

Understanding Ownership

Have You Reviewed the Terms of Use for Your Social Media Accounts?

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Individuals and companies alike are flocking to social media platforms such as Facebook, Twitter, LinkedIn, Pinterest and more. When setting up their pages and preferences, they believe those pages are theirs to do with what they wish. But are they?



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THE OCCUPY WALL STREET PROTESTOR

With everyone jumping on the social media bandwagon, it's very important for both companies and individuals to understand the terms of use for each social media platform. It's becoming clear that posts and updates on social media are not the property of the account owner, but actually by the platform itself.

The People of the State of New York v. Malcolm Harris

On April 20, 2012, Judge Matthew A. Sciarrino, Jr. issued a decision overruling the defendant's motion to quash a subpoena seeking to compel the defendant's Twitter account information in the case of *The People of the State of New York v. Malcolm Harris*, Docket No. 2011NY080152, pending before the Criminal Court of the City of New York.

Defendant Harris was one of several Occupy Wall Street protestors charged with disorderly conduct for allegedly marching onto the roadway of the Brooklyn Bridge on or about October 1, 2011. In late January 2012, the District Attorney's office served a subpoena on Twitter, Inc., seeking user account information and Tweets posted during a three month time frame for the Twitter account allegedly used by Harris. Twitter notified Harris about the subpoena, and Harris promptly filed a motion to quash. In response to the motion to quash, the District Attorney argued that the Twitter account information sought was relevant to rebut the defendant's anticipated defense that the police either had led or escorted Harris onto the roadway of the bridge.



TWITTER TERMS AND OWNERSHIP

In this matter of first impression in New York, Judge Sciarrino held that a criminal defendant lacks standing to quash a subpoena issued to a third-party online social networking service seeking to obtain the defendant's user information and postings. The Judge treated the case as analogous to a bank customer seeking to quash a subpoena issued to a third-party bank for the customer's bank records. Under New York law, bank records belong to the bank, and not the customer. Consequently, a bank customer lacks standing to quash a subpoena issued to the bank for the customer's bank records.

The defendant lacks standing to quash a subpoena issued to a third-party.

With respect to the Twitter account at issue, Judge Sciarrino held that by virtue of the defendant's acceptance of Twitter's Account Terms of Use ("Twitter Terms"), the defendant had granted Twitter a license "to use, display and distribute the defendant's Tweets to anyone and for any purpose it may have." The Judge concluded that "Twitter's license to use the defendant's Tweets means that the Tweets the defendant posted were not his." As a result of the defendant's contractual inability to prevent Twitter from using his Tweets, the Judge found that the defendant lacked any proprietary interest in his own Tweets.

The acceptance of Twitter Terms grants Twitter a license to distribute Tweets to anyone and for any purpose.

The Judge also looked to the Twitter Terms in dispensing with the defendant's argument that he had a reasonable expectation of privacy in his Tweets. The Twitter Terms disclosed:

What you say on Twitter may be viewed by all around the world instantly ... [t]his license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same. (See <https://twitter.com/tos>).



YOUR BUSINESS IMPACT

The Judge then proceeded to rule that the subpoena did not violate any federal laws governing internet communications (such as the Stored Communications Act, 18 U.S.C. § 2701, et seq.), and that the “low” legal threshold for issuing a subpoena had been met.

The attorney for Harris has indicated he will move to reconsider the ruling.



The following information is provided as a general guideline and should not be taken as legal advice or counsel.

Until this issue is finally decided by the courts, all Twitter account users, including companies who use Twitter to promote their products and services, need to be reminded that their account information as well as their Tweets, the lists they create, the people they follow, the Tweets they mark as favorites or Retweet, as well as many other bits of information are not private, and may be subject to compelled disclosure by Twitter itself.

It may seem like simple advice, but thoroughly reading the terms of use documentation provided by social media outlets will facilitate the understanding of all implications of agreeing to those terms. Both companies and individuals should make this a standard practice before engaging in any social media activity.



ABOUT THE AUTHOR



Katherine D. Hoke

Because of Katherine D. Hoke's 24 years of legal experience representing businesses in various litigation matters and disputes, she has the unique talent for understanding the ultimate goals of a business. Rather than simply responding to the typical process of legal procedures, she leads SLG's traditional legal services team as a partner in handling client legal activities. Ms. Hoke counsels clients on matters involving contract disputes, complex commercial and real estate litigation, and creditors' rights and collections.