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Twitter's Plan To Go Public Sets Up Privacy Juggling Act

By **Allison Grande**

Law360, New York (October 04, 2013, 9:05 PM ET) -- With the release of its highly anticipated initial public offering Thursday, Twitter Inc. will now face pressure to loosen restrictions on consumer data use to maximize its advertising revenue, a temptation experts say the company will need to carefully balance with users' privacy expectations in order to stay successful.

In a lengthy **Form S-1 registration statement** in support of its plan to raise up to \$1 billion from investors, Twitter — which boasts more than 200 million monthly active users and 500 million tweets per day — revealed it had experienced rapid growth in revenue in recent periods, including an increase in revenue by 107 percent to \$253.6 million in the first six months of this year.

As Twitter has grown, it has also proven to be one of the industry frontrunners in protecting consumers' privacy. The company was the only one of the major Internet giants to **earn all six stars** in a May report released by the Electronic Frontier Foundation assessing how companies safeguard user data, and it **garnered widespread praise** when it joined the growing movement to enable users to opt out of online tracking by throwing its support behind certain do-not-track mechanisms in May 2012.

But in going public, Twitter's efforts to protect user privacy are likely to run up against pressure by investors and others to use consumer data to improve advertising and generate more revenue, according to attorneys.

"After going public, Twitter's inevitable drive to increase revenue will no doubt result in further monetizing the treasure trove of information it can and does collect from users," Pryor Cashman LLP digital media practice group co-chair Robert J. deBrauwere told Law360 on Friday. "Its policies will likely need to be modified and expanded to allow for the collection, use and sharing of such information with its partners."

The recalibration will require Twitter to take into account not only the desires of investors, but also the demands of consumers who have grown to expect that their information will be protected by the site.

"Wall Street measures success by the bottom line, while privacy advocates measure success by how consumer information is being handled," Michelman & Robinson LLP partner Ron Camhi said. "Those need to be balanced from a PR standpoint and a cultural standpoint to make sure that the company is not doing things that will negatively impact their profitability."

While pressure is likely to be high for the company to expand its use of consumer data,

experts noted that opening it up too widely is likely to backfire on the company by turning away the users that Twitter relies on to generate its revenue.

"Twitter executives are well-aware of the compromises and less than optimal decision-making that accompanies the activity of public companies," Quinnipiac University associate professor Rich Hanley said. "That tension may counterintuitively result in better privacy options for users as the company cannot afford to alienate anyone, [because] it will thrive only if more and more people use their service more and more times."

Twitter acknowledged the impact that controversial privacy decisions could have on its bottom line in its S-1 registration filing Thursday.

"User trust regarding privacy is important to the growth of users and the increase in user engagement on our platform, and privacy concerns relating to our products and services could damage our reputation and deter current and potential users and advertisers from using Twitter," the company said.

Given the financial risks associated with attempting to capitalize on consumer data, the best approach for the company to take — and the one that several experts predicted that Twitter would choose — is for the company to keep its privacy policies mainly intact.

"Consumers keep shareholders happy, and if consumers aren't happy about way the company is protecting their information, it will naturally flow down to shareholders," Aerostat privacy and data protection team co-leader Ted Kobus said. "By going public, I think we're going to see a continued focus on privacy as it becomes even more critical to increase customer loyalty."

The company may also be encouraged to maintain strong privacy protections in light its new responsibility to divulge more information publicly about its privacy practices and risks. The most significant revelations are likely to come in its reports to the U.S. Securities and Exchange Commission, which in October 2011 issued nonbinding guidance that encouraged all public companies to disclose in their regulatory filings descriptions of the specific cybersecurity threats they face and the steps that they are taking to mitigate these risks.

While the guidance is not law, many companies **have elected to include** the information amid pressure from the regulator, and similar disclosures by Twitter will make it easier to monitor how exactly the company is handling and protecting consumer data, according to attorneys.

"Because of the transparency created by the public filing requirement, I do not think Twitter will back off on the consumer privacy protections it has put in place," Shook Hardy & Bacon LLP data security and privacy group co-chair Al Saikali said. "In fact, we may see even more protections put into place."

While the way it handles consumer data may not change much, its support for future initiatives and its willingness to fight data requests from the government or probes by federal regulators may be more muted as a public company, Camhi noted. Facebook Inc. has **demonstrated an increased willingness** to work with regulators instead of pushing its own information collection agenda since going public in May 2012, he added.

"Going public may give them pause to take a bold position on a privacy issue, so that they're not perceived as being too consumer-privacy oriented or too loose with consumer privacy," he said. "Instead of going to an extreme on either side, they may need to find a balance between Wall Street and consumers."

--Editing by Elizabeth Bowen.

