

# Issues of social media for intellectual property rights



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**Critically evaluate the challenges and issues presented by social media platforms such as Facebook, Instagram, Twitter, LinkedIn and Snapchat to intellectual property rights. Consider both tangible and intangible assets**

Intellectual Property Rights is a blanket term that encompasses tangible and intangible property rights.[1]Tangible property refers to the physical assets that can be both seen and felt, whereas the intangible properties mean the various immaterial properties that can neither be seen nor touched.

[2]Tangible property rights include trademarks, trade secrets and patents.

Intangible property, on the other hand encompasses trade secrets, rights to publicity and rights to privacy among others.[3]Social media platforms such

as Facebook, Twitter, Instagram and Snapchat among others, provide the users with appropriate avenues to communicate with one another both

creatively and quickly.[4]People can share their ideas, thoughts, and feelings with others. Besides, people can share creative pieces such as songs,

pictures and videos among others with their social media acquaintances.[5]It

is in this use and sharing of original content that intellectual property rights

get embedded in the social media platforms.[6]Many quarters claim that

social media sites provide their users with means of infringing the

intellectual property rights.[7]

Intellectual Property issues and in particular matters concerning copyright

laws are concerns everyone is likely to contend with in the wake of the

expansion of the social media platforms.[8]Arguably, for many sharing an

image, song and videos is a relatively straightforward process. Besides, most

people usually do it.[9]However, when it comes to distributing original pieces

of authorship embedded on a tangible medium, it is never straightforward.

[10]Unless an individual has explicit permission from the original creator to share and spread the content from the creator, he/she is liable to copyright infringement.[11]IP rights Law encompass a wide variety of subjects such as copyrights, trademarks and trade secrets among others.[12]

Copyright laws constitute a pivotal part of the IP laws.[13]Copyright laws offer protection to original content produced by a particular creative personality from being shared, copied and displayed without informed consent and permission from the specific original figure.[14]Copyrights by default, vest on the creators of the original content.[15]An original creator need not necessarily register to have the copyrights. Copyright issues present themselves in the area of social media, where legally individuals are barred from sharing different content on their social media platforms without the consent of the original creators.[16]Any action contrary to this gets considered as a copyright infringement.[17]The copyright infringement encompasses a vast host of activities such as copying and pasting excerpts on social media sites without the permission of the original creators, playing music in the background of own YouTube Videos, and copying and pasting various images on social media platforms without the consent of the original creators.[18]An individual only has the right to use and distribute content, if he/she is the original creator of the material.[19]The issue of copyright infringement perhaps gets best exemplified in the case of *Agence France Presse v. Morel*. [20]In this particular Case, Daniel Morel, a photographer had shared firsthand account photos of the January 2010 Haiti earthquake on his Twitpic account.[21]Twitpic is an affiliate of the popular social media

platform Twitter, which allows the users to share pictures on their timelines as a series of tweets.[22]Once Morel had posted the photos, they all went viral. However, for Morel another person copied and shared the images through his Twitpic profile, claiming ownership of the pictures in the process.[23]The photos were later taken on by Agence France Presse and Getty images who further shared the images across their extensive networks. The photos then got shared through newspapers and other means of mass media. However, credit was only given to AFP, Getty Images and the individual who copied the images from Morel's Timeline.[24]Morel, later on, sued AFP and Getty images arguing that they violated his copyrights.[25]As it will be seen in the subsequent sections, AFP and Getty images defended themselves claiming that there were no copyright infringements and they were only beneficiaries of the contract Morel had with Twitpic.[26]Nevertheless, the court ruled in favour of Daniel Morel and ordered AFP to pay Daniel Morel for the various damages incurred.[27]

Additionally, the violation of trademark laws is another issue presented by social media platforms to intellectual property rights.[28]Trademark refers to a phrase, combination of words or symbols that both distinguishes and identifies the source of a particular good from another commodity.[29]The definition of trademarks also extends to service marks. Service marks are the ones used to both identify and distinguish services, unlike products.[30]As illustrated in the case of copyrights, trademarks law rights by default fall on the creator of the original content. However, it is imperative to note not all designs, phrases, symbols or combination of words qualify to get considered as trademarks.[31]Trademarks generally serve as reward

mechanisms to multiple individuals who invest in creating high quality original content.[32]As such, all people have a legal mandate to ensure that while they are using social media platforms, they do not misuse trademarks in a manner that leads to confusion of the customers or significantly lowers the quality of the product produced by the original creator.[33]One particular case, which illustrates trademark concerns as one of the issues presented by social media platform to intellectual property rights, is the infamous Jack Daniels Whisky branding case of 2012.[34]In this case, upon learning that a specific book was being drafted with a cover that strikingly resembled Jack Daniels Trademark cover, the enterprise wrote a rather casual letter through its lawyer to the book author.[35]In the letter, Jack Daniels noted that while it was deeply impressed with the author's affection of the brand, it was necessary for the author to minimise the use of the brand to prevent it from growing weak. Jack Daniel's move was favourite among many parties as exemplified by the many shares of the image of the letter across numerous social media platforms.

Further, the violation of trade secrets is another issue presented by the various social media platforms to intellectual property rights. Trade secrets refer to economically important information, formulas and processes, which are not known to others.[36]Trade laws constitute intellectual property and often gear at providing a particular original creator with a competitive advantage over other peers.[37]The role of social media as a platform that offers businesses added leverage to compete with other enterprises has grown in importance in recent years. In the same breath, there has been a surge in the number of intellectual property cases related to the ownership

of the social media accounts. ' Facebook likes, Twitter followers and Linked In connections', constitute essential intellectual properties.[38]In some instances, the social media accounts constitute trade secrets of particular individuals as illustrated in the case of *PhoneDog L. L. C. v. Kravitz*. [39]The case featured a dispute between a marketing enterprise and a former employee. The former employee while working at the Marketing Company, PhoneDog had used a Twitter account bearing the company's details through which he built a significant following of about 17, 000 followers.[40]When the employee left the company, he changed the handle of his Twitter account. Subsequently, PhoneDog marketing company sued the employee alleging that he had inappropriately handled the trade secrets belonging to the firm. The company argued that its Twitter followers were synonymous to traditional customer lists, which applied to trade secrets protection. Although the case later came to a halt in 2012, it is apparent that it is one of the issues presented by social media platforms to intellectual property rights.

Arguably, every new development brings with it a new set of concurrent challenges. In this regard, the growth in social media platforms such as Facebook, Twitter and Instagram among others has brought with it new sets of intellectual property challenges, which are both complex and complicated. Specifically, the new social media platforms both provide the users with an avenue and encourage them to share content across their extensive and broad platforms.[41]Plausibly, this has brought additional challenges in enforcing copyright and interpreting the fundamental legal philosophy of copyright.[42]Various parties, and in particular entertainment industries have diligently fought against this avenue provided by social media that

allows the users to copy, distribute and use for free music and videos among others without the consent of the original artists.[43]Because of the continued expansion of social media and rise in the reported cases of IP laws infringement, businesses and individuals alike have had to develop strategies and techniques of combating these incidences of violation, which occur on the social media platforms.[44]However, the fact that not all users in social media reveal their identities aggravates the seriousness of the challenges to the IP rights brought about by Social media platforms.

[45]Some users share the content of other parties either in entirety or in making little modifications without authorisation from the original creator.

[46]Thus, various users of social media platforms always have to contend with the challenge of discerning user-generated content and user-created content.[47]Conceivably, the two are not the same thing.

Conceivably one of the significant challenges brought about by social media platforms to the intellectual property rights is privacy intrusion.[48]Privacy is nonexistent in the social media platforms, and this gets captured in Mark Zuckerberg infamous claim that the “ era of privacy is over.” Explicitly, the right to privacy of the users of the social media platforms marginally concerns the operators of the sites. Their chief concern is making a profit, and this only gets realised by allowing users to freely share content across the platforms without the worry of the barriers brought about by numerous privacy concerns. Most of the social media sites are continually creating new applications that are a potential threat to the privacy of the users.

[49]Besides, the platforms go on to install these applications on the profiles of various users without their concerns. For instance, the new feature by

Facebook 'Places' reveals the locations of the users even without their consent and knowledge at times. In its FAQ and Privacy section, Facebook authoritatively informs the users of the limits to what it can do with the various data of the users. However, perhaps the biggest threat to IP rights posed by social media sites gets captured in the clauses of the social media sites which states they do not offer a guarantee on the information posted on the sites by the users. For example, Facebook, in particular, warns the users that although it continually tries to make the platform a safe service for everyone, it cannot guarantee the safety of the site. As such, it needs the help of the users with regards to particular obligations, which it lists.[50]

Having shown how social media sites infringe the privacy of the users in the previous section, it is evident there is an inherent need to explain how this applies to IP rights. First, because the users consent to the privacy rights enforced by the particular social media platforms, this means that their say on the specific property they share on the social media platform gets undermined.[51] Having highlighted the loose security and privacy framework that permeates most of these social media platforms, it is then highly likely that an individual's tangible and intangible assets can be shared with other parties without his/her consent. For instance, Twitter and Facebook are the sites commonly used to share pirated content of the original creators.[52] Potentially, this is an infringement of the intellectual property rights.

It is conceived that this is a direct consequence of the inability of the social media to create a culture of individuals who are stimulated creatively.

Instead, cyber space has led to the creation of a group of individuals who  
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steal intellectual property.[53]Specifically, the entertainment industry is the one that has been significantly affected by the dominant intellectual property theft emanating from the expansion of the social media platform. The intellectual property theft has both dampened the creativity levels and overall spirit levels of the industry. Most people currently download music, videos and games from the Internet.[54]Other parties use the same avenue provided by the internet to mass-produce and ship the already downloaded materials to various markets. The particular copyright infringers then distribute different compacts discs reproduced from the original compact disk thereby affecting the business prospects of the intellectual property owner. In the long run, the zeal and need for the rightful owners to continue producing more works gets stifled. After all, the security of their legal content is not recognised. They hardly make any meaningful money from their intellectual property. This has killed the dreams of many artists who despite having a large following, often hardly have anything to show for their popularity.[55]

The stifling of the creativity and spirit of the entire industry perhaps succinctly gets more captured in the recent decisions of the Motion Picture Association of America (MPAA) and The Recording Industry Association of America (RIAA).[56]The two companies oversaw the spearheading of the initiative of barring all attempts of file sharing which lead to copyright infringement of the rightful owners. The two enterprises are the primary representatives of major entertainment firms in the USA. Also, in the last decade, the two companies have sued multiple individuals and organisations in the USA, UK, China and Canada among other nations. The actions of the

two companies clearly illustrate that the social media platforms have stifled the creativity and overall verve that dominates the industry.

As mentioned earlier, IP rights are the various rights bestowed upon different individuals for the creations of their minds.[57] Various creative personalities such as photographers, designers, and authors among others are usually given exclusive rights to both use and exploit their respective pieces of works economically.[58] The rights are generally well discernible, and all parties are generally required to show their respect to these rights. As such, whenever another individual uses a piece of work that is not his/hers, he/she has a legal mandate to give credit to the original creator of the content. [59] However, the growth of the social media platform has led to increased permeation of disrespect to intellectual property rights.[60]

Social media platforms have presented new issues and challenges to intellectual property rights. Most of the issues and challenges have never been experienced before, and are relatively complex. Most of the issues presented by social media platforms to intellectual property rights revolve around copyright, trademarks and trade secrets among others. It has been illustrated that social media platforms accord the users with an avenue to infringe the copyrights, trade secrets and trademarks. Specifically, this is shown through reviewing pertinent case laws such as *PhoneDog L. L. C. v. Kravitz and Agence France Presse v. Morel* among others. Besides, most of the challenges presented by social media platforms to intellectual property rights are about privacy intrusion, stifling of creativity and enterprise, and intellectual property theft.

In conclusion, privacy intrusion is such a big concern as exemplified by the lack of myriads of social media platforms to pay detailed attention to the privacy of the content shared by the users. Arguably, the inherent challenges posed by social media platforms to intellectual property rights require concerted efforts from all the stakeholders to ensure that the various intellectual property rights get safeguarded.

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