

How the Copyright Law Protects the Users' Works of Social Media (Facebook & YouTube as Examples)

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Abstract:

The Research aims to discuss how copyright law protects users' work on *Facebook* and *YouTube*. Also, how *Facebook* and *YouTube* deal with infringements. Copyright law protects videos, video games, websites, architecture, movies, and graphics for a limited time, according to the US Copyright Office. On the other hand, *Facebook* and *YouTube* have a system of infringements. *Facebook* does not have a system to block the infringed upload automatically, but copyright owners can get a report from the *Facebook* system of any potential violation. However, *YouTube* has "Content ID" for infringing content automatically. It is efficient, but some people can avoid this system successfully. Both of them, *Facebook* and *YouTube*, need stronger systems to protect their users' work. Finally, Social media should create a stronger system to discover infringement like what already exists in research which easily detects plagiarism.

Keywords: Copyright Law, Social Media, Facebook, YouTube, Fair Use.

Introduction

The first federal copyright law in the United States was enacted in May 1790 by Congress. In 1897, the Copyright Office became a separate department of the Library of Congress (U.S. Copyright Office). The copyright law was created to protect the owners' works. Also, they have right to control their creation for a limited period under 107 of the Copyright Act. When that period expired, people have right to use or copy that work for any purpose. Copyright law includes art, sculpture, videos, video games, websites, architecture, movies, and graphics (Stim, 2016). "Copyright refers to a portion of a law that tells you who owns certain types of intellectual property, such as things you can read, or hear or look at," said Paula Goedert, Academy legal counsel and a partner in the Chicago, IL, office of Barnes & Thornburg LLP. "In copyright law, everything belongs to its creator—that is the basic rule. If someone created it—they own it. If I create a recipe and publish it, I own that recipe. We know that the mere fact that we can see something in print form or on the internet does not mean we can take it without permission." (Peregrin, 2017). This paper focuses on how social media, using *Facebook* and *YouTube* as examples, protects user's work through copyright.

Nowadays social media is a wide source of communication, information and entertainment. Usually, users do not recognize the copyright law while they use social media. At the same time, it has become the largest threat to copyright and the most challenging tool. It is because the information spreads quickly and transfers from a user to others rapidly too without a realization that might be infringed the law of copyright. Social media such as *Twitter*, *Facebook*, *Instagram*, *Pinterest* has given people a chance to share and publish almost everything such as

photos, texts, and videos. Many users do not recognize that the social media site does not own the work that has been posted on their site; the owner has still retained the copyright. Consequently, many consumers assume that content posted on the Internet is naturally free for the taking. “Copyright infringement means taking somebody else’s work in violation of the copyright law,” stated Goedert. “It is a civil statute, so you can be sued for violation of a copyright law. Plagiarism is more of a moral issue—it means copying without attribution.” Therefore, users of social media should know copyright law and social media websites should educate and clarify to their users the right ways to share the content.

In general, understanding how the copyright law works, help users of social media to avoid infringement by copying such as photos, videos, and music. Therefore, the period of copyright depends on several factors, including whether it has been published, and, if so, the date of first publication. As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term will vary depending on several factors (US Copyright Office).

Copyright law enables users and encourages them to create new works. On the other hand, some people may ask why the copyright law is important in social media. The constitution answered this concern in Article I, Section 8, Clause 8 of the Constitution. It allows Congress the power to make laws: “[t]o promote the progress of science and useful arts, by securing for a limited time to authors and inventors the exclusive right to their respective writings and

discoveries.” Reading this closely, the reader notices that copyright law wasn’t created to secure creative people to “get rich” off of their works. Instead, the legislators understood that the public has been benefitting greatly from individuals’ creative work. Also, it is encouraging and stimulating them to create new creative works because of the limited period of copyright.

Moreover, on the copyright website has explained the type of copyright on the Internet. "Copyrighted works on the Net include new stories, software, novels, screenplays, graphics, pictures, Usenet messages and even email. In fact, the frightening reality is that almost everything on the Net is protected by copyright law. That can pose problems for the hapless surfer." (Copyright Law Office). Therefore, people need to know what they can share on social media as fair use and what they cannot.

What Is Fair Use?

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use (Copyright Law Office). Also, it means the users of social media can take something without permission from the copyright owner. In other words, fair use is a defense against a claim of copyright infringement. If a work qualifies as a fair use, then it would not be considered an infringement.

On the other hand, some advocates for strong copyright laws argue that copyright infringement hurts people and it becomes an obstacle for spreading information and

entertainment (New Media Rights, 2011). Social media users are the most affected by the infringement. For instance, “in the United States, 81 percent of the population had a social media profile. It means that there were around 207 million social network users in the country in 2016”. Also, the number of the *Facebook* users were 197.7 million and *YouTube* users were 176.1 million in 2016 in the U.S. only (The Statistics Portal). Therefore, ignoring copyright laws makes information free and more accessible, and people can benefit from it which means people can share news, photos, videos, and music with their followers and their friends. In other words, 81 percent of the population of the United States is restricted by copyright law.

Social media has become a big part of people’s lives and the large number of people using this communication tool confirms the importance of social media presently. They use it to engage, interpret, and communicate with friends and family or people. In some communities, social media has changed people’s lives. They use it to organize protests and even revolutions. Others, may use it to get news, information, education or entertainment. Also, “recent research has shown that 88 percent of marketers are using social media and that they are spending over \$60 billion annually on social media advertising (A. Whiting, & Williams 2013).” In addition, sometimes, it is to influence public opinion like what happened between Russia and the US in the 2016 election (All Things Considered, 2017). Therefore, people, governments, companies and schools see social media as an important source and influential in everyday life. Nevertheless, in the rest of pages, it will focus deeply on Facebook and YouTube as examples of how these sites protect user’s work through copyright.

Facebook is a social media networking service launched on February 4, 2004. Mark Zuckerberg founded it with his college roommate and fellow *Harvard University* student,

Eduardo Saverin. The website's membership was for the founders of *Harvard* students at first, and then it was expanded to other colleges in the Boston area. Then to most universities in the United States and Canada. On September 2006, everyone with a valid email address along with an age requirement of being 13 and older were able to make a *Facebook* account (Wikipedi, 2017). Currently, as of the third quarter of 2017, *Facebook* had 2.07 billion monthly active users (The Statistics Portal).

On the other hand, *PayPal* employees created *YouTube* as a video-sharing website where users could upload, share and view content. The Internet domain was activated on Monday, February 14, 2005 (Wikipedi, 2017). On July 2015, more than 400 hours of video content were uploaded to YouTube every minute and according to YouTube CEO Susan Wojcicki, more than 1 billion hours of content are consumed on the platform every single day as of March 2017 (The Statistics Portal).

What Facebook has Posted about Copyright on Their Website

Facebook has informed their users of the copyright law in order to avoid infringement.

They posted that:

The FAQs in this section provide some information about copyrights, including how you can protect your own copyrighted works and avoid infringing the copyrights of other people when posting to Facebook, as well as how Facebook addresses reports of copyright infringement. If you believe someone is using your copyrighted work without your permission, you can fill out [this form](#).

What are copyrights and what do they protect?

In most countries, copyright is a legal right that protects original works of authorship. Typically, if you create one of those works, you obtain a copyright from the moment you create it.

Copyright covers a wide variety of types of works, including:

- Visual: videos, movies, TV shows and broadcasts, video games, paintings, photographs.
- Audio: songs, musical compositions, sound recordings, spoken word recordings.
- Written: books, plays, manuscripts, articles, musical scores.

Remember, only original works are eligible for copyright protection. To be original enough for copyright protection, a work needs to be created by the author themselves, and must have some minimal amount of creativity. Generally, things like names, titles, slogans or short phrases aren't considered to be original enough for copyright protection. For example, the symbol “+” is likely not subject to copyright, but a painting full of shapes and colors arranged in a unique pattern is likely protected under copyright. Copyright doesn't generally protect facts or ideas, but it may protect the original words or images that express a fact or idea. This means that you may be able to express the same idea or fact as another author, as long as you don't copy that author's way of expressing that idea or fact. For example, a playwright may not be able to copyright the idea of a man waking up to repeat the

same day over and over again, but the script for a play or movie expressing that idea could be subject to copyright (Facebook, 2017).

In addition, the user of *Facebook* may ask, “how I can know if he or she owns the copyright to work?” *Facebook* answered that the person who creates an original work owns the copyright. For example, if the user created a painting, he likely owns the copyright in that painting. Similarly, if he takes a photo, he generally owns the copyright in that picture. Also, to give up their responsibility of the possibility of infringement, they have written this statement in the end of their copyright page, “If you’re not sure about the extent of your copyright in an original work, you may want to contact an attorney to advise you on your rights (*Facebook*, 2017).

Moreover, some users of Facebook may infringe person’s copyright without intending. Therefore, the *Facebook* team ensures that the user shouldn’t use someone else’s copyrighted work if he doesn’t have permission. They say that it is possible to infringe copyright without intending to do so. Using someone else’s content may still be violating the copyright, even if the person: includes a disclaimer that he doesn’t plan to infringe copyright. He says that is a fair use, didn’t intend to profit from it, bought or downloaded the content (for example, a song from iTunes or a copy of a DVD), and founds the content available on the internet (Facebook, 2017).

On the other hand, *Facebook* allows only two options: just allow the upload of the content, or report it to the copyright owner as a potential violation. There is no other option to block the upload automatically. Also, rights holders must receive notices of matched content and then the case takedown notices to *Facebook* using Facebook’s DMCA process; then Facebook removes those videos in response to accurate reports. Also, "*Facebook* offers an API so that rights holders

that have the wherewithal to do so — or to pay third-party copyright monitoring services — can build tools that receive reports of matching content and issue takedown notices automatically," *Facebook* states (2017). Therefore, Facebook needs to do three things to make their users share and post a content comfortably.

First, *Facebook* [may] need to add an option to Rights Manager — an alternative to permit uploads and pay rights holders copyrights on them for users who want to use somebody's work. Second, *Facebook* needs to provide an option to automatically block material that matches its fingerprint database, as Content ID does in *YouTube* (Rosenblatt, 2017). The third is that the new user should read and agree on the law of copyright before he starts using the web because if a person wants to create a *Facebook* account, he should follow these four steps only: go to www.facebook.com/r.php, enter the name, or mobile phone number, password, date of birth and gender, click create an account. Then the user confirms his email or mobile phone number to finish creating his account. These steps are not enough to educate the users of *Facebook* about copyright. They need to know the law of copyright before they start using the website.

Therefore, some ordinary people and celebrities use other people's content to build a fanbase. For instance, the Rapper, Ludacris, has previously shared material belonging to Lichtenberger without permission with his 19 million fans. Gossip blogger, Perez Hilton, who has 1.5 million fans, is another example. In the article "Facebook's new video business is awash with copyright infringement and celebrities are some of the biggest offenders," Price (2015) states that "Skogmo pointed me towards comedian, Dane Cook, who has been sharing Jukin Media's content without permission among his 4.5 million fans (n.p)." Also, perhaps most

prolifically, there's Tyrese Gibson. The Verge's Chris Plante has previously written about the singer, who is "lifting the internet's most viral videos for fame and fortune" — and amassing a 25-million-strong following on *Facebook* in the process," (2015). Another example is "according to CrowdTangle, [a Gibson video] this is the fifth most popular *Facebook* post of 2014 with nearly 86 million views at the time of publishing. The video is watermarked with the logo for ABC's America's Funniest Home Videos, but the footage is hosted on Gibson's Facebook Page. As for the link on the post, it directs to one of Gibson's albums on iTunes," Plante (2015, n.p.) states.

In addition, Price subtitled a part of his article "Celebrities are stealing content with impunity" in *Business Insider* magazine. He talked with Jay Lichtenberger who is a full-time viral video creator, best known for his "scary snowman" *YouTube* videos. Lichtenberger told Price that copyright infringement on *Facebook* is "out of control." In the intervening six months, video views on *Facebook* have quadrupled — but when it comes to intellectual property theft, he says nothing has changed. Also, Lichtenberger sees that some people take his content without his permission. "It's happening more and more everyday," the filmmaker wrote in a recent angry missive posted to his private *Facebook* profile: "They are building an audience off of stolen content. First of all, it's stealing content. Secondly, it's stealing millions of views each week from the rightful owners in an effort to build their own brand" (Price, 2014). Nevertheless, not only are ordinary people creating a fanbase with other people's content, but celebrities like Gibson are too. In the end, *Facebook* users must ask, is *Facebook* working on a more efficient solution for copyright?

Moreover, infringements happen with some media channels who are supposed to be aware and have knowledge of what they are doing. For example, in an anniversary tribute, a *Fox News* producer posted on *Facebook* an iconic unadjusted photo of firefighters hoisting a flag after the bombings of 9/11. The photo was with an image of soldiers who were raising the flag at Iwo Jima with the caption “#neverforget.” After that, the photographer sued *Fox News*, and *Fox* claimed fair use for the posting. They argued that posting on social media is a natural transformation because such postings promote comment and criticism. The court refused the argument and held that the posting was not a fair use, Stim stated (2015). Moreover, *Facebook* is really struggling to control the content of their users. *Facebook* is now “shutting down one million accounts every day, the firm's chief security officer Alex Stamos said. But even while removing the many problematic accounts, the company is still struggling to stop spam, fraud, and hate speech” (Sage L., 2017). These efforts are just on spam, fraud, and hate speech, it is not on infringements. Therefore, social media sites should have a stronger system to protect copyright and people’s works.

What YouTube has Posted about Copyright on Their Website

YouTube has informed their users on their website that:

when a person creates an original work that is fixed in a physical medium, he or she automatically owns the copyright of that work. The owner has the exclusive right to use the work in certain, specific ways. Also, it answered a question about the type of work to

copyright which are audiovisual works, such as TV shows, movies, and online videos, sound recordings and musical compositions, written works, such as lectures, articles, books, and musical pieces, visual works, such as paintings, posters, and advertisements, video games and computer software, and dramatic works, such as plays and musicals. In addition, YouTube users can still be claimed by a copyright owner, even if they have given credit to the copyright owner, refrained from monetizing the infringing video, purchased the content on iTunes, a CD, or DVD, and recorded the material yourself from TV, a movie theater, or the radio (*YouTube*, 2017).

Moreover, the *YouTube* website has a professional tool called Content ID which is software used to monitor for infringing content automatically. It is scanning all new uploads against a database of registered intellectual property. Copyright owners get to decide what happens when content in a video on *YouTube* matches a work they own. When this happens, the video gets a Content ID claim (*YouTube*). On the other hand, both, *YouTube* and *Facebook* do not have a step that shows the policy of copyright for the new user when s/he wants to create a new account and signs up and agrees before s/he starts using their account. It is important because some people do not take the subject of infringement seriously.

For example, in 2014, Andrew Chung of *Reuters* stated that “Ultra Records LLC and Ultra International Music Publishing LLC are suing Phan for copyright infringement, alleging she used songs and compilations from some of the world’s biggest dance music DJs and groups in her creative videos without a license.” According to *Reuters*, “the companies are seeking an injunction to stop Phan’s use of the music and either maximum statutory damages of \$150,000 for each infringed work or unspecified damages to be determined.” The reader may ask where is

the “Content ID” on *YouTube*? Content ID is not perfect in every case, of course, but it is currently the only viable way to protect personal works from infringement effectively. So, the user of *YouTube* or social media, in general, is responsible for his content and the violation because s/he does own their content in their account, not the website.

Therefore, *YouTube* and *Facebook* are like other social media websites; they do not protect the user from infringement efficiently. The user should be aware when he wants to share or use someone’s work. The law does not claim those social media websites, but the user is the only one responsible. For example, *YouTube* has “Content ID” to protect their users’ works, but it doesn’t work in every case. Some people try to penetrate Content ID system to publish infringed content. For instance, Ellen Seidler states that,

clever YouTube users have discovered ways to fool the technology so their illegal uploads of copyrighted movies and music don’t get flagged, blocked or removed... When I started poking around *YouTube* to find other examples of these uploads they were easy to find. It only took me a few minutes to find dozens of copies of a variety of full copyrighted movies, old and new. One title I came across was the 2015 release, Everest...In this case, the uploader had used several techniques to avoid detection including reversing the frame (note the backwards title), darkening the lower part of the structure and cropping it. Of course, having recently viewed the film on HBO, watching a lousy copy like this on YouTube wouldn’t be my choice, but apparently, others didn’t mind. Uploaded only a month ago, the movie had already racked up more than 16,000 views (2016).

This is just one example; if the reader searched on *Google* about how to avoid the Content ID system, he would find many ways. However, if a person found their work in other accounts without permission and thought that it infringed on their work, there are a few ways to report the infringement.

People occasionally may find a photograph or content belonging to them that someone else took without their permission. To protect their rights, there are a few things copyright holders should do. The Copyright office did answer the question of What Do I Do If My Copyright Has Been Infringed? The Copyright Office is responsible for enforcing the law. The copyright owner should pursue the case in federal court because Copyright infringement is a civil matter. In some cases, the infringement may also be considered a criminal issue, which the U.S. Department of Justice is responsible for (Copyright, 2017). Also, it has a page titled "Stopping Copyright Infringement" which explains many cases may happen to protect copyright and educate the copyright owner how he can get his rights protected.

On the other hand, if a person is accused of copyright infringement, they will be notified. As WIPO described this issue, the defendant may receive an e-mail, telephone call, regular letter, or otherwise be notified by a copyright owner that he is infringing his copyright. It may relate to a photograph or an article on his Web site. Usually, if the defendant did deal with this notification and remedy it, either by paying an “after-the-fact” copyright license fee, or by stopping any and all use of the content, the owner of copyright may institute a court action (Lesley Ellen Harris, 2017). After that, the judge studies the case and make a decision after analyzing and estimating the damage.

Conclusion

This paper discussed how the copyright law protects users' work on *Facebook* and *YouTube*. Also, how *Facebook* and *YouTube* deal with infringements. Copyright law protects videos, video games, websites, architecture, movies, and graphics for a limited time which is, as US Copyright Office maintains, works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. On the other hand, *Facebook* and *YouTube* have a system of infringements. *Facebook* does not have a system to block the infringed upload automatically, but copyright owners can get a report from the *Facebook* system of any potential violation. However, *YouTube* has "Content ID" for infringing content automatically. It is efficient, but some people can avoid this system successfully. Both of them, *Facebook* and *YouTube*, need stronger systems to protect their users' work. It isn't enough to post the copyright law on a website. Both companies still share a part of the responsibility for the infringements on their websites. Social media should create a stronger system to discover infringement like what already exists in research which easily detects plagiarism.

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