

MySpace and Facebook: Where Your Information is Made Public and Your Private Information is Made Discoverable

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If you're like most individuals who frequent social networking sites like MySpace and Facebook, you probably believe that adjusting your privacy setting to "private" means that nobody will have access to your webpage without your permission. Privacy settings are often used by MySpace and Facebook users when they want to restrict who may have access to information contained on their webpage for a variety of reasons. However, New York case law has recently made clear that self-regulated privacy settings do not protect self-proclaimed private web content from being dragged into the courts of New York. One New York trial court has explicitly held that relevant information and pictures posted on social networking sites like Facebook and MySpace are discoverable, even if such content has been designated as private by the webpage owner.

In *Romano v. Steelcase, Inc.*,¹ the plaintiff brought a personal injury claim against the defendant seeking damages for injuries allegedly caused by the defendant. The plaintiff claimed that she suffered permanent injuries that affected her enjoyment of life. However, after the defendant started digging into the plaintiff's claims, it located pictures of the plaintiff traveling across the country and socializing with friends, clearly contradicting her claims that her injuries had prevented her from socializing and traveling. Surprisingly, the plaintiff did not make it hard for the defendant to find the damaging photos because she posted them on her publicly available MySpace and Facebook pages.

Having located photos that casted serious doubt on the validity of plaintiff's claims, the defendant requested that the New York trial court order the plaintiff to produce all web content posted by the plaintiff on her MySpace and Facebook pages, regardless of whether it was designated as private by the plaintiff. The defendant argued that the private web content might yield more pictures and/or comments that would be useful to prove that the plaintiff's injuries had not seriously affected her ability to enjoy life.

The plaintiff objected to the request and argued that allowing discovery of web content that she intentionally designated as private would be a violation of her right to privacy. However, the trial court of New York disagreed, stating that "as neither Facebook nor MySpace guarantee complete privacy, Plaintiff has no legitimate reasonable expectation of privacy [when using those websites]."

In its analysis, the *Romano* court compared the social networking webpages with email communications. The court acknowledged that other courts had routinely allowed discovery of emails when they were relevant to the proceedings, and it felt that web content published on social networking sites should also be discoverable. The *Romano* court reasoned that the defendant's need for the sought-after web content outweighed the plaintiff's privacy concerns. Additionally, preventing the defendant from accessing the contents of plaintiff's private webpages would put the defendant at "a distinct disadvantage."

Ultimately, the court could not ignore the fact that even the plaintiff's public webpages contained clear evidence that contradicted some of her claims. Accordingly, the trial court ordered the plaintiff to produce all web content that she posted on MySpace or Facebook, even if it was designated as "private."

What should you do now in light of the *Romano* decision?

Whether you are a plaintiff or a defendant, you should always be extremely careful about what you decide to post on any social networking site, because you never know who might stop by to visit your personal or corporate webpage. This is especially true when you are involved in litigation. The best course of action would be for you and your company to refrain from posting any content on social networking sites for the duration of your litigation. Additionally, you should continue to closely monitor your personal and corporate social networking pages to ensure that other users do not post any harmful content on those webpages. However, if you decide to post private information on these sites during litigation, the *Romano* decision has made it clear that both plaintiffs and defendants should be aware that nothing is truly private on social networking sites, and both sides should be prepared to conduct discovery in this area moving forward.

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1. 907 N.Y.S.2d 650 (Sup. Ct. Suffolk County 2010).

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