



Selected Topics in Internet Law

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SELECTED TOPICS

- Website User Agreements
- 47 USC 230
- Twitter, Facebook, YouTube and you

WEBSITE USER AGREEMENTS

- Does your website really need an agreement?
- What does your website do? What interests are you protecting?
 - Brochure ware?
 - Information/News
 - User Generated Content (UGC)
 - Transactions
 - Products
 - Services

WEBSITE USER AGREEMENTS

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BROWSE WRAP OR CLICK WRAP

- “A defining feature of a browsewrap license is that it does not require the user to manifest assent to the terms and conditions expressly – the user need not sign a document or click on an “accept” or “I agree” button. **A party instead gives his assent simply by using the website.**”

BROWSE WRAP OR CLICK WRAP

- Do you want your users to click through a license agreement just to be able to visit your website?
- Would that discourage people from using your website?
- Are there special provisions that are important to you that you want to be sure that people have agreed to?

BACK TO BASICS

- “As browsewraps have become more prevalent in today’s increasingly e-driven commercial landscape, the courts have been called upon to determine their enforceability. Though the outcomes in these cases are mixed, one general principle that emerges is that the validity of a browsewrap license turns on whether a website user has actual or constructive knowledge of a site’s terms and conditions prior to using the site.”
 - *Southwest Airlines v BoardFirst*

BACK TO BASICS

- So, do we have an agreement?
 - “For a contract to exist, the parties must manifest their mutual assent to be bound by it. The law is not concerned with the particular manner in which an offeree makes his assent known to the offeror provided that it is effectively communicated. Assent may be manifested directly, as by the written or spoken word, or indirectly, through one’s actions or conduct.” [citations omitted]

BROWSE WRAP OR CLICK WRAP

- Kwan v. Clearwire Corporation, Case No. C09-1392JLR Dist. Court, (WD Washington, January 12, 2012)
 - Ms. Brown admits that she received an email confirmation of her telephone order from Clearwire. However, as the court noted above, the confirmation email did not contain a direct link to Clearwire's TOS, but rather a link to Clearwire's homepage. To find the TOS, Ms. Brown would have had to negotiate her way through two more hyperlinks. Further, the reference to the TOS did not appear until the third page of the email Ms. Brown received. Like the court in Specht, this court finds that the breadcrumbs left by Clearwire to lead Ms. Brown to its TOS did not constitute sufficient or reasonably conspicuous notice of the TOS. Accordingly, the court declines to hold that Ms. Brown manifested assent to the TOS based on her receipt of Clearwire's email and retention of the modem alone. Further, the court notes that Ms. Brown did in fact ultimately return her modem to Clearwire.

BROWSE WRAP OR CLICK WRAP

- *Southwest Airlines, Co. v. Boardfirst, LLC*, No. 3:06-CV-0891-B, 2007 WL 4823761 (N.D. Tex. Sept. 12, 2007)
 - Southwest complains that BoardFirst’s use of the Southwest website violates the terms and conditions of use (the “Terms”) posted on the site. Southwest’s homepage states in small black print at the bottom of the page that “[u]se of the Southwest websites . . . constitutes acceptance of our Terms and Conditions.” (Pl. App. 116). Clicking on the words “Terms and Conditions”, which are distinguished in blue print, sends the user to the Terms page.

ACTUAL NOTICE

- *Southwest Airlines, Co. v. Boardfirst, LLC*
 - There is no dispute that BoardFirst has had actual knowledge of Southwest's Terms at least since Kate Bell received from Southwest the December 20, 2005 cease-and-desist letter in which Southwest informed Bell that the Terms forbid the use of the Southwest website for commercial purposes. (Pl. App. 14, 94, 106-07). Despite having actual knowledge of the Terms, BoardFirst has continued to use the Southwest site in connection with its business. In so doing BoardFirst bound itself to the contractual obligations imposed by the Terms.

ARBITRATION

- Most web sites operators prefer arbitration
- Arbitration is favored under federal law
 - “A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”. [9 U. S. C. §2]
 - We have described this provision as reflecting both a “liberal federal policy favoring arbitration,” and the “fundamental principle that arbitration is a matter of contract,” In line with these principles, courts must place arbitration agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U. S. 440, 443 (2006), and enforce them according to their terms...
 - *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 563 US ___, 179 L. Ed. 2d 742 - Supreme Court, 2011

ARBITRATION

- It is well settled, however, that a court may not compel arbitration until it has first resolved whether a valid arbitration agreement exists.
- The party seeking to enforce an arbitration agreement bears the burden of showing that the agreement exists and that its terms bind the other party.
- It is very common for the validity of a web agreement to come up in a motion to compel arbitration. The courts often struggle with finding a binding agreement when faced with a browsewrap agreement (such as the Kwan case).

FORUM SELECTION

- Carnival Cruises v. Shute 499 U.S. 585 (1991)
 - “After the respondents Shute, a Washington State couple, purchased passage on a ship owned by petitioner, a Florida-based cruise line, petitioner sent them tickets containing a clause designating courts in Florida as the agreed-upon fora for the resolution of disputes.”

FORUM SELECTION

- Carnival Cruises v. Shute
- ...it would be entirely unreasonable to assume that a cruise passenger would or could negotiate the terms of a forum clause in a routine commercial cruise ticket form. Nevertheless, including a reasonable forum clause in such a form contract well may be permissible for several in several different fora, the line has a special interest in limiting such fora. Moreover, a clause establishing ex ante the dispute resolution forum has the salutary effect of dispelling confusion as to where suits may be brought and defended, thereby sparing litigants time and expense and conserving judicial resources. Furthermore, it is likely that passengers purchasing tickets containing a forum clause like the one here at issue benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued.

FORUM SELECTION

- Hoffman v. Supplements Togo Mgmt. LLC, A-5022-09T3 (N.J. Ct. App.; May 13, 2011)
 - Again, ordinary contract rules apply.
 - This is a browse wrap agreement and Supplements Togo managed to “submerge” the forum selection provision inside a completely different topic. Court would not uphold.
- “You should do everything you can to preempt the ‘I did not read the terms and could not agree to them’ argument” [Professor Eric Goldman].
(Hint: use Click wrap—see e.g. Fusha v Delta Airlines (DC MD, Aug 30 2011))

AMENDMENT

- Lawyers and website operators want to be able to change their web user agreements at any time for any reason, but...
- Douglas v Talk America 495 F3d 1062 (9 Cir. July 2007)
 - Even if Douglas had visited the website, he would have had no reason to look at the contract posted there. Parties to a contract have no obligation to check the terms on a periodic basis to learn whether they have been changed by the other side. Indeed, a party can't unilaterally change the terms of a contract; it must obtain the other party's consent before doing so. Even if Douglas's continued use of Talk America's service could be considered assent, such assent can only be inferred after he received proper notice of the proposed changes. Douglas claims that no such notice was given.

AMENDMENT

- **Douglas v. Talk America**
 - Nor would a party know when to check the website for possible changes to the contract terms without being notified that the contract has been changed and how. Douglas would have had to check the contract every day for possible changes. Without notice, an examination would be fairly cumbersome, as Douglas would have had to compare every word of the posted contract with his existing contract in order to detect whether it had changed.

AMENDMENT

- Harris v. Blockbuster Inc, USDC (ND TX, April 15, 2009)
 - Blockbuster may at any time, and at its sole discretion, modify these Terms and Conditions of Use, including without limitation the Privacy Policy, with or without notice. Such modifications will be effective immediately upon posting. You agree to review these Terms and Conditions of Use periodically and your continued use of this Site following such modifications will indicate your acceptance of these modified Terms and Conditions of Use. If you do not agree to any modification of these Terms and Conditions of Use, you must immediately stop using this Site.

AMENDMENT

- Harris v. Blockbuster Inc
- The Court concludes that the Blockbuster arbitration provision is illusory for the same reasons as that in Morrison. Here, as in Morrison, there is nothing in the Terms and Conditions that prevents Blockbuster from unilaterally changing any part of the contract other than providing that such changes will not take effect until posted on the website. There are likewise no “Halliburton type savings clauses,” as there is “nothing to suggest that once published the amendment would be inapplicable to disputes arising, or arising out of events occurring, before such publication.”

RIGHT TO SUSPEND OR TERMINATE

- You need to preserve your right to discontinue, suspend or modify your website and your user agreement
 - “FedEx may discontinue, suspend or modify fedex.com at any time without notice, and FedEx may block, terminate or suspend Your and any user's access to fedex.com at any time for any reason in its sole discretion, even if access continues to be allowed to others.”
 - “Amazon reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion.”

OUTSIDE THE SCOPE OF THE LICENSE

- Jacobsen v Katzer, 2008-1001 (CAFC, 2008)
 - We consider here the ability of a copyright holder to dedicate certain work to free public use and yet enforce an “open source” copyright license to control the future distribution and modification of that work.

OUTSIDE THE SCOPE OF THE LICENSE

- Jacobsen v. Katzer
- The heart of the argument on appeal concerns whether the terms of the Artistic License are conditions of, or merely covenants to, the copyright license. Generally, “a copyright owner who grants a nonexclusive license to use his copyrighted material waives his right to sue the licensee for copyright infringement” and can sue only for breach of contract. *Sun Microsystems, Inc., v. Microsoft Corp.*, 188 F.3d 1115, 1121 (9th Cir. 1999); *Graham v. James*, 144 F.3d 229, 236 (2d Cir. 1998). If, however, a license is limited in scope and the licensee acts outside the scope, the licensor can bring an action for copyright infringement.

OUTSIDE OF THE SCOPE OF THE LICENSE

- **Jacobsen v. Katzer**
 - The Artistic License states on its face that the document creates conditions: “The intent of this document is to state the conditions under which a Package may be copied” (Emphasis added.) The Artistic License also uses the traditional language of conditions by noting that the rights to copy, modify, and distribute are granted “provided that” the conditions are met. Under California contract law, “provided that” typically denotes a condition.

UNAMBIGUOUS OWNERSHIP

- Your mantra needs to be that you always want “unambiguous ownership” of your intellectual property.
 - Your organization cannot afford to have any ambiguity about its ownership of its intellectual property.
 - The first thing any investor will conduct is an intellectual property audit, and any cloud in your ownership will create a significant challenge to any transaction.

UNAMBIGUOUS OWNERSHIP

- FNC owns and shall own all rights, title and interest to the CMS Service, to the FNC Ports and other Associated Services and processes and any modifications thereto, regardless of whether made by you or by FNC.
 - FNC alone will own all right, title and interest, including all related intellectual property rights, to any suggestions, ideas, feedback, recommendations, or other information provided by you relating to the Service ("Submissions") and you agree to assign such Submissions to FNC free of charge. FNC may use such Submissions as it deems appropriate in its sole discretion.

UNAMBIGUOUS OWNERSHIP

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 - If you do post content or submit material, and unless we indicate otherwise, you grant Amazon a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.
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 - FedEx does not accept ideas, concepts, or techniques for new services or products through fedex.com. If such information is received, it will not be considered confidential and FedEx will be deemed free to use, communicate and exploit such information in any manner it chooses.

- **Traditional Defamation Standards**
 - A finding that PRODIGY is a publisher is the first hurdle for Plaintiffs to overcome in pursuit of their defamation claims because one who repeats or otherwise republishes a libel is subject to liability as if he had originally published it. In contrast, distributors such as book stores and libraries may be liable for defamatory statements of others only if they knew or had reason to know of the defamatory statement at issue. A distributor or deliverer of defamatory material is considered a passive conduit and will not be found liable in the absence of fault.

47 USC 230

- In various national newspaper articles written by Geoffrey Moore, PRODIGY's Director of Market Programs and Communications, PRODIGY held itself out as an online service that exercised editorial control over the content of messages posted on its computer bulletin boards, thereby expressly differentiating itself from its competition and expressly likening itself to a newspaper.

47 USC 230

- First, PRODIGY held itself out to the public and its members as controlling the content of its computer bulletin boards. That such control is not complete and is enforced both as early as the notes arrive and as late as a complaint is made, does not minimize or eviscerate the simple fact that PRODIGY has uniquely arrogated to itself the role of determining what is proper for its members to post and read on its bulletin boards. Based on the foregoing, this Court is compelled to conclude that for the purposes of Plaintiffs' claims in the action, PRODIGY is a publisher rather than a distributor.
- *Stratton Oakmonth v Prodigy* NY Sup Ct 31063/94 (March 10, 1995)

47 USC 230

- In response to the Prodigy case 47 USC 230 was enacted as part of the Communications Decency Act (Title V of the Telecommunications Act of 1996)
 - **(1) Treatment of publisher or speaker**
 - No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
 - **(2) Civil liability**
 - No provider or user of an interactive computer service shall be held liable on account of—
 - **(A)** any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
 - **(B)** any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).



47 USC 230

- (3) State law
 - Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

47 USC 230

- 47 USC 230 accomplishes two major policy initiatives
 - Immunizes “interactive computer service” from third party liability for defamation and other causes of action arising from the delivery or hosting of “information content providers”
 - Protects “interactive computer service” from liability for good faith filtering, monitoring, editing or other activities related to third party content (including the failure to filter, monitor or edit).

47 USC 230

- Without 47 USC 230 it is unlikely that the Internet would have grown as much as it has since 1995 or in the ways it has.
- Without 47 USC 230, it is unlikely we would have
 - YouTube, eBay, Facebook, Yelp
 - Spam filters
 - And many more

VIRUSES ARE COVERED BY 47 USC 230

- Green v. America Online 318 F.3d 465 (3d cir, 2003)
- Green was alleged defamed and was the victim of a virus/malware attack through AOL
 - There is no real dispute that Green's fundamental tort claim is that AOL was negligent in promulgating harmful content and in failing to address certain harmful content on its network. Green thus attempts to hold AOL liable for decisions relating to the monitoring, screening, and deletion of content from its network — actions quintessentially related to a publisher's role. Section 230 "specifically proscribes liability" in such circumstances. Zeran, 129 F.3d at 332-33.

THE ROOMMATES CASE

- The “Roommates case”

Fair Housing Council of SFV v. Roommates.com 521 F.3d 1157 (9th cir, 2008)

Here, the part of the profile that is alleged to offend the Fair Housing Act and state housing discrimination laws — the information about sex, family status and sexual orientation — is provided by subscribers in response to Roommate's questions, which they cannot refuse to answer if they want to use defendant's services. By requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information provided by others; it becomes the developer, at least in part, of that information. And section 230 provides immunity only if the interactive computer service does not "creat[e] or develop[]" the information "in whole or in part." See 47 U.S.C. § 230(f)(3).

THE ROOMMATES CASE

- **Roommates**
- Today's holding sheds additional light on Batzel v. Smith, 333 F.3d 1018 (9th Cir.2003). There, the editor of an email newsletter received a tip about some artwork, which the tipster falsely alleged to be stolen. The newsletter editor incorporated the tipster's email into the next issue of his newsletter and added a short headnote, which he then emailed to his subscribers. The art owner sued for libel and a split panel held the newsletter editor to be immune under section 230 of the CDA
- Our opinion is entirely consistent with that part of Batzel which holds that an editor's minor changes to the spelling, grammar and length of third-party content do not strip him of section 230 immunity. None of those changes contributed to the libelousness of the message, so they do not add up to "development" as we interpret the term. See pp. 1167-69 supra. Batzel went on to hold that the editor could be liable for selecting the tipster's email for inclusion in the newsletter, depending on whether or not the tipster had tendered the piece to the editor for posting online, and remanded for a determination of that issue.

THE ROOMMATES CASE

- By contrast, Roommate both elicits the allegedly illegal content and makes aggressive use of it in conducting its business. Roommate does not merely provide a framework that could be utilized for proper or improper purposes; rather, Roommate's work in developing the discriminatory questions, discriminatory answers and discriminatory search mechanism is directly related to the alleged illegality of the site. Unlike Carafano, where the website operator had nothing to do with the user's decision to enter a celebrity's name and personal information in an otherwise licit dating service, here, Roommate is directly involved with developing and enforcing a system that subjects subscribers to allegedly discriminatory housing practices.

ROOMMATES CASE

- We must keep firmly in mind that this is an immunity statute we are expounding, a provision enacted to protect websites against the evil of liability for failure to remove offensive content. See pp. 1162-64 supra. Websites are complicated enterprises, and there will always be close cases where a clever lawyer could argue that something the website operator did encouraged the illegality. Such close cases, we believe, must be resolved in favor of immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites, fighting off claims that they promoted or encouraged — or at least tacitly assented to — the illegality of third parties.

- Asia Economic Institute v Xcentric Ventures LLC 10-01360, Dist. Ct. (CD CA, May 4, 2011)

(Xcentric Ventures operates the Ripoff Report website)

As outlined above, the content that appears on the website originates with the site's users (the third parties who write and submit the reports), not the site itself. The content of the reports was prepared solely by the user. It is undisputed that the only advice that Defendants offer to users is generic and stylistic in nature. More specifically, users are only instructed, "DO NOT use ALL CAPITAL LETTERS," "DO NOT sign your name, or include any e-mail addresses in the report," and "The more information you provide, the better." (Id. ¶¶ 11, 16). As a matter of law, these statements cannot amount to encouragement, solicitation, or instruction to say anything in particular that might warrant labeling Defendants as "information content providers."

TWITTER, FACEBOOK, YOUTUBE AND YOU

- Social media that belongs to the employee
 - Social media policy
 - NLRB memoranda
- Social media that belongs to the employer
 - It is 10:00 pm, do you know where your Twitter account is?
 - Who owns your social media account?

LIMITATIONS ON SOCIAL MEDIA POLICIES

- As more employees use social media, employers have felt the need to issue social media policies.
- Out of anxiety, many employers have taken a very restrictive position regarding what employees may talk about through social media
- Not all restrictions are appropriate or permissible

SOCIAL MEDIA POLICIES

- While employers have broad latitude in forming their social media policies, they are limited by the National Labor Relations Act, especially the employee's Section 7 rights
 - “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...”
- To clarify, the General Counsel's office of the NLRB has recently issued two memoranda on social media cases
 - Memorandum OM 11-74 (August 18, 2011)
<https://www.nlr.gov/news/acting-general-counsel-releases-report-social-media-cases> and
Memorandum OM 12-31 (January 24, 2012)
<https://www.nlr.gov/news/acting-general-counsel-issues-second-social-media-report>

NLRB GENERAL COUNSEL REPORTS ON SOCIAL MEDIA

- Permissible employee speech. We first concluded that the discharged employees' postings on Facebook were concerted activity under the Meyers cases. Meyers Industries (Meyers I), 268 NLRB 493 (1984), revd. sub nom Prill v. NLRB, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand Meyers Industries (Meyers II), 281 NLRB 882 (1986), affd. sub nom Prill v. NLRB, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). In these cases, the Board explained that an activity is concerted when an employee acts **“with or on the authority of other employees, and not solely by and on behalf of the employee himself.”**

EMPLOYEE POSTINGS

- We decided that the Facebook discussion here was a textbook example of concerted activity, even though it transpired on a social network platform. The discussion was initiated by the one coworker in an appeal to her coworkers for assistance. Through Facebook, she surveyed her coworkers on the issue of job performance to prepare for an anticipated meeting with the Executive Director, planned at the suggestion of another employee. The resulting conversation among coworkers about job performance and staffing level issues was therefore concerted activity.

NOT ALL EMPLOYEE POSTINGS ARE PROTECTED

- **Not all employee postings are protected**
 - We found that the employee's discharge did not violate Section 8(a)(1) because he was terminated for writing inappropriate and offensive Twitter postings that did not involve protected concerted activity. His conduct was not protected and concerted: it did not relate to the terms and conditions of his employment or seek to involve other employees in issues related to employment. Ignoring his Employer's warning, he continued to post inappropriate tweets while covering his beat. He was discharged for this misconduct, which did not involve protected activity.

EMPLOYEE STATEMENTS

- Finally, we held that the discharged employees did not lose the Act's protection. Although there was swearing and/or sarcasm in a few of the Facebook posts, the conversation was objectively quite innocuous. We also found that the postings were not "opprobrious" under the Atlantic Steel Co. test, 245 NLRB 814, 816-817 (1979), typically applied to employees disciplined for public outbursts against supervisors.
- And in another case Applying Atlantic Steel, we concluded that the employee did not lose the Act's protections when she referred to her supervisor by such terms as "scumbag".

DEFAMATION

- **Evaluating employee speech.** In considering the Employer's assertions of defamation, we applied the Supreme Court's determination that labor speech must be evaluated under the "malice" standard enunciated in New York Times v. Sullivan, 376 U.S. 254, 280 (1964). This test requires a determination of whether the statements were made with knowledge of their falsity or with reckless disregard for their truth or falsity. We also noted that the Board and courts have recognized that statements in hotly contested labor campaigns are often statements of opinion or figurative expression, "rhetorical hyperbole" incapable of being proved true or false in any objective sense.

EVALUATING SOCIAL MEDIA POLICIES

- Looking at social media policies
 - Guideline 3 of the policy precluded employees from pressuring their coworkers to connect or communicate with them via social media. Guideline 5 precluded employees from revealing, including through the use of photographs, personal information regarding coworkers, company clients, partners, or customers without their consent. Guideline 6 precluded the use of the Employer's logos and photographs of the Employer's store, brand, or product, without written authorization.

EVALUATING SOCIAL MEDIA POLICIES

- And the answer is
 - Applying Lafayette Park Hotel and Lutheran Heritage, as discussed above, we concluded that the Employer's admonition in guideline 3 that no employee should ever be pressured to "friend" or otherwise connect with a coworker via social media could not be reasonably read to restrict Section 7 activity. The rule was sufficiently specific in its prohibition against pressuring coworkers and clearly applied only to harassing conduct. It could not reasonably be interpreted to apply more broadly to restrict employees from attempting to "friend" or otherwise contact colleagues for the purposes of engaging in protected concerted or union activity.

EVALUATING SOCIAL MEDIA POLICIES

- But
 - We found, however, that guideline 5's restriction upon revealing personal information was unduly broad and could reasonably be interpreted as restraining Section 7 activity. Employees have a Section 7 right to discuss their wages and other terms and conditions of employment. **A rule precluding employees from discussing terms and conditions of employment, or sharing information about themselves or their fellow employees with each other or with nonemployees violates Section 8(a)(1).** Absent any limitations or examples of what is covered, we concluded that the guideline would reasonably be interpreted as prohibiting employees' right to discuss wages and other terms and conditions of employment.

EVALUATING SOCIAL MEDIA POLICIES

- And
 - Similarly, we decided that the prohibition in guideline 6 on using the Employer's logos or photographs of the Employer's stores would restrain an employee from engaging in protected activity. For example, an employee could not post pictures of employees carrying a picket sign depicting the Employer's name, peacefully handbill in front of a store, or wear a t-shirt portraying the Employer's logo in connection with a protest involving terms and conditions of employment.

SOCIAL MEDIA THAT BELONGS TO THE EMPLOYER

- If you ask an employee to set up a social media account (e.g. Twitter) and they leave
 - Do you own the account or do they? [what does your agreement with them say? You do have an agreement with them, don't you?]
 - Would you have the user name and password to the account so you could use it, or...
- Bonus question. If you have someone else design your website but want to move it to someone else, ask yourself the same questions.

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