

Trends, Stats, and Best Practices for Adapting To Your Audience

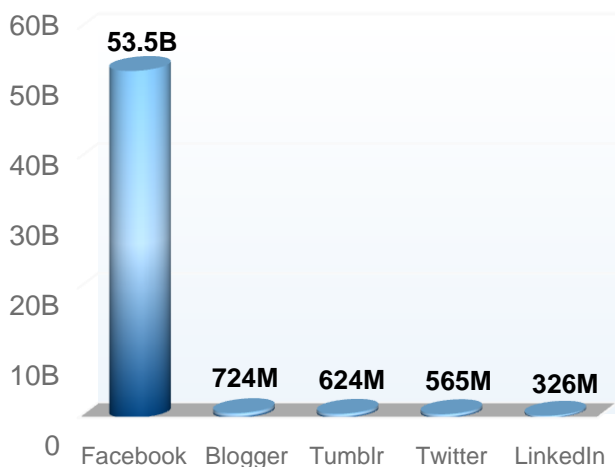
By Douglas Skoke

Social Media Report

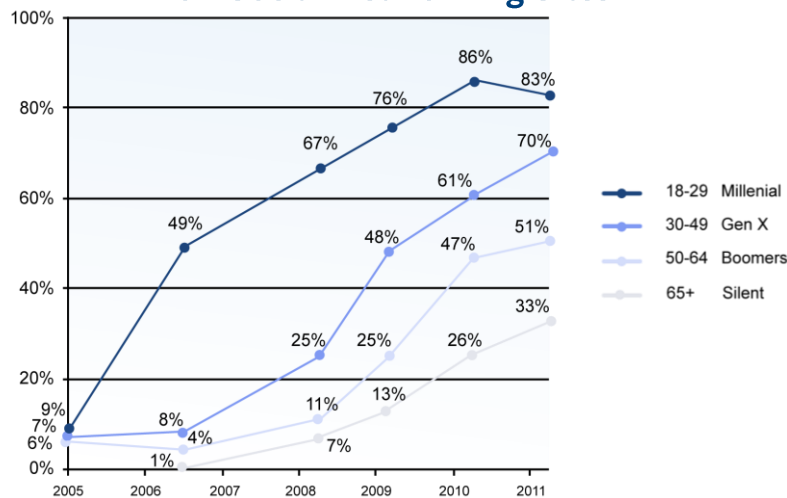
According to Nielsen's "State of the Media: The Social Media Report," social media accounts for 22.5% of the time that Americans spend online, compared with 9.8% for online games and 7.6% for e-mail. That makes social media the No. 1 specific category and the No. 2 category overall behind the other ways in which Americans pass their time online – which includes (unsurprisingly) browsing adult content, online shopping, and reading about topics like sports or health.

The more interesting part is how much more time people are spending on Facebook vs. other websites. In May 2011, Americans spent 53.5 billion minutes on Facebook's website from computers at home and work – up 6% as compared to May 2010. With far fewer minutes was Google's Blogger at 723.8 million minutes, Tumblr at 623.5 million minutes, Twitter at 565.2 million minutes, and, finally, LinkedIn at 325.7 million minutes.

Time Spent Online in May 2011 (In Minutes)



Generations of Internet Users On Social Networking Sites



Source: Pew Research Center's Internet & American Life Project surveys: February 2005, August 2006, May 2008, April 2009, May 2010, and May 2011

Although younger generations are more likely to use social media, the Pew Research Center found that older generations are tightening the technology gap – 33% of Internet users in the silent generation and 51% of users in the baby boomer generation are utilizing social networking sites. Silent generation Internet users on social sites such as Facebook increased 150% in only two years.

This online explosion has had a significant impact on the practice of law. People of all ages expect information instantaneously and are comfortable getting it from the Internet, television, and podcasts. These electronic sources influence how an audience may view your evidence.

Legal teams addressing this social-savvy portion of the jury population need to present complex material in a more dynamic manner than ever before to connect more directly with judges, arbitrators, and juries. This trend has also stimulated the use of visual aids that not only help lawyers try a case but also provide an unprecedented level of interactivity.

Learning Style

Out of the numerous factors to consider when preparing communication strategies for trial, perhaps the most important is learning style. Our predominantly visual society fuels the common misconception that every salient point, piece of evidence, or exhibit must be supported by a substantial amount of content.

Fortunately, this perception is not reality. In the social psychology world, the higher an individual's "cognitive load" (or the total amount of mental activity imposed on working memory at an instance in time), the more challenging it is for him or her to process information. Thus, an individual is more likely to take mental shortcuts (e.g., decide which expert is more credible based on credentials rather than testimony).

Most jurors already experience a high cognitive load due to the stressful circumstances and expectations that are often associated with being impaneled. Increasing this load by using an overwhelming number of complicated graphics will only make processing information more difficult. Keeping graphics simple and straightforward enables visual-learning jurors with high cognitive loads to better retain and recall your key points.

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Surprisingly, while most attorneys assume that judges understand evidence better than jurors, which group understands evidence better varies from case to case. It is safe to say that judges typically have a lower cognitive load than jurors because they are accustomed to the circumstances of trial and familiar with the process and procedure. If the subject matter is familiar terrain for a judge, his or her cognitive load may be even lower than normal. However, if a judge has little exposure to the particular subject matter at issue, his or her cognitive load will be higher and you should take this into consideration when presenting your case.



Practical Considerations

▪ Easy-to-Process Nuggets of Information

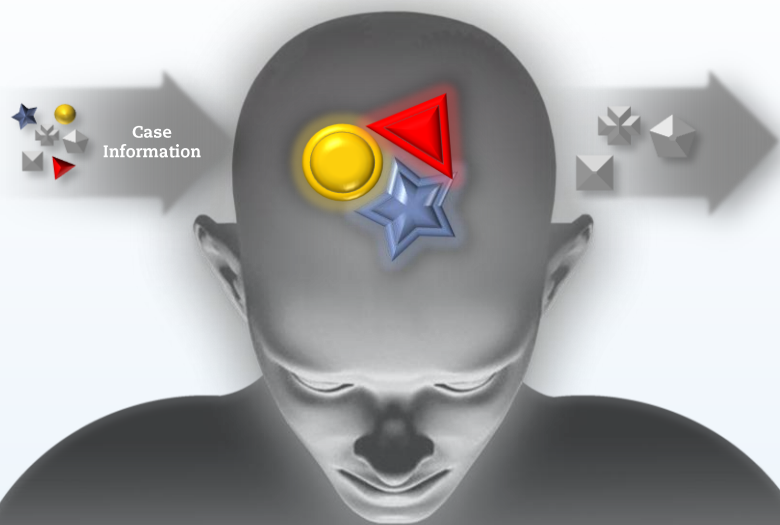
With 76% of Americans using smartphones and 46% communicating on social networking sites, it's no wonder people crave more information. Each month the average American spends 60 hours on the Internet alone – seven hours on Facebook and two hours on other social sites – as well as seven hours watching video on a mobile device and 60 hours watching television. With this much online and TV white noise, people have a limited ability to recall new information.

Research shows individuals can recall no more than seven pieces or “chunks” of information at a time, and when information is brand new, those chunks are very small. “Each piece of information needs to be heard, processed, understood, and encoded in their thought process in order for them to remember and use later – for instance, in deliberations,” says Dr. Daniel Wolfe, director of jury consulting, TrialGraphix.

It is critical for counsel to present information in small, basic, and easy-to-process nuggets of information. Providing context is an effective method of communicating information in proper chunks.

Filtering Information

Attitudes, Experiences, and Preconceptions



“When it comes to presentations, sometimes less is more”

▪ Adapt Your Presentation to Visual Learning Style

“When it comes to presentations, sometimes less is more,” says Andrew Skim, director of presentation technology consulting, TrialGraphix. Skim recently supported a trial team at a hearing for a motion to dismiss. Despite the fact that the judge mandated both sides to limit their presentation to 40 minutes, our client insisted on creating more than 50 text-driven slides. Against Skim’s recommendation, the team felt it was important to walk the judge through each point with a detailed supporting slide. Shortly into the presentation, the judge asked the team to stop reviewing the material and speak its points to the bench. At the conclusion of the hearing, the team was asked to submit its 15 best supporting slides to the court for additional review.

While it is common for judges and jurors to adapt to a presentation that exceeds their cognitive load, this example speaks to the fact that many viewers have difficulty processing information in this type of scenario. Oftentimes, they will reach their cognitive threshold and no longer process what is being presented. Therefore, adapting your presentation to meet your viewers’ learning style is equally important to the material at issue.

Practical Considerations

Convey Complex Concepts With Straightforward Design

In a practical sense, counsel should be advised to use demonstratives judiciously and be cautious about information overload when designing graphics. For instance, in a recent trade secret case, a macro time line was created and displayed on a large poster board to serve as the anchor demonstrative for the opening statement. Initially, counsel attempted to include every event imaginable in addition to thumbnail scans of relevant exhibits related to the events.

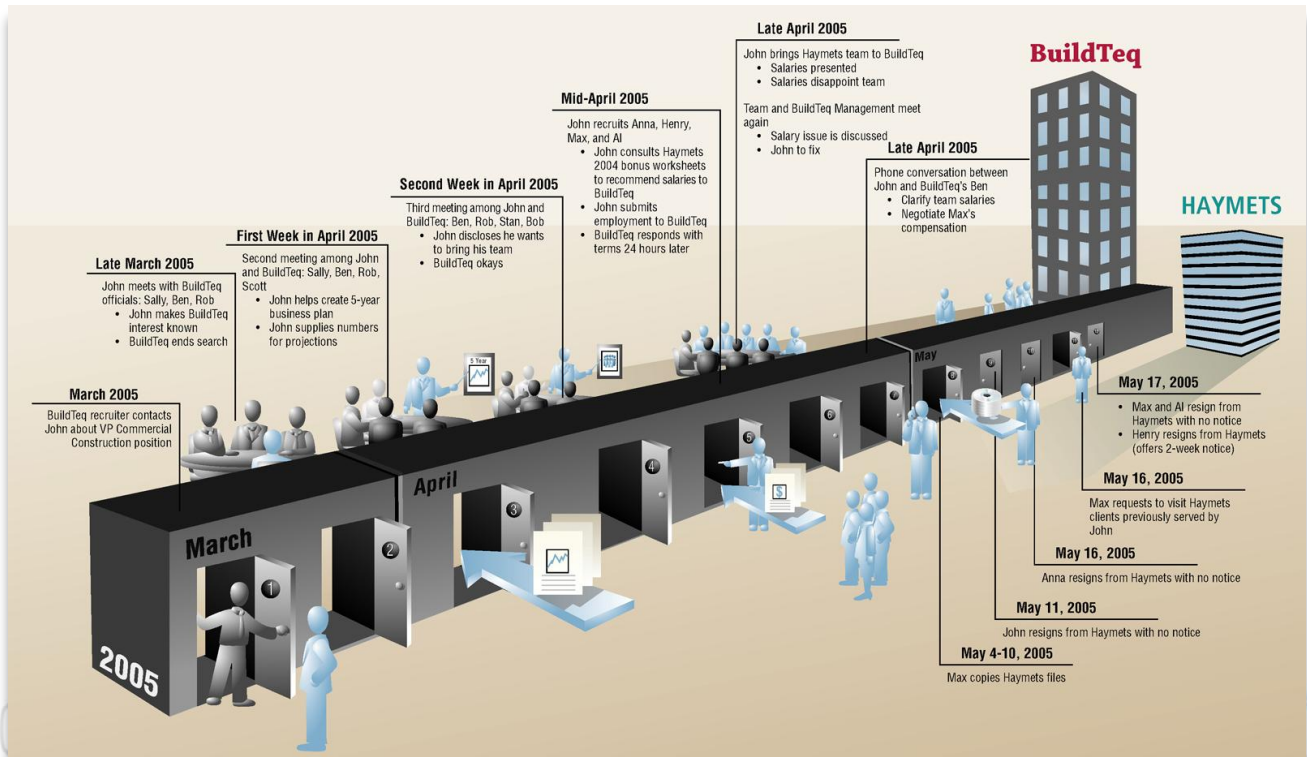
Ultimately, TrialGraphix advised against this strategy and worked with counsel to reduce the number of entries on the time line by 25%. We also persuaded them to utilize a trial presentation system for the display of all of the underlying exhibits that coincided with the time line entries.

By consolidating the media and limiting the time line to only the most significant events, we likely lowered the jury's cognitive load, making it easier for them to process the information.

When consulting with trial teams on demonstratives, it is important to ask "compared to what?" in order to glean the proper context for the argument being made. Because nuggets of information can often seem like puzzle pieces, a well-designed information graphic that provides the proper context will assist the judge or jury in putting the pieces of the puzzle together.

Trade Secrets Time Line – Chronology of Events

Time line of the misappropriation and theft of confidential, proprietary, and trade secret information belonging to Haymets



Delivering Results

Building a strong case thematically and having the evidence to support it does not always ensure a favorable outcome. The ability to effectively present the case by catering to these learning styles, as well as delivering information in concise, impactful elements, is absolutely critical to telling a credible and coherent story. This requires the ability to manipulate demonstratives and exhibits on the fly and it contributes to the bond between presenter and his or her audience, making a more interesting and persuasive presentation. Remember to be selective and strategic in designing and using demonstratives, because less is often more.

Sources: Nielsen media research, ANA Mobile Marketing Conference, and Pew Research Center



About the Author

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Douglas Skoke is the vice president of corporate business development for TrialGraphix, a litigation consulting firm specializing in jury consulting, graphic design, presentation technologies, and trial preparation solutions. He works collaboratively with the business development team to cultivate corporate relationships with Fortune 500 companies.

These partnerships are geared toward establishing preferred provider status within key corporations, allowing them and outside counsel to realize significant cost savings and efficiencies.

With almost 15 years of litigation consulting experience, Mr. Skoke has worked with a wide variety of trial teams and experts in translating key themes and issues into a coherent presentation strategy.