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14 Attorneys for Defendant
15 Lori Drew

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES,

19 Plaintiff,

20 vs.

21 LORI DREW,

22 Defendant.

Case No. CR-08-582-GW

RULE 29 MOTION FOR JUDGEMENT OF
ACQUITTAL

23 Comes now defendant, together with counsel, and moves this Court
24 under Rule 29 of the federal Rules of Criminal Procedure, for a
25 judgment of acquittal on all counts. The following material
26 supplements this motion, also made orally in open court.

27 Dated: Nov. 23, 2008

s./ H. Dean Steward

H. Dean Steward

Orin Kerr

Counsel for Defendant Drew

1 I. STANDARD OF REVIEW

2 The standard of review for a Rule 29 motion is to view the
3 evidence presented against the defendant "in the light most
4 favorable to the government to determine whether ' any rational
5 trier of fact could have found the essential elements of the crime
6 beyond a reasonable doubt.' " U.S. v. Fretter 31 F.3d 783 (9th Cir.
7 1994), quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979).

8 II. INTENT

9 It is essential to remember the government's theory of the
10 case. The defendant is on trial for intentionally violating
11 MySpace's Terms of Service. The government's theory of the case is
12 that intentionally violating a website Terms of Service is a
13 federal misdemeanor violation of 18 U.S.C. 1030(a)(2)(C), and that
14 this misdemeanor becomes a felony when it is undertaken in
15 furtherance of the tort of intentional infliction of emotional
16 distress.

17 Incredibly, however, the government has offered no evidence
18 whatsoever that the defendant or any of the alleged co-
19 conspirators intentionally violated MySpace's Terms of Service.
20 Neither the defendant nor any co-conspirator ever read or discussed
21 MySpace's Terms of Service [partial RT Grills testimony, 32-33].
22 And without having read MySpace's Terms of Service, it was
23 impossible for the defendant to know of the exact Terms of Service
24 that the defendant might have "intentionally" violated. Here, it
25 is essential to realize that in order to violate a Terms of Service
26 intentionally, a person must have actual knowledge of the exact
27 term and then make it her conscious object to violate it. A guess
28

1 that conduct *might* violate a Term of Service is insufficient.
2 Further, even knowledge that conduct violates a Term of Service is
3 insufficient. To violate the Terms of Service intentionally, it
4 must be the conscious object -- the actual goal of the conduct
5 -- to violate them. See Model Penal Code §2.02 (distinguishing
6 intentional conduct from mere knowing conduct). And it is simple
7 logic that you cannot have a conscious object to violate Terms that
8 you do not even know with certainty exist.

9 This is equally true under the conspiracy count. For the
10 defendant to be guilty of engaging in a conspiracy to intentionally
11 violate Terms of Service, it must be the object of
12 the conspiracy to violate the Terms of Service. But the
13 government doesn't even claim that the purpose of the conspiracy
14 was to violate MySpace's Terms of Service. The government's theory
15 is that the goal of the conspiracy was to inflict emotional
16 distress on MTM, but that is facially insufficient:

17 To support a conspiracy charge, the goal of the conspiracy -- the
18 aim that the co-conspirators attempted to achieve -- must be to
19 violate a specific MySpace Term of Service.

20 Evidence that the defendant urged the deletion of the MySpace
21 account is completely irrelevant to the question before the Court.
22 The government argues that Drew urged the deletion of the MySpace
23 account because she realized that she had done something wrong by
24 violating the Terms of Service. But this is simply bizarre.
25 M.T.M. had committed suicide, and Drew logically feared that the
26 account could connect Grills and her to the suicide. As Drew
27 learned, the connection to the suicide would trigger extraordinary
28

1 public approbation. The public outcry and attention to this case
2 has nothing to do with the outcry over the Terms of Service: Drew
3 has not received hate mail and threats by people furious that she
4 violated MySpace's Terms of Service. To put it simply, it is
5 completely absurd to think that Drew acted as she did because she
6 feared that it might be revealed that she violated the Terms of
7 Service of a website.

8 III. CONCLUSION

9 For the reasons above and the argument made in open court, the
10 defense asks this Court to dismiss all four counts under Rule 29,
11 F.R.C.P.

12 Dated: Nov. 23, 2008

s./ H. Dean Steward

H. Dean Steward

Orin Kerr

Counsel for Defendant Drew

1 **CERTIFICATE OF SERVICE**

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3
4 IT IS HEREBY CERTIFIED THAT:

5 I, H. Dean Steward, am a citizen of the United States, and am at
6 least 18 years of age. My business address is 107 Avenida Miramar,
7 Ste. C, San Clemente, CA 92672.

8 I am not a party to the above entitled action. I have caused,
9 on Nov. 23, 2008, service of the defendant's:

10 **RULE 29 MOTION**

11 On the following parties electronically by filing the foregoing
12 with the Clerk of the District Court using its ECF system, which
13 electronically notifies counsel for that party.
14

15 **AUSA MARK KRAUSE- LA**

16
17 I declare under penalty of perjury that the foregoing is true and
18 correct.

19 Executed on NOV. 23, 2008

20 H. Dean Steward

21 H. Dean Steward
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