

Twitter's Open Use Policy Not A Copyright License

The instant availability of material published on Twitter and the way information material is spread quickly among the millions of Twitter users' makes it one of the favored methods of social media communication. But just because it's on twitter does not always mean it's free of intellectual property rights.

Professional photographer Daniel Morel ("Morel"), author of a number of photos taken immediately after the Haitian earthquake of 2010, scored a victory in his ongoing lawsuit against Agence France Presse ("AFP") and others for the misappropriation of his photographs that were posted by Morel on his Twitter and Twitpic accounts. Morel survived a motion to dismiss on his claims for copyright infringement and Digital Millennium Copyright Act ("DMCA") violations against AFP, Getty Images, CBS, and TBS; as well as claims for contributory infringement and vicarious infringement against AFP and Getty.

Haiti Earthquake Photos Posted On Twitter

The dispute, arising during the days immediately following the Haitian earthquake of 2010, hinges on the rights of an author under the Copyright Act and DMCA. Morel, photographed the events of the earthquake and quickly uploaded the pictures to his Twitter and Twitpic, noting that they were available to news agencies.

Within minutes a fellow Twitter user from the Dominican Republic, Lisandro Suero ("Suero"), copied Morel's photos and posted them as his own. A number of media outlets, including AFP, began inquiring about Morel's photos and the possibility of licensing them. Simultaneously, those same media outlets began inquiring about Suero's copied photos, and later downloaded those photos from Suero's Twitpic page.

AFP published the photos, placed them on their website, and transmitted them to Getty, a licensing company that in turn licensed those photos to numerous third party agencies, including CNN and CBS.

Photographer Sues for Copyright Infringement

Morel brought a lawsuit and the defendants moved to dismiss making two arguments, first, whether the Twitter terms of service created an express license for their use of Morel's images once they were published on Twitter, and, second, whether they were third party beneficiaries of the license agreement that all Twitter users grant when they open an account.

Defendants argued that, according to Twitpic's Terms of Service, an express license was granted to them and therefore they are able to use those photos as they please.

The Terms of Service state that:

By submitting, posting, or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such content in any and all media or distribution methods ...

Defendants' argument was rejected by the court, however, since the terms of service grant a license to use content only to Twitter and its partners, not to the users. Furthermore, the simple fact that Twitter "encourage[s] and permit[s] broad re-use of Content" does not clearly confer a right on other users to illegally re-use posted content.

Defendants also failed in their bid to establish they were third party beneficiaries of a license agreement between Morel and Twitter. As the court noted, a third party may enforce a contract right in an agreement made expressly for the benefit of that third party.

Defendants are not considered third party beneficiaries because they are characterized as “users” and not partners or sub licensees. Since the terms of service meant to confer a benefit to Twitter’s partners and sub licensees, the defendants may not enforce any contractual rights.

In short, Twitter may make it easy to spread content, but it does not limit the protections for intellectual property that may be available under copyright law and presumably trademark and other common law rights.