

Meta v. Bright Data: Significant Decision For Web Scraping Industry

Yesterday, Judge Chen of the Northern District of California, who granted a preliminary injunction against LinkedIn in the seminal *hiQ v. LinkedIn* data scraping case, granted Bright Data’s motion for summary judgment in *Meta v. Bright Data*. His opinion is likely to have far-reaching consequences for the data scraping industry.

Bright Data sells publicly-available data scraped from Meta’s platforms (e.g., Facebook and Instagram). Its software does so in a “logged-off” state, i.e., no Meta account is logged in at the time. Early last year, Meta sued, alleging that the scraping violates Meta’s Terms of Service (“ToS”). The primary issue was “whether the Facebook and Instagram Terms could be construed to prohibit logged-off scraping of publicly available data by Bright Data.” In a 37-page opinion that applied numerous canons of contract interpretation, Judge Chen said that those terms could **not** be construed to prohibit logged-off scraping of data that is publicly available on Meta’s platforms.

In so ruling, Judge Chen credited Bright Data’s argument that, when it was scraping while “logged off” of Facebook or Instagram, it was not then a Facebook or Instagram “user” and thus not bound to the ToS. The Court noted that evidence outside the four corners of the ToS supported Bright Data’s reading of the ToS to apply only to logged-in scraping. The Court noted that at some point after 2009, Meta removed a clause from its terms that provided that, by merely “accessing” Facebook, an individual “agree[d] to be bound by these Terms . . . , whether or not you are a registered member of Facebook.” That removal, the Court found, signifies that Meta intended its terms to bind only active “users,” as opposed to mere visitors to the platforms. The Court further noted that “the fact that Bright Data had Facebook and Instagram accounts when it scraped is entirely incidental and unrelated to its scraping.”

The Court’s analysis did not end there. The Court held further that, even if Meta’s terms prohibited scraping of data while logged-out of the platforms, once Bright Data terminated its accounts with Meta, Meta could no longer bind Bright Data to that prohibition. The Court found that a “survival” clause in the Facebook ToS that purported to prohibit scraping of public Facebook data in perpetuity—even after a user terminated any agreements with Meta—was unenforceable. In reaching this conclusion, excerpting language from his earlier *hiQ* opinion, Judge Chen explained:

Giving companies like [Meta] free rein to decide, on any basis, who can collect and use data—data that the companies do not own, that they otherwise make publicly available to viewers, and that the companies themselves collect and use—risks the possible creation of information monopolies that would disserve the public interest.

The Court also found that Meta’s construction of the survival clause could lead to a situation in which a user who had a Facebook account for a brief moment could be forever bound to the prohibition of scraping public Facebook information. As to Instagram, the Court noted that Instagram did not have a survival clause and that post-termination logged-out scraping of public data on Instagram was likewise not prohibited.

Judge Chen’s ruling significantly narrows the issues between the parties in this case and Quinn Emanuel will continue to follow the case closely.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to contact:

Hope Skibitsky

Email: hopeskibitsky@quinnemanuel.com

Phone: +1 212-849-7535

Renita Sharma

Email: renitasharma@quinnemanuel.com

Phone: +1 212-849-7413

Robert Schwartz

Email: robertschwartz@quinnemanuel.com

Phone: +1 213-443-3675

To view more memoranda, please visit www.quinnemanuel.com/the-firm/publications/.

To update information or unsubscribe, please email updates@quinnemanuel.com.