

# CONSIDER POLICIES BEFORE YOU TWEET

You may think you own your social media accounts, but litigation shows it's not as clear cut as it seems

In one of the first of a coming wave of potential lawsuits aimed at defining ownership of social-media accounts, a federal court in California has, in an opinion on a preliminary motion, given employers a useful guideline over “ownership” of an employee’s Twitter followers. Yes, litigation continues and both parties still hope for an amicable resolution, but the implications of the case are clear for employers that are savvy with social media.

### Just the facts, ma’am

Let’s start at the beginning with PhoneDog, a consumer-research company that produces tech reviews for mobile products. In April 2006, Noah Kravitz was hired as a product reviewer and video blogger, tasked with submitting written and video content for the company’s website and a Twitter account, @PhoneDog\_Noah. By the time he resigned in October 2010, Kravitz had accumulated about 17,000 Twitter followers — and, at his exit interview, PhoneDog asked Kravitz to stop using the account. Kravitz refused, instead changing his account handle to @noahkravitz. The rest is litigation history.

PhoneDog sued Kravitz under California law, claiming theft of trade secrets, conversion, and intentional and negligent interference with prospective economic advantage. The company asserted ownership of the account and its related trade secrets, namely the compilation of subscribers and the associated password.

In its lawsuit, PhoneDog states that it suffered “at least \$340,000” in damages.



## EMPLOYMENT LAW

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In response, Kravitz filed a pre-trial motion for dismissal, asserting that, even if all the claims were

true, PhoneDog isn’t entitled to recover damages under applicable law. The Court’s preliminary ruling, in plain English? In a nutshell, if PhoneDog can prove the alleged facts, it may, indeed, have a protectable interest in Kravitz’s Twitter followers.

What are the lessons company owners and managers should already be taking away from this unfolding legal dispute?

■ Bring it on home. If Twitter is important to you and your company, keep in mind that Twitter accounts, their followers and their passwords are maintained by Twitter. To create real value, it may make sense to take steps now to migrate or at least cross-pollinate your Twitter accounts to an employer-controller customer database.

■ Mind your T&Cs. Create or review your website’s terms and conditions, in particular looking at your privacy and customer-information usage policies. Be specific about spelling out employer ownership and permitted uses of account and website information, and make sure to obtain your customers’ documented consent.

■ Protect your trademarks. This is partic-

ularly important when an account includes a company’s trademark or brand names. Register your trademark(s) with each social media site, including Twitter, and take pains to register not just your house mark, but each of your product marks as well.

■ Review your policies and licenses. Put effective social-media policies in place making it clear that employee accounts created on company time are company property. Obtain documented consent and maintain a current list of all passwords. (Remember, possession is the largest percentage of the law.) Thereafter, regularly review existing licenses and future license agreements to restrict use of trademarks online, particularly in the social networking context.

■ Monitor your social-media presence. While you’re at it, and if you aren’t, you should begin regularly monitoring company-facing sites and accounts (for example, through internal monitoring, third-party monitoring, Google alerts, etc.) to detect negative, inaccurate and misleading comments or intellectual property infringements.

Ultimately, this “Case of the Filched Followers” may prove to have no merit. The attention this case is receiving, however, affords employers a unique opportunity to get up to speed, review current policies and take smart steps to protect the company’s social-media assets.

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