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Twitter's Embedded Tweet Functionality Further Erodes Control of Content Owners

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Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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Twitter recently updated its service, expanding how [tweets can be embedded and displayed](#) outside of its website. Instead of accessing tweets only through Twitter.com, individuals can now view full "[Twitter cards](#)" directly on any website. These cards include not only tweeted text but also any photo, video, or other content the tweet contains. Effectively, embedded tweets put tweeted content on any website on the Internet. However, despite a recent federal court ruling involving retweeted photos that was favorable to content owners, this enhanced functionality may enable third parties to reproduce content with the owner's permission while avoiding the pitfalls of copyright infringement.

On January 14, 2013, Judge Alison J. Nathan of the Southern District of New York issued an opinion in [Agence France Presse v. Morel](#), a case involving alleged infringement of photographs taken in the aftermath of the 2010 Haiti earthquake. Daniel Morel, a photographer, uploaded photos to Twitter. These same photos were then copied by Lisandro Suero, uploaded to Suero's Twitter account, and sold to Agence France Presse ("AFP"). AFP then licensed the photos to Getty Images, which distributed them, without Morel's consent, to [news outlets around the world](#), including the Washington Post, the Boston Globe, USA Today, ABC, CBS, and CNN. It was at this point that Morel started issuing takedown notices, leading AFP to file a preemptive lawsuit against him on March 26, 2010. AFP sought a declaration that it had not infringed Morel's copyrights. Morel then filed a counterclaim against AFP, Getty Images and the Washington Post, asserting that they willfully infringed on his copyrights and that AFP and Getty Images were secondarily liable for infringement as well.

The parties ultimately filed cross-motions for summary judgment, raising a number of arguments based in copyright law. While a detailed analysis of all of the arguments is outside the scope of this post, the court's ruling on the re-use license in Twitter's terms of service ("TOS") makes it clear that there is no broad re-use license to the public at large. However, Twitter's own re-use rights, coupled with embedded tweets, could still lead to content reproduction without a copyright holder's permission.

The [Twitter TOS](#) provides: “You (i.e. Twitter account holder) retain your rights to any Content you submit, post or display on or through the Services. 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 (now known or later developed)... This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same.” The TOS later state, “What you say on Twitter may be viewed all around the world instantly. You are what you Tweet!” and “We encourage and permit broad re-use of Content.”

Based on these provisions, AFP claimed that it was a third party beneficiary to the Twitter TOS and could not have infringed because Morel’s posting of the photos on Twitter constituted a license to use the photos outside of the Twitter service. However, the district court judge rejected this argument, noting 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.” Moreover, the TOS’s reference to users retaining rights to any posted content “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.” The opinion makes it clear that the Twitter TOS “were not intended to confer a benefit on the world-at-large to remove content from Twitter and commercially distribute it.” In short, the district court roundly rejected AFP’s argument that, under the Twitter TOS, posting content on Twitter grants a broad re-use license to the public.

Although the Agence France Presse decision protects content posted on Twitter, the launch of embedded tweets might threaten that protection. This new feature allows any tweet to be embedded on any website. Combined with the [expanded content that can now be included directly inside a Twitter card](#), embedded tweets potentially allow reproduction of content without permission. While a newspaper could not post a photographer’s pictures from his Twitter account without his consent, the newspaper could embed his tweets directly on their site. If the images were included in the Twitter card, then they would be visible on the newspaper’s site, via the embedded tweet. As noted earlier, the Twitter TOS grant Twitter a re-use right in posted content and embedding tweets is included within Twitter’s right to “use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute” the photo.

The key element, [some have suggested](#), is that the embedded photo “has to be in some sense not the photograph, but a representation of the underlying photograph as it looks on Twitter. This would permit the embed-tooling while not taking the image as a stand-alone.”

This distinction between in-line linking and simple reposting was firmly established in the Ninth Circuit’s 2007 decision, [Perfect 10 v. Amazon](#). The case was brought by a content owner who claimed that Google Image Search’s inclusion of its pictures constituted copyright infringement. The appellate court held that Google’s in-line links to images did not constitute copyright infringement, noting that since its “computers do not store the photographic images, Google does not have a copy of the images for purposes of the Copyright Act.” Instead, Google used “HTML instructions that direct a user’s browser to a website publisher’s computer that stores the full-size photographic image” and the court held that “providing these HTML instructions is not equivalent to showing a copy.”

Embedded tweets operate the same way, pointing back to the original content on Twitter. The tweets remain on Twitter.com. Twitter is only enabling website developers to add code to their own sites which will prednisone no prescription cod let them display a tweet – essentially a “remote window” into Twitter.com – on webpages outside the Twitter.com domain. Rather than reposting content, websites that embed tweets will simply be linking back to Twitter. But, to users, it will appear as though the tweet is a part of the other website. And although the content owner who originally tweeted the content would be identified in the embedded tweet—and thus be attributed as the source of the content—the content owner would have no control over where, when and how his or her content is redistributed.

So, despite the Agence France Presse ruling, copyrighted content could start appearing on newspaper websites, blogs, and other websites throughout the Internet without an owner's explicit consent. Twitter appears to be well within its TOS in offering this new service, making it crucial for content owners to carefully decide what to post to Twitter. Third-party embedders will certainly consider the benefits from increased traffic to an embedded image. Therefore, the potential for any tweeted pictures or videos to actually reappear on other websites, as opposed to being accessible only through a traditional link to Twitter.com, should be considered while managing content distribution.

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