Use of Social Media by Law Enforcement

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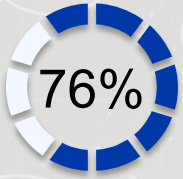
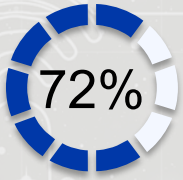
Police and Social Media – 2016 IACP Study



Soliciting Tips on Crime

76% use social media to solicit tips on crime

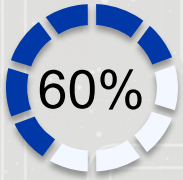


Monitoring Public Sentiment

72% use social media to monitor public sentiment

Gathering Intelligence for Investigations

70% use social media for intelligence gathering for investigations



Contacting Platforms for Evidence

60% have contacted a social media company for evidence

2013: 92% of all LEAs reviewed social media profiles/activities of suspects

Source: https://www.urban.org/sites/default/files/publication/88661/2016-law-enforcement-use-of-social-media-survey_5.pdf

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How Do Police Use Social Media for Investigations and Intelligence?

01 View individuals' publicly available posts

02 Use undercover identity or friend/informant to view private information

03 Use analytical software to track hashtags, infer associations etc. (mostly ended in 2016/2017)

04 Request information directly from social media company using court order

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Policies on Social Media Use - By the Numbers

- Departments with publicly available policies: 16
- Policies addressing undercover/covert online activity: 8
- Policies limiting use of social media to surveil people based on constitutionally protected activities or protected categories: 2

Fourth Amendment Prohibitions On Viewing Public Information or Connecting Undercover?

Historically, no.

- #1 Public space doctrine
- #2 Invited informants/third-part doctrine

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New Fourth Amendment Arguments

What are the new arguments for Fourth Amendment protections?

1. Accumulation of sensitive information
2. Reconsideration of the third-party doctrine
3. New kinds of digital impersonation

Standards for Access to Non-Public Information

- Stored Communications Act
- California: CalECPA

Stored Communications Act (18 U.S.C. §§ 2701-2713)

- **Facebook**:
  - Subpoena: basic subscriber records (2703(c)(2))
  - Court order: records including message headers & IP addresses, not contents of communications (2703(d))
  - Search warrant: stored contents of any account, including messages, photos, videos, timeline posts, & location info

CalECPA (S.B. 178)

- Police must get search warrant before accessing data from social media platform – includes IP address information, call detail records, and payment & location information
- Target and social media platform can both challenge

Illustrative Cases

- *U.S. v. Yelizarov* (D.Md. 2017): Court approved warrant to search FB account of murder suspect because "computer data created by individual involved in criminal activity" offers evidence of "intent, activities, & whereabouts."

- *U.S. v. Ortiz-Salazar* (E.D. Tex. 2015): Info on publicly available FB account, including posts & pictures with co-conspirators, established probable cause for broader search. Private accounts seen as evidence of criminal activity.

- *U.S. v. Hamilton* (E.D. Mich. 2017): Warrants to search FB & Twitter accounts were valid because time period for search was limited, even though no limitations on parts of social media accounts to be searched.

Illustrative Cases, con't

- *State v. Rouch* (Mo. App. W. Dist. 2014): warrant to search home based on Facebook joke didn't meet probable cause standard.

- *U.S. v. Whitt* (S.D. Ohio Jan. 17, 2018): law enforcement applied for warrant to search defendant's FB account to investigate violation of Fair Housing Act after he defaced landlord's property; court ruled insufficient nexus between place to be searched & items to be seized (but: good faith).

Use of Social Media in Gang Cases: Bronx 120

- Kraig Lewis - 22 months in jail with no physical evidence against him.

- Facebook posts, photos and messages presented as evidence of gang affiliation for 30 people.

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Source: Howell, Babe and Bustamante, Priscilla, *Report of the Bronx 120 Mass "Gang" Prosecution,* April 2019, https://static1.squarespace.com/static/5caf6f4fb7c92ca13c9903e3/t/5cf914a3db738b00010598b8/1559827620344/Bronx%2B120%2BReport.pdf; Speri, Alice, "The Largest Gang Raid In NYC History Swept Up Dozens Of Young People Who Weren't In Gangs," *The Intercept*, April 25, 2019, https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/

The Case of Jelani Henry

"Jelani was brought in over nothing. Because he was Asheem's brother. Because he was friends with people from the hood on Facebook."

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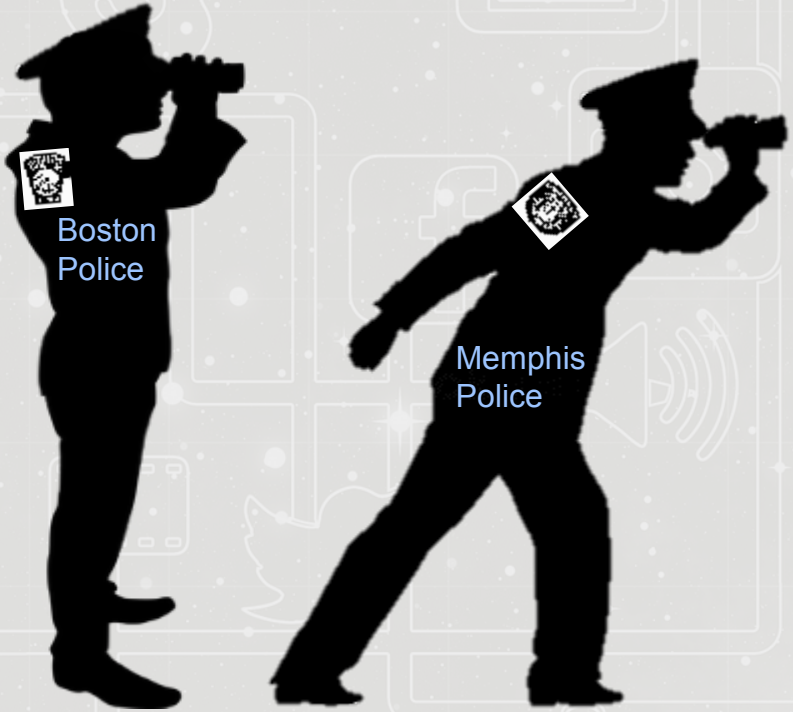
Source: Popper, Ben, "How the NYPD is using social media to put Harlem teens behind bars," *The Verge*, December 10, 2014, https://www.theverge.com/2014/12/10/7341077/nypd-harlem-crews-social-media-rikers-prison.

Monitoring of Protestors and Communities of Color



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Using Tech Tools to Monitor Political Protest

"How many fake accounts can be loaded up into the database in order to see the private users?"

From: [redacted]@geofeedia.com>
Sent: Tuesday, October 20, 2015 1:08 PM
To: [redacted]
Subject: [External] Re: Geofeedia

Det[redacted],

Thanks for getting in touch. I've provided answers to your question below. Let me know if there's any additional information needed.

1 – Who is your biggest competitor? Why Geofeedia over them?

From a location based standpoint, SnapTrends is probably our closest competitor. There are other quasi competitors from the social media standpoint like HootSuite and TweetDeck, but they are focused on only keywords and hashtags, while we have keywords/hashtag search capabilities, and location based social media information. In a prior e-mail I sent you, I included 15+ agencies who use Geofeedia in your area, where we have gone head-to-head against SnapTrends and won (or they switched to Geofeedia from SnapTrends). If you need me to send that list again, I'd be more than happy. Here are just a few ways we differ from SnapTrends:

- 8 total social media sources
- Ability to access social media data in perpetuity
- Agencies have told us there is a 15-20 minute delay in gathering data
- Our data is richer and more complete since we pay for our data from the different platforms, opposed to just tapping into the open access API. This also allows us to be faster overall
- We pay for Twitters Firehose, which allows to gather more complete data and quicker
- Gather 10x more Instagram Data due to our partnership with Instagram. We are the only social media monitoring tool to have partnership with Instagram
- Geofeed Streamer is unique to Geofeedia and has numerous uses (ie: Live Events, Protests - which we covered Ferguson/Mike Brown nationally with great success, Disaster Relief, Etc)
- Our Alerts functionality is available when you are not logged in (you receive an e-mail immediately as the posts come through)
- Undercover account lockage
- We have Mobile Apps for both Android & iOS
- Unlimited data

2 – When a post is made to a social media site, is the location where they uploaded the post (home) or where they tagged the location (club, bar, beach, etc)?

Great question - it's going to be from the location where the post is uploaded. For Twitter and Instagram, you can tag the location (club, bar, beach, etc) if it's within a certain vicinity/distance, to ensure it's location is still accurate and actionable. Majority of data comes from the location of the upload.

3 – How many fake accounts can be loaded up into the database in order to see the private users?

There is no limit on how many fake accounts can be uploaded into the database.

"Geofeedia streamer… has numerous uses (i.e.: Live Events, Protests – which we covered Ferguson/Mike Brown nationally with great success...)."

"There is no limit" on the number of fake accounts.

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Source: ACLU of Northern California FOIA Request

Social Media Monitoring During Recent Protests

- Artificial Intelligence startup Dataminr helped law enforcement digitally monitor the protests that swept the country following the killing of George Floyd.

- Dataminr relayed tweets about the protests directly to police, despite Twitter's terms of service prohibiting such surveillance.

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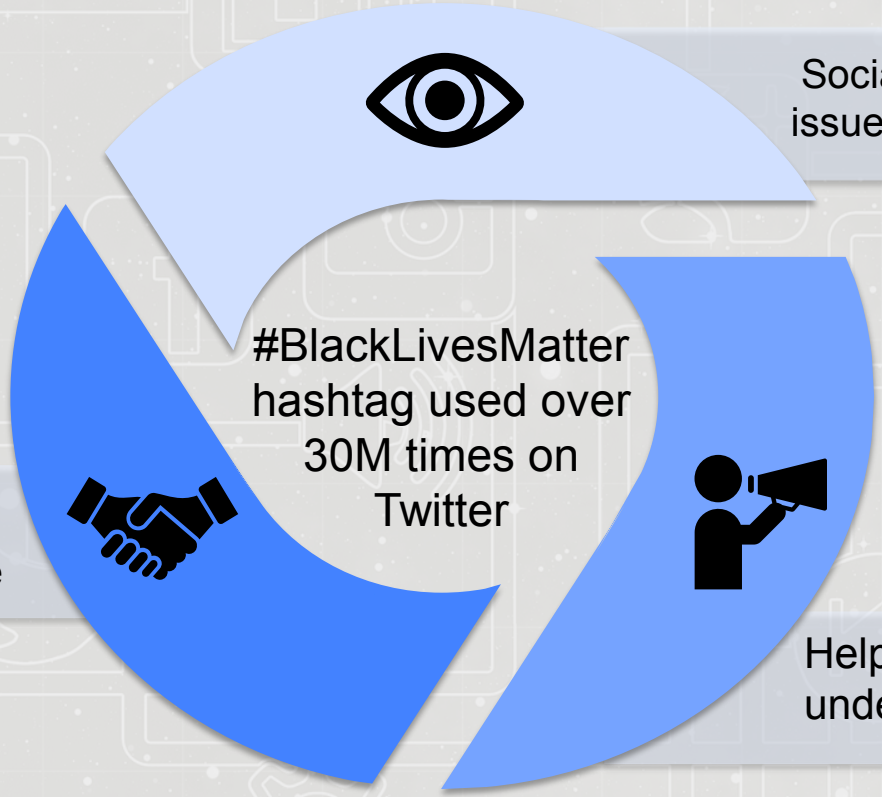
Source: Biddle, Sam, "Police Surveilled George Floyd Protests With Help From Twitter-affiliated Startup Dataminr," *The Intercept*, July 9, 2020, https://theintercept.com/2020/07/09/twitter-dataminr-police-spy-surveillance-black-lives-matter-protests/

Social Media and Communities of Color



Social media highlights important issues that might not get attention

Helps give voice to underrepresented groups

Makes it easier to hold powerful people accountable

First or Fourteenth Amendment Protections?

1997

Third Circuit

Government retaliation for exercise of First Amendment-protected rights supports a constitutional claim.

2015

Third Circuit

Individuals can challenge *discriminatory* surveillance.

2017

Supreme Court

Most important place for the exchange of views is social media.

Questions? Comments?

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