

THERE IS NO REAL PRIVACY ON FACEBOOK AND OTHER SOCIAL NETWORKS

Posted by Darren Heitner on October 19, 2010

If you get sued in court, will your Facebook privacy settings protect you from opposing counsel's request for electronic discovery? If that information is **material and necessary** for the opposition's case and the need for the information outweighs any privacy concerns, then that "private" information might be available, no matter what privacy settings you set for your profile. And not even deleted information is safe from the grasp of the court.

The material and necessary standard is not the hardest for a party to overcome. In the context of discovery, it could be liberally applied to mean any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.

In *Romano v. Steelcase Inc.*, 2010 WL 3703242 (N.Y. Sup. 2010), the New York court found that there is no reasonable expectation of privacy for information that is placed on a social networking profile (i.e. Facebook), no matter what the privacy settings look like.

I think the most instructive line from the opinion is the sentence that references the decision of *Katz v. United States*. It states, "The Fourth Amendment's right to privacy, protects people, not places." If we consider the internet to be a distinct place, and Facebook and MySpace to be communities in this place (or separate places themselves), then they may not be protected by the Fourth Amendment.

It must be noted that New York's liberal disclosure policy may not apply in other jurisdictions. However, the judge in *Romano* cited to similar cases where production of social network profile information was permitted.