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Copyright Law in a Social Media World

BY [MORGAN ROMAGNA](#)/ ON MARCH 13, 2017

There is no denying that social media has taken over our society. Even those who are not well versed in social media have a basic understanding of what it does and how it operates. With this emergence of social media, each industry has had to adapt practices and policies in order to comply with social media and to “keep up with the times” and with the law. The legal world is one that is still trying to navigate through the waters of social media, and they have done so by creating “social media law”. These laws directly effect copyright law, as many things posted on the internet now face the question of whether or not they are protected by traditional copyright laws or whether they fall under fair use standards.[\[1\]](#)

Whether or not photographs posted on certain social media sites, such as Instagram, Twitter and Facebook, is an issue the law has yet to resolve. When an author creates a work as the original author and owner of a valid copyright, they have the exclusive right to display and distribute that work, as well as the exclusive right to make derivative works.[\[2\]](#)

In Davis v. Tampa Bay Arena LTD, an issue arose between a photographer who was hired by the Tampa Bay Arena in order to take pictures of the arena for promotional purposes.[\[3\]](#) Once Davis took the photos of the arena, the arena used Davis’ work without his permission and posted the images on its Facebook page.[\[4\]](#) The original agreement between the two parties had no reference to social media sites but only “newsletters, advertising, display prints, broadcast and the web site,” for the arena.[\[5\]](#) The photographer sued the arena, stating that they had violated his derivative works right. According to Davis, the Facebook posts were an entirely different media and, since he was the author and owner of the copyright, he had the first right to publish his material on a different media then agreed to.[\[6\]](#) The case ultimately settled and the Arena and Davis redrafted the contract to include social media rights.[\[7\]](#) This case highlights an important aspect in social media law: not many companies recognize the new media and do not realize the implications of doing so. In order to avoid issues, lawyers must draft contracts diligently in order to cover each and every medium.

Another social media law issue is demonstrated in Agence France Presse v. Morel.[\[8\]](#) This case established the principal that, even if something is posted on the internet, it does not mean that it automatically enters into the public domain.[\[9\]](#) In this case, Morel, a news photographer, was on the scene of the Haiti earthquake in 2010.[\[10\]](#) Morel tweeted one of the pictures that he took on his personal twitter feed. Agence France Presse, a large news company, took the picture from Morel’s twitter and printed it in their own newspaper – after the picture went viral.[\[11\]](#) The question was whether or not Morel’s photo was publishable as public domain or if France Presse had violated copyright. The court found that the picture was

not publishable outside of twitter and that France Presse had infringed Morel's copyright by publishing the photo without his approval. Each social media site has its own terms of use governing copyrights.^[12] In Twitter's terms of use, photos are allowed to be "retweeted" freely and used within the Twitter website but they cannot leave the Twitter bubble without the explicit permission of the author.^[13]

The courts are largely divided in social media law between those who see shareable content as free for sharing and those who feel it is necessary to seek copyright approval from the owner before sharing.^[14] "Social" normally suggests an issue that would fall under the fair use definition, which states "fair use is any copying of copyrighted material done for a limited and 'transformative' purpose, such as to comment upon, criticize, or parody a copyrighted work."^[15] The transformative aspect is a defense to copyright infringement, wherein one would argue that the work was transformed in such a way then it can be considered fair use and not a violation of copyright law.^[16] A Fox News reporter posted the iconic picture of New York City fire fighters raising the flag on Ground Zero after the 9/11 attacks, superimposed with a photograph of American soldiers raising the flag on Iwo Jima during World War 2.^[17] When the original owner of the 9/11 image brought suit against Fox, Fox argued that the image was sufficiently transformed and, therefore, did not infringe.

What does this mean for lawyers? Since the boundaries are so fine, it is important to stick to strict guidelines while posting on the internet.^[18] One commentator argues that, in order to comply with copyright law in terms of social media, there are only three scenarios where content should be shared: 1) Where you are the original author and have created the content yourself; 2) Where a license has been granted by the original author or you have bought the copyright; and 3) Where the use of the photo is considered "fair use".^[19]

As social media is ever-changing and new sites are popping up seemingly every day, copyright law will forever be on its toes protecting the authors from infringement on the internet.

Morgan Romagna is a second-year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Law Journal. In addition, Morgan is the Alumni Director of the Sports Law Society and looks forward to a career in licensing and intellectual property law.

^[1] Jean Murray, *Copyrights and Social Media Issues: Fair Use, Licenses, and other Issues*, The Balance (July 7, 2016), <https://www.thebalance.com/copyrights-and-social-media-issues-397821>.

[2] *Copyright 101*, Colo. St. U., <http://socialmedia.colostate.edu/copyright/>, (Last Accessed February 22, 2017).

[3] Darren Spielman, *Tampa Arena's Violation of Implied License for Photos Not Copyright Infringement*, Complex IP, (Aug. 2, 2013) <https://www.complexip.com/tampa-arenas-violation-of-implied-license-for-photos-not-copyright-infringement/>.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Agence France Press v. Morel*, 769 F.Supp.2d 295 (S.D.N.Y. 2011).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Twitter Copyright Policy, <https://support.twitter.com/articles/15795> (last visited February 22, 2017).

[14] *Copyright and Fair Use*, Stan. U. Libr., <http://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/> (Last Accessed Feb. 22, 2017).

[15] *Id.*

[16] *Id.*

[17] Andrew Chung, *Fox News, Publisher, Settle Copyright Dispute Over Iconic 9/11 Photo*, Reuters (February 16, 2016), <http://www.reuters.com/article/us-ip-fox-news-photo-idUSKCN0VP2HY>.

[18] Keir Baker, *Social Media Law: An Essential Guide*, The Guardian, (Aug. 12, 2016), <https://www.theguardian.com/law/2016/aug/12/social-media-law-an-essential-guide>.

[19] *Id.*