

## Twitter Confirms User Ownership Of Tweets

Users of Twitter can rest assured that they own their tweets, even if not every tweet can be owned.

By Thomas Claburn, InformationWeek  
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Twitter co-founder Biz Stone on Thursday said that the popular online messaging site had updated its Terms of Service to clarify what users can expect from the service, though the announcement appears to be more about reassuring users than delineating substantive rights.

The move suggests a desire not to repeat the controversy that Facebook found itself in when, in February, the social network altered its Terms of Service and users read the language as a claim of ownership over all user-submitted content.

"The revisions [of Twitter's Terms of Service] more appropriately reflect the nature of Twitter and convey key issues such as ownership," said Stone in a blog post. "For example, your tweets belong to you, not to Twitter."

This does not appear to be much of a change, however. Twitter's Terms of Service from October 2007 state, "We claim no intellectual property rights over the material you provide to the Twitter service. Your profile and materials uploaded remain yours."

Such assurances may mollify twittering authors of note but they're not particularly meaningful.

"The vast majority of tweets are likely to be too short and lacking in creativity to qualify for copyright," said Fred von Lohmann, senior staff attorney for the Electronic Frontier Foundation, in an e-mail. "So they are not 'owned' by anyone, much like your idle chatter while walking down the street isn't 'owned' by anyone."

Lohmann however grants that there are exceptions, such as a carefully-crafted haiku that was tweeted.

As far as the U.S. Copyright Office is concerned, short phrases don't qualify for copyright protection. The Copyright Office's Compendium of Copyright Office Practices states, "Names, titles, slogans, and other short phrases or expressions are not copyrightable, even if such expressions are novel, distinctive, or lend themselves to a play on words. Similarly, a mere listing of ingredients or contents is not copyrightable."

Tweets -- the messages of up to 140 characters that users send using Twitter -- appear to exist in a gray area.

As Jeffrey Johnson, a partner at New York-based law firm Pryor Cashman, explained in a phone interview, "The essence of copyright law is originality. The smaller the piece, the less likely it is to be truly original."

"One of the standards they look at is whether you can express the idea in a different way," he said. "If it's impossible to express the idea in a different way, the likelihood that it's copyrightable content is much lower."

Johnson points to *Feist v. Rural*, a case from the early nineties in which the plaintiff, Rural Telephone Service Co., argued unsuccessfully that its telephone listings should be protected under copyright.

But tweets, he says, approach the point of being copyrightable.

"I think there's no doubt that when you're talking about 140 characters, you're going into a range where they are probably a lot of things that are copyrightable," he says.

A 2005 legal paper titled "Size Matters (or Should) in Copyright Law," by Yeshiva University law professor Justin Hughes, observes that there has been increasing legal pressure to confer copyright protection on "microworks" and argues that the size, rather than originality, should matter more in determining whether something can be copyrighted.

"When liability for copyright infringement boils down to copying a name, a couple of choice phrases, a slogan, or a small subset of numeric evaluations, copyright law is being dragged by clever lawyers into dark alleys where it should not go," Hughes writes. "These dark alleys threaten some of the most flourishing areas of recombinant culture -- software programming, collage art, the cutting and pasting of snippets which is a wonder of digitization, criticism which requires significant quotation from the target of criticism -- whether by a Ph.D. candidate or a blogger."

Johnson suggests a more accurate way to word the Twitter Terms of Service might be, "You own whatever copyright you have, if any."

But Twitter's assertion that users own their content obscures the fact that Twitter's rights under its Terms of Service allow the company to do pretty much anything a content owner could do. For example, if Twitter wanted to publish a book featuring your tweets, it could.

In advising clients about securing rights for user-generated content, Johnson says that in most cases, non-exclusive rights -- that's what Twitter claims -- are enough for typical business uses.

For Twitter users, perhaps it will be enough simply to say, "I own my tweets," whether or not those tweets can be owned under the law.