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Social *butterflies*

K&L Gates' **Simon Casinader** and **Bianca D'Angelo** investigate the risks associated with using social media.



MANY OF US remember the “You Wouldn’t Steal a Car”, PIRACY. IT’S A CRIME ad campaign of the 2000s, which equated downloading pirated films with stealing. Ironically, the ad has since become a popular source for memes, reflecting the ever-changing landscape of the Internet and the evolution of online sharing.

Today, social media gives us the ability to share photos, videos, tweets, pins and many more items in an instant. This incredible exchange of information and imagery has been hugely beneficial to the fashion world – creating endless possibilities for engaging customers and re-imagining branding. However, the explosion of social media usage has meant the risk of users’ content being stolen or misused has never been greater.

Copyright and social media

In Australia, copyright rights attach to original creative works such as artworks, photographs, music and videos. Copyright gives the owner the exclusive right to control and exploit the work, including online. Depending on the type of work, copyright usually lasts for 70 years from the date of the author’s death.

Many of the creative works on social media are protected by copyright law, including works made overseas. However, the © symbol does not have to be present for copyright to exist.

This all means that you need to obtain a copyright owner’s permission to use or reproduce a substantial part of their work, or you may be in breach of copyright law. Conversely, if someone is using your work (or a substantial part of your work) without authorisation, they may be infringing your copyright rights.

When you don’t need permission to share material

There are a few exceptions to copyright infringement in Australia, including fair dealing for the purpose of research or study, criticism or review, parody or satire, and news reporting.

Also, many online platforms require users to agree to their posts being shared as part of the terms of using the site. The terms and conditions of almost all the major social media platforms (e.g. Facebook, YouTube and

Twitter) also give the platform the right to use anything posted by a user.

Some users may choose to provide their materials under a Creative Commons Licence (CCLs), subject to restrictions on use. While CCLs permit the sharing of content more easily, users should be aware that content offered under a CCL can be used by anyone for almost anything.

What about hyperlinking and embedding content?

The legality of linking and embedding material on a site is not entirely settled in Australia.

However, a recent decision of a US Federal Court this year ruled that embedding a tweet can amount to a violation of US copyright law. The case was brought by Justin Goldman against a number of media outlets. Goldman uploaded a photo of Tom Brady on to his Snapchat Story, which subsequently went viral. The image was uploaded and re-tweeted by users on Twitter. A number of media outlets then decided to feature the photo by embedding the tweets on their webpages.

The Court found that embedding a Twitter link may violate a copyright owner’s right to display an image publicly, even if the photo is not copied or saved onto the server of the infringer. In this case, the media outlets were found to have actively transmitted the photo so that it could be visibly shown thereby potentially infringing copyright.

While this US decision has been appealed, the outcome is likely to have wider implications on the use of digital media. The case highlights how the law is trying to keep up with technological advances

Conclusion

Before using online content, always consider whether the copyright owner’s permission is required to use the work. Seek legal advice if you are unsure. ■

For more information about issues relating to sharing content on social media please contact Simon Casinader, Senior Associate at K&L Gates (email simon.casinader@klgates.com.au). This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.