

Socially Aware: The Social Media Law Update

Did you know that Facebook now has **more than 500 million members**? (By contrast, the entire population of the United States is 307 million people.) That Facebook accounts for **over seven percent of all Web traffic**? That **two and a half billion photographs** are posted to Facebook **each month**? That Twitter reported growth of an astonishing **1,271 percent** from fall 2008 to fall 2009? That users view over **two billion videos** on YouTube **per day**?

Facebook, Twitter and other social media sites are transforming not only the daily lives of consumers, but also how companies interact with consumers. Indeed, even the largest, most conservative blue-chip corporations have begun to embrace social media; one recent study showed that, of the Fortune Global 100, 65% had Twitter accounts; 54% had a presence on Facebook; and 50% had a channel on YouTube.

Here at Morrison & Foerster, across all of our practice groups, we are seeing complex, cutting-edge legal issues arising out of social media. As with the Internet boom during the mid-to-late 1990s, social media is generating new legal questions at a far faster pace than the law's ability to provide answers to such questions. In an effort to stay on top of these emerging issues, and to keep our clients and friends informed of new developments, we are launching a newsletter devoted to the law and business of social media. Welcome to our inaugural issue!

IN THIS ISSUE

- 2** Facebook Surpasses 500 Million Members; Starbucks Exceeds 10 Million Facebook Fans

- 2** Twitter Settles FTC Charges

- 2** Social Media Policy Update

- 3** Obligation to Monitor Third Party Posts Under Swedish Law?

- 3** Facebook Sued for 84% Ownership Stake

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Facebook Surpasses 500 Million Members; Starbucks Exceeds 10 Million Facebook Fans

Two recent milestones highlight the explosive growth of social media generally and Facebook in particular. First, as reported by [Mashable](#), and as noted in our introduction above, Facebook has just surpassed 500 million total users. According to [statistics](#) made available by Facebook, the company's site reached 300 million members in September 2009, 350 million members in December 2009, and 400 million members in February of this year. In other words, **Facebook has added 100 million new members in roughly five months** – has any business in history added members at such a fervent pace? (Recall that Facebook only recently turned six years old, and opened up its business to the general public less than four years ago.)

Second, Starbucks has become **the first corporate brand to reach 10 million “fans” on Facebook**. This achievement places the Starbucks Facebook page among an elite group of Facebook pages with **10 million or more fans** – pages associated with high-profile individuals (e.g., Lady Gaga, Michael Jackson, Vin Diesel and President Obama), two popular Facebook-based games (Mafia Wars and Texas HoldEm Poker), the television show “Family Guy” and, of course, Facebook itself. **At least one report** has attributed Starbucks' Facebook success to the company's clever use of the social media platform as a marketing tool in combination with more traditional marketing tools, such as discounts and deals redeemable in brick-and-mortar stores.

Twitter Settles FTC Charges

The FTC **recently announced** that Twitter has agreed to settle FTC charges that the social networking service had deceived users and put their privacy at risk. According to the FTC's charges, between January and May of 2009, hackers were able to obtain administrative control of Twitter on two separate occasions, enabling them to reset user passwords and send phony tweets from nine user accounts – including then-President-elect Barack Obama's account – while Twitter's then-current privacy policy stated, among other assurances, that Twitter employed “administrative, physical, and electronic measures” to protect information from unauthorized access. David Vladeck, Director of the FTC's Bureau of Consumer Protection, stated in the FTC's press release regarding the settlement, “When a company promises consumers that their personal information is secure, it must live up to that promise.” Under the terms of the settlement, Twitter will be barred for 20 years from misleading consumers about the extent to which it protects the privacy, confidentiality and security

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— FTC PRESS RELEASE

of nonpublic consumer information, and must establish and maintain an information security program that will be assessed by an outside auditor every other year. For more information, visit the [Twitter blog's announcement](#) on the settlement.

Social Media Policy Update

As companies increasingly permit – and even encourage – their employees to use social media and other Web 2.0 technologies for company-related purposes, such companies need to pay greater attention to crafting nuanced internal policies governing such use. Providing a terrific resource for such companies, a number of websites currently track the proliferation of corporate social media policies around the globe. Such resources include:

- [SocialMediaGovernance.com's Policy Database](#)
- [ComplianceBuilding.com's Social Media Policies Database](#)
- [Altimeter Group's Social Media Policies database](#)

Not only are the social media policies collected at these sites useful resources in and of themselves, but the sites demonstrate how widely social media policies vary across companies, even among companies within the same industry. The public availability of these policies, however, has enabled bloggers and industry watchdogs to keep a close eye on companies' social media practices.

Obligation to Monitor Third Party Posts Under Swedish Law?

Sweden's **Data Inspection Board (DIB)** recently issued a report concluding that companies operating official social media pages, such as blogs or Facebook or Twitter profiles, have a legal responsibility to monitor personal data posted to those pages. The report comes in the wake of a DIB investigation of Swedish organizations' management of pages on social media websites. According to the DIB's July 5, 2010 report, organizations must have clear rules and internal procedures governing how they will remove personal information that is offensive or could compromise privacy (including in posts made by third parties) from their official social media pages. Further, such information and posts – even where posted by third parties – may subject these organizations to sanctions under Sweden's Personal Data Act, or even criminal liability under Sweden's Penal Code. The DIB is reportedly planning to develop guidelines relating to personal information appearing on organizations' social media pages. For more information, visit Sweden's **The Local**, or the **DIB website**.

Facebook Sued for 84% Ownership Stake

Facebook was sued recently by an individual claiming an 84% interest in Facebook's business. According to **the complaint**, the plaintiff, Paul Ceglia, entered into an agreement with Facebook CEO Mark Zuckerberg in April 2003 regarding, among other things, the

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development of a site referred to in the contract as "a suitable website . . . similar to a live functioning yearbook with the working title of 'The Face Book'," which called for the plaintiff to obtain a 50% share "in the software, programming language, and business interests derived from the expansion of that service to a larger audience" and an additional "1% interest in the business . . . for each day the website is delayed" beyond January 1, 2004. **Facebook's lawyers are reportedly uncertain** as to whether Zuckerberg actually signed this agreement.

Although the state court judge hearing the case had issued a temporary restraining order restricting Facebook, Inc. and its subsidiaries, as well as Zuckerberg, "from transferring, selling, assigning any assets, stocks, bonds, owned, possessed and/or controlled" by the defendants, Facebook **moved the case to federal court**, where Facebook's lawyers filed a **motion to dissolve the restraining order** and the restraining order was **stayed** on July 16.

According to **an article in *The Guardian***, Facebook believes the claims to be frivolous, and **an article in *The Wall Street Journal*** notes that the case could be derailed for a variety of reasons, including New York's statute of limitations. Stay tuned for further developments!

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