

## **Twitter's TwitPic Terms Do Not Permit Unlimited Use of Photos**

A third party may not use images posted on Twitter's TwitPic for commercial purposes without the poster's permission, a federal district court ruled.

On January 12, 2010, following the devastating earthquake in Haiti, Agence France Presse (AFP) sought pictures from Haiti by searching TwitPic. Several of the images AFP found and forwarded to its clients, which include broadcasters and newspapers, were taken by Daniel Morel, a photojournalist, who had posted the images on Twitter via his TwitPic account. Morel had a contract to distribute his images with Corbis, Inc., a competitor of AFP.

AFP filed a lawsuit seeking a declaration that it, and its news clients, had not infringed on Morel's copyright in the images. Morel filed a counterclaim for willful copyright infringement. Both parties filed a motion for summary judgment.

AFP argued that when Morel posted the images on TwitPic, Twitter's terms of service (TOS) granted AFP a license to use the images. The TOS state "by uploading your photos to TwitPic you give TwitPic permission to use or distribute your photos on Twitpic.com or affiliated sites. All images uploaded are copyright © their respective owners." AFP argued it was a third party beneficiary to the Twitter terms of service and derives a license from the terms and is therefore insulated from liability.

AFP also argued that Twitter's *Guidelines for Third Party Use of Tweets in Broadcast or Other Offline Media*, which encourage the use of Tweets, supported its position that it had a license to use the photographs.

The court disagreed, noting that "it suffices to say that based on the evidence presented to the Court the Twitter TOS does not provide AFP with an excuse for its conduct in this case." The court found that a "fatal flaw" in AFP's argument is that "it fails to recognize that even if some re-uses of content posted on Twitter may be permissible, this does not necessarily require a general license to use this content as AFP has."

The court said that the license to use images from TwitPic is limited to Twitter and its partners. AFP did not allege it was a "partner" of Twitter. "Construing the Twitter TOS to provide an unrestrained, third-party license to remove content from Twitter and commercially license that content would be a gross expansion of the terms of the Twitter TOS," the court wrote.

Finally, the court noted that AFP's argument ignored the statements in Twitter's TOS "that are directly contrary to its position, particularly those portions that '[y]ou retain your rights to any Content you submit, post or display' and 'what's yours is yours—you own your content.'" These

statements would have no meaning if the Twitter TOS allowed third parties to remove the content from Twitter and license it to others without the consent of the copyright holder.”

As a result, the court found AFP was liable for copyright infringement and remanded the case to determine damages.

*Agence France Presse v. Daniel Morel v. Getty Images, Inc.*, S.D.N.Y. No. 10 CV 2730, filed January 14, 2013. A copy of the court’s ruling is available at [www.balough.com](http://www.balough.com).