



# Social Media – Everything You Need to Know

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# SOCIAL MEDIA BASICS

## Why It's Important

Social networking platforms such as Facebook, Twitter, YouTube, and LinkedIn have certainly revolutionized the way people communicate and share information. Today around seven-in-ten Americans use social media to connect with one another, engage with news content, share information and entertain themselves.<sup>1</sup> The demographics of social media users has also grown over the years. Young adults were among the earliest adopters and continue to use at higher levels. Usage by older adults, however, has increased.<sup>2</sup> According to the Pew Research Center, about 90% 18-29-year-olds use social media. This is compared to 78%, 64%, and 40% of 30-49, 50-64, and 65+ -year-olds respectively.

Not surprisingly, lawyers have embraced social media as well. According the 2019 American Bar Association TECHREPORT, 80% of respondents reported their firms maintain a presence on social media, the highest since 2016. 80% of all respondents also indicated they used at least one social media platform for themselves for professional purposes.<sup>3</sup>

Social media can assist lawyers, not just with professional marketing or client development, but it can also assist in other significant areas. For instance, lawyers have reported using social media for education and awareness (43%) and case investigation (22%).<sup>4</sup>

Social media really has revolutionized the way we communicate. Individuals can share information with their friends, family, coworkers, and clients over several platforms. It is rare nowadays to meet someone who does not use at least one platform for personal or professional purposes. Because of its significance in the world we live in today, it is important lawyers be at least somewhat familiar with several different platforms. In all likelihood, your clients are using social media in some form or fashion, therefore it is important that you have at least baseline competency with social media. Afterall, you never know when you may need

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<sup>1</sup> Pew Research Center, *Social Media Fact Sheet* (June 2019). The Fact Sheet can be found at: <https://www.pewresearch.org/internet/fact-sheet/social-media/>

<sup>2</sup> *Id.*

<sup>3</sup> Allison Shields, *Websites & Marketing*, ABA TECHREPORT 2019 (October 2019). Available at: [https://www.americanbar.org/groups/law\\_practice/publications/techreport/abatechreport2019/websitesmarketing2019/](https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/websitesmarketing2019/)

<sup>4</sup> *Id.*

to investigate on a social media platform, or if you might just connect with your next big client through social media.

Throughout this CLE session we will explore several topics regarding social media to increase not only your awareness, but also give you skills to know how to use it, where to look, and how to do both ethically.

## Social Media Sites

In 2019, there were around 2.77 billion people worldwide using social media. And, with smartphones and internet connectivity becoming cheaper and easier to access, we should expect to see these numbers grow even higher. In 2020, it is estimated 3.6 billion people are using social media, and it is project that 4.4 billion will be using social media by 2025.<sup>5</sup>

Everyday it feels like there are new social media platforms popping up. There are currently more than 200 known social media sites on the internet. They are, however, not all created equally. Here are a few of the platform you should be familiar with:

1. Facebook - Facebook is currently the largest social media site in the world. With 2.6 billion monthly active users as of 2020. Users can share text posts, links, images, and videos with their Facebook friends.
2. Instagram - Instagram is one of the fastest-growing social networking platforms. In June 2018, it finally reached 1 billion monthly active users. Instagram is a highly visual platform, where users share videos and images. You can also use Instagram Stories and Live features. It is very popular among the younger generations. According to [Statista](#), 32% of users are aged between 18 and 24 and 33% are aged between 25 and 34.
3. Twitter - In 2019, the platform had over 330 million monthly active users. While it doesn't have as many users as other top social media sites, it does have a highly engaged user base. Twitter users send out at least 500 million tweets per day on average.
4. LinkedIn - LinkedIn is now more than just a resume and job search site and has almost 300 million active users. It has evolved into a professional social media site where industry experts share content, network with one another, and build their personal

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<sup>5</sup> Statistics can be found at: <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>

brand. It has also become a place for businesses to establish their thought leadership and authority in their industry and attract talent to their company.

5. Tumblr - In February 2020, there were a total of 321 million unique visitors to the website. Users can join communities and participate in cultural dialogues to expand their ideas. It's one of the top social media sites for self-expression and is very popular among teens and fandoms. It is like a cross between a blog and Twitter: It's a streaming scrapbook of text, photos, and/or video and audio clips.
6. TikTok - TikTok is a short-form video sharing platform that has become quite popular within a short span of time since its launch in 2016. It was created by the Chinese company, ByteDance, and has a Chinese version called Douyin. This app is famous for its lip-sync and dance challenge videos and has over 800 million monthly users.
7. YouTube - YouTube is the largest video-sharing social media site in the world. It lets users upload videos on the platform, view videos from other users, and interact with them. In 2019, it had an average of 2 billion monthly active users.
8. WhatsApp - WhatsApp is a messaging app that lets users share text messages, images, voice notes, audio files, documents, and videos. It has grown exponentially over the years and had about 2 billion monthly users as of March 2020 and people in more than 180 countries use WhatsApp. Initially, it was only used to communicate with friends and family. Gradually, people started to use this free social media app for communicating in businesses also.
9. Snapchat - Snapchat is another highly visual social media platform that's popular among the younger generation. Users can send snaps to each other and update 24-hour Statuses just like on WhatsApp and Instagram.
10. GroupMe - is a texting app that doesn't charge fees or have limits for direct and group messages. Users also can send photos, videos, and calendar links.
11. Kik - Kik is a smartphone messenger system where users send videos and images instead of text. Think emojis on steroids.
12. Pinterest - Pinterest can be described as a virtual scrapbooking social media site and is therefore, highly visual. Users can create themed boards and add images and products to the board. In 2019, there were 335 million monthly active users on the platform. These users have created more than 200 billion pins on over 4 billion boards.
13. Reddit - Reddit is a social media site where users become part of subreddits and engage with other users on relevant topics. It is also somewhat of a news aggregator

site since users share the latest news from different sources on the site. It has a huge community and gets over 1.3 billion monthly visitors.

14. 4Chan - 4chan is a simple forum platform. Anyone can post images on bulletin boards, and anyone can comment. Like Reddit, the boards are dedicated to a variety of topics, but here users do not need to create an account to participate in the community. Anonymity can create extremely hostile environments online within this platform.
15. Meetup - Meetup is a social media site that does exactly what its name says - it helps connect users with local groups to meet up with new people. Groups can organize events for like-minded people to get together.
16. Tinder - Tinder is a geosocial networking and online dating application that allows users to anonymously swipe to like or dislike other profiles based on their photos, a small bio, and common interests. Once two users have "matched", they can exchange messages.
17. Twitch - Twitch is a specialty live-streaming platform, mostly used by gamers to stream their game play or watch other gamers. Users can interact with live streams from other gamers and comment on them or upload videos to Twitch for their audience. It has about 5 million monthly broadcasters.
18. Flickr - Flickr is a photo-sharing social media site that's a favorite among photographers and graphic designers. You can share original, high-quality images on the platform or discover relevant images from other users. You can also join groups and connect with new people with shared interests.<sup>6</sup>

## ETHICS

### Competence

*"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Kansas Rules of Professional Conduct 1.1*

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<sup>6</sup> Most of the information in this list can be found at: <https://influencermarketinghub.com/social-media-sites/>

## Technology Competence

In 2009, then-ABA president Carolyn Lamm created the ABA Commission on Ethics to perform a thorough review of the ABA Model Rules of Professional Conduct and the U.S. system of lawyer regulation in the context of advances in technology and global legal practice developments. The Commission was led by Andrew Perlman, who served as its chief reporting officer. The group's challenge over the next several years was to study these issues and, with 20/20 vision, propose policy recommendations that would allow lawyers to better serve their clients, the courts, and the public.<sup>7</sup> Ultimately, the Commission proposed several changes to the ABA Model Rules of Professional Conduct which were adopted by the ABA House of Delegates in August 2012. These changes were recommended with strong consideration of the advances in technology throughout the legal practice and within society.

Because technology use in law firms is now universal, the Commission proposed and the ABA House adopted an amendment to Comment [8] of Model Rule 1.1<sup>8</sup> to remind lawyers that being competent includes not only staying abreast of changes in the law and its practice, but also includes having a basic understanding of the benefits and risks of relevant technology.<sup>9</sup> While the text to the model rule requires lawyers to provide competent representation, The Comment goes further and now reads, “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” The Comment makes clear, that an attorney or law firm should be versed in the implications of technology used in the course of representation, including knowing any limitations of their personal understanding and hiring the right professionals to help make informed choices.<sup>10</sup> It requires that every lawyer:

- keep abreast of changes to technology used in legal practice;
- develop an awareness of technology, its functionality, and available offerings;
- gain a grasp of the risks and benefits associated with using technology; and

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<sup>7</sup> ABA Commission on Ethics 20/20, information available at:

[http://www.americanbar.org/groups/professional\\_responsibility/aba\\_commission\\_on\\_ethics\\_20\\_20/about\\_us.html](http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/about_us.html).

<sup>8</sup> ABA Commission on Ethics 20/20 Revised Draft Resolution for Comment - Technology and Confidentiality, at 4 (February 2012) (available at:

[http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20120221\\_ethics\\_20\\_20\\_revised\\_draft\\_resolution\\_and\\_report\\_technology\\_and\\_confidentiality\\_posting\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120221_ethics_20_20_revised_draft_resolution_and_report_technology_and_confidentiality_posting_final.authcheckdam.pdf)) (hereinafter Ethics 20/20 Draft Resolution for Comment Re Technology).

<sup>9</sup> Catherin Saunders Reach, *Ethics 20/20, Security, and Cloud Computing*, ABA TECHSHOW, at 4 (2015).

<sup>10</sup> *Id.*

- attain reasonable level of skill in a chosen technology.<sup>11</sup>

This change reflected in the Model Rules, also appears in the Kansas Rules of Professional Conduct, as it was adopted by the Kansas Supreme Court in 2014 at the recommendation of the Kansas Ethics 20/20 Commission. Comment 8 to KRPC 1.1 now reads:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added).

Per the rules, lawyers should have a basic understanding of the technology they employ, in addition to acknowledging the risks associated with the use of that technology and determining what can be implemented to mitigate those risks. It is important to remember, however, that competence does not mean perfection or expertise, instead it requires the baseline understanding of, and reasonable proficiency in, the technology being used. And, just as with any other practice area or skill, a lawyer's duty of technology competence can be achieved through continuing study and education or through association with others who are well versed in the area.

In addition to understanding a chosen technology, lawyer should also have a baseline understanding of technology that is commonly used. Just as with substantive law, you don't need to know everything, but you must know enough to spot the issues. Social media is one of those "subjects" you should at least know a little about. For two reason really, 1) you should enough to know when it can be a potential issue in a given and case ; and 2) if you are going to use social media, then you should have a baseline understanding so you don't violate the rules of professional responsibility.

## Using Social Media and Blogging

In March of 2018, the ABA issued Formal Opinion 480 which addressed confidentiality issues with respect to the use of social media and blogging. The opinion stated, "lawyers who blog or engage in other public commentary may not reveal information relating to a representation,

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<sup>11</sup> Ivy Grey, *Exploring the Ethical Duty of Technology Competence*, Law Technology Today (March 2017). Available at <http://www.lawtechnologytoday.org/2017/03/technology-competence-part-i/>.



including information contained in a public record, unless authorized by a provision of the Model Rules.”

Lawyers who communicate about legal topics in public commentary must comply with the Rules of Professional Conduct, including the Rules regarding confidentiality of information relating to the representation of a client. A lawyer must maintain the confidentiality of information relating to the representation of a client, unless that client has given informed consent to the disclosure, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by Rule 1.6(b). Information about a client’s representation contained in a court’s order, for example, although contained in a public document or record, is not exempt from the lawyer’s duty of confidentiality under Model Rule 1.6. The duty of confidentiality extends generally to information related to a representation whatever its source and without regard to the fact that others may be aware of or have access to such knowledge. A violation of Rule 1.6(a) is not avoided by describing public commentary as a “hypothetical” if there is a reasonable likelihood that a third party may ascertain the identity or situation of the client from the facts set forth in the hypothetical. Hence, if a lawyer uses a hypothetical when offering public commentary, the hypothetical should be constructed so that there is no such likelihood.

Recently, an Illinois lawyer got herself in serious trouble with her blog. She was an assistant public defender when, fed up with clients and judges, she took to her blog to vent her frustrations. She posted things like:

#127409 (the client's jail identification number) This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because ‘he's no snitch.’ I managed to talk the prosecutor into treatment and deferred prosecution, since we both know the older brother from prior dealings involving drugs and guns. My client is in college. Just goes to show you that higher education does not imply that you have any sense.

‘Laura’ was a middle-aged woman with 7 children, 2 of them still adolescents. She was a traditional housewife. Her husband, a recovering alcoholic, worked. She stayed at home, and home schooled her child who was handicapped amd (sic) learning disabled. In her favor, her original offense was a matter of sheer stupidity. . . . [blog entry went on to describe her case and defense in great detail, including that she received a lenient sentence due in part to swearing she was

clean, but she did have to serve 5 days in jail immediately.] I went back there to see what her concerns were. 'But I'm on Methadone!' she tells me. Huh? You want to go back and tell the judge that you lied to him, you lied to the pre-sentence investigator, you lied to me? . . .

In another post, she referred to a judge as being "a total asshole," and in another referred to a judge as "Judge Clueless." The Illinois Bar was none too happy with these posts. She was suspended for 60 days.<sup>12</sup> The lawyer was also licensed in Wisconsin and faced a reciprocal proceeding, in which she was also suspended in Wisconsin for 60 days.<sup>13</sup>

Social media can be a great marketing tool for yourself and/or your business, however, we must not forget about our ethical responsibilities with respect to using social media. Social media is often meant to be informal, however, that does not mean we toss out our duty of confidentiality and write a tell all about our clients.

Another thing to consider with respect to social media is if you are accepting Facebook messages, for instance, from clients. Keep in mind the rules of confidentiality and who could potentially have access to that information. If the client prefers this as a method of communication, then the lawyer should advise the client of the risks associated with the use of the technology prior to obtaining their consent.

# INVESTIGATIONS

## Social Media (and Internet) Investigations

The internet is full of information, including information you may find useful when investigating. When conducting an internet investigation into a client matter, knowing where to find the information is key, along with ensuring you are adhering to your ethical obligations.

Even though most of use the internet daily, most people, however, don't realize the internet is divided into three categories. These categories include: Surface Web, Deep Web, and Dark Web. Knowing the difference between the categories can be helpful when determining what information may be out there and where to look to find the information.

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<sup>12</sup> *In Re Peshek*, M.R. 23794, 09CH89 (2010).

<sup>13</sup> Reciprocal discipline case: 798 N.W.2d 879 (Wis. 2011).

# Surface Web, Deep Web, and Dark Web

## 1. Surface Web

Surface Web is the internet we all know and love. It is readily available to the public and searchable with standard search engines, such as Google, Yahoo, Bing...etc. Common names this layer of the web also goes by is Visible Web, Indexed Web, and Clearnet.

The websites on the surface web are indexed by search engines. Because this information is indexed, the user can open websites and gain information. Even though we spend a significant amount of our time on the surface web, it only accounts for about 4% of the internet. There are millions of pages on the internet, however, many of the pages are not indexed by search engines.<sup>14</sup>

## 2. Deep Web

The deep web is a form of secret web that is not visible for a normal user. The deep web contains website, or pages on a website, which are not indexed by search engines. Often, the information is held in database rather than on a single page. This makes it difficult for the search engines to index.

In the Deep Web, the user can only access the information if they have special permission. This may require the user to have the direct URL or IP address, and/or a password. Common Deep Web content includes items like web-based email, online banking, or private and restricted access social media.<sup>15</sup> Many public Deep Web websites may have search engines built into them, allowing you to find the information that isn't readily available in a Google Search. For instance, Facebook is a good example of this. Facebook has a built-in search engine, which you can use to find users, pages, and other items you can't find with Google.

## 3. Dark Web

The Dark Web is often described as the most dangerous portions of the internet, mainly because this is the place where criminal activity is often conducted over the internet. The only way to access the dark web is if a person has a special browser, often the Tor Browser.<sup>16</sup> This

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<sup>14</sup> Ibukun Taiwo, *90% of the Internet is Hidden from your Browser; and it's Called the Deep Web*, (November, 18, 2015). Available at: <https://techcabal.com/2015/11/18/90-of-the-internet-is-hidden-from-your-browser-and-its-called-the-deep-web/>

<sup>15</sup> Conor Sheils, *The Dark Web & Deep Web: How to Access the Hidden Internet Today*, Digital.Com Blog. Available at: <https://digital.com/blog/deep-dark-web/>

<sup>16</sup> YouTube, *What is TOR browser & How it Works*, available at: <https://www.youtube.com/watch?v=gcEq9JDMs94>

browser allows you to search the internet anonymously. Being able to access the Dark Web anonymously by using a browser like TOR is why the Dark Web is so popular for criminal activity. Getting to the Dark Web is probably easier than you think, however, finding material is more difficult than using a search engine like Google. There is no indexing on the Dark Web.<sup>17</sup>

Browsing on the Dark Web can also be dangerous. Computer viruses and hackers are always a concern with the Dark Web. You might find yourself unintentionally on an illegal website while searching for things on the Dark Web or downloading a virus with just a simple click on a link.

While you will more than likely spend your time on the Surface and Deep Web for investigations, it is important that you understand what the Dark Web consists of should it become an issue in a case you may be working on for a client.

### Searching Websites

Knowing how to conduct internet searches is arguably important with respect to the requirements under KRPC's 1.1 technology competency standard. Below you will find some useful information to become more competent in how to conduct searches on the Web.

## Search Engines

### 1. Internet and Meta Search Engines

Running an internet search including names and possible aliases, possible email addresses, possible usernames, historical telephone data, address history, or list of family/associates may reveal information pertinent to an investigation on different websites. Here is a list of possible search engines you can use:

- Google
- Yahoo
- Bing
- Ask
- AOL
- isseek

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<sup>17</sup> Norton: How to Safely Access the Deep and Dark Webs, available at: <https://us.norton.com/internetsecurity-how-to-how-can-i-access-the-deep-web.html>

Meta-search engines include: Dogpile, Duck Duck Go, and Metacrawler. A metasearch engine is a search tool that uses another search engine's data to produce its own results from the Internet. It is sometimes referred to as an aggregator. Metasearch engines take input from a user and simultaneously send out queries to third party search engines for results.<sup>18</sup> By sending multiple queries to several other search engines this extends the search coverage of the topic and allows more information to be found.<sup>19</sup> Just remember, not all search engines are created equally.

You should search for information on multiple search engines, since results can be different. Just like conducting legal research, using search operators can help filter your results. Here are some helpful search operator suggestions:

- Specific search term - Use quotation marks for an exact match.  
Example: "Danielle M. Hall"
- Search for X or Y. This will return with results related to X or Y.  
Example: jobs OR gates
- Search for X and Y. This return results related to both X and Y.  
Example: danielle AND attorney.
- Exclude a Term or Phrase. In the example you would get results associated with my name but not the association.  
Example: danielle -KBA.
- File Type. You can restrict to documents of a certain file type.  
Example: apple filetype:pdf
- Sites. You can limit results to a specific website.  
Example: Danielle Hall site:reddit.com
- Find website related to a given domain.  
Example: related:kscourts.org

For a complete list of Google search Operators visit <https://ahrefs.com/blog/google-advanced-search-operators/>.

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<sup>18</sup> Varun Kashyap, *What is a Meta Search Engine & How It Works*, MUD Technology Explained Blog. (February 13, 2010) <https://www.makeuseof.com/tag/technology-explained-what-is-a-meta-search-engine/>

<sup>19</sup> *Id.*

## 2. People Search Engines

There are several people search engines out there than can be used to find information. Some of them are free and some require a fee. Here is a list:

- <https://xlek.com/> - free
- [www.Whitepages.com](http://www.Whitepages.com) - free
- [www.Peekyou.com](http://www.Peekyou.com) - free
- [www.Truepeoplesearch.com](http://www.Truepeoplesearch.com) - free
- [www.Fastpeoplesearch.com](http://www.Fastpeoplesearch.com) - free
- TLO/TransUnion
- Accurint/Lexis Nexis
- [www.Intellius.com](http://www.Intellius.com)
- [www.Radaris.com](http://www.Radaris.com)
- [www.Pipl.com](http://www.Pipl.com)
- Thompson Reuters CLEAR
- [www.TruthFinder.com](http://www.TruthFinder.com)
- [www.spokeo.com](http://www.spokeo.com)

## 3. Internet Archive

Sometimes, it may be necessary to locate past versions of websites. For instance, you may need to look at an archived version of a law firm website in a disciplinary investigation. If you find yourself in need of looking at a past version of a site, then using a tool like the Way Back Machine may help you locate the past content. This website can be found at <https://archive.org/>. Additionally, the Way Back Machine can pull past versions of publicly available Twitter pages. If you are need of finding a deleted tweet, you might be able to find it through this resource.

## Searching Social Media Profiles

According to the Pew Research Center, 7 out 10 Americans use social media to connect with one another, engage with news content, share information and entertain themselves.<sup>20</sup> Facebook alone has 1.2 billion users. There are 400 million tweets every day. 75 hours of video is uploaded to YouTube every minute. There can be value in checking a Respondent's

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<sup>20</sup> Pew Research Center, *Social Media Fact Sheet*, available at: <http://www.pewinternet.org/fact-sheet/social-media/>

social media content. It may also be directly relevant to your investigation depending on the nature of the complaint. Looking at someone's social media page may also reveal helpful information, despite a lack of an allegation related to social media. For instance, if you are trying to locate a Respondent, social media may be helpful in narrowing down where to possibly look.

There are things you will want to keep in mind, however, when investigating social media profiles. For instance, do not attempt gain access to private material under false pretenses, as this could implicate KRPC 4.1 and 8.4. As a result, lawyers should never use false identities or fabricated profiles to obtain access to and information contained on social media sites. Lawyers should refrain from requesting "friend" or "follower" status of a represented person's profile. You will also want to know how the platform works. Some notify the person when someone has viewed their profile, such as LinkedIn. Lastly, you might also consider setting up a professional account in order to conduct the investigation on a social media platform if you need to be logged in to view information. Make sure the profile of the account, however, is not misleading. Most states have agreed, however, publicly accessible information on social media is subject to investigation and can be viewed without violating the lawyer's ethical obligations.

Some social media information can be found on the surface web, however, you may have to go a step deeper than just performing a basic Google search to locate pages or to locate specific content. When performing searches for social media, you may need to be creative with your search. Consider using variations of the person's name, including maiden names, and even consider misspellings. Sometimes you will need to be persistent to find information. This may require looking at public profiles of known friend or family if/when necessary.

There are several websites out there that can assist in tracking down social media content. Here are a few:

- <https://netbootcamp.org/osinttools/#socialmedia> - Contains a variety of social media search tools. Can be helpful to conduct a keyword search in someone's social media.
- Google's Reverse Image Search - you can scour the Internet for any instances in which a photo has been published. It will find the exact matching photo or any similar photo that has been posted on Facebook, Instagram, blogs or anywhere else on the Internet.

<https://support.google.com/websearch/answer/1325808?co=GENIE.Platform%3DDesktop&hl=en>

- Open Source Intelligence Tools and Resources Handbook - This handbook includes a comprehensive list of tools that can help investigators explore and make sense of social media information.  
[https://assets.losspreventionmedia.com/uploads/2018/11/OSINT\\_Handbook\\_June-2018\\_Final.pdf](https://assets.losspreventionmedia.com/uploads/2018/11/OSINT_Handbook_June-2018_Final.pdf)
- <https://stalkscan.com/> - Unfortunately this is a good thing that came to end after Facebook made it Graph Search less transparent. As a result, you can use this website to check on your own personal information, but you can no longer find other's information. I still include this on the list, however, if you want to see what is publicly available about yourself through your social media.