

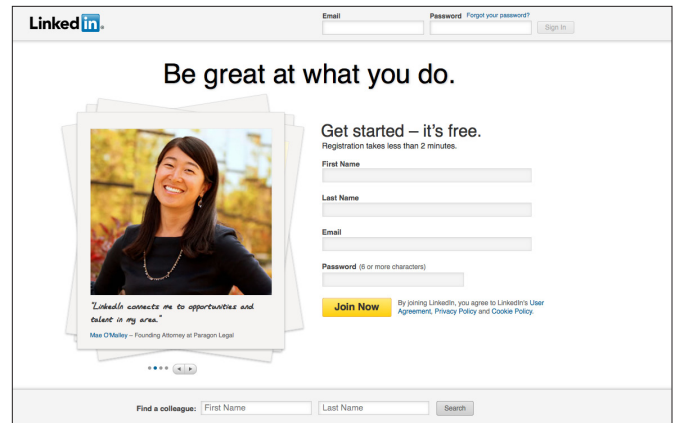
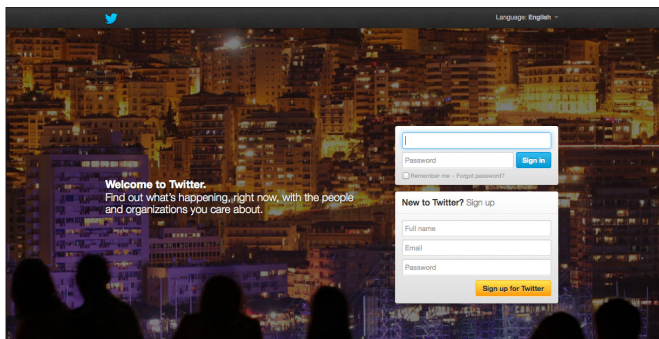
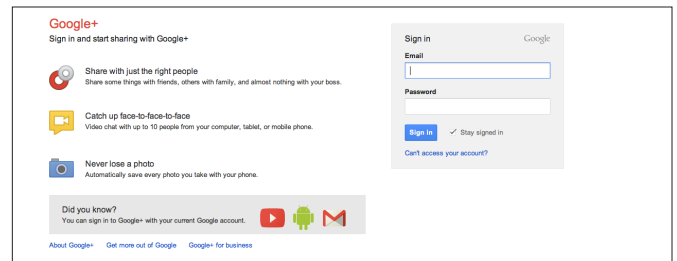
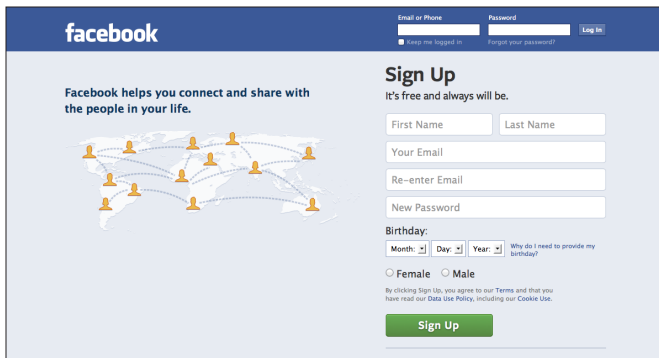


# Managing Your Social Media Accounts

By: *Mary E. Gately*

Imagine a situation where you have a small business that is planning a major event at a sports venue and needs to utilize a variety of social media channels to publicize the event and garner support for it. Such a business may engage a third party to assist it in managing its social media presence on Facebook and Twitter in order to maximize their ability to generate ticket sales and interest in the event. Your small business turns over its passwords and username to the third party so that they

can perform the agreed upon services. Several months after the event and after payment for these services, the parties get into a fee dispute over unrelated services and the third party changes the username of the business to the third party's name on Facebook, then changes the passwords for Facebook and other social media accounts. Your small business is effectively locked out of its social media accounts.



For many this may seem improbable, but disputes related to the creation and management of social media accounts are on the rise. The increased use of social media accounts as a marketing tool for businesses and the proliferation of businesses that are willing to provide social media management expertise are causing an increase in the number of disputes. These disputes are not confined to outside businesses providing social media management services, but they often arise in the context of employees who are tasked with managing the social media accounts of their employer. The court system now has to apply legal theories that may not be a perfect fit for the issues created by the widespread use of these valuable social media accounts. The good news, however, is that businesses and individuals can protect themselves through clear contractual safeguards.

### The Status of Ownership of Social Media

The legal landscape related to the ownership of social media accounts is unsettled. There are several cases pending in the courts at the present time that are confronting these issues. At the outset of engaging a third party vendor or hiring an employee to manage a company's social media accounts, many companies do not consider the question of who owns the social media accounts of the company or the followers (Twitter), friends (Facebook) and connections (LinkedIn) associated with the accounts. They also fail to consider the worst-case scenario of what the measure of damages for interfering with or preventing access to social media accounts and followers, friends and connections is or should be.

The cases dealing with these issues are percolating up through the court system; they will clarify how to protect your rights to social media accounts and the value of such accounts. The courts will also have to consider the impact of the terms of service of the social media involved since many sites, like Twitter, retain their rights to the services and the website while allowing users to retain rights in the content posted by them. A few of the important cases are profiled below.

In 2011, a lawsuit concerning a dispute over who owns a LinkedIn account was filed in federal court in Pennsylvania: Eagle v. Morgan. In that case, Dr. Linda Eagle, the Co-Founder of Edcomm Inc., a banking education company, had a LinkedIn account in her own name that she used for promoting Edcomm. The company's internal policy recommended that all employees participate in LinkedIn and that they list Edcomm as their current employer. Edcomm's policy included a requirement that when an employee left the company, Edcomm would "own" the LinkedIn account and could use the information from it so long as it did not use the former employee's identity. Sometime after Edcomm was sold, Dr. Eagle was terminated and the company assumed control of her LinkedIn account for several weeks. Edcomm changed her password and changed the profile of Dr. Eagle to the profile of the new CEO.

Dr. Eagle brought suit under two federal statutes: the Computer Fraud and Abuse Act (CFAA), which prohibits hacking of computers, and the Lanham Act. She also sued under state law for a variety of torts, including invasion of privacy, misappropriation of publicity and conversion. Edcomm countersued Dr. Eagle for a

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variety of claims including misappropriation, unfair competition and conversion. The court recently dismissed Dr. Eagle's two federal claims on summary judgment. Under CFAA, the court concluded that Dr. Eagle's claim that her professional reputation was damaged by her inability to use LinkedIn was not a recognized form of damage under CFAA. Under the Lanham Act, the court ruled that Edcomm's actions had resulted in a diversion of Dr. Eagle's LinkedIn contacts, but that there was no likelihood of confusion among her contacts about whether she was affiliated with the account or with Edcomm. Dr. Eagle's state law claims survived summary judgment and will be tried as will Edcomm's claims for misappropriation, unfair competition and conversion.

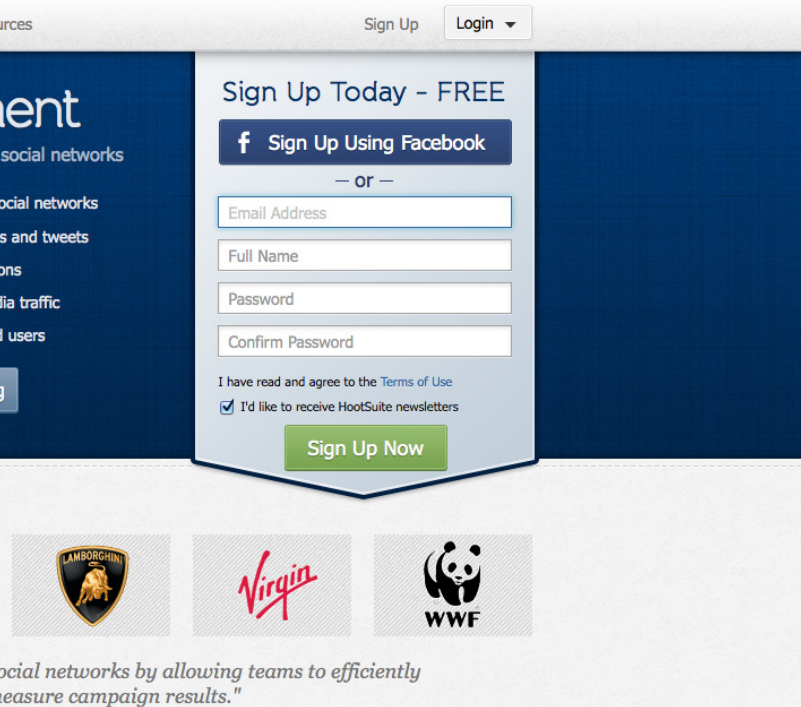
Another case, PhoneDog v. Kravitz, raises a similar issue. PhoneDog, a mobile news and review resource company, sued a former employee, Noah Kravitz, for his failure to return a Twitter handle that allegedly belonged to the company. PhoneDog used a variety of social media to market and promote its services. During the course of his employment, the employee tweeted under the handle @Phonedog\_Noah and posted reviews of mobile products and services. The account accumulated 17,000 Twitter followers, which PhoneDog alleged to be worth \$42,500 per month (each Twitter follower was valued at \$2.50 per month). When Kravitz left the company, PhoneDog requested that he turn over control of the account and the account's followers. Kravitz changed the account handle to @noahkravitz, continued to control and use the account, and purportedly started to work for a competitor of PhoneDog. PhoneDog sued for misappropriation of trade secrets, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage and conversion. A trial date has not been set but a decision is anticipated this year.

### Protecting Your Social Media Accounts

The use of social media is here to stay. As the courts sort out the ownership issues raised in the Eagle and PhoneDog cases, companies can take steps to protect themselves from the conversion of their social media accounts and from disputes over ownership of their accounts. Here are some tips for protecting your social media accounts:

Companies that employ third parties to maintain their social media accounts must have written agreements that make it clear that the social media accounts and any followers, friends and connections are the property of the company. The written agreement must make it clear that the account settings, passwords and username of the company are given to the third party for the sole purpose of maintaining their social media accounts, that they cannot be changed or altered, and that they must be returned upon request. In addition, the third party must agree to protect confidential information derived through the engagement, including the followers, friends and connections of the account. The agreements should specify what remedy the third party has in the event of a dispute with the company related to the services provided and make it clear that interference with its social media accounts is not permitted.

As an alternative, companies that use third party vendors to maintain their social media accounts should consider the use of software that encrypts the passwords so that the third party never sees the passwords of the company but can still log in and act as the client on its social media accounts. Companies can also use the features offered by the various social media sites to limit third party vendors' access to company passwords. For



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social networks by allowing teams to efficiently measure campaign results."

example, Facebook allows the use of administrators who have certain defined powers. Companies also can set up special accounts for limited purposes or functions as well so that access to the company's main social media accounts is not needed.

Companies that manage their own social media accounts should first determine their level of interest in protecting their social media accounts. Given the industry, their brand, and the size and value of their social media accounts, some companies may not want to assume control over social media accounts maintained by their employees. In fact, adopting such a policy might have a negative effect on recruiting employees in industries like journalism and news media.

If employees that manage their own social media accounts want to control the company's accounts, they must have a written social media policy that is specific and provides that the company and, not individual employees, own the social media accounts of the company, including accounts that are used to promote the business but are in the name of individual employees. These policies should specify that followers, friends and connections developed through these accounts belong to the company and not the employee.

The social media policies of companies must be integrated into employment agreements so that employees agree to abide by the social media policy of their company as well as other company policies. Remedies for breach of the agreement should include the use of injunctions and liquidated damages for the harm caused by interference with social media accounts.

Companies have to understand the terms of use of the underlying social media that they are using. It is important to understand whether the content posted on the website belongs to the user as opposed to the social media company. For example, if the social media company retains all ownership rights, except with respect to the content that is posted, then the account and the followers, who voluntarily decide to affiliate themselves to the account, may not be capable of "ownership" by the company. In addition, some social media platforms, such as Facebook, permit only one change to the username of the account. Therefore, careful attention must be given to the terms of service and peculiarities of each of the social media platforms.

## Remedies

If you are locked out of your social media accounts, do not despair. You should consider retaining experienced counsel who can evaluate the situation and recommend a course of action. One option to consider is the use of administrative remedies provided by the social media providers. For example, in the case described in the opening of this article, Facebook permitted the small non-profit to change the username and password when the conversion of the account was brought to Facebook's attention.

If the matter cannot be resolved, legal remedies should be considered. As shown through the cases described above, a variety of state and federal causes of action may be applicable. The cause of action and remedies available will depend on the circumstances, but if the company's intellectual property is used, federal causes of action for trademark violations and state conversion claims may be most effective.

*Mary E. Gately is a partner at DLA Piper LLP (US) in Washington, D.C and is the co-chair of the litigation department. She specializes in reputation management for corporate clients and individuals and complex civil litigation. She graduated from Harvard Law School. The author thanks Nedra Adam, a DLA Piper associate, for her research and assistance.*