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ISSUES OF COPY RIGHT IN USE OF SOCIAL MEDIA TOOLS AND APPLICATIONS : A NEW CHALLENGE

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Abstract-

"Internet is a place where nothing ever dies."

The rise of social media platforms has drastically increased in current scenario. We are now constantly linked to and receive instant updates from our social media connections, and personal information is startlingly simple to access now, more than ever. Social media has transformed our means of communication by providing instant information to publish and publicize almost anything. In addition, social media provides marketing opportunities for instant, mass publication of content including everything from tweets, photos, blogs and links to content.

Social media plays a powerful role even in the way we conduct business today. Small businesses can grow their business quickly with the social media tools, including Facebook, Twitter, Google, Pinterest, Instagram, and many more since they are a great marketing and publicity tool for a small business, startups, and well-established company. With social media, companies can immediately connect with their customers and clients.

A copyright protects the owner of one kind of intellectual property created by an individual but having no form or substance. The copyright process has become fairly simple with traditional works like books, plays, movies, and theatre. But copyright is a little more difficult with the advent of the internet. Posting copied material on the website is an Offence under the Copyright Act.

Like **users** must be aware of what they write, to avoid copyright, trademark, and libel issues and before you use an image from the internet you need to be sure to get a license or find public domain images. . There are innumerable benefits to social media but there are also pitfalls that may threaten your intellectual property. Social media is one of the opened doors to infringement of your trademarks, trade secrets, copyrights, and privacy rights. Rapid advancements in social media are posing challenges for courts, as existing laws were written without social media in mind.

The study is based on secondary data and is an attempt to conceptualise and analyse legal issues of copy right infringement in social media.

Key words: Social Media, Copy Right, Intellectual Property

INTRODUCTION

The Internet has become a vital platform for delivering digital content such as movies, music, books, news, and software. Most importantly, the global reach of the Internet enables content to be nearly instantaneously delivered to any part of the world. This means that many of the barriers that constrain the exchange of physical content products e.g. costly transportation, import tariffs are significantly reduced or eliminated in the case of digital content. It also underscores the importance of copyright as an incentive mechanism for the creation and dissemination of digital content.

Social media has not only affected the social life but legal world in terribly fascinating ways that, from jury selection to new applications of older laws in social media litigation everything comes under its ambit.

Intellectual Property Law

IP law is a general term for both tangible and intangible property rights. Tangible property rights include:

- Trademarks/Trade Design: A name, symbol, and/or design identifying and distinguishing the source of goods or services of one party from those of others
- Copyrights: Exclusive rights to produce copies and control an original literary, musical, or artistic work
- Patents: Exclusive rights to manufacture, use, or sell an invention

Intangible property rights include:

- Trade Secrets: Economically valuable information, formulas, or processes, not generally known or ascertainable to others by which a competitor would obtain an economic advantage if known
- Right of Publicity: The right to control one's own name or likeness
- Right of Privacy: The right to prevent the disclosure of private information in the absence of clear and ambiguous consent

The Copyright Act, 1957

The law of copyright protects your work and gives you legal recourse to prevent people from copying it and/or distributing copies of it without your permission. It can also be used to prevent others from performing, showing or playing your work in public, making an adaptation of your work or putting it on the internet. As soon as you create an account on a social media platform like Instagram or Twitter, you're prompted to accept their terms and conditions. Of course, 99% of users blindly accept these without actually reading them. By accepting, you're

usually granting a transferable, royalty-free, worldwide licence to the platform to use any content that you share. By creating an account on the site, you're agreeing to give the social media platform a licence to use your content. If you're a content creator, it's especially important to be aware of this fact and ensure that you fully understand the terms and conditions that you've signed up to, in order to understand your IP rights.

The Copyright Act, 1957, supported by the Copyright Rules, 1958, is the governing law for copyright protection in India. Substantial amendments were carried out to the Copyright Act, in May 2012. Copyright laws have been partially standardised through a set of international conventions. The Berne Convention was one of the first international agreements on copyright, accepted in 1886. Most of the articles of the Berne Convention were incorporated into the World Trade Organization's TRIPS agreement in 1995.

India is a member of the Berne Conventions and Universal Copyright Convention. The Government of India has also passed the International Copyright Order, 1958. According to this Order, any work first published in any country which is a member of any of the above conventions is granted the same treatment as if it was first published in India.

Today, in all economies where the Berne Convention standards apply, copyright is granted automatically, and does not require any official certification. Once a qualifying work is presented to the public in a physical form or secured on a medium e.g. optical disc, computer file, painting etc, the holder is automatically entitled to his or her exclusive copyright. Both the Berne Convention and TRIPS prohibit signatories from maintaining any formalities to the protection of copyright.

Coverage provided by copyright

1. Literary, dramatic and musical work. Computer programs/software are covered within the definition of literary work.
2. Artistic work
3. Cinematographic films, which include sound track and video films.
4. Recording on any disc, tape, perforated roll or other device.

"Work" protected in India

In order to keep pace with the global requirement of harmonization, the Copyright Act, 1957 has brought the copyright law in India in line with the developments in the information technology industry, whether it is in the field of satellite broadcasting or computer software or digital technology. The amended law has also made provisions to protect performer's rights as envisaged in the Rome Convention.

Registration of Copyright

In India, the registration of copyright is not mandatory as the registration is treated as mere recordal of a fact. The registration does not create or confer any new right and is not a prerequisite for initiating action against infringement. The view has been upheld by the Indian courts in a catena of judgments.

Enforcement of Copyright in India

The law of copyright in India not only provides for civil remedies in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings. etc. but also makes instances of infringement of copyright, a cognizable offence punishable with imprisonment for a term which shall not be less than six months but which may extend to three years with a fine which shall not be less than Rs 50,000 but may extend to Rs 2,00,000 . For the second and subsequent offences, there are provisions for enhanced fine and punishment under the Copyright Act. The (Indian) Copyright Act, 1957 gives power to the police authorities to register the Complaint (First Information Report, ie, FIR) and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention of the court.

SOCIAL MEDIA AND COPYRIGHT

“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,”

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? These mounting issues and unanswered questions highlight how the interplay between intellectual property (IP) law and social media is an emerging area of concern for not only lawmakers and lawyers, but also business owners and consumers.

It is important to remember that all social media platforms have different rules and take big steps to protect themselves and their users. To know what is or isn’t acceptable for each platform, one need to find a comfortable spot and read each platform’s Terms of Service.

With new social media platforms and sharing apps becoming more and more popular, the risk of copyright infringement through the sharing of content 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.

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.

We can say that 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, 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 law 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. 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 media?

Re-posting, saving, and sharing other persons' content on social media is far more impactful than the simple click of a button. In fact, infringing on an author's copyright by re-posting, saving or sharing content is no different than other forms of copyright violations. Infringers can be held liable for actual damages and their additional profits or statutory damages. If the infringement was wilful, courts may increase damages up to six-figure awards.

Social media, like Facebook, Twitter, and Pinterest, allow online posting of material that may be copyrighted. The social media site does not own the work that has been posted on their site; the copyright is still retained by the owner. But by agreeing to post works on the site, you sign an agreement that gives the site a license to use the work. In these cases, the license is given without payment.

To complicate matters, when a social media account is created, users agree to the particular terms of use of the website. These terms often include a statement certifying that the poster holds all intellectual property rights to the content that he or she is posting on the site. By agreeing to such terms, social media users take on the liability for an infringement claim, which may be brought by an author for content that users post. That's not to say the social media providers are off the hook entirely, but they are learning to protect themselves more and more.

Twitter and Copyright

The Twitter Terms of Service state that

You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).

In other words, Twitter users grant Twitter a license to make Tweets available to other Twitter users.

Facebook and Copyright

The Facebook Terms are similar, stating that you (the Facebook user) own "all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings." In addition, for content protected by intellectual property rights,

you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License).

. When you leave Facebook, all content is deleted (they use the analogy of a recycle bin).

Pinterest and Copyright

Pinterest is a social media site that allows members to post photos from their websites and other places. Pinterest's terms of service says that Pinterest does not take your copyright to photos. But, by signing up for Pinterest and agreeing to their terms and privacy notice, you have agreed to give Pinterest

a non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, display, reproduce, re-pin, modify (e.g., re-format), re-arrange, and distribute your User Content on Pinterest for the purposes of operating and providing the Service(s) to you and to our other Users. "Your Content. Pinterest allows you to post content, including photos, comments and other materials. Anything that you post or otherwise make available on our Products is referred to as "User Content." You retain all rights in, and are solely responsible for, the User Content you post to Pinterest."

Reportedly, Pinterest attracted more than 10 million visitors in one month, relying heavily on copyrighted material to generate traffic for its site. Although many Pinterest users give credit to the original author, giving credit is not the same thing as having permission. It's a fine line between original artists who crave the increased publicity, and websites that make money by selling works of authorship such as stock images online. Social media users, both in the professional and private realms, need to understand what might be at stake when a photograph or other work of authorship is repinned. In other words, Pinterest can use your content on its site because you have agreed to give them a license to use it as described in this agreement, without payment. The Pinterest copyright statement includes a link where you can file a complaint against someone you feel has violated your copyright.

Risks for the average social media user

The risks of sharing on social media aren't just limited to content creators.

If you post a video or image online without the permission of the creator, you could be infringing their IP rights. The law of copyright is designed so that, if someone has created something, they get to decide who accesses it.

One Twitter user thought it would be a brilliant idea to post the eagerly-anticipated music video for Kanye West's song 'Fade' before it was generally released. If you were a member of the music streaming service TIDAL, you

could enjoy the video early. The accused user took the video from TIDAL and uploaded it to Twitter, invoking the wrath of angry lawyers who threatened to sue him for US\$20m. Unsurprisingly, the video was hurriedly taken down.

Not all sharing will get you into trouble

Despite scare stories like this, not everything that you share has the potential to get you into trouble. The Court of Justice of the European Union decided that posting a hyperlink to another, freely accessible website which contains copyright-protected content does not constitute copyright infringement on your part.

Additionally, materials which explicitly state they're in the public domain and available for use can be freely used for instance, stock photos from free photo libraries and some content licensed under Creative Commons licences. However, these do contain some restrictions for commercial use, so again, make sure you read the small print.

The law also provides for a limited number of exceptions to copyright infringement. This includes works used for non-commercial research or private study, as well as the criticism, review or reporting of current events. However, the exceptions are limited and need to be considered with care before reliance is placed on them.

Most content isn't 'copyright free'

The key message to take away is not to believe that online use of a created work is 'copyright free' make sure you know if you need a licence and, if you do, take steps to contact the copyright holder before you share material. If you're a creator of content and you do discover that your content is being shared without your permission, social media platforms do have online tools which allow you to have the material removed.

An image or video should only be shared or used online in one of the three following scenarios, where:



- copyright is owned because you created the content yourself
- a licence has been granted or you've bought the copyright
- the use of the photo or video is considered 'fair dealing'

Social Media Companies Exposure to Copyright Infringement Claims

Though this is a developing area of the law, it would appear social media companies may indeed be held accountable for the actions of their users. For example, when a Web-based service encourages copyright infringement, the company opens itself up to claims.

Alternatively, some original authors would rather have their works posted by users of social media as it increases their exposure and in turn, increases their sales. Many businesses are happy to see their products reposted in social media outlets. And some writers may encourage links to their articles, posted in the hopes of being commissioned for other work.

Social media is still in its infancy with its rapid growth largely occurring in the last 10 years. Whether you are frequently posting or reposting on these sites, it's becoming increasingly clear that the power of your click goes beyond something so seemingly simple. Social media users need to be aware that there are consequences, both

good and bad, to posting within this medium. A cogent plan outlining a strategy, and more importantly, specific guidelines for use, can be helpful in protecting against unwanted situations.

Suggestions for Protecting user's Own Content on Social Media

- Inform people that you're the creator of the work and that you hold the copyright for it, by using the copyright symbol © with your name and possibly the year of creation, next to your work. This encourages people to seek permission if they wish to reproduce it.
- You may want to consider adding digital watermarks to your images or videos — many editing programmes can help you do this.
- Only share low-resolution images. This can limit the range of infringements that occur and means people will have to seek you out in order to access a higher quality image.
- Link your images and videos back to your website, where you have control of your terms and conditions. On other sites like social media platforms, you're operating under their terms and conditions.
- Keep track of the images you publish and which social media platforms you've published them on. This may help you in the event of an infringement.
- The best way to protect intellectual property from being appropriated on social media is to not put it up there in the first place. Although user own the content placed on one of these social media sites, they have granted a license to the media site to use the content and for others to view it.
- To protect content, include a copyright statement on the file for photos. And be aware that property might get appropriated by someone (not associated with the social media site).
- User must be vigilant to keep track of possible violations and be quick to file complaints. If they are not vigilant, they may not be able to support their claims in a lawsuit.
- “Users should consider whether the content they are posting is the original work of someone,”“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.
- Educating yourself about copyright, social media platform terms, and image licenses will go a long way in protecting yourself.

Conclusion

The bottom line is that using images on social media and for any other purpose these days is tricky. These mounting issues and unanswered questions highlight how the interplay between intellectual property (IP) law and social media is an emerging area of concern for not only lawmakers and lawyers, but also business owners and consumers

The awareness of Intellectual Property (IP) Laws is considerably low among the enforcement authorities in India, and most of the IP litigation is confined to metropolitan cities. Despite the fact that the registration of copyright is not mandatory in India and is protectable through the International Copyright Order, 1999, it is advisable to register the copyright as the copyright registration certificate is accepted as a "proof of ownership" in courts and by police authorities, and acted upon smoothly by them. As is often the case, the law is behind and may take a while to catch up. But if user can keep certain safety tips in mind as they use images on social media, they'll be way ahead of the curve.

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