



Client Alert

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Social Media Policies Reduce Discovery Risks: Are You Prepared?

The pervasive use of Social Media, such as Facebook, Twitter, LinkedIn and MySpace, has made Social Media websites fertile sources of discovery in lawsuits. Unfortunately, the lack of clear legal precedent and many courts' lack of familiarity with Social Media have resulted in conflicting decisions regarding the ability to discover information from these websites.

Earlier this year, in *Crispin v. Christian Audigier, Inc.*, a federal court in California applied an electronic privacy law from 1986 to hold that messages and comments on Facebook and MySpace that were visible by only a select group of users were protected from discovery.

Two other decisions issued in the last two months, however, suggest that some courts are willing to allow liberal discovery of the content in a litigant's Social Media accounts. In one recent decision, a New York court in *Romano v. Steelcase, Inc.* ordered that a plaintiff execute authorization forms that would allow Facebook and MySpace to provide the plaintiff's records to the defendant. In another recent decision, a Pennsylvania court in *McMillen v. Hummingbird Speedway* provided the defendant in a personal injury action seemingly unfettered access to a plaintiff's Facebook and MySpace accounts by ordering the plaintiff to turn over his user name and password information to the defendant.

Until higher courts begin to weigh in on these issues and provide more guidance regarding the ability of litigants to discover information from Social Media websites and the scope of such discovery, parties and witnesses should assume that at least some of the content of their Social Media accounts may ultimately be discoverable, regardless of their privacy settings. For businesses, this means that implementing Social Media policies and training employees regarding the use of Social Media is critical to help control the risks inherent in the use of Social Media. Preparation and education now can help you avoid substantial costs and unexpected consequences when litigation arises.

Attorneys in Armstrong Teasdale LLP's Social Media group regularly advise clients with respect to the legal issues which arise from Social Media and have assisted clients in dealing with and developing policies and providing training to avoid mishaps which can harm clients. If your company does not have a Social Media policy or if your employees do not understand the implications of their Social Media actions, we can help.

For further information, please contact one of the following members of Armstrong Teasdale's Social Media group:

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