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Court Holds That Postings on Social Networking Sites are Protected from Discovery Under Third Party Subpoenas in Civil Cases

A federal district court in California has ruled that postings on the social networking sites Facebook and MySpace are protected from discovery under third-party subpoenas in civil cases. Full text of the decision is [available here](#).

In *Crispin v. Christian Audigier, Inc. et al.*, the court concluded that Facebook wall postings and MySpace comments that were not accessible by the general public because of the user's privacy settings qualified for protection under the Stored Communications Act. The Act prohibits electronic communication service providers and remote computing service providers from disclosing communications held by them except in accordance with the Act. The Act does not expressly provide for discovery of such communications through subpoenas in civil cases.

The court also held that individual party litigants had standing to object to the third party subpoenas directed to Facebook and MySpace. Under the Federal Rules of Civil Procedure a party does not ordinarily have standing to seek to quash a subpoena issued to a third party unless the party claims some particularized personal interest in the information sought. In this case, the court held that an individual "has a personal right in information in his or her profile and inbox on a social networking site and his or her webmail inbox in the

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same way that an individual has a personal right in employment and bank records" and that the party litigants therefore had standing to object to the subpoenas.

The Act does not shield party litigants from direct requests to obtain and produce in discovery information held by electronic communication service providers and remote computing service providers. Courts interpreting the Act have held that such information is within the control of the party and therefore remains subject to discovery in civil cases. Thus, in any court following the *Crispin* ruling, a litigant seeking discovery of non-public Facebook wall postings, MySpace comments, or other information protected by the Act must proceed through party discovery and may not obtain such information through the use of Rule 45 subpoenas.

For more information about the *Crispin* decision, the requirements of the Act, or other electronic discovery matters, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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