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Photo Sharing on Social Media & Copyright Infringement: What You Need to Know



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DECEMBER 15, 2017, 08:00 AM  1



Do you share images in your personal social media or in social marketing? Wondering if you're violating copyright laws? With some education, you can learn to protect yourself and your business from a copyright infringement lawsuit.

Today, social media gives the user the amazing ability to share content instantly. Sharing other people's photos is something a lot of us do frequently on

social media. We see a beautiful, inspirational, thoughtful or educational photo that we want to share with our friends, so we post it without much thought. But, is this considered copyright infringement?

Is it okay to retweet? Sure. Is it okay to re-pin images on Pinterest? Maybe. Is it okay to repost on Instagram? Sometimes. It is important to remember that all social media platforms

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With new social media platforms and photo sharing apps becoming more and more popular, the risk of copyright infringement through the sharing of photos is more present now than ever before. Not to mention, many social media platforms give the ability to re-post, save or share other people's content. When so many options are available, allowing you to share someone's photo at the click of a button, it is easy to forget about the possible legal implications of what you do on social media.

Rory Kay of McDonald Carano, sat down with IPWatchdog.com to discuss points to consider when sharing or posting photos online. The first lesson: "Technology has always moved faster than the law, and that is especially true with new social media platforms and photo sharing apps coming out seemingly every week," Kay explained.

In fact, as of May 2016, it was estimated there were over two billion people worldwide that are now using social media, and sharing content is the lifeblood of most social media. As the courts and policymakers try to work through how to protect content shared through social media and photo sharing apps while still fostering creativity, more authors now understand the protections available to them for their copyrights and are looking to enforce their rights.

"Right now, it's the perfect combination of volume posting in social media and a dearth of case law on cases involving social-media related copyright," Kay explained. "It's in that atmosphere of uncertainty that we currently operate."

Being able to share content instantly often removes the deliberative process of considering such content before it gets posted. According to Kay, copyright protects original works of authorship fixed in a tangible medium of expression, including literary, dramatic, musical, and artistic works. Whereas offline photo and content sharing often goes through several rounds of review, social media content can be posted with the click of a single button, which creates risk.

"When this happens, users frequently forget to think through whether the content they are sharing is copyrighted and whether they have any fair use protections for sharing such content," he explained. "Despite the lack of case law, what cases do exist vindicate authors' copyrights online."

So, what are the legal implications of re-posting, saving, or sharing other people's content on social?

Re-posting, saving, and sharing other persons' content on social media is far more impactful

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Infringers can be held liable for actual damages and their additional profits or statutory damages. If the infringement was willful, courts may increase damages up to six-figure awards.

But, how the fair use defense applies to social media is an evolving issue as fair use protects uses of copyrighted material for, among other things, criticism, comment, news reporting, teaching, scholarship or research.

According to Kay, courts reviewing a fair use defense look at four primary factors: The purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion taken; and the effect of the use upon the potential market.

“Applying those factors to social media and photo sharing can be tricky, as several apps allow users to apply wholesale filters to photos or edit them through markup applications,” he said. “There is very little guidance from the case law regarding the fair use defense and whether through filtering and editing social media users transformed content into something new or merely copied an original work.”

Kay shared several best practices for individuals and social media managers should follow to be safe. Although the benefit of social media is the lightning speed at which users can create content, they must evaluate that content before posting.

“Users should consider whether the content they are posting is the original work of someone,” he advised. “This can be difficult to determine on social media, as photos, memes, and other work can be posted by several hundred users to the point that authorship becomes unclear.”

If a user cannot determine the authorship of content, then he or she should not use it. If the user can identify the author, then it’s necessary to contact them and ask for permission to share content.

Kay added, “The golden rule is simple: if the content was offline rather than online, would you seek out permission to use it? If so, you must do so online just as you would offline.”

The bottom line is that using images on social media and for online business these days is tricky. As is often the case, the law is behind and may take a while to catch up. But if you can keep Kay’s tips in mind as you use images on social media, you’ll be way ahead of the curve. Educating yourself about copyright, social media platform terms, and image licenses will go a

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Chelsea Freeman

February 6, 2018 01:15 am

Very great discussion and topic. I am curious to know the laws, if any, that apply to the use of photo editor apps. I am wondering if it would be unlawful to sell these? I think this draws a fine line because "not any one" person has caused the being of the resulting picture. It is a software program, either under or independent of, a company. Also, the photo could be said to be under your ownership, granted you took the photo, because as it is unchanged and in its natural state as you made it. Now once you use a photo editor app, using frames and effects, and generally their application, free or paid for, you alter your picture under their software. Do you still have complete ownership over the photo still? And if you have complete ownership of the photo, then it would be yours to sell, am I correct in this? Or does the company have restrictions set in place for this?



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