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Meta v. Bright Data Ruling Has Important Implications for Webscraping Activities by Investment Advisers

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Background

On January 23, 2024, Judge Edward M. Chen of the United States District Court for the Northern District of California ruled in *META PLATFORMS, INC. v. BRIGHT DATA LTD. (Meta v. Bright Data)*, granting Bright Data's motion for summary judgment. Meta had alleged, among other claims, breach of contract by Bright Data due to its webscraping activities and resale of information obtained from publicly available portions of Meta's businesses Facebook and Instagram. Bright Data had previously created corporate accounts at both Facebook and Instagram, for purposes such as corporate marketing, and in creating those accounts had agreed to each of Facebook's and Instagram's terms of use.

The Facebook and Instagram terms of use expressly restrict webscraping (Facebook) and resale (Facebook and Instagram) of data by account holders. Importantly, Judge Chen found no evidence of scraping of information only available while logged in to Facebook and Instagram accounts and not otherwise publicly available. Rather, Meta argued that the terms agreed to by its account holders operate both to restrict these activities while logged in to Facebook and Instagram and to restrict these activities when logged out. In fact, Meta argued further that even after account termination, its former account holders/users would be restricted from engaging in these activities in perpetuity due to the survival language existing in the previously agreed terms of use.

Judge Chen engaged in a careful analysis of the relevant contractual language and found that the contract was not clear on these points. Accordingly, Bright Data was found not to have breached the Facebook and Instagram terms through either (a) its webscraping (while logged out) and resale activities while it was an active account holder/user of Facebook and Instagram or (b) its webscraping and resale activities after termination of its Facebook and Instagram accounts.

Implications for Investment Advisers and Next Steps

Overall, the court's decision in *Meta v. Bright Data* offers a number of important insights into the legal background applicable to webscraping activities. First, the case serves to reaffirm the broad general ability to webscrape publicly available portions of websites where an account login/password has not been utilized. Where an account login/password may have been utilized in unrelated contexts, the precise contractual terms agreed to by the user will be important to determine whether webscraping is allowable. While current terms are unlikely to expressly restrict webscraping while logged out (or after termination of an account), website owners may react to the court's decision in *Meta v. Bright Data* by attempting to modify their terms to broadly restrict these activities through specific language to this effect. It remains to be seen whether such broad restrictions on webscraping activity (while logged out) would be upheld by courts even if terms of use are drafted to maximum effect.

Webscraping is commonly utilized in the creation of alternative data, which has become an increasingly important commodity used by investment advisers and others in the investment management community to support investment

decision-making. In general, investment advisers utilizing data that is the product of webscraping should have robust policies and procedures in place around their firms' webscraping activities, along with robust policies and procedures for the use of webscraped data provided by third parties (including in relation to the due diligence of third-party data vendors).

In light of *Meta v. Bright Data*, investment advisers should continue to exercise care in their use of webscraped data. Webscraping from websites where the adviser or its agents maintain an account requires particular diligence to determine if the applicable terms of use may restrict webscraping even when logged out (particularly where the website owner may have updated its terms in light of the court's decision in Meta v. Bright Data). Similarly, investment advisers should ensure that their diligence of third-party providers of webscraping services or webscraped data addresses any accounts that the provider may maintain with the applicable websites being webscraped.

While Meta's contractual terms did not extend to logged-out webscraping activities in this case, advisers should remain vigilant in looking for potentially broader contractual terms prohibiting webscraping in such circumstances in the future.

Lowenstein Sandler's Investment Management Group stands ready to assist clients with designing and implementing appropriate policies and procedures and due diligence practices in regard to webscraping and other sources of alternative data.

Contacts

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