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Who Owns Your Employee's Social Media Account Content?

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Does your organization encourage your employees to open LinkedIn, Twitter or other social media accounts? Do employees add contacts and post updates to social media accounts on company time using company resources? Does your organization monitor employee social media account activity? What happens to an employee's social media account after he or she is no longer employed by your organization? The answers to these questions may determine whether social media account information is owned or controlled by an organization versus the individual employee named on the account.

Several recent lawsuits — which are currently pending — may provide answers to these very issues. In *Eagle v. Morgan* , the U.S. District Court for the Eastern District of Pennsylvania examined the ownership of LinkedIn account content. Linda Eagle was a founder and executive of Edcomm, Inc. She established a LinkedIn account in 2008 and, along with another Edcomm employee, maintained the account. In 2011, Edcomm was purchased by another company and, ultimately, the employment of Ms. Eagle and some of her colleagues was terminated. When Ms. Eagle later tried to access her LinkedIn account, she found that the password had been changed, preventing her from accessing the account. Apparently, three weeks later, Ms. Eagle was able to regain access to her LinkedIn account.

Ms. Eagle filed a multi-count lawsuit against Edcomm and others that included allegations of conversion and tortious interference. Defendants filed a counterclaim, arguing that all Edcomm employees' LinkedIn accounts were directed and monitored by the company under guidelines established by Ms. Eagle during her management of the company. In bringing a misappropriation claim against Ms. Eagle, Edcomm alleged that it is the rightful owner of Ms. Eagle's LinkedIn account connections and that she misappropriated them for her own use. Ms. Eagle filed a motion to dismiss all counts of Edcomm's counterclaim. The court granted the motion in part, but denied it as to the misappropriation claim because of disputed facts alleged by the parties.

The Northern District of California also took a crack at answering the question of what happens to an employee's social media account when the employee leaves a company. In *PhoneDog v. Kravitz* , the employee worked for the employer as a product reviewer and video blogger. PhoneDog provided him use of a Twitter account — @PhoneDog_Noah — to disseminate info and promote PhoneDog's services on its behalf. Kravitz subsequently resigned and PhoneDog asked him to stop using the Twitter account. He didn't. Instead, he changed the name of the account to @noahkravitz and kept using it. PhoneDog sued alleging, in part, that Kravitz stole its trade secrets and other proprietary and confidential information.

Kravitz moved to dismiss the lawsuit arguing, in part, that PhoneDog couldn't prove that it owned the Twitter account: "To date, the industry precedent has been that absent an agreement prohibiting employee from doing so, after an employee leave an employer, they are free to change their Twitter handle." Rejecting Kravitz's argument, the court permitted the case to go forward.

The recent decision in *Maremont v. Susan Fredman Design Group,* out of the Northern District of Illinois, is also instructive. There, the court concluded that a former director of marketing for an interior design firm may have claims under the Lanham Act and Stored Communications Act if she can prove actual damages related to her company posting

to her private Facebook and Twitter accounts while she was on medical leave. Maremont ran the company's "Designer Diaries: Tales from the Interior" blog and had a personal Twitter following of 1,250 people. She claimed she had become well known within Chicago's interior design community. The court ruled that to succeed on her Lanham Act claim, Maremont must show "a loss of sales, profits, or present value (goodwill)" or unjust enrichment by defendants, and for her SCA claim, she also must show actual damages. The court, however, dismissed her Illinois Right to Publicity Act claim, finding that the company had noted on its blog that she had temporary replacements, and there was no evidence that it had passed itself off as Maremont.

The ultimate issues in each of these cases are yet to be decided. In the meantime, your organization may want to examine or rethink its policies and practices for social media use by employees. Consider whether employees should be required to agree that the company, not the employee, owns the social media account and that the employee must return all social media accounts, with login and password, at the end of employment.

The *Eagle v. Morgan* court's decision: http://www.scribd.com/doc/76429541/Eagle-v-Morgan-11-4303-E-D-Pa-Dec-22-2011

The *PhoneDog v. Kravitz* decision: http://www.scribd.com/doc/72258605/Phonedog-v-Kravitz-11-03474-N-D-Cal-Nov-8-2011

The *Maremont v. Susan Fredman Design Group* case: http://www.scribd.com/doc/72258605/Phonedog-v-Kravitz-11-03474-N-D-Cal-Nov-8-2011

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