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# Locked Out on LinkedIn: LinkedIn Account Belongs to Employee, not Employer

By Joshua A. Mooney

LinkedIn reportedly boasts having 181 million users, including over 1.5 million lawyers. The 2012 GreenTarget New Media Survey reported that LinkedIn leads all other social media networks in professional usage and “perceived credibility.” As professional use of social media grows, two legal risk considerations undoubtedly will grow with it: (1) who owns a professionally-used social media account in the employer-employee context, and (2) what are the potential legal repercussions of an employer seizing control of a departing employee’s social media account. *Eagle v. Morgan*<sup>1</sup> addressed these issues and provides a good glimpse at yet another area of expanding cyber liability.

## The Facts: *Eagle v. Morgan*

The lawsuit was brought by Linda Eagle, a co-founder and former executive of corporate defendant Edcomm, Inc., in connection with the seizure and use of Eagle’s LinkedIn account by the company and individual defendants (collectively, Edcomm) following the company’s termination of Eagle’s employment. The facts are as follows.

While at Edcomm, Eagle registered and used a LinkedIn account.<sup>2</sup> Edcomm apparently encouraged its employees to open and use LinkedIn accounts; although, Edcomm did not require them to use LinkedIn. Nor did Edcomm pay for employees to use it. Per the LinkedIn User Agreement agreed to by Eagle when she opened her account, the LinkedIn account belonged to Eagle alone, and Eagle individually was bound by the terms of the User Agreement. Eagle, however, later shared her LinkedIn password to Edcomm employees to help her manage her account and its content.<sup>3</sup>

On June 20, 2011, Edcomm terminated Eagle’s employment after Edcomm was purchased by

another entity.<sup>4</sup> At that time, Edcomm employees accessed Eagle’s LinkedIn account using her shared password and changed its password, effectively locking Eagle out of the account. Edcomm thereafter had “full control” of the account from June 20, 2011 through July 6, 2011, whereupon on July 7, LinkedIn took the account over.<sup>5</sup> (By July 14, 2011, Eagle regained access to the account.)

Edcomm gave public notice that Eagle was no longer affiliated with the company within a week of her termination. This information, however, did not appear on Eagle’s LinkedIn account. Instead, Eagle’s LinkedIn page reflected the name, picture, education, and experience of Sandi Morgan, the newly-appointed Interim CEO of Edcomm. However, Eagle’s honors and awards remained listed on the page. In addition, a Google search for “Linda Eagle” or a search for “Linda Eagle” on LinkedIn conducted during the time Edcomm controlled Eagle’s account directed the searcher to a LinkedIn account named “Linda Eagle,” but which bore the name, picture, and credentials of Sandi Morgan.

## The Lawsuit

Eagle commenced a civil action seeking damages stemming from the seizure of her LinkedIn account and Edcomm’s use of it. It’s worth noting that Eagle’s claims under the Computer Fraud and Abuse Act were dismissed in an earlier juncture of the lawsuit. This is not surprising. Most courts hold that the absence of a “hacking” allegation is fatal to such a claim. Here, Eagle’s disclosure of her password to the employees, who later accessed her account using the authorized password, foreclosed any such claim.<sup>6</sup> The lawsuit, however, asserted a host of other claims, including common law violation of rights of privacy and publicity, violation of Pennsylvania’s publicity and identity theft statutes, and common law conversion.<sup>7</sup> Ultimately, Eagle was successful on a number of these claims.

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The court held that Edcomm's use of the LinkedIn account violated Pennsylvania's publicity statute, 42 Pa. C.S.A. §8316 (a), which states that:

[a]ny natural person whose name or likeness has commercial value and is used for any commercial or advertising purpose without the written consent of such natural person or the written consent of any of the parties authorized in subsection (b) may bring an action to enjoin such unauthorized use and to recover damages for any loss or injury sustained by such use.

The statute defines "name" or "likeness" as "any attribute of a natural person that serves to identify that natural person to an ordinary, reasonable viewer or listener, including, but not limited to, name, signature, photograph, image, likeness, voice or a substantially similar imitation of one or more thereof."<sup>8</sup>

The court held that Eagle had offered "ample testimony" demonstrating that the name "Dr. Linda Eagle" had commercial value due to her reputation in the relevant industry, and that Eagle was a published authority, had been quoted in others' publications, and had presented at conferences.<sup>9</sup> She also demonstrated that Edcomm had used her name without her consent. Therefore, the court concluded, Eagle successfully demonstrated a claim under the statute.

The court also held that Edcomm violated Eagle's right of privacy, defined under Pennsylvania law in part as the tort of misappropriation of another's name or likeness (*i.e.*, where a defendant appropriates to its own use or benefit the name or likeness of another).<sup>10</sup> Edcomm disputed the claim. Edcomm argued that because it had not used Eagle's likeness or credentials on the LinkedIn account, and instead had used the name and picture of its Interim CEO, Morgan, it did not misappropriate Eagle's identity or likeness. The court rejected the argument because Edcomm still had used Eagle's name:

Plaintiff had a privacy interest not just in her picture and resume, but in her name. There is sufficient evidence that the name "Dr. Linda Eagle" had the benefit of reputation, prestige, and commercial value within the banking

education industry. While Defendant updated the home page of the LinkedIn account to mostly reflect Sandi Morgan's information, Defendant maintained that home page under a URL containing Dr. Eagle's name. Thus, someone searching for Dr. Eagle on LinkedIn would be unwittingly directed to a page with information about Ms. Morgan and Edcomm. *Such a scenario could be deemed to be "appropriat[ing] to [Edcomm's] own use or benefit the reputation, prestige, social or commercial standing, public interest or other values of plaintiff's name."*<sup>11</sup>

The court also found that this conduct constituted a violation of Eagle's common law right of publicity.

The court, however, rejected Eagle's claims that the seizure of Eagle's LinkedIn account constituted identity theft or conversion. Noting that violation of Pennsylvania's identity theft statute required *the unlawful possession* of personally identifiable information, the court concluded that there was no violation in the case at bar because *Edcomm had only used Eagle's name, which was "publically available and thus not unlawfully possessed."*<sup>12</sup> The court concluded that while Edcomm's use of Eagle's name to direct a user to an Edcomm-related website while it also kept Eagle "from her personal account" was "unscrupulous," it was "not so clearly an 'unlawful' purpose under the meaning of the statute such that it constitutes identity theft."<sup>13</sup>

The court also rejected the common law conversion claim. The court noted that "[n]umerous courts... have found that items such as software, domain names, and satellite signals are intangible property not subject to a conversion claim."<sup>14</sup> Here, because the "sole item converted in this case is the LinkedIn account," there was no claim for conversion:

As the LinkedIn account is not tangible chattel, but rather an intangible right to access a specific page on a computer, Plaintiff is unable to state a cause of action for conversion.<sup>15</sup>

Finally, the court rejected Edcomm's counterclaim that Eagle had misappropriated the LinkedIn account from Edcomm as her own. Although

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Edcomm may have used LinkedIn as an “indispensable sales and marketing tool” for the firm, there was no corporate policy pertaining to the use of the social media. This omission was fatal to any claim of ownership:

Edcomm never had a policy of requiring that its employees use LinkedIn, did not dictate the precise contents of an employee’s LinkedIn account, and did not pay for its employees’ LinkedIn accounts. Indeed, as noted above, the LinkedIn User Agreement expressly states that Plaintiff’s account is between LinkedIn and the individual user. Edcomm did not itself maintain any separate account. Moreover, Edcomm failed to put forth any evidence that Eagle’s contacts list was developed and built through the investment of Edcomm time and money as opposed to Eagle’s own time, money, and extensive past experience. Accordingly, the Court finds in favor of Eagle on this claim.<sup>16</sup>

### Conclusion

What does this case mean? Claims similar to the ones alleged in *Eagle v. Morgan* may become more commonplace as workers develop professional online personas and employers wish to capture the work product (and contacts) of those personas when valuable employees depart for other pastures. This may be especially true in instances where a social media account has contact information for customers, vendors, or other information that the former-employer-to-be deems proprietary or competitively valuable.

Employers likely will attempt to craft corporate policies that overcome the failings of Edcomm’s ownership claim in Eagle’s LinkedIn account. The ultimate merit of such claims will be fact intensive. (For instance, in *Eagle*, the parties agreed that Eagle was “well-published” in her industry, and “was quoted in newspapers and magazines, and presented at industry conferences around the world.”<sup>17</sup>

This was an important concession for the elements of Eagle’s common law and statutory publicity claims.) Proving damages also can be a substantial hurdle. Eagle won a compensatory damages award of \$0. (No, that is not a typo.) But that does not mean that these types of claims can’t be a component of an overall larger lawsuit.

Most importantly, the lessons learned here easily can apply to Facebook, Twitter, and any other social media tool or network. Because of inherent issues of publicity and privacy involved in any such claim, coverage under CGL policies and media policies likely would be implicated. Intellectual property claims also can be intermingled in any such lawsuit. Risk managers, IT personnel, and insurance underwriters, therefore, each may wish to inquire about employee/company use of social media and whether such cyber tools are addressed in employee handbooks and corporate procedures. Are there strict agreements that give the employer ownership in such media? Would such corporate policies even work? These are issues worth considering.

### Notes

1. 2013 WL 943350 (E.D. Pa. Mar. 12, 2013).
2. *Id.* at \*1.
3. *Id.* at \*3.
4. *Id.*
5. *Id.*
6. *E.g.*, *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012).
7. *Id.* at \*6.
8. *Eagle v. Morgan*, 2013 WL 943350, *supra*. *See also* §8316(e).
9. *Id.* at \*7.
10. *Id.*
11. *Id.* at \*8 (emphasis added).
12. *Id.* at \*9.
13. *Id.*
14. *Id.* at \*10.
15. *Id.*
16. *Id.* at \*16.
17. *Id.* at \*1.