

Small Businesses and Big Trouble with Copyright Violations

Jillian R. Yarbrough
West Texas A&M University

Robin E. Clark
West Texas A&M University

ABSTRACT

Instagram, Twitter, Snapchat and Facebook have become essential marketing tools for small businesses. While these tools are creating new avenues for outreach, there are also increased exposures to errors and violations. Most people know it is against the law to copy someone else's work of authorship without permission or valid fair use exemption, but many people seem unaware that indiscriminately sharing content through social media may exceed the traditional boundaries of fair use and consequently falling into categories of copyright infringement. As more and more organizations operate in the virtual world with the use of social media, it is important that all employees are trained regarding how to use social media for business purposes such that it is aligned with US copyright laws. Further, contemporary managers must be prepared to lead not only people, but to effectively and efficiently lead social media operations. The following case has the purpose of teaching business students about copyright laws and serving as a brief guide to support business professionals in maintaining copyright alignment in a social media.

Keywords: Copyright, Social Media, Fair Use, Marketing, Business

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INTRODUCTION

Much of the United States population is on social media and this creates unique potential for small businesses to reach current and new customers. An opportunity that many small businesses recognize, “77% of U.S. small businesses use social media to facilitate key business functions including sales, marketing and customer service,” (Dougert, 2018, para. 1). Even more interestingly, 52% small businesses throughout the United States are using social media at least once a day and the majority (54%) of these posts are images and infographics (Herhold, 2018). For small businesses, Facebook is the most popular social media network, with Instagram second and Twitter third (Driver, 2018).

While 77% usage is high, it is interesting that not 100% of businesses are utilizing social media. The benefits are evident; social media can cut marketing costs, increase sales and drive consumers to the company website (Delzio, 2015). It is beyond important for contemporary small businesses to understand and use social media; social media is becoming a necessity for an organization that wants to remain competitive (Agbaimoni and Bullock, 2013; Hughes, 2017; Drive, 2018).

While the benefits are evident, there are some parallel concerns. Consider that in 2016 surveys showed about 45% of small businesses were using social media to market and promote products (Bose, 2016). Now, this number has nearly doubled. Along with rapid growth in application, many organizations are jumping into social media marketing without a clear plan or goals (Martin, 2018). The combination, of rapid growth in application and a lack of planning, allows for errors in social media usage.

Small businesses have responsibilities and an error on social media can have significant and costly negative consequences. One area in which businesses may make social media errors is regarding copyright. In fact, small businesses, unwittingly or not, have a history of playing off a larger company’s protected trademarks (Maltby, 2010). Copyright can be defined as the legal right to be the only one to reproduce, publish, and or sell a book, recording, image, etc. for a certain period (Hill, 1989) and it is meant to ensure the creators are fairly compensated for their work and to give the copyright holder control over when, where and how their work is reproduced and distributed (La Moel-Gray, 2000). When in place, copyright requires a user to gain permission from the copyright owner for use of their materials.

Copyright and Fair Use

The United States Copyright Act of 1976 serves as the defining criteria of copyright law protecting original works of authorship. This protection is available to unpublished and published works alike and includes musical, choreographic work, literary, pictorial work, audio-visual work, dramatic work, architectural works and sound recordings to name a few (Jones, 2011). Under this act, the copyright owner has the right to exclude others from reproducing, adapting, distributing, publicly performing, and publicly displaying the work (Brennan, 1993).

It is important to understand three key aspects of the United States Copyright policy: (Seadle, 2001)

- Everything created since 1978 is protected from the moment it is fixed or saved in some permanent form.
- Everything on the World Wide Web has copyright protection.

- Copyright includes texts, graphics, pictures, sculptures, pantomimes, architecture, dramatic works, music or visual expression that meets the criteria for minimum originality.

While copyright law bestows exclusivity rights to creators, regarding reproduction, the exclusivity rights are not absolute. The doctrine of “fair use” creates important exceptions to copyright policy. Specifically, “fair use” allows for any reproduction of copyrighted material performed in a narrow or limited fashion, with a transformative goal (Macknight, 2000). Such minimal actions can be taken without permission of the copyright owner with the fair use as a defense against copyright infringement (Bennett and Others, 1994). So, what would qualify as “fair use?”

(17 U.S.C. § 1075)

Under US law, faculty and students have rights to use copyrighted intellectual property for educational (non-profit) activities called “fair use” rights. The Library of Congress Copyright Office publishes guidelines on its Web site for fair use by educators and students, as well as information for authors who wish to register the copyrights to their material.

(Seadle, 2001).

The Copyright Act of 1976 clearly codifies four criteria as determining whether a use of copyrighted material is justified under fair use:

1. The purpose of the use.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used.
4. The effect of the use upon the potential market value of the copyrighted work.

The purpose of “fair use” is that the public benefits from the transformed review or product. Figure 1 (Appendix) describes the United States Copyright and Fair Use Policies, specifically indicating clear “fair use” qualifications that fall within the copyright guidelines.

Copyright Infringements

Once an idea has been placed into a tangible medium, writing, music, photography, art or film the material is automatically copyright protected. The creator does not have to do anything directly to obtain copyright. They are not required to register or even publish the material for the material to be under copyright. Equally important is the fact that copyright is a “strict liability,” a legal liability in which a Plaintiff does not have to prove a Defendant’s fault, only that their rights were infringed (Donick, 2017). In other words, someone remains liable for copyright infringement even if they did not intend or even realize that were infringing a copyright. The following are just a few of the many businesses facing legal consequences due to unintentional infringement.

- Daniel Morel took photographs of the 2010 earthquake in Haiti that Agency France Presse (AFP) obtained from the Twitter feed of a third party and distributed without Morel’s permission. The court ruled in Morel’s favor awarding Morel \$1.2 million in statutory damages (Herzfeld and Melzer, 2016).
- A New York federal judge ruled that news organizations that embedded tweets that contain an individual’s picture of Tom Brady had violated the Copyright Act (D’Angelo, 2018).

- Vincent Khoury Tylor is a landscaper in Hawaii, and he found one of his most popular photos, Waikiki Pink Boat, was on the website of Melbourne online travel agent Serpil Sevin. A Federal Circuit Court order the owner of an online travel agency to pay Tyler \$24,000 for using the picture without permission (Barker, 2015).
- YouTube star Michelle Phan was sued by Ultra Records for using music in some of her clips without permission. Ultra-Records was awarded the maximum damages of \$150,000 (Welch, 2014).

From these examples, it is clear that a business must be cautious regarding grabbing an image, picking a name or using music without proper owner permission. The monetary consequences for copyright infringement are severe. Under federal copyright law, statutory damages can be up to \$150,000 per infringement plus attorney fees and court costs (Donick, 2017). This is just the monetary damage, there will be further damage to the small business in terms of loss of productivity and loss of reputation.

It is important for small businesses interested in future success to engage in social media. Clearly, there is a potential return on investment. But, if social media is used by unknowing and untrained employees, the consequences can be devastating. The following case study has the purpose of discussing potential copyright pitfalls that small business managers and leaders may need to navigate.

LEARNING OBJECTIVES

After completing this case, students will be able to:

1. Define copyright and fair use.
2. Assess the use of copyright and fair use in basic business operations.
3. Explain the consequences of intentional or unintentional copyright infringement.
4. Recognize the benefits and challenges present with the application of social media in business marketing.
5. Develop unique solutions to managing copyright infringement issues.

THE CASE

Stephanie is excited. Not only did she just graduate from college with her Master of Business Administration, she has been hired by *Level: One of a Kind Clothing* as an Operations Manager. In this role, Stephanie will manage the overall operations and will be responsible for the effectiveness of labor, productivity, quality control and safety. In addition, the Operations Manager serves as the company representative on regularly issues and enhances the flow of management and communication. Stephanie will be working at the headquarters in Albuquerque, New Mexico. Also working at the headquarters is the organizational CEO, Samantha and the organizational Vice President, Manny. From her office at the headquarters, she will manage and lead the three store managers who in turn manage their store teams of about 10 employees. The entire organization employs about 50 people.

During her first few weeks at Level, Stephanie worked to meet as many of the employees as she could, personally visiting each of the three stores. She also participated in executive meetings with the CEO and VP to plan and prepare for the organization's future. As Stephanie met with the employees, she found that she was not only one of the youngest employees at 32, she was the only employee who was actively engaged with social media. While the three store

managers, the CEO and the VP all had Facebook pages, none of them were active on their pages. Further, she found none of her co-workers were familiar with Twitter or Instagram. This fact was most concerning to Stephanie because her co-workers lack of engagement with social media meant that her organization, Level, was not marketing on social media platforms.

Level: One of a Kind Clothing is a niche clothing store that makes authentic Southwestern clothes for both men and women. Every piece of clothing is handmade by the Level seamstress team. Stephanie believes the clothing store has a market well beyond Albuquerque. She believes if the store builds an online presence, they could fulfill orders and built a market throughout the United States. She brings this idea, the idea of building an online presence and accepting online orders, to the next executive meeting with the CEO, Samantha and the VP, Manny. Both Samantha and Manny think this is a good idea and good direction for the organization. After making her pitch to build a social media presence, Samantha simply turns to Stephanie and says, “Make it happen!”

Stephanie is thrilled. She has grown up watching YouTube, posting to Facebook, Instagram and Twitter. She believes this is an opportunity for her to combine her personal love of social media with her work.

Application One: What is the Plan?

With full enthusiasm and with the permission of the company CEO, Stephanie jumps into building an online presence for *Level: One of a Kind Clothing*. First, she creates a Facebook page, Twitter Account and Instagram Account for *Level*. She wants to add pictures of the store clothing, so she spends the entire day traveling to each store and takes pictures to load on all the sites. While at each store, she announces the three accounts and asks that all employees please “friend,” or “follow” each account. In her enthusiasm, she asks employees to take their phones out now and link to the organizational sites. She joyfully walks from employee to employee and watches over their shoulders as they friend or follow. The employees seem enthusiastic and pleased with the organizational growth opportunities through social media. Stephanie loads the pictures, has the CEO, VP and the seamstress’s friend and follow and performs one final checks with each site. The sites are already gaining attention. Potential customers are joining, commenting and liking as each unique outfit is featured and described with a post. Stephanie leaves her work feeling accomplished.

When she arrives back at work in the morning, Samantha is waiting for her. The Facebook page did pick up new friends, many likes and what Samantha announces as an “issue.” Samantha says to Stephanie, “We have had an issue with our Facebook page.” Samantha has the page up on her iPad and is already showing Stephanie, even before Stephanie is seated at her desk. Apparently, one of the store employees reposted one of the store posts with a picture of an outfit. In the re-post, the store employee mocked the outfit, the price and offered a tip at where a similar outfit could be purchased at a cheaper price. Stephanie was shocked. Samantha asked, what are you going to do now?

Discussion Questions

1. What initial step or response should Stephanie take and why?
2. What steps should Stephanie have taken to avoid this issue before it occurred?
3. What plan should Stephanie put in place now to move forward?

4. What if any consequences should the store employee face for their repost?
5. Create the outline for a *Level* corporate social media plan.

Application Two: Using Images

Once Stephanie finishes managing the Facebook issue with the unfavorable store employee report, she asks Samantha if she should continue with building a social media presence. Samantha says “yes,” they should continue, social media is needed for *Level* to grow. Samantha does ask that Stephanie please develop some social media training for the employees, so they understand appropriate and inappropriate comments to place on the company website. Stephanie agrees and says she will begin developing the training today. Once Samantha leaves her office, Stephanie pulls up each account. She scrolls through the Facebook feed, the twitter feed and the Instagram posts, everything seems productive. The accounts have more followers, more friends, more likes. Not only are people favorably commenting on the clothing collections, many people are asking how to place orders.

As Stephanie is responsible for building the online presence, she adds her office phone number to the accounts as the contact for placing orders. While the online presence is growing, Stephanie figures she will have the ability to take the orders and when the orders become too much for her, she can hire someone to exclusively complete online orders. Immediately calls begin. Stephanie begins accepting and placing orders with the seamstress teams.

From her experience, she knows that it is important to post and participate in social media in order to maintain customer energy and interest. As most of her day was spent answering phone calls, taking orders and responding to potential customers on social media and as it is late, she decides to simply update the *Level* cover page. She scans her office. One of her distant friends, Sally, drew an amazing pencil picture of the Manzano Mountains. Stephanie thinks the mountains perfectly represent the Southwest and outdoor themes of *Level*. She takes a picture with her phone and loads the picture as the company Facebook Cover Page. Then goes home for the night.

When she arrives in the morning, Samantha is waiting outside her office again. Stephanie says, “Oh no. Is something wrong with our social media?” Samantha answers, “Have you checked the account lately?” Stephanie says, not since yesterday at 4:30pm. Samantha says, “Well, a lot has happened since then.” She hands her iPad to Stephanie and once again even before reaching her desk, she is reviewing the corporate social media Facebook page.

Stephanie changed the cover page at about 4:30 the day before to a picture of the Manzano Mountains. A picture an acquaintance, Sally, had drawn and given her. By 5pm, people were responding to the cover page update. Comments like, “My friend drew this picture” and “Hey, I drew this picture,” “I did not give anyone permission to use my picture” and “That is copyright infringement, you should contact a lawyer.”

Samantha says, “Stephanie, what are you going to do to fix this? This could be a very serious issue!”

Discussion Questions

1. What initial step or response should Stephanie take and why?
2. What steps should Stephanie have taken to avoid this issue before it occurred?

3. What must Stephanie do in terms of Sally and the pencil drawing of the Manzano Mountains?
4. What plan should Stephanie put in place now to move forward?

Application Three: What is Fair Use?

After changing the cover page, Stephanie is feeling a little worried. She says to herself, certainly that was the last mistake I will make regarding social media and *Level*. Even with the trouble she has experienced, the sites are continuing to gather followers. People are reviewing the clothes, still liking and still ordering. This is good. Even with the two missteps, overall company order is up 5% and it has been only one week since launching the social media sites. Despite the two issues, Samantha says, "Continue with growing the accounts. But, do continue training the employees and continue building policies that will help us maintain effective communication with our growing customer base."

In response, Stephanie immediately schedules and begins monthly social media trainings at each store. With the monthly trainings, she shows effective corporate Facebook pages, Instagram Accounts and Twitter Accounts. She instructs that all employees should engage in only professional and positive comments about the organization on each social media medium. Also, she asks the employees for their feedback and ideas about how to further build their social media presence.

In addition to the trainings, Stephanie has been very careful not to post anyone else's original work. But Stephanie is determined to remain active on each site recalling that many social media experts state that the business must post updates and new information to maintain consumer interest. With the Facebook page running smoothly and gaining momentum, Stephanie decides she will work on building momentum on Twitter.

To date, Stephanie has mostly been Tweeting about sales and new items. She wonders if she should begin to build a company "personality" with her Twitter feed. In order to add personality, she spends her workday visiting the stores and asking employees if they would like to model the new line of clothing. Many team members showed interest. She had them model the new professional clothing and she photographed each new outfit. To build momentum, she posted the new photographs to the corporate Twitter feed. Within minutes, people were retweeting the pictures. The interest was rapid, certainly a much greater response to the clothing with models than without. This was a successful day. Orders are up. Facebook is gathering friends and now the Twitter feed was gaining attention. Stephanie went home feeling very accomplished.

When Stephanie arrived the next morning, she had a store employee waiting outside her office. The employee had modeled the new clothing line for Twitter pictures in the previous week. Like Samantha, the employee had the Twitter feed on her iPhone, a newspaper in her hand and began talking to Stephanie before she could get her key in her office door. "Stephanie, my picture has been retweeted 200 times. I am thrilled about that. But, look my picture is now being used as an advertisement for the annual balloon fiesta in the newspaper." Stephanie examined the number of retweets on the iPhone and then looked at the newspaper ad. There was the employee's picture under the heading, Don't Miss Out on the Annual Fiesta. The employee looks at Stephanie and says, "what should we do?"

Discussion Questions

1. What initial step or response should Stephanie take and why?
2. What steps should Stephanie have taken to avoid this issue before it occurred?
3. What must Stephanie due in terms of the newspaper and the photograph of her employee?
4. What plan should Stephanie put in place now to move forward?

Application Four: Music Copyright Infringement

Stephanie looks at her calendar and realizes that she started marketing *Level: One of a Kind Clothing* on Social Media exactly four months ago, to the day. Four months since she opened the corporate Facebook, Instagram and Twitter accounts. The CEO, Samantha, has praised Stephanie's efforts and views the marketing efforts as a success by two measures, one increased sale and two growth in social media followers. Sales have increased by 10% in the last four months and for the first time, *Level* is reaching customers outside of New Mexico. The Facebook, Instagram and Twitter accounts are all receiving "likes" into the hundreds with each new post of clothing. Based on current success, Samantha directs Stephanie to, "Try something new so our social media presence can grow even further."

Stephanie considers her options and thinks adding some videos would allow for customers to see the "flair" and the "personality" of *Level's Clothing*. So many employees are interested in modeling for the store that managers are now able to select store models based on highest sales. So, the employees in the stores with the highest sales are rewarded with the opportunity to model the new lines for the social media sites. Stephanie has three top sales professionals coming to her office today and instead of pictures, they will be making a video.

When approached with this idea, the three store sales professionals are excited, and they agree. Stephanie and three models clear out one of *Level's* conference rooms and create a "fun" atmosphere. The models put on the new clothing line, Stephanie picks her favorite song to play in the background, Happy by Pharell and she simply asks the models to laugh, dance and have fun. The group does have fun. In fact, the models said this was their favorite *Level* modeling session.

Stephanie took the footage to her office, edits, adds the music Happy to the final edited video and loads the product to Youtube. She announces and links the video on all of *Level's* social media accounts. Almost immediately, people began "liking" and responding to the video. Stephanie knew she created "something" new to help grow *Level's* social media presence.

In fact, the video was so good, it had over 10,000 views within the first week. But, also by the end of the first week, Stephanie had a co-worker, Brian, ask her an important question. Brian said, "Stephanie, this is a great video! It is fun! I think it will encourage people to buy our clothes, but do we have permission to use Pharell Williams song?" The smile on Stephanie's face immediately faded. Not only had she not considered the question, she did not know the answer.

Discussion Questions

1. Does a corporation have to obtain permission prior to use a published song in their Youtube videos?
2. Can Stephanie protect herself and *Level* from any potential legal consequences from using the song in a Youtube video by claiming she thought copyright policies applied only to books or written works? Why or why not?
3. What part of Copyright Law will apply to this specific situation?
4. What should Stephanie plan to do now to move forward?

Application Five: Transformative Exception Under Fair Use

It is Friday and usually, the workday is slow, but today, when Stephanie arrives, she has three co-workers waiting outside of her office. They are laughing and smiling and hand Stephanie a newspaper. The paper has picture of the local band Green Chilis playing at the state fair and all four band members are wearing outfits from *Level*. Stephanie is thrilled and immediately pulls up the newspaper website on her computer. The picture is on the front page! She says to herself, "This is an amazing opportunity for *Level*, I have to take advantage of this publicity." She downloads the picture to her computer, adds the caption, "Green Chili Loves *Level*," and posts the picture with the caption to the company Facebook, Twitter and Instagram. The reaction from the public is almost immediate. People quickly begin responding "Wow!" and "This is great!" or "We love Green Chili and we love *Level*."

Along with the positive response, Stephanie watches as more people follow, friend and join *Level's* accounts. But, if her Social Media experience to date has taught her anything, it is that she might make a mistake. As she sits at her desk and watches the response to her post she wonders, "Was I allowed to post that picture?"

Discussion Questions

1. Was Stephanie allowed to post the picture from The Tribune? Why or why not?
2. Does it matter that she added some text, "Green Chili Loves *Level*" to the picture? Why or why not?
3. Does adding text to the picture transform the picture into something new?
4. What part of the U.S. Copyright Act addresses this issue?
5. What should Stephanie do now to move forward?

Samantha and Manny meet with Stephanie six months post her launch of the *Level* Social Media marketing. They are pleased with Stephanie's efforts, but they also decide to send Stephanie to a short course at the University of New Mexico on Copyright Laws and Policies. They want her to continue her work but realize that any individual that will be managing social media for an organization must have some training in Copyright Laws and Policies.

CONCLUSION

Social Media is a very important tool, especially for small businesses. While social media has many benefits in terms of gaining attention and minimizing costs, there are several potential challenges. One area of concern regarding corporate social media is avoiding copyright infringements. Copyright infringements can have significant financial penalties and significant long-term corporate damage in the form of loss of consumers and damage to the organizational reputation. Contemporary organizational leaders and managers must be prepared and trained not only to manage people but also to manage social media.

TEACHING NOTES

Social Media is important for organizations. Not only can social media enhance communication with consumers (Odoom, Anning-Dorson and Acheampong, 2017), social media can positively affect internal organizational performance (Nisar, Prabhakar and Strakova, 2019). But if mismanaged, social media has the potential to expose the organization to several liabilities, one of which is copyright infringement. Organizations must have managers that understand basic copyright policies, so infringement issues can be avoided.

In the case, five scenarios were presented. The first scenario emphasizes the need for a social media plan. The second scenario discusses the copyright infringement issue of posting someone else's work without permission to social media. The third scenario discusses the copyright infringement of using someone's Tweeted content without permission. The fourth scenario provides discusses copyright regarding the use of music. The fifth offers an example that allows for a discussion on transformative exception under fair use. All five scenarios describe unintentional errors that could result in costly consequences for organization. Teaching notes for each scenario are listed below.

Application One

For years now, many brands are entering the social media front lines without a clear strategy (Wilson, Guinan, Parise and Weinbert, 2011; Quesenberry, 2018). A survey by eMarketer estimates that nearly half of marketers were unable to show any impact from their social media investments (Quesenberry, 2018). Misiak Piskorski identified successful social media tactics in his book, *A Social Strategy: How We Profit from Social Media*. Piskorski outlines two important management strategies:

1. use social media to broadcast commercial messages and seek consumer feedback.
2. steer clear of direct broadcasting in favor of helping customers create and strengthen relationships with each other.

In addition to creating a plan to create and measure a return on investment, managers should create a corporate social media policy and corporate social media training.

Application Two

Some consider images, photographs and artists a “grey” area on Facebook. It is a good idea to treat images, photographs and art as compositions and as the intellectual property of the creator (Lavery, 2019). With this strategy in mind, companies should not post pictures, art work or images to the company social media without the written permission of the artistic creator, and assume others’ work is protected (Stim, 2016). For more reading on this topic consider Richard Stim’s book, *Getting Permission: Using & Licensing Copyright-Protected Materials Online & Off*.

Application Three

Regarding Twitter, unless your account is private, once you Tweet, your post is broadcast for anyone to see. If the words or photos are your original work, then according to Copyright law, your Tweets are yours (Guinness, 2017). While anyone can republish your Tweets, they cannot do what they want with them or use them without Twitter tools. But, be aware the exact wording is yours; the ideas are not. The ideas can be used by others. Further, people can embed your tweets with Twitter Tools anywhere they want, in other words people can Retweet or Quote you without your permission. While Retweeting is fine, you cannot take the content on Twitter and simply do anything you want (Guinness, 2017). Consider again, the case of Daniel Morel. Morel Tweeted pictures of the aftermath of Haiti in January 2010. The Agency France-Presses and The Washington Post infringed on copyright by using these pictures and publishing them without Morel’s permission (Smith, 2013). For more information on this topic, consider reading Ford’s *Social Media Marketing for the Future: Strategies for 2020 & Beyond: Stay Ahead of the Competition*.

Application Four

The United States Copyright Policy states that Copyright includes texts, graphics, pictures, sculptures, pantomimes, architecture, dramatic works, music or visual expression that meets the criteria for minimum originality. For this reason, an individual must obtain the artist’s permission prior to using a song in a YouTube video. Songs also have a copyright for the song and for the recording itself, you will need two licenses to use.

However, there is a difference between simply sharing someone’s music and taking the track and using it solely for your own benefit. Sharing would be posting a link to the song to your Facebook wall or Twitter page. When a link is shared, the owner retains the digital copy.

Taking a copy of music and loading it to your YouTube channel could be considered stealing as you are removing the artists chance to monetize, and this would indicate a violation of copyright.

Application Five

One of the only ways we can use a copyrighted work without the copyright holder's permission, is under the Fair Use Exception. Section 107 of the United States Copyright Act lists the Fair Use Exceptions as the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used and the effect of the use upon the potential market value. When considering transformative use, one is considering the first of the four exceptions, the purpose and character of use.

Generally, transformative use includes criticizing a quoted work, exposing the character of the original author, proving a fact, summarizing an idea argued in the original work or defending or rebutting an idea in the original work (Level, 1989). Simply adding text to a picture taking and published by someone else will not fall under the category of transformative fair use.



REFERENCES

- Agbaimoni, O. & Bullock, L. (2013). Social Media Marketing – why businesses need to use it and how. *Marketing of Scientific and Research Organizations*, 8(2), 91-105.
- Barker, A. (2015). Photographers net thousands in compensation after spike in copyright infringement cases. *ABCNEWS*. Retrieved from: <https://www.abc.net.au/news/2015-08-15/copyright-infringement-nets-photographers-thousands-of-dollars/6695906>
- Bennet, S., & Others. (1994). Fair use and copyright. *Computers in Libraries*, 14(5), 18-22, 24-28, 40-32.
- Bose, S. (2016). Almost half of small businesses marketing products on social media. *Small Business Trends*. Retrieved from: <https://smallbiztrends.com/2016/10/how-small-businesses-are-using-social-media.html>
- Brennan, T. (1993). Copyright, property and the right to deny copyright, property and the right to deny. *Chicago-Kent Law Review*, 68, 675-1427.
- D'Angelo, M. (2018). How to avoid copyright infringement in the age of social media. *Business News Daily*. Retrieved from: <https://www.businessnewsdaily.com/4693-legal-image-usage.html>
- Delzio, S. (2015). 12 Social Media marketing trends for small business. *Social Media Examiner*. Retrieved from: <https://www.socialmediaexaminer.com/social-media-marketing-trends-for-small-business/>
- Donick, M. (2017). Accidental copyright infringement is still infringement. *Traverse Legal*. Retrieved from: <https://www.traverselegal.com/blog/accidental-copyright-infringement-is-still-infringement/>
- Dougart, B. (2018). 77 Percent of U.S. Small Businesses Use Social Media for Sales, Marketing and Customer Service. *PRNewswire*. Retrieved from: <https://www.prnewswire.com/news-releases/77-percent-of-us-small-businesses-use-social-media-for-sales-marketing-and-customer-service-300704921.html>
- Driver, S. (2018). Social media for business: A marketer's guide. *Business News Daily*. Retrieved from: <https://www.businessnewsdaily.com/7832-social-media-for-business.html>
- Guinness, H. (2017). Are other people allowed to use my Tweets? *How to Geek*. Retrieved from: <https://www.howtogeek.com/310158/are-other-people-allowed-to-use-my-tweets/>
- Herhold, K. (2018). How small businesses use social media in 2018. *Clutch*. Retrieved from: <https://clutch.co/agencies/social-media-marketing/resources/small-business-social-media-survey-2018>
- Herzfeld, O. & Melzer, M. (2016). Fair use in the age of social media. *Forbes*. Retrieved from: <https://www.forbes.com/sites/oliverherzfeld/2016/05/26/fair-use-in-the-age-of-social-media/#64c943fa3300>
- Hill, A. (1989). The “work for hire” definition in The Copyright Act of 1976: Conflict over specially ordered or commissioned works. *Cornell Law Review*, 74, 559-1179.
- Hughes, B. (2017). Reality check: Small businesses must be using social media. *Huffington Post*. Retrieved from: https://www.huffingtonpost.com/brian-hughes/reality-check-small-busin_b_10263296.html

- Jones, K. (2011). Stiff fair after all these years? How claim preclusion and issue preclusion should be modified in cases of copyright's fair use doctrine. *UCLA Law Review*, 58, 1071-1859.
- Laverty, S. (2019). Do you need someone's permission to take their pictures from Facebook? *Small Business Chronicle*. Retrieved from: <https://smallbusiness.chron.com/need-someones-permission-pictures-facebook-66026.html>
- Le Moal-Gray. (2000). Distance education and intellectual property: The realities of Copyright Law and the culture of higher education. *Touro Law Review*, 16, p. 981-1441.
- Level, P. (1989-1990). Toward a Fair Use Standard. *Harvard Law Review*, 1105(1111).
- Maltby, E. (2010). Name choices spark lawsuits. *The Wall Street Journal*. Retrieved from: <https://www.wsj.com/articles/SB10001424052748704895204575321230041321508>
- Martin, M. (2018). Evaluate your social media marketing ROI. *Spade Design A Digital Marketing Agency*. Retrieved from: <https://spadedesignlab.com/evaluate-social-media-marketing-roi/>
- Macknight, C. (2000). An overview of Copyright Law and distance education. *Journal of Computing in Higher Education*, 12(1), 107-120.
- Nisar, Prabhakar, & Strakova. (2019). Social media information benefits, knowledge management and smart organizations. *Journal of Business Research*, 94, 264-272.
- Odoom, R., Anning-Dorson, T., & Acheampong, G. (2017). Antecedents of social media usage and performance benefits in small- and medium-sized enterprises (SMEs). *Journal of Enterprise Information Management*, 30(3), 383-399.
- Quesenberry, K. (2018). The basic social media mistakes companies still make. *Harvard Business Review*. Retrieved from: <https://hbr.org/2018/01/the-basic-social-media-mistakes-companies-still-make>
- Seadle, M. (2001). Copyright in the networked world: Multimedia fair use. *Library Hi Tech*, 19(4), p. 422-25.
- Smith, E. (2013). News outlets improperly used photos posted to Twitter: judge. *Reuters*. Retrieved from: <https://www.reuters.com/article/us-socialmedia-copyright-ruling-idUSBRE90E11P20130115>
- Stim, R. (2016). Getting Permission: Using & Licensing Copyright-Protected Materials Online & Off. NOLO. ISBN: 9781413323139
- Welch, C. (2014). YouTube star sued for copyright infringement over music in her videos. *The Verge*. Retrieved from: <https://www.theverge.com/2014/7/21/5924405/youtube-star-michelle-phan-sued-copyright-infringement>
- Wilson, J., Guinan, P., Parise, S. and Weinberg, B. (2011). What's your social media strategy? *Harvard Business Review*. Retrieved from: <https://hbr.org/2011/07/whats-your-social-media-strategy>

APPENDIX

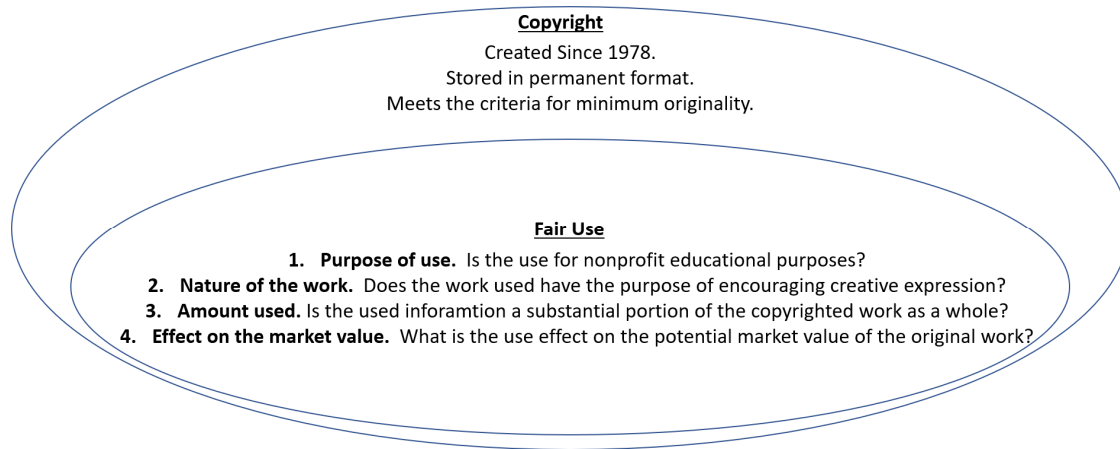


Figure 1: United States Copyright and Fair Use. This figure shows that in the US there are clear “fair use” qualifications that fall within the copyright guidelines.

