with the public in the course of their daily work.[11] Agencies do so for many purposes, including

- informing the public of its rights and entitlements;[12]
- telling the public of the agency's activities;[13]
- inviting public comment on proposed rules;[14]
- warning the public of perils;[15] and
- discouraging harmful or dangerous behaviors.[16]

Congress also has established agencies whose primary purpose is to make information available to the public (e.g., the U.S. Government Printing Office (GPO)), and tasked others with carrying out media campaigns (e.g., the Office of National Drug Control Policy's National Youth Anti-Drug Media Campaign).[17]

It is unclear how much the executive branch, let alone the federal government as a whole, spends on communications each year. However, CRS has estimated that executive branch agencies spent nearly $945 million on contracts for advertising services in FY2010, a figure that does not include all agency public communications expenditures.[18] The Department of Defense spent $545.4 million on advertisements in FY2010, much of it for the purpose of drawing recruits.

Statutory Restrictions on Executive Agency Public Communications

Congress has established three executive branch-wide[19] statutory restrictions on executive agency communications:[20]

[11] Here "communicate" is defined to mean "to share or exchange information."

[12] E.g., the Social Security Administration has a publication that explains "who can get Social Security disability benefits." See http://www.ssa.gov/pubs/10029.html.

[13] E.g., the Department of Education, like many other agencies, has a web page that includes copies of its secretary's speeches, press releases, and other informational media. See http://www.ed.gov/news/.

[14] E.g., the Administrative Procedure Act of 1946 (5 U.S.C. 551 et seq.) requires agencies to accept public comments in certain instances. See CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, by Maeve P. Carey.

[15] E.g., the National Weather Service's National Hurricane Center issues notifications of dangerous storms.

[16] E.g., the U.S. Forest Service discourages the setting of forest fires.

[17] 44 U.S.C. 301 et seq. and 22 U.S.C. 1708 respectively. On federal government advertising, see CRS Report R41681, *Advertising by the Federal Government: An Overview*, by Kevin R. Kosar.

[18] CRS Report R41681, *Advertising by the Federal Government: An Overview*, p. 4.

[19] Agency-specific statutory restrictions on communications also exist. For example, Congress has forbidden the Department of Defense from using appropriated funds to pay the costs of advertising by any defense contractor (10 U.S.C. 114 amendments).

[20] Two addenda are warranted. First, the Hatch Act prohibits employees from engaging in partisan campaign activity on federal property on official duty time. See CRS Report 98-885, *"Hatch Act" and Other Restrictions in Federal Law on Political Activities of Government Employees*, by Jack Maskell. Second, the Anti-Deficiency Act (31 U.S.C. 1341(a)) also limits these activities, but only as a consequence of violating the publicity and propaganda restrictions—which forbid expenditures that exceed available budget authority. CRS Report RL30795, *General Management Laws: A*
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- A 1913 statute (P.L. 63-32; 38 Stat. 212; 5 U.S.C. 3107) declares, "Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose."
- A 1919 statute (P.L. 66-5; 41 Stat. 68; 18 U.S.C. 1913) forbids agencies from spending appropriated funds to encourage the public to contact Members of Congress. This "grassroots lobbying" prohibition, as it is often called, forbids agencies from paying for "any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress."[21]
- Annual appropriations acts often carry a prohibition that forbids the use of appropriated funds "for publicity or propaganda purposes within the United States not authorized by the Congress." These restrictions have appeared in appropriations laws for over a half century.[22]

The rationales advanced for each of these statutes have varied. The 1913 anti-publicity expert statute may have been motivated by concern over agencies spending funds to extol their achievements.[23] Plainly, the annual appropriations restrictions aim to prevent agencies from propagandizing the public. The 1919 anti-lobbying statute, meanwhile, aims to protect the separation of powers by preventing executive agencies from pressuring legislators through the public. All three statutes also were justified as means for stopping agencies from wasting public funds.[24]

Enforcement of Statutory Restrictions

Historically, Congress has found enforcing the restrictions on government communications is inherently challenging for at least three reasons.

First, no single federal agency is responsible for reviewing agencies' communications with the public and enforcing statutory restrictions. The Department of Justice is responsible for prosecutions under the aforementioned 1919 anti-lobbying law. However, the DOJ "has never prosecuted anyone" for violating this statute.[25]

Otherwise, oversight, investigation, and enforcement of appropriate practices regarding government advertising falls to agencies' inspectors general, the Government Accountability Office (GAO), and Congress, all of whom have numerous other responsibilities.

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Compendium, by Clinton T. Brass et al., pp. 93-97.

[21] Generally, see CRS Report 97-57, *Restrictions on Lobbying Congress With Federal Funds*, by Jack Maskell.

[22] For example, Section 8001 of the Department of Defense Appropriations Act, 2010 (P.L. 111-118; 123 Stat. 409) reads, "No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress." U.S. Congress, House Appropriations, *Department of Defense Appropriations Act, 2010*, committee print, 111th Cong., 2nd sess., January 2010 (Washington: GPO, 2010).

[23] Kevin R. Kosar, "The Law: The Executive Branch and Propaganda: The Limits of Legal Restrictions," *Presidential Studies Quarterly*, vol. 35, no. 4, December 2005, pp. 786-787.

[24] Lee, *Congress vs. the Bureaucracy*, p. 19.

[25] Lee, *Congress vs. the Bureaucracy*, p. 125.

Second, the enforcement of public communications restrictions is inevitably post hoc—it comes after an agency action. Each agency has the authority to communicate with the public; there is no central federal communications agency that reviews agency communications for legal propriety before they are released to the public. (Individual agencies, in contrast, limit their own employees' communications with the public. Agencies' public communications are the responsibility of press offices and public affairs officials.) This "fire alarm" approach to oversight tends to mean in practice that authorities (Congress, GAO, inspectors general, etc.) only learn of possible transgressions when alerted by someone else (e.g., the media or a whistle-blower).[26]

Third, the brevity of the current statutes has left agencies and oversight authorities with the responsibility for interpreting the extent of the statutes' coverage.[27] Annual appropriations restrictions, for example, speak of "publicity or propaganda purposes" but do not define these terms. The 1913 anti-publicity expert statute does not define who is a "publicity expert." The GAO, however, has developed a body of opinions that attempt to define the scope of these terms.[28] Thus GAO construes "publicity and propaganda" to cover agency communications that are self-aggrandizing, designed to aid a political party, or that fail to disclose that they were produced by the government ("covert propaganda").[29] But GAO's determinations are not authoritative. The Department of Justice (DOJ) has contested GAO's conclusions in some instances and directed executive agencies not to heed GAO's opinion.[30]

Executive Agency Use of New Media for Public Communications

Over the past two decades, federal agencies have adopted new electronic communication technologies. These "new media" technologies include e-mail, websites, weblogs (or blogs), text messaging, and social media, such as Facebook and Twitter.

Federal agencies are increasingly using new media technologies to communicate with the public. At present, there are more than 1,504 federal government domains (e.g., Data.gov), and thousands of websites on these domains.[31] As of June 2011, the GAO found that 23 of 24 of the federal

[26] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire alarms," *American Journal of Political Science*, vol. 28, no. 1, Feb. 1984, pp. 165-179.

[27] The legislative histories behind these acts also tend to be sparse, with little guidance as to the intent behind them. For example, appropriations reports rarely comment on the public relations and propaganda restrictions in the legislation they accompany.

[28] For GAO's interpretations and criticisms of these some of these statutes, see Government Accountability Office, *Principles of Federal Appropriations Law*, GAO-04261SP (Washington: GAO, 2004), vol. 1, pp. 4-196-4-218, 4-227-4-233.

[29] Ibid., pp. 4-199-4-202.

[30] Steven G. Bradbury, Principal Deputy Assistant Attorney General, "Re: Whether Appropriations May be Used for Informational Video News Releases," Memorandum for the General Counsels of the Executive Branch, March 1, 2005.

[31] As of March 12, 2012, 1,504 domains were listed at http://explore.data.gov/Federal-Government-Finances-and-Employment/Federal-Executive-Branch-Internet-Domains/k9h8-e98h. The Obama Administration has been reducing the number of domains—there were 1,759 domains on the aforementioned Data.gov list on July 15, 2011. In June 2011, the Administration estimated there were approximately 24,000 federal websites. White House, "TooManyWebsites.gov," the *White House Blog*, June 13, 2011, at http://www.whitehouse.gov/blog/2011/06/13/toomanywebsitesgov; and Jeffrey D. Zients, Federal Chief Performance Officer and Deputy Director for Management, "Implementing Executive Order 13571 on Streamlining Service Delivery and Improving Customer Service," (continued...)

agencies it surveyed had a presence on Facebook, Twitter, and YouTube.[32] All 15 of the President's Cabinet agencies have at least one Twitter account.[33]

Some agencies are especially heavy users of these new communications technologies. For example, the National Archives and Records Administration (NARA) utilizes blogs, Facebook pages, Twitter accounts, and Flickr photography pages, and it has a YouTube video channel.[34] Additionally, a survey of 3,000 federal managers found that approximately a quarter of them used Facebook for work purposes.[35]

In part, the incorporation of these technologies into agency communications is in keeping with past adoptions of emergent communications technologies in the hopes of improving agency operations.[36] Additionally, the Administration of President Barack H. Obama has strongly encouraged agencies to use the most recent new media communications technologies. The President issued a memorandum on his first day in office declaring,

> [e]xecutive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.[37]

This "Open Government Initiative" was operationalized by a subsequent memorandum,[38] and the Office of Management and Budget (OMB) provided agencies guidance on using new media to make government more transparent, participatory, and collaborative.[39] President Obama appointed a deputy chief technology officer to head the "open government initiative" and a

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memorandum, M-11-24, June 13, 2011, p. 3.

[32] Government Accountability Office, *Social Media: Federal Agencies Need Policies and Procedures for Managing and Protecting Information They Access and Disseminate*, GAO-11-605, June, 2011, p. 1.

[33] CRS review of Twitter accounts, July 20, 2011. The Twitter accounts for each cabinet agency were located by visiting their websites, which are compiled at http://www.whitehouse.gov/administration/cabinet.

[34] David S. Ferriero, the National Archivist, told an interviewer that the NARA intends "to become a leader and innovator in all aspects of social media in the federal government." Benjamin Guterman, "An Interview with the Archivist of the United States," *The Federalist*, Summer 2010, p. 8.

[35] William Matthews, "Facebook Using Federal Managers Surge," *GovernmentExecutive.com*, March 29, 2011, at http://www.govexec.com/dailyfed/0311/032911wm1.htm.

[36] Agencies began adopting facsimile machines in the 1960s. U.S. General Accounting Office, *Reduced Government Facsimile Communications Costs Possible Through Better Management*, LCD-76-116, October 22, 1976, p. 2.

[37] Barack H. Obama, "Memorandum for the Heads of Executive Departments and Agencies: Transparency and Open Government," January 21, 2009, p. 1, 74 *Federal Register* 15, January 26, 2009, p. 4685.

[38] Peter R. Orszag, Director, Office of Management and Budget, "Memorandum for the Heads of Executive Departments and Agencies: Open Government Directive," December 8, 2009, at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf. On the Obama Administration's "Open Government Initiative," see CRS Report R41361, *The Obama Administration's Open Government Initiative: Issues for Congress*, by Wendy Ginsberg.

[39] Cass R. Sunstein, Administrator, Office of Management and Budget, "Memorandum for the Heads of Executive Departments and Agencies: Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act," April 7, 2010, at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf; and Peter R. Orszag, Director, Office of Management and Budget, "Memorandum for the Heads of Executive Departments and Agencies: Guidance for Agency Use of Third-Party Websites and Applications," June 25, 2010, at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf.

federal chief information officer, both of whom advocated expanding agency use of Internet technologies.[40]

Different agencies have used different new media to communicate with the public for different reasons and purposes. Several recent examples include the following:

- The U.S. Army uses websites (e.g., ArmyStrongStories.com) and Facebook (Facebook.com/goarmy) to reach potential recruits. Lieutenant General Benjamin C. Freakley, who led the Army Accessions Command which previously was in charge of troop recruitment, reportedly stated, "We're working hard to increase our social media" because "we fully recognize that young people TiVo over commercials or are multitasking on their smartphones when the commercials come on."[41]
- Department of Energy Secretary Steven Chu has a Facebook page (http://www.facebook.com/stevenchu) where he posts short messages on a variety of subjects, such as energy conservation.[42]
- The NARA employs the aforementioned social media technologies for multiple purposes. According to David S. Ferriero, the National Archivist, "Social media tools can help us make it easier for researchers, students, and the general public to learn about and make use of the billions of items in our collection. And just as important, they give the public direct ways to reach us: asking questions, telling us what's important to them, helping us plan for the future.... Digitization and online access to government records can also benefit from the collaborative expertise of the many, including the citizen archivists, researchers, federal agencies, the private sector, and IT professionals."[43]
- The Department of State uses Twitter (http://twitter.com/#!/statedept) as a tool of public diplomacy. Along with online video and other new media, Twitter enables the agency to speak directly with foreign audiences.[44]
- After the April 20, 2010, Deepwater Horizon explosion in the Gulf of Mexico, a multi-federal agency "unified command" was established. It utilized a website (deepwaterhorizonresponse.com),[45] Twitter, Facebook, Flickr, and YouTube to

[40] Beth Noveck and Vivek Kundra, respectively, both of whom have left their positions. White House, "Transparency and Open Government," *White House Blog*, May 21, 2009, at http://www.whitehouse.gov/blog/2009/05/21/transparency-and-open-government; and Kevin R. Kosar, "Collaborative Democracy on the Move," *Public Administration Review*, vol. 70, issue 4, July/August 2010, at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6210.2010.02193.x/full.

[41] Stuart Elliot, "Army Seeks Recruits In Social Media," *New York Times*, May 24, 2011, at http://www.nytimes.com/2011/05/25/business/media/25adco.html. In January 2012 reorganization, the Army Accessions Command was replaced with the Army Marketing and Research Group. United States Army Accessions Command Discontinuance Task Force, "USAAC Important Notice," February 24, 2012 at http://www.usaacarmy.mil/index.html.

[42] For example, Chu posted a video of how he used "an old quilt, some bubble wrap and a magnet" to reduce the drafts coming through the mail slot in the front door of his home. Steven Chu, "My Door Slot," video, posted March 10, 2011, at http://www.facebook.com/video/video.php?v=727231270741&oid=79707582290&comments.

[43] Guterman, "An Interview with the Archivist of the United States," p. 8.

[44] Jesse Lichtensten, "Digital Diplomacy," *New York Times Magazine*, July 16, 2010, at http://www.nytimes.com/2010/07/18/magazine/18web2-0-t.html. On

[45] http://www.deepwaterhorizonresponse.com has been replaced with http://www.restorethegulf.gov/.

explain how it was responding to the oil spill, and how affected individuals (e.g., fishermen) could get assistance.[46]

- The Department of Veterans Affairs (VA) hired Alex Horton, a former soldier who has been openly critical of the VA, to write for the VA blog (http://www.blogs.va.gov/VAntage/).[47] "Alex is not here to flack for the agency," his VA supervisor has said. Horton serves as an in-house critic of the agency, identifying to the VA shortcomings in its services and understanding of veterans' issues.[48]
- Smithsonian museums, such as the Museum of Natural History and the National Postal Museum, have allowed the public to vote via the Internet on which items it would like to see displayed in particular exhibits.[49]

Implications for Congressional Oversight

The development and use of new media by agencies has several implications for Congress in its oversight and enforcement of agency public communications.[50]

(1) *Quantity of Agency New Media Communications*. The ease of producing new media communications makes it easier for agencies to produce more public communications. The Department of State, for example, has more than 15,191 posts ("tweets") from its main Twitter account (http://twitter.com/#!/StateDept) since late 2008, and this is not its only Twitter account.[51] More communications may provide for more opportunities for an agency to transgress

[46] Joel Achenbach, "An Excerpt from Joel Achenbach's 'A Hole at the Bottom of the Sea,'" *Washington Post*, April 4, 2011, at http://www.washingtonpost.com/lifestyle/style/an-excerpt-from-joel-achenbachs-a-hole-at-the-bottom-of-the-sea/2011/03/30/AFNy6bXC_story.html. On social media use and disasters, see CRS Report R41987, *Social Media and Disasters: Current Uses, Future Options, and Policy Considerations*, by Bruce R. Lindsay.

[47] Horton was known to the agency because he operated a blog (http://armyofdude.blogspot.com/) that was very critical of the VA's treatment of former service members.

[48] Lisa Rein, "At VA, a Blogger Criticizes from the Inside," *Washington Post*, May 9, 2011, at http://www.washingtonpost.com/politics/at-va-a-blogger-criticizes-from-the-inside/2011/04/20/AF96tAdG_story.html. Hiring a critic to criticize an organization from within also is a means for an organization to demonstrate to its clientele that it is unafraid of admitting its errors and correcting them. Some federal agencies have ombudsmen. CRS Report RL34606, *Federal Complaint-Handling, Ombudsman, and Advocacy Offices*, by Wendy Ginsberg and Frederick M. Kaiser. A number of newspapers have ombudsmen who publicly criticize their employers. Two examples include the Ombudsman at the *Washington Post* (http://www.washingtonpost.com/patrick-b-pexton/2011/02/24/ABkLhYN_page.html) and the Public Editor at the *New York Times* (http://topics.nytimes.com/top/opinion/thepubliceditor/index.html).

[49] Lonnae O'Neal Parker, "Vote On Which Cars the Smithsonian Should Display," *Washington Post*, January 2, 2011, at http://www.washingtonpost.com/wp-dyn/content/article/2010/12/30/AR2010123004818.html; and National Postal Museum, "And the Winner Is ... " *Postmark Extra* e-newsletter, January 24, 2011.

[50] The GAO has suggested that it is "difficult" to reconcile social media with the requirements of the Privacy Act of 1974 (P.L. 93–579; 88 Stat. 1896; 5 U.S.C. 552a), which limits government collection, use, and disclosure of personal information. Government Accountability Office, *Information Management: Challenges In Federal Agencies' Use of Web 2.0 Technologies*, GAO-10-872T, July 22, 2010, pp. 6-7.

[51] E.g., the agency's Office of Public Liaison has tweeted 2,244 times (http://twitter.com/#!/EngageState). Tweet counts as of March 7, 2012. The State Department first tweeted on July 28, 2008, under the account http://twitter.com/#!/dipnote. On March 27, 2010, its http://twitter.com/#!/dipnote tweets were moved to its current Twitter account and the State Department began issuing tweets from it. Kimberly M. Smith, Bureau of Legislative Affairs, Department of State, e-mail to author, September 9, 2011.

(inadvertently or otherwise) the statutory prohibitions against unauthorized publicity and propaganda and lobbying with appropriated funds (18 U.S.C. 1913).

(2) *Quality of Agency New Media Communications*. New media technologies can remove the filters between agency employees and the public. This intimacy and immediacy enables prompt communications between agencies and the public. It also may lead to agency employees making misstatements of fact or comments that violate statutory restrictions. Daniel Mintz, who served as CIO of the Department of Transportation during the second term of President George W. Bush, has further cautioned, "any material a federal employee publishes [online] can be taken as establishing or implying the establishment of a formal policy."[52]

(3) *Locating Agency New Media Communications*. The nature of new media communications could complicate oversight further. Digital communications often are "born digital"—they exist in digital format only, and often may be deleted easily.[53] Digital communications produced today can be difficult to locate subsequently, especially if they are "real-time" communications (e.g., live online "chats" or video). The NARA has issued guidance to agencies on the preservation of new media communications.[54] However, managing and preserving electronic records in general is a complex undertaking, and historically agencies have not given these activities high priority.[55]

(4) *Authenticating and Securing Agency New Media Communications*. As with paper-based communications, new media communications can be altered or forged. The Government Printing Office produces digital documents that carry a signature indicating their authenticity.[56] But federal agencies' new media public communications seldom are subjected to similar security protocols. Someone with desktop publishing software and the requisite skills easily could download an agency's new media, alter its content, and then distribute it via e-mail and document-sharing websites. In some instances, agencies' new media communications have been commandeered by hackers or other malefactors and used to send out inappropriate content.[57]

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[52] Daniel Mintz, "Web 2.0: Fact or Fiction?" *The Public Manager*, Winter 2007-2008, p. 23, at http://www.thepublicmanager.org/docs_articles/current/Vol36,2007/vol36,Issue04/Vol36N4_Government2.0_Mintz.pdf. See also Mark Landler, "Twitter Musings in Syria Elicit Groans in Washington," *New York Times*, June 29, 2010, at http://www.nytimes.com/2010/06/30/world/30diplo.html.

[53] There are online reports claiming the Secret Service deleted one of its tweets. Joe Pompeo, "Secret Service Issues Mea Culpa for Accidental Anti-Fox News Tweet," *Yahoo News*, May 19, 2011, at http://beta.news.yahoo.com/blogs/cutline/secret-issues-mea-culpa-accidental-anti-fox-news-145533529.html.

[54] National Archives and Records Administration, *NARA Guidance On Managing Web Records*, January 2005, at http://www.archives.gov/records-mgmt/pdf/managing-web-records-index.pdf; and National Archives and Records Administration, "Guidance on Managing Records in Web 2.0/Social Media Platforms," *NARA Bulletin 2011-02*, October 20, 2010, at http://www.archives.gov/records-mgmt/bulletins/2011/2011-02.html.

[55] Government Accountability Office, *Social Media: Federal Agencies Need Policies and Procedures for Managing and Protecting Information They Access and Disseminate*, p. 18.

[56] For a list of GPO-authenticated government documents, see http://www.gpo.gov/help/authentication_of_information.htm.

[57] In January 2009, a hacker took control of President-Elect Barack Obama's Twitter account briefly and sent out advertisements for coupons. See Federal Trade Commission, "Complaint, In the Matter of Twitter, Inc. a Corporation," March 2, 2011, p. 4, at http://ftc.gov/os/caselist/0923093/110311twittercmpt.pdf. Reportedly, one of the National Aeronautics and Space Administration's accounts was commandeered temporarily and used to send out commercial messages. Tariq Malik, "NASA's Astronaut Twitter Account Hacked," *Space.com*, July 24, 2010, at http://www.space.com/8819-nasa-astronaut-twitter-account-hacked.html.

(5) *Identifying Publicity Experts*. New media technologies may make it more difficult to determine who is acting as a "publicity expert" for the purposes of 5 U.S.C. 3107. For one, the employees who author new media often are not readily discernable. For example, government agencies' Twitter accounts seldom state which employees are authorized to send agency tweets. Government agency blog posts may not list an author.[58]

Additionally, Twitter, Facebook, and other new media technologies are not difficult to use, which makes it easier for agencies to have more federal employees (whatever their official agency position) communicate with the public. For example, the Department of Commerce's Chief Economist has a blog (http://www.esa.doc.gov/blog) and Twitter account (https://twitter.com/#!/EconChiefGov). Similarly, Congress established the position of chief information officer (CIO) within federal agencies to coordinate and monitor the acquisition and implementation of information technology programs (P.L. 104-106, Div. E, Title LI, §5125(b)-(d); 110 Stat. 3009-393; 40 U.S.C. 11315).[59] CIOs are not public affairs personnel, yet some have blogs that promote their agencies' activities.[60]

(6) *Identifying Agency Grassroots Lobbying*. The use of new media may make it more difficult to discern when an agency has violated 18 U.S.C. 1913. As noted previously, grassroots lobbying occurs when an agency consciously encourages the public to pressure Congress. Arguably, any time an agency publishes anything on the Internet it could have the effect (intentionally or unintentionally) of encouraging citizens to contact Congress, especially if the communication "goes viral."[61] Thus, an agency may think it is serving the public's "need to know" by publishing its congressional testimony online on the day of a hearing. Congress, meanwhile, might view this as an attempt to create public pressure. Additionally, in the past, agency grassroots lobbying efforts could be identified partly based upon the format of the communication (e.g., press releases and direct mail). Today, new media have expanded the number of formats that agency communications may take, and any new media format might carry content that has the effect of grassroots lobbying.

(7) *Rebroadcasting and the Loss of Control Over Communications.* Government communications produced as new media may be easily rebroadcast. For example, a document posted on an agency website may be downloaded by an individual and then reposted on a personal website or blog. If the initial document contained an error or transgressed the statutory limitations on public communications, it would be difficult for the agency to rectify the situation by removing all online reproductions of it. The ease with which new media may be rebroadcast also may raise

[58] E.g., Economics and Statistics Administration, "The 2010 Holiday Season Facts and Features from the U.S. Census Bureau," December 23, 2011, at http://www.commerce.gov/blog/2011/12/23/2010-holiday-season-facts-and-features-us-census-bureau.

[59] The Clinger-Cohen Act of 1996, a federal information management statute, established the CIO position. See CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., pp. 88-92.

[60] E.g., the General Service Administration's CIO authored a blog post titled, "Flag Day Marks 15 Years of Innovation at GSA," June 20, 2011, at http://innovation.gsa.gov/blogs/OCIO.nsf/dx/Flag-Day-marks-15-Years-Of-Innovation-At-GSA.

[61] As a related matter, the near global accessibility of anything published on the World Wide Web also makes somewhat anachronistic the distinction between domestic and foreign audiences in the United States Information and Education and Exchange Act of 1948, also known as the Smith-Mundt Act (P.L. 80-402; 62 Stat.6; 22 U.S.C. 1431). It forbids informational and public diplomacy materials produced by the State Department from being distributed in the United States except under certain conditions. On the Smith-Mundt Act and public diplomacy generally, see CRS Report R40989, *U.S. Public Diplomacy: Background and Current Issues*, by Kennon H. Nakamura and Matthew C. Weed.

unforeseen legal issues. Thus, should a federal agency "retweet" another federal agency's communication, could the former agency be held culpable if the initial communication violated any of the statutory restrictions on public communications?

Possible Policy Options for Congress

As noted earlier, Congress historically has found it challenging to enforce the current statutory restrictions on agency communications. Agencies' adoption of new media appears to have further complicated oversight.

Should Congress find that the proliferation of new media communications is problematic, it may find value in considering a range of possible policy options to improve or augment the public communications restrictions, such as the following:

1. Defining the major terms in the statutes, such as "publicity expert," "publicity," and "propaganda."[62]
2. Updating the 1919 anti-lobbying statute (18 U.S.C. 1913) to explicitly extend coverage to new media communications.
3. Surveying agencies to see whether agency employees who use new media communications technologies are trained to respect the current statutory public communications restrictions.[63] The Department of Veterans Affairs, for example, has released a policy directive for VA employee use of social media. It makes no mention of the statutory prohibitions.[64]
4. Requiring all agency public communications to identify the author and his or her position at the agency.
5. Requiring the OMB to provide agencies with public communications guidelines. The Information Quality Act (IQA; P.L. 106-554; 114 Stat. 2763A-153; 44 U.S.C. amendments), which was enacted December 21, 2000, required the OMB to issue guidance to federal agencies designed to ensure the "quality, objectivity, utility, and integrity" of information disseminated to the public.[65] However, as an amendment to the Paperwork Reduction Act (44 U.S.C. 3501),[66] the IQA's coverage has not been construed by OMB as covering public relations communications (67 *Federal Register* 8460).

[62] On the challenges of defining propaganda, see CRS Report RL32750, *Public Relations and Propaganda: Restrictions on Executive Agency Activities*, by Kevin R. Kosar, p. 13.

[63] Persons who protect government information from public release are required to receive training in information controls. (E.g., see CRS Report R41528, *Classified Information Policy and Executive Order 13526*, by Kevin R. Kosar, p. 16.) Arguably similar training might be proper for federal employees who communicate with the public.

[64] Department of Veterans Affairs, "Use of Web-Based Collaboration Technologies," VA Directive 6515, June 28, 2011, at http://www.va.gov/vapubs/viewPublication.asp?Pub_ID=551&FType=2.

[65] CRS Report RL32532, *The Information Quality Act: OMB's Guidance and Initial Implementation*, by Curtis W. Copeland.

[66] The Paperwork Reduction Act focuses on the federal government's collection of information. CRS Report R40636, *Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates*, by Curtis W. Copeland and Vanessa K. Burrows.

6. Requiring agencies to report annually to Congress on their public communications activities, expenditures, and the agencies' rationales for these activities.
7. Including in agencies' annual appropriation acts a requirement that GAO assess agencies' public communications for comportment with the public communications restrictions.[67] This would provide Congress with assessments of agency compliance; it also could serve as a reminder to agencies of the public communications restrictions.

Author Contact Information

Kevin R. Kosar
Analyst in American National Government
kkosar@crs.loc.gov, 7-3968

[67] E.g., when Congress grew concerned about the public relations activities of the Department of Defense, it included a provision in the agency's FY2009 appropriation directing GAO to issue a legal opinion to Congress on whether the Department of Defense (DOD) violated prohibitions on publicity or propaganda activities (P.L. 110-417, Section 1056(c); 122 Stat. 4610). The DOD abolished the office whose activities had caught congressional attention. Thom Shanker, "Pentagon Closes Office Accused of Issuing Propaganda Under Bush," *New York Times*, April 16, 2009, at http://nytimes.com2009/04/16/us/politics/16policy.html.