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Can Pinterest Be Considered Fair Use?

Under copyright law, when the copyright term expires, a work may become a part of the “public domain”. However, even before a term expires, a copyrighted work may be used, as long as it can be considered fair use. Fair use takes into account whether a work is to be used for the public versus the private. Private use of a work is often preferred and more likely to fall under fair use because it does not threaten the commercial value of the original work. It also means that the “borrower” is in no way competing with the original creator.

In an age where technology is rapidly changing, social media is flourishing, providing easy ways for people to share information, ideas, images, videos, and more. Social media encompasses the notion of “sharing” and is therefore easily accessible through an overwhelming amount of websites and apps. While apps like Instagram and Keek are becoming more widespread, Facebook still remains the most popular app and website of social media, with over 950 million users. Behind Facebook comes Twitter, the second most popular social media site/app, home to more than 140 million monthly users. Both Facebook and Twitter allow for people to share everything from world news to personal news. The third most popular form of social media, Pinterest, focuses mainly on expression through pictures and the sharing of virtually everything on the web. Launched in 2009, Pinterest has quickly climbed to the third most popular form of social media with more than 20 million users, approximately 80% being women (Wymore). Similar to Facebook and Twitter, Pinterest encourages “sharing” ideas and inspirations with those of similar interests. Pinterest users create different pinboards to which they can assign each a different theme.  Once a pinboard is created, users then can “pin” images to make a collection following that theme. For example, one may create a pinboard titled “wedding” or “I do” where they “pin” pictures relating to the wedding theme. This board may serve as an inspiration for not only their wedding, but for the weddings of others as well. With its popularity increasing, “…Pinterest’s mission is to ‘connect everyone in the world through the “things’ they find interesting” via a global platform of inspiration and idea sharing” (Wymore).

With social media and the increasing popularity in the notion of “sharing” comes the question, “can posting on Facebook, Twitter, or Pinterest really violate copyright law?” (Wymore). In short, the answer is yes, but it really isn’t that simple. As a copyright holder, one has numerous rights. Among these rights is “the right to reproduce, distribute, and publicly display the copyrighted material.” Copyright infringement occurs when the social media user reproduces, distributes, or publicly displays the copyrighted material when he or she isn’t the copyright holder. Luckily, users have a few options to keep themselves in the clear.  For example, a social media user can approach the copyright holder for a permit or a license to use the copyrighted material. This often proves difficult, especially when the user is trying to contact a celebrity or big corporation. Therefore, users also turn to websites like Flickr and Google, which authorize certain uses of copyright material. Users also have the opportunity to consider “fair use” (Wymore).

Paul Goldstein, the Lillick Professor of Law at Stanford University, discusses the complexity of intellectual property laws in his book *Copyright’s Highway*. Goldstein is a “copyright optimist” which is his personal definition for a strong supporter of copyright. Although Goldstein strongly believes in the rapid growth of copyright laws, he understands there are still problems with our countries growing interest and success in technology. Pinterest would be considered one of Goldstein’s ideas of a current problem. As a person usually does “pin” an original piece of work, the legality of Pinterest lies up in the air. Goldstein would heavily question whether or not this is considered “fair use”. A slightly complicated subject, fair use “…permits the use or reproduction of copyrighted materials “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” (Wymore). To determine if something falls under fair use, four factors must be considered, “(1) the purpose and nature of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work” (Wymore). In considering “the purpose and nature of the use”, the user must check to see if what they intend to do to the original work adds something more to it, ultimately changing the character of the work. When a person chooses to “pin” a picture, the picture continues to be re-circulated throughout the website and the person who “pinned” the picture receives no personal gain. According to Goldstein’s definition, Pinterest acts according to “fair use” because the website searches and generates information for the user making it a search engine. “The Copyright Act allows for the copying of copyrighted material if it is done for a salutary purpose” and a search engine has been defined a salutary purpose (Goldstein 15). However, Pinterest introduces a new complex issue into the mix because according to social media sites, posting, or in the case of Pinterest, “pinning”, often aesthetically changes the purpose of the work, even though it often links it back to the original.  This definition defies Goldstein’s description of fair use and no longer follows The Copyright Act. Goldstein would probably not support any copyrighted piece of work being republished or “re-pinned” publically. Since these pieces of work have copyrights, the authors should be receiving some type of monetary compensation for the use of their work, unless they decided to give permission for their work to be published freely.

Another interesting problem Goldstein might have with Pinterest revolves around the users. Some people use Pinterest privately with no intent to share information while others use it to advertise products. Basically, the difference between a woman “pinning” wedding ideas for her own personal wedding versus a wedding planner “pinning” wedding dresses for her customers to look at and possibly purchase. The nature of the copyrighted material takes into consideration whether it is meant to be published and public or more confidential while also taking into account its creativity. Goldstein describes this idea with his explanation of the Happy Birthday Song. “Copyright prohibits only public performances of the song… no copyright infringement now occurs” when the song is sung privately (Goldstein 23). More creative works are better protected than those that are more informational. On a social media site like Pinterest, the exact link a user is “pinning” will factor into the decision of whether or not it falls under fair use. How much of the original work is used is also a big factor. On Pinterest, users often “pin” an image without making any changes to it. When examining “the effect of the use upon the potential market for or value of the copyrighted work” it is important to consider whether the use diminishes, interferes with or fulfils the demand for the original work.  Therefore, as social media sites continue to increase in popularity, it is important to consider how original works will be affected, what constitutes as copyright infringement, and if something can be considered fair use.

Before describing our personal reactions, we decided we should make it known that we are both frequent users of Pinterest so we find ourselves in an interesting predicament when it comes to the legality of the site. While we both consider ourselves to be more of “copyright optimists” than “copyright pessimists” like Goldstein, we both agree that when it comes to social media, and in this instance, Pinterest, the site should fall under fair use. We believe that everyone should have the right to his or her original work. However, on Pinterest, we find that no one is trying to claim someone else’s work or ideas as their own. Rather, they are using these ideas and works as inspiration for their own life, and if anything, drawing more attention to the original inventors/creators. Also, Pinterest is simply linking you to field or subject you are searching for which follows along the description of a search engine. Although it has been declared a “pin” can take on a whole different meaning, the picture itself stays intact. The meaning only changes because of the subject of the board it was “pinned” on or because of the image of the person who “pinned” it. For instance, a person may “pin” a picture of a landscape in Italy to a board he or she has dedicated to Italy. For him or her personally, this picture would represent his or her heritage and memories he or she may have of traveling in Italy. Someone may “re-pin” this same picture off of their board, and place it in a board they have representing places they wish to go. To this person, the picture may represent their hopes and dreams. We would have to disagree with Goldstein and say that because the Internet will never be private, to a certain extent, the content is still meant to be shared. Pinterest is providing a larger audience for things already posted and we find that more often than not, it not only fulfills the demands of the original work, but also exemplifies them.

This group project was very fun and simple. At first, I was concerned about having to work with another person on a written essay. However, Alexandra was very easy to work with on this project. We did the entire project on Google Documents, which make it very easy to work with each other’s work. Also, we emailed each other almost everyday with questions and tips. We took a very relaxed aim towards writing the paper as each of us wrote different sections. Alexandra focused on the introduction and I wrote the section on Goldstein’s opinion. We both contributed to the reaction section. However when we had finished writing our sections, we actually relooked at the paper and combined a lot of our separate pieces. Although this project was a little challenging, I found myself enjoying working with a partner because when I found myself having “writers block” Alexandra was able to make suggestions and help me get back on track.

Works Cited

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