

# Onboarding of Social Media

Maintaining Company Policies:  
Whose Social Network Account is it Anyway?

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Part 3 of 3

You're a company that has embraced the world of social media. You've strongly encouraged and supported your employees to establish LinkedIn accounts, which the employees use to promote your company's goods or services, as well as enhance their own professional and personal relationships. Then you and your employee part ways, and the issue arises, "Who gets to keep the LinkedIn account?"



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# THE EAGLE CASE

## Eagle v. Morgan, et al.

This is the issue facing the federal court in the case of *Eagle v. Morgan, et al.*, Civil Action No. 11-4303, pending before the United States District Court for the Eastern District of Pennsylvania. According to the lawsuit papers, Dr. Linda Eagle, a Ph.D., with extensive experience in financial services and training, was one of the founders of a company called Edcomm, Inc.

## A Policy Requiring Employees to Create LinkedIn Accounts

As alleged, Edcomm, under Eagle's management, implemented a policy requiring all employees to create and maintain LinkedIn accounts, utilizing the following criteria:

- ❖ Use of Edcomm e-mail address for LinkedIn account;
- ❖ Use of Edcomm-created template to describe Edcomm, the employee's work history, and professional activities;
- ❖ Use of photograph taken by Edcomm hired photographer;
- ❖ Contain links to Edcomm's website and other web pages specified by Edcomm;
- ❖ Display Edcomm's contact information; and
- ❖ Use of Edcomm-created template for replies through LinkedIn.

Certain Edcomm administrative personnel were asked to periodically review the LinkedIn accounts to verify compliance with company policy, and to correct any violations. Edcomm administrative personnel also maintained the LinkedIn accounts for several employees, all for the benefit of Edcomm.



# THE EAGLE CASE

Eagle had an Edcomm-compliant LinkedIn account established in 2008. Edcomm administrative personnel had the password to Eagle's LinkedIn account, and developed and maintained the connections and content on her account. There is no question that Eagle's LinkedIn account was used for Edcomm business.

In 2010, all of the outstanding shares in Edcomm were sold to a third party purchaser. Although Eagle initially remained as an employee of Edcomm, the new owner terminated her services in June 2011. On that same day, the new owner used Eagle's password to access her LinkedIn account, and then changed her password so that Eagle could no longer access it. Individuals searching for Eagle were routed to a LinkedIn page for the new CEO of Edcomm.

**The new owner accessed & changed Eagle's LinkedIn account password.**

In July 2011, Eagle filed suit against the company and others, alleging that Edcomm wrongfully misappropriated her LinkedIn account, preventing her business contacts from locating her, and using her business contacts for Edcomm's benefit. She asserted various causes of action, including violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030) ("CFAA"), violation of the Lanham Act (15 U.S.C. § 1125), misappropriation of identity, and other common law claims. Edcomm filed a counterclaim alleging several causes of action of its own based upon Edcomm's policies and procedures regarding the creation and maintenance of employee LinkedIn accounts, including violation of the CFAA, conversion, and misappropriation of the LinkedIn account.

**Edcomm wrongly misappropriated her LinkedIn account.**

On December 22, 2011, the district court issued its ruling partially granting Eagle's motion to dismiss Edcomm's counterclaims. Under the ruling, Edcomm's claims against Eagle for conversion, misappropriation, and unfair competition with respect to the LinkedIn account survived dismissal. Discovery is proceeding in the case, and it is currently set for trial in June 2012.



# THE PHONEDOG CASE

## PhoneDog v. Kravitz

*PhoneDog v. Kravitz*, Case No. 3:11-cv-03474, pending before the United States District Court for the Northern District of California, is a similar type of case regarding a Twitter account. According to the court filings, PhoneDog, a self-described “highly interactive” reviewer of mobile products and services, required its sales agents and employees to maintain Twitter accounts, which were used to tweet links directing account followers to PhoneDog’s website, thereby driving traffic to the website and generating advertising revenue for PhoneDog. PhoneDog took care to maintain the secrecy of all of the passwords to the Twitter accounts used by PhoneDog’s sales agents.

**PhoneDog required employees to maintain Twitter accounts.**

In 2006, PhoneDog hired Kravitz to write product reviews and maintain a video blog. Kravitz would submit his written and video content to PhoneDog, and PhoneDog subsequently transmitted the content to its users via its website and Twitter accounts. PhoneDog gave Kravitz one of its Twitter accounts to use to disseminate information regarding PhoneDog’s services. Kravitz alleges that after he was given the Twitter account, he changed the password to one not known by PhoneDog, and retained exclusive control over the account. Eventually, the Twitter account assigned to Kravitz grew to 17,000 Twitter followers.

**Kravitz retained exclusive control of his given Twitter account.**

In October 2010, Kravitz resigned from PhoneDog. After freelancing for a couple of months, Kravitz accepted a sales position with a direct competitor of PhoneDog. After Kravitz resigned, PhoneDog requested that Kravitz relinquish the Twitter account. In response, Kravitz changed the Twitter handle on the account, and continued to use the account to promote the services of PhoneDog’s competitor.



# YOUR BUSINESS IMPACT

PhoneDog sued Kravitz in July 2011, alleging numerous causes of action, including misappropriation of trade secrets and conversion, and seeking recovery of damages in the amount of \$340,000 (17,000 Twitter followers, each worth \$2.50/month for 8 months). PhoneDog's complaint survived two separate motions to dismiss. In February 2012, Kravitz filed a counterclaim, seeking among other relief, a declaration that he retained the rights to the subject Twitter account. This case is set for trial in late January 2013.

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

In both cases, issues regarding ownership and/or rights to the social network accounts created and/or supported by the employers remain undecided. As these cases work their way through the judicial system, companies who encourage or require their employees to use social networking accounts to promote the company's business interests need to be aware that the accounts may be up for grabs if the company and employee terminate their relationship. Companies not only should have clearly written and understandable social media policies in place that address social network accounts, but make sure that the policies are being implemented and followed.

**Another possible way to address, in advance of a separation, what happens to a LinkedIn or Twitter account would be through an employment/non-compete agreement. Although such an agreement likely would not prevent litigation over rights to a social network account, the fact of its existence and terms could bolster a company's legal position on who gets to keep the account.**



# 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.