ORIGINALITY AND ITS EXPLOITATION IN SOCIAL MEDIA –WITH EMPHASIS ON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

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Abstract— **Internet is a platform for information dissemination and Social media is a media for social interaction, using highly accessible publishing techniques and web-based technologies to transform and broadcast sentiments and emotions into social media dialogues. In the modern society everyone has come across such global platforms as Facebook, YouTube, and Twitter, etc. which have an interactive and sharing element, that defines them as Social Media. With the success of social media and our dependence on it, has mushroomed a dark side of piracy of privacy and piracy of originality. The enormous volume of material being published on the internet every minute and the speed at which these get shared to people around the globe on Social media creates extreme threat to the rightful authors and owners of Intellectual Property Rights (IPR). At the same time, this reality raises serious concerns for users of social media who can be exposed to the liability for infringing Intellectual Property Rights. Whether infringement of an original brand's trademark or its message, knowingly or unknowingly infringing an original work of art or literature, etc. are concerns of high monetary impact for the original IPR authors and owners, which get overlooked in the daily rush of information sharing in the social media space. Every other business faces these issues in case of social media marketing for their brands. The objective of this paper is to highlight the important concerns of intellectual property rights in the social media space, particularly relevant to the two important area of Trademarks and Copyrights, its understanding among users and its impact on the original work of authors and owners.**

Key words— **Social Media, Intellectual Property Right, Infringements, Original work**

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I. INTRODUCTION

In the modern society everyone has come global platforms as Facebook, Twitter, LinkedIn, MySpace, Blogspot but there are others popular in particular countries such as Orkut in Brazil and Tuenti in Spain, also company and industry-specific networks, such as Medscape's Physician Connect and Epernicus, for medical researchers. There are also video and file sharing sites such as YouTube, IsoHunt and The Pirate Bay, reference sites such as Wikipedia, etc. In fact all these sites have an interactive, collaborative element of some kind, which defines them as social media. All social media platforms have grown in size and importance in recent years, as exemplified when Facebook, the most successful, became the world's third largest Nation in terms of its population of subscriber base. With the success of social media and our dependence on it has mushroomed a grave dark side of the piracy of privacy and piracy of originality. In fact proliferation of social media has actually challenged the common law tradition's understanding of ownership. The famous statement of John Locke that "the fruits of one's labour are one's own possession" is falsified in the age of Facebook and Myspace. According to Locke, a person who works on something can claim at least partial ownership over it. This is however not necessarily true in case of most of the social media sites where users constantly create and enhance the content available on the networks yet is the information is co-opted and place under the ownership of multinational organizations. In addition, people have also voiced their concerns that students and business professionals have been increasingly neutered of their desire for privacy by the social networking sites. In response to these the social media swears by the fact that their users do not really attach a very high premium to privacy matters and mostly make rational privacy choices when they are online. Social media presents serious challenges to intellectual property law due to rampant infringement of original work. The same rules apply, the same legislation directs and the same common law rights exist for those who own intellectual property, but the enormous volume of material being published on the internet and the speed at which this information can be shared to the vast number of individuals around the globe creates extreme threat to the rightful owners of intellectual property rights. At the same time, this reality raises serious concerns for users of social media who can be exposed, unwittingly or otherwise, to liability for breach of intellectual property rights.

II. UNDERSTANDING THE REVOLUTION OF SOCIAL MEDIA:

Revolution in publishing happened in Germany between 1438 and 1450 when Johann Genesfleisch von Guttenberg invented his printing press and published his first book in 1451. Thanks to the printing press that significant number of literary, artistic and scientific creations benefited from an incipient Geographic mobility unknown till then. Since then another revolution happened several centuries later in the year 2004 when Mark Zuckerberg created Facebook whose success has created history. It is an open fact that Social media is openly available across the world, it is transparent, non-hierarchical, interactive and most importantly it is real time. This therefore is a platform for all businesses to explore their objectives. This has also churned consumerism internationally. Social media is the media created online through social interaction and exchange of user-generated content. It is different from the traditional media such as print media where the publication of information goes one way. In social media, with information flows from multiple sources and anyone with an internet connection can be a publisher. In less than a decade, social media, in many ways, seems to have taken over the world. This statement is not hyperbole. As one of the largest social networking sites in the social media universe, Facebook boasted more than 750 million people actively using its service. If it hasn't already, Facebook will soon grow twice as large as the population of the United States, which currently hovers at 311 million. Even so, the vast majority of companies did not immediately join the social media revolution. Instead, they spent varying amounts of time observing from the sidelines. But when the first wave of companies did join, it was because they anticipated the significant business benefits of this "brave new world" where the personal, the professional, and the commercial combine seamlessly, and in the blink of an eye. Many others, however, remained unconvinced -often because of a lack of information and an unclear understanding of how social media could be beneficial. "What is this 'social media' thing all about?" they wanted to know. "And why should my company care?" Unlike traditional media, which offers a one-way experience in which media outlets broadcast information for public consumption, social media offers a two-way interactive experience. Consumers of social media, unlike consumers of traditional media, can interact instantly and directly with either the originators or the authors of the proffered information. They can interact with each other, too. The interaction and cross-communication that social media makes possible is precisely what makes social media so world-changing. As with any new technology, there is a downside. Social media also creates a whole new world of privacy, security, intellectual property, employment practices, and other legal risks, to name just a few. But the opportunity to interact with anyone, anywhere, anytime is too world-changing to ignore. It has altered the traditional media expectation of consumers listening passively to radio and television broadcasts, or reading newspapers and magazines, with no hope of an immediate interaction (and no way, certainly, for customers to converse with companies). With social media, all that changed. Individuals and groups suddenly have a radical new ability to voice opinions through this new media, a channel never before available. Using social media, everyone can become a commenter, editor, content creator, producer, and distributor. Not only that, but the entire world has become accessible in ways that are disorienting for traditional media and those accustomed to its cultural hierarchy. Consider the popular social networking site, Twitter. This platform allows anyone with an account to post short messages. To tailor the onslaught of messages being broadcast from the "Twitter-sphere" of 200 million plus current Twitter subscribers, users can create lists of those they wish to "follow" so they only receive Twitter feeds from those they select. With Twitter, anyone can send a short message of 140 characters -called a "tweet" -about any topic, including the famous and the infamous, the holy and the ethically challenged. Anyone, for instance, can tweet about President Barack Obama, Sachin Tendulkar or even the Indian National Cricket Team. Twitter is just one of the components in a social media portfolio. England's Queen Elizabeth II, already with a Twitter account, added a Facebook page to complement her YouTube channel, Flickr account, and website. Our Prime Minister Mr. Narendra Modi has his twitter account too. Social media has also done a great amount of impact during the elections in our country. Perhaps most surprising, social media has been an enabler of grassroots revolution in countries where such an event seemed impossible. As a case in point, look at the impact of social media on the governments of Colombia, Egypt, Indonesia, Iran, Libya and Tunisia, to name but a handful. In summing up this trend, author *David Kirkpatrick* in his book, *The Facebook Effect*, observed that the "large scale broadcast of information was formerly the province of electronic media -radio and television. Today you don't have to know anything special or have any particular skills. The social media universe encompasses a much broader array of interactions than those that occur on popular and familiar social networking sites like Twitter and Facebook. "Social media" actually refers to a growing galaxy of sites that includes: personal and business blogs, news sites with interactive or comment features, group forums, wikis, social and business networking sites, online community sites, social bookmarking sites, microblogging sites, and gaming as well as virtual world sites. Social media embraces a cyber-universe of websites that promise to expand virtually forever. (One example: according to WhiteboardAdvisors.com, by the end of 2010, there were 152 million blogs on the Internet). *The Facebook Effect* author David Kirkpatrick wrote, "*social media is a new form of communication, just as was instant messaging, email, the telephone, and the telegraph*."

Social media marketing primarily covers activities involving social sharing of content, videos, and images for marketing purpose through some media platforms as listed below:

1) **Social networking sites**- Facebook, Google Plus
2) **Micro-blogging sites**- Twitter, Tumblr, Posterous
3) **Publishing tools**- WordPress, Blogger, Squarespace
4) **Collaboration tools**- Wikipedia, WikiTravel, WikiBooks
5) **Rating/Review sites**- Amazon ratings, Angie's List
6) **Photo sharing sites**- Flickr, Instagram, Pinterest
7) **Video sharing sites**- YouTube, Vimeo, Viddler

8) **Personal broadcasting tools**- Blog Talk radio, Ustream, Livestream
9) **Virtual worlds**- Second Life, World of Warcraft, Farmville
10) **Location based services**- Check-ins, Facebook Places, Foursquare, Yelp
11) **Widgets**- Profile badges, Like buttons
12) **Social bookmarking and news aggregation**- Digg, Delicious
13) **Group buying**- Groupon, Living Social, Crowdsavings

The working structure of Social media can be understood by seven functional building blocks: identity, conversations, sharing, presence, relationships, reputation, and groups. Each block allows us to understand (i) a specific facet of social media user experience, and (ii) its implications for firms. These building blocks are neither mutually exclusive, nor do they all have to be present in a social media activity. They allow us to make sense of how different levels of social media functionality can be configured.

Identity
The identity functional block represents the extent to which users reveal their identities in a social media setting. This can include disclosing information such as name, age, gender, profession, location, and also information that portrays users in certain ways. *Kaplan and Haenlein (2010)* explain that the presentation of a user's identity can often happen through the conscious or unconscious 'self-disclosure' of subjective information such as thoughts, feelings, likes, and dislikes. Consequently, users and social media sites have different discourse preferences and aims. Many individuals who participate in online activities use their real names (e.g., Guy Kawasaki, a leading blogger and managing director of Garage Technology Ventures), while other influential social media mavens are known by their nicknames, or 'handles' (e.g., hummingbird604 is Raul Pacheco, a blogger and educator on environmental issues). Of course, there are many different social media platforms built around identity that require users to set up profiles (e.g., Facebook). This has led to the formation of secondary services like 'DandyID', which allows users to store their online social identities in one place. Similar in nature to business cards and email signatures, social media users now create social media profile cards, using tools like 'Retaggr', to advertise their different identities and encourage others to follow them. As identity is core to many social media platforms, this presents some fundamental implications for firms seeking to develop their own social media sites or strategies for engaging with other sites. One major implication is privacy. Users willingly share their identities on social media sites such as Facebook and Twitter, yet this does not mean they do not care what happens to this information. Indeed, users have serious concerns about how secondary firms use their information as a source for data mining and surveillance *(Kietzmann & Angell, 2010)*, and the extent to which social media sites passively facilitate or actively encourage these activities. This has resulted in users and government agencies initiating class-action lawsuits for invasion of privacy *(Kravets, 2010)*. Users have also developed identity strategies (e.g., real identity versus virtual identities), while others focus on self-promotion (e.g., Facebook) or self-branding (e.g., LinkedIn). Professional photographers, for example, pay a premium to share their photographs on Flickr to develop their professional brand, and start conversations within their community. However, this does not suggest that firms should insist on profiles that are complete or accurate. In fact, in an effort to protect their privacy, people tie different identities to the context of the different social media platforms they use (e.g., hobbies, interests, social presence, pictures on Facebook might be different from those on LinkedIn

Conversations
The conversations block of the framework represents the extent to which users communicate with other users in a social media setting. Many social media sites are designed primarily to facilitate conversations among individuals and groups. These conversations happen for all sorts of reasons. People tweet, blog, et cetera to meet new like-minded people, to find true love, to build their self-esteem, or to be on the cutting edge of new ideas or trending topics. Yet others see social media as a way of making their message heard and positively impacting humanitarian causes, environmental problems, economic issues, or political debates. The enormous number and diversity of conversations that can take place in a social media setting, means that there are format and protocol implications for firms which seek to host or track these conversations. Twitter, for instance, is centered on exchanging short messages that are mostly real-time status updates, so as to create an 'ambient awareness' of issues *(Kaplan & Haenlein, 2010)*. Mostly, these messages are of an ephemeral nature, without any obligation to respond. Reviewing past tweets requires an archiving service like Google Replay, which lets users search through and review tweets. Twitter is more about conversation than identity. Blogs, on the other hand, are less about staying connected synchronously. Often lengthy conversations can be traced back on the blog itself.

Sharing
Sharing represents the extent to which users exchange, distribute, and receive content. The term 'social' often implies that exchanges between people are crucial. In many cases, however, sociality is about the objects that mediate these ties between people *(Engeström, 2005)*; the reasons why they meet online and associate with each other. Consider Groupon, which publishes a 50% - 90% discount coupon for local businesses each day via email, Twitter, mobile phone applications, and its own website. The coupon is only valid, however, once a critical mass has agreed to purchase the special offer. Social shopping services like Groupon leverage the 'social graph,' a mapping of users' connectivity, to share the news via email across their entire social network. Consequently, social media consist of people who are connected by a shared object (e.g., a groupon, text, video, picture, sound, link, location). Sharing alone is a way of interacting in social media, but whether sharing leads users to want to converse or even build relationships with each other depends on the functional objective of the social media platform. For instance, the objects of sociality are pictures for Flickr, Indie music for MySpace, and careers for LinkedIn. It can be suggested that; there are at least

two fundamental implications that the sharing block of the honeycomb has for all firms with ambition to engage in social media. The first is the need to evaluate what objects of sociality their users have in common, or to identify new objects that can mediate their shared interests. Without these objects, a sharing network will be primarily about connections between people but without anything connecting them together. Of course, these objects and the type of sharing that can be built into a social media platform very much depend on the aims of the platform. For example, YouTube started as a platform to allow individuals to upload and share homemade videos. YouTube was established primarily to enable users to share personal objects –experiences and observations with the world. A second implication concerns the degree to which object can or should be shared. As YouTube grew, users increasingly uploaded video not created by them. This led to criticism and lawsuits against YouTube for failing to ensure that uploaded material complied with Copyright laws. YouTube has also been denounced for hosting videos that contain offensive content. As a result, YouTube developed controls and allocated resources to filter and then screen the content that it helps share. This includes requiring users who want to upload video, to register and agree to terms of use; providing a content management system that allows content owners (e.g., movie studios) to identify and manage their content on YouTube; asking users to flag inappropriate content; and employing a team who screen and remove content that violates the terms of use.

Presence

The framework building block presence represents the extent to which users can know if other users are accessible. It includes knowing where others are, in the virtual world and/or in the real world, and whether they are available. In the virtual world, this happens through status lines like 'available' or 'hidden.' Given the increasing connectivity of people on the move, this presence bridges the real and the virtual. Celebrities who are active on Foursquare, and when they 'check in' at a particular location, fans and traditional media can view this information and know where to go for celebrity gawking. Similar presence-focused platforms center on geographical spaces, not specific locations. Friends Around Me allows users to share their status updates and check-ins across networks –Facebook, Twitter, Foursquare displays which friends are in close physical proximity. A firm may be interested to know if users desire for selective presences, where one can be visible to some people while staying hidden to others. Considering the thoughts of *Kaplan and Haenlein (2010)*, firms should recognize that social media presence is influenced by the intimacy and immediacy of the relationship medium, and that higher levels of social presence are likely to make conversations more influential.

Relationships

The relationships block represents the extent to which users can be related to other users. 'Relate' would mean two or more users have some form of association that leads them to converse, share objects of sociality, meet up, or simply just list each other as a friend or fan. Consequently, how users of a social media platform are connected often determines the what-and-how of information exchange. In some cases, these relationships are fairly formal, regulated, and structured. LinkedIn, for instance, allows users to see how they are linked to others and how many degrees of separation they are from a 'target' member possibly an employer they would like to meet. Member profiles also need to be validated by others to be complete. With a focus on relationship building, LinkedIn has a referral system so that these users can be introduced, through a chain of friends-of-friends, to the person they intended to meet so that they can be closer to the people they would like to meet. Social software like AOL Instant Messenger (AIM) and Skype allow people to talk to 'buddies' or 'contacts' they already know. On other platforms, relationships are informal and without structure. Blogs, for instance, can allow users to develop a relationship with each other, without a formal arrangement of what and how much information they should share

Reputation

Reputation is the extent to which users can identify the standing of others, including themselves, in a social media setting. Reputation can have different meanings on social media platforms. In most cases, reputation is a matter of trust, but since information technologies are not yet good at determining such highly qualitative criteria, social media sites rely on 'mechanical Turks': tools that automatically aggregate user-generated information to determine trustworthiness. For instance, Jeremiah Owyang's 70,000 and Guy Kawasaki's 292,000 followers on Twitter attest their reputations as social media maven and emerging technology expert, respectively. Another example is LinkedIn, which builds the reputation of one individual based on endorsements from others. However in social media, reputation refers not only to people but also their content, which is often evaluated using content voting systems. On YouTube, the reputation of videos might be based on 'view counts' or 'ratings,' while on Facebook this could be 'likes,' and so forth. Via the StumbleUpon platform, for example, one can only see content that has already been filtered by users who share a common interest. The more Stumble-Upon knows about a user, the better it can match up preferences of like-minded individuals who have given the particular website a 'thumbs up' or 'thumbs down' verdict. The number of followers on Twitter has limited value in that it only indicates how popular a person is, not how many people actually read the posts. Since people can follow as many others as they like, they also do not have a reason to 'unfollow' anyone. For a firm, this means the engagement needs of its community should inform the choice of reputation system.

Groups

The groups' functional block represents the extent to which users can form communities and sub communities. The more 'social' a network becomes, the bigger the group of friends, followers, and contacts. A widely discussed relationship-group metric is Dunbar's Number, proposed by anthropologist *Robin Dunbar (1992)*, who theorized that people have a cognitive limit which restricts the number of stable social relationships they can have with other people to about 150. Social media platforms have recognized that many communities grow well beyond this number, and offer tools that allow users to manage membership. Two major types of groups exist. First, individuals can sort through their contacts and place their buddies, friends, followers, or fans

into different self-created groups (e.g., Twitter has lists). Second, groups online can be analogous to clubs in the offline world: open to anyone, closed (approval required), or secret (by invitation only). Facebook and Flickr have groups, for instance, with administrators who manage the group, approve applicants, and invite others to join. The direct implication of groups is fairly straightforward. It can be assumed that a social media community would enjoy a way to group its users, even when the number of likely contacts is low for each member initially. It is good practice to enable this feature from the start such that members don't have to sort through lengthy contact lists to order their contacts later. If the members just need to order their contacts to manage followers, friends, fans, and the like, then simple user-generated grouping will suffice. This resembles allowing users to label their contacts, without these contacts being aware of it. If, however, a group wants to pursue an agenda and grow its membership, then more formal group rules and functions would be required. Many social media platforms have chosen to offer a few categories of groups and a few combinations of permissions, these choices are highly contextual, and a firm would benefit from studying exactly what kinds of groups their community would support, and how these should affect their consumer connect.

III. LEGAL ISSUES IN SOCIAL MEDIA:

The exponential rise in popularity of social networking websites and other social media outlets such as Facebook, Twitter, LinkedIn, and individual blogs, is due in large part to their viral nature. Social networking sites are essentially self-promoting, in that users spread the word for the sites. The more quickly social networking sites grow, the more quickly they spread. The viral quality of social media makes it an appealing way for businesses to market products and services, and marketers have long recognized and tapped the potential of social media outlets. Many advertisers have conducted consumer promotions involving social media to generate attention to and participation in their promotions, thereby maximizing brand exposure. Incorporating social media into a marketing campaign is not, however, without legal risks. Companies utilizing the power of social media must be cognizant of the relevant legal issues in order to protect themselves from liability risks.

Keep in mind that existing laws apply equally to online and offline conduct. It becomes extremely important to evaluate if the content you post on a social networking site being reviewed and scrutinized prior to its release. Accordingly, following are some of the major legal implications that are noted on social media space:

Third Party Content. Anytime you publish content on a social network, including text, graphics, photos or other media content, compliance with applicable copyright laws is an important consideration. Have you secured the right to post all third party content?

Content Ownership/Control. Who owns your social networking profile page? If you delete your page, is the content truly gone or does the social network retain the right to access, use or share your deleted information? Have you read the terms of use for the social networking site? In your haste, could you be disclosing sensitive or proprietary information?

Defamation/Other Torts. Could any of your posted content be considered defamatory to a third party? Could it be the basis for other tort liability, such as intentional infliction of emotional distress, interference with advantageous economic relations, fraud or misrepresentation?

Criminal Activity. Postings of text and photos on social networking sites have been the source of discovery of criminal activity. Social networking activities have also served as a catalyst for offline criminal activities and charges.

Employment Practices. Social networks are used as a source of information about individuals and organizations. Members may not realize the full impact of statements made or content posted on a social network profile. What are the ramifications of taking social networking information into account when making hiring or firing decisions?

Litigation Impact. As more and more people incorporate real-time technology and social media tools into their daily lives, litigants, witnesses and even jurors are no exception. What about the propriety of checking out the profiles of prospective jurors or witnesses?

Among all these common legal implications, the primary concern of this paper is to evaluate the infringements of Intellectual property Rights in the social media space. Accordingly so, the major concern area in the cyber world, are of Trademarks, Patents and Copyrights. Trademark would involve the infringements relating to a brand name, Copyright would involve in infringements relating to artistic/literary content. Patents however would only deal with the product or process patent grant for a software only hence the most important concerned area considering the objective of this paper are Trademarks and Copyrights.

IV. TRADEMARK AND COPYRIGHT ISSUES

It is of the utmost importance for companies to protect their own trademarks and copyrights when using social media to promote their brands. A company's brands and other intellectual property are often nearly as valuable as the products or services that they

offer. Social media's capacity to facilitate informal and impromptu communication – oftentimes on a real-time basis – can aid companies in promoting their brands and disseminating copyrighted material, but it can also facilitate third-party abuse of a business' trademarks and copyrights. When using social media, whether via a third party outlet or a company's own social media platforms, marketers should regularly monitor the use of their trademarks and copyrights. Companies should monitor their own social media outlets as well as third-party social media platforms to ensure that their intellectual property is not being misused by those providing content through the media outlets. Internet monitoring and screening services are available to monitor the use of your business' marks and copyrights on third party sites, including checking social media sites for profile or user names that are identical or substantially similar to your company's name or brands. This form of business impersonation can damage a company's brand and reputation if left unchecked; such monitoring can also serve as a positive indicator of business success. Companies should consider reserving, on various social media sites, user names that match or closely resemble their trade names and marks. Social networking sites generally have terms and conditions that prohibit trademark and copyright infringement, and many sites, such as Twitter, also have rules regarding business and/or celebrity impersonation. Twitter terms and conditions state, in relevant part: Using a company or business name, logo, or other trademark-protected materials in a manner that may mislead or confuse others or be used for financial gain may be considered a trademark policy violation. Accounts with clear intent to mislead others will be suspended; even if there is not an explicit trademark policy violation, attempts to mislead others may result in suspension. Twitter has specific provisions governing business or individual impersonation and name squatting.

While social networking sites are beneficial in many ways, they are fertile ground for trademark misuse. In this regard, a fairly new practice has been the use of "vanity" web addresses / domain names. A vanity domain name is a relatively short domain name that points to content that is succinctly described in the sub-domain portion of the URL (Uniform Resource Locator) -the address of a web-page. For example, there are many brands for which the www.facebook.com/Some other Trademark points to a social networking web page for the branded product associated with the trademark appearing in the vanity URL. When the associated web page is maintained by the trademark owner, displaying owner-approved content, there is no problem. However, virtually any user can create a vanity URL, and there is little to prevent an unauthorized user from using another's trademark as the essential portion of a vanity URL. For example, no identification, authentication of identity, or authorization is required to stop someone from creating a website using a vanity URL that contains a popular brand name. Likewise, LinkedIn permits users to create named user groups; however virtually any can create a named group, and upload an image (such as a logo easily retrieved from the trademark owner's official website) to be used to identify the group. But, unlike domain name cybersquatting and trademark abuses for which specific legal remedies are well-established, law and procedures for resolving social media trademark issues are in their infancy. Further, the forms of trademark use are quite varied. While some unauthorized uses are commercial in nature, many others are not. Further still, some unauthorized uses may be disparaging and objectionable, while others may offer praise. Consider an online social networking web page that looks official, has a recognizable brand name, and displays the official corporate logo. Suppose that the page displays a lot of praise for the branded products. If the page is controlled by the brand owner, there may not be a trademark issue. But, what if the page is not controlled by the brand owner? There still may not be an immediate problem. But, what if the page recommends a certain online store for purchasing the products, and those products are inferior counterfeit products? Or, what if the page includes discussion of other products (or services) that appear to be sponsored by, or offered by, the corporation that has its logo displayed on the web page? These scenarios could create problems for a trademark owner that does not want to be associated with counterfeit, inferior, or competing products. Even a seemingly "friendly" social networking fan page provides a forum for visitors to post information that may be harmful to the trademark owner. The trademark owner must be particularly thoughtful and creative in addressing unauthorized use of trademarks in the social media context. In a more traditional approach, the trademark owner may send the social networking page's "owner" a conventional cease-and-desist letter. This might be the right approach if the page is wrongfully using a trademark in a commercial trademark manner. However, it may not be appropriate where there is no commercial use. In such a case, lodging a complaint with the social networking website, under the web site's own policies, may be more effective. The trademark owner may wish to gain control of a social networking page that makes unauthorized use of the owner's trademark. For example, transfer of "ownership" and control of LinkedIn Groups to trademark owners is permitted under applicable policies. After gaining control of the group, the trademark owner should establish policies for the group that are consistent with the trademark owner's interests. For example, a policy may require that visitors to the relevant social networking webpage refrain from: (i) commercial use of the mark; (ii) solicitation for purchase of any competing products or services; and (iii) posting of content that would tarnish the mark. Such policies should permit the trademark owner to bar a visitor from use of the social networking website for failure to comply with the policies. The trademark owner should consider that taking the traditional approach may backfire when the unauthorized party is an enthusiastic fan of the trademark owner's product and is part of a large fan group. The very same social networking tools that were used to champion the trademark owner's products might be used to lead an anti-owner campaign.

In such situations, a more progressive approach to resolving the issue could begin with sending the unauthorized social networking web page "operator" a "friendly" letter permitting continued use of the trademark, but in a controlled manner. This collaborative approach involves partnering with the operator and granting permission to use the mark consistent with the trademark owner's guidelines. In appropriate circumstances, the operator of the social networking page could be enlisted to assist in monitoring for users' actions in violation of an applicable use policy. If desired, the trademark owner could require the operator to include a disclaimer distinguishing the operator from the trademark owner, or to provide a hyperlink on the unauthorized web page to the "official" web page of the trademark owner. The trademark owner might also require that no more than a reasonably necessary portion of the mark be displayed by the social networking page, e.g., to prohibit third party use of a logo when a mere

word form of the mark is available. In a highly-collaborative approach, the trademark owner may facilitate the operator's activities, e.g., by providing owner-approved content for posting by the operator. Such collaboration may incentivize the operator to comply with the trademark owner's requests.

In case of copyright, owners and authors have the right to prevent others from copying their original work. Which could be in the form of artistic, literary, dramatic, musical wok. Generally, the author of a work will own the copyright in that work. However, where a work is made by an employee in the course of their employment, the employer will be the owner of the copyright, subject to any contrary agreement. Regardless of who owns the copyright, authors of some categories of works including literary work such as blogs and musical works such as songs, also have certain moral rights. Moral rights include the right to be identified as the author or director of the copyright work, the right to object to derogatory treatment of a copyright work and the right not to have a copyright work falsely attributed. An employee will only have limited moral rights where the copyright in a work is owned by their employer.

It is easy to see how the growth of the internet and the increasing popularity of blogging has resulted in an increase in copyright infringement. The world of social web is flooded with copyright materials, which may or may not be reproduced with the consent of the rights owners. Photographs posted to Facebook and Flickr, films and music posted to YouTube and materials posted on a blog may all be the subject of copyright protection but come from a variety of sources. For example, a blogger might copy text from an article or a photograph belonging to another without permission for their own blog post. Users infringing the rights of copyright owners risk being sued for infringement. The copyright owner has the exclusive right to copy a work by reproducing the text of a blog post, issue copies to the public by placing a song or movie on a file-sharing site, perform, show or play it in public, communicate the work to the public, which might also include streaming over the internet or make an adaptation of the original copyright work. A third party who, without consent, does any of these acts will commit primary copyright infringement. In addition, a person who deals with an article that they know or have reason to believe is an infringing copy will commit secondary infringement. To establish copyright infringement, claimants must show that a substantial amount of the work in question has been copied, and this is judged by reference to what has been copied rather than how much. If a whole article is copied then clearly this will constitute copyright infringement; however, a small but critical part of a work may also be substantial loss. There is no requirement for an intention to infringe and therefore a writer can infringe copyright in a work without knowing that their actions are an infringement. It is even possible to infringe the copyright in a work without having seen the work, for example if the writer has been given information from the original or seen a recreation of the original. Copyright owners may be entitled to recover any profits made by infringing parties from copying their works, or an injunction to prevent further infringement.

An obvious way to avoid infringing the copyright in an existing work is not to copy it at all, though in the spirit of 'harnessing collective intelligence' cross-referral and mutual recognition is common. Bloggers should therefore be careful about how much they copy from an existing original work. Even if a small substantial part is copied, they should either obtain consent from the copyright owner first or for a fair dealing work of journalistic blogging, they should ensure that they include appropriate acknowledgements. A reference to the existing work will not be a defense to copyright infringement in itself, though it may go some way to pacifying the original author, it may avoid a breach of any moral rights and it may help to establish a 'fair dealing' defense. They should also check the terms of use of any website they wish to take material which may give readers a specific right to reproduce the website contents, subject to certain restrictions. Users of the social web should also be aware of the terms of use of their service providers, including both internet service providers and social website operators. Service providers are likely to require a warranty that any material contributed will not infringe third-party rights; breach may result in suspension or termination of access to the service, and in some cases indemnities for any costs suffered by the service provider if they were sued by the copyright author/owner. There are only a limited number of defenses to copyright infringement, based on the concept of 'fair dealing'. These include fair dealing for the purposes of criticism or review, which might apply to bloggers reviewing new movies and music, and fair dealing for the purpose of news reporting, which might apply in the context of blogging journalists. It is not yet clear how far the fair dealing for news reporting defense will be stretched now that every blogger might claim to be an amateur journalist. To qualify for one of the fair dealing defenses an author's work must also contain a sufficient acknowledgement i.e. generally the author copying the relevant section must acknowledge the author by name. There is no statutory guidance about when dealing is 'fair', but law has considered factors such as whether the alleged infringing use competes commercially with the copyright owner's exploitation of their work, whether the copyright work has already been published or made available to the public and the amount and importance of the part of the work copied.

There are several steps that can be taken to limit the consequences of users posting or creating material on your website or social network that infringes copyright:

- As part of a binding agreement with your users, ensure that one of the terms or conditions states that they will not infringe copyright and that they will indemnify you for any infringing behavior.
- It's a good idea to get an IPR lawyer to draft the terms and conditions and to advise on how to make sure these are contractually binding.
- Users can be educated by reminding them in simple language not to post material without the relevant copyright owner's consent.
- Make it clear to users that you retain the right to remove material that you consider may infringe copyright.

- Monitor your site for potentially infringing material, have a moderating process, so that someone has to scrutinize and approve content contributed by users before it goes "live" on your site. You can then remove potentially infringing material before it becomes a problem.
- Put a clear statement on your website, blog, social network or other online service that sets out how people who want to complain about potential infringements of their copyright can contact you.
- Respond quickly to claims that any content posted on your site infringes copyright by removing the material.

Following the above can likely reduce the chances of infringement occurrence and greatly diminish the financial and legal consequences of infringements.

V. COMPLYING WITH THE TERMS AND CONDITIONS OF SOCIAL MEDIA

Social networking websites generally have terms and conditions in place that govern the use of the sites. Some sites' terms and conditions contain provisions specifically regulating advertising and other commercial practices conducted on the site, including consumer sweepstakes, contests, and giveaways. LinkedIn, for example, prohibits users from disseminating any unsolicited or unauthorized advertising or promotional materials. Twitter prohibits the use of the site to disseminate mass unsolicited messages ("spamming"). According to Twitter's rules, what constitutes "spamming" will evolve as the site responds to new tactics used by spammers. Twitter's rules list several factors that the site considers in determining what conduct constitutes spamming, including whether a Twitter user has followed a large number of users in a short amount of time; whether a user's Twitter updates consist mainly of links and not personal updates; and whether a user posts misleading links. Facebook has rules in place (discussed in detail below), which were substantially revised and updated last Fall, that specifically govern the administration and advertisement of promotions on the site. In addition to complying with the provisions of a social networking site that are directly applicable to advertisers, when designing promotional activities, marketers should *also* take into account any rules that restrict *users'* involvement in advertising and other commercial activities on the site. A marketing campaign that leads consumers to violate a social networking site's terms and conditions could expose the marketer to liability, damage the marketer's standing among consumers, and lead the site to bar the marketer from conducting future marketing campaigns through the site. Social networking sites frequently impose various other rules that restrict how a marketer can use their sites. For example, Facebook, YouTube and Twitter prohibit the uploading or posting of content that infringes a third party's rights, including intellectual property, privacy and publicity rights.

Implementing Your Own Terms and Conditions
If a marketer creates and/or administers its own social media platform, such as a blog or podcast, it should have in place terms and conditions governing use of the platform and should make the terms and conditions readily available to potential users. By providing guidelines governing the use of the site, carefully crafted terms and conditions can prevent both company employees and third parties from using the social media platform in an unlawful manner. To some extent, such terms and conditions may also shelter companies from liability for the actions of third parties and employees. Comprehensive terms and conditions should reflect a good faith, reasonable effort to control and police third-party and employee conduct with respect to the platform. Such efforts are often taken into consideration by courts and regulators in determining a marketer's level of responsibility for the conduct of third parties and employees. A site's terms and conditions should prohibit unlawful use of the platform, and ideally should specify particular types of unlawful conduct in addition to a broadly prohibiting illegal activity. For example, the rules should bar use of the site in a manner that is defamatory, libelous, or infringing upon the company's or a third party's intellectual property rights or right of privacy/publicity. The terms and conditions should also expressly state that the company is not responsible for content published through the platform by third parties.

User-Generated Content
Oftentimes marketing campaigns involving social networking sites or other social media incorporate user-generated content into the campaigns. Whether it's a video or photo shared on a site, or messages that site users disseminate to members of network, user generated content holds much promise as a marketing tool. Consumers who create content in connection with a marketing campaign may develop a strong connection with the promoted brand, and audiences are often drawn to the authenticity of the content and the notion that an everyday Joe may perhaps obtain some degree of fame through low-budget, amateur productions that he or she created. In addition, user-generated content comes with a relatively high degree of credibility in the eyes of consumers, particularly if the content was created by someone the consumer knows (for example, a "Tweet" between friends). Soliciting user-generated content in connection with a marketing campaign comes with some risk of incurring legal liability for content created by an individual participating in the campaign. Incorporating user-generated content in a marketing campaign could expose the sponsor to liability for libel, copyright infringement, and violation of one's right of privacy/publicity, deceptive advertising, trademark infringement, or other violations. The law affords social networking sites and marketers some limited shelter from liability stemming from user-generated content used for limited purposes, but gives marketers minimal protection for user generated content when it is republished in connection with a promotion or other marketing campaign. Marketers can, however, take certain steps to minimize legal risks associated with campaigns that involve the dissemination of user-generated content through social media. When conducting marketing campaigns in which participants can publish content that they created through a social media space, whether the space is administered by the marketer or a third-party, marketers should regularly

monitor published content and remove or request removal of any postings that violate the marketer's rules or the third-party's rules, or otherwise pose a legal risk. Alternatively, or pending removal of the content, marketers can post a statement disclaiming any association with the content or the content creator, and perhaps also express disapproval of the content. When practicable, marketers should screen user generated content before it is disseminated. If, in screening content, a marketer identifies any legal issues, it should promptly take appropriate steps to address each issue. Marketers should also have in place clear and easily accessible terms and conditions governing the marketing campaign, and those rules should include specific provisions addressing user-generated content. Marketers should also adopt disclaimers stating that the company had no hand in producing the user-generated content used or published in connection with the marketing campaign and, where appropriate, stating that the content does not reflect the opinions of the marketer. To provide protection from intellectual property infringement claims by creators of user-generated content used by a marketer, the marketer should obtain the consent of participating consumers to use such content and the terms and conditions for the campaign should grant the marketer the specific right to use the content without compensating the consumer. Companies can also require that participants execute a release agreement allowing the marketer to use the participant's content. To protect against infringement claims by third parties, companies should consider either: (a) prohibiting the use of third party content altogether; (b) restricting the use of third-party content to only content that is in the public domain; or (c) permitting the use of third-party content only when the participant has provided written releases from each third party permitting the use of such content. Marketers can also find creative ways to reduce legal risks while facilitating the screening process by limiting the content that consumers can create in connection with marketing campaign – for example, by providing consumers with a selection of content that they can choose from that the marketer has previously cleared.

VI. MONITORING AND SCREENING SOCIAL MEDIA CONTENT

When conducting marketing campaigns in which participants can post content that they created to a social networking site, marketers should regularly monitor the postings and remove or request removal of any postings that violate the marketer's rules or the site's rules, or otherwise pose a legal risk. Alternatively, pending removal of any content, marketers can post a statement disclaiming any association with the content or the content creator, and perhaps expressing disapproval of the content. When practicable, marketers should screen user-generated content before it is disseminated. If, in screening content, a marketer identifies any legal issues, it should promptly take appropriate steps to address each issue. There are companies that provide Internet monitoring and screening services, including companies that provide services focusing on social networking sites. Some of these services allow a marketer to provide certain terms (*e.g.*, company name) that it wants the service to search for on a regular basis, and the service will provide the search results. This allows companies to monitor their social media marketing campaigns and any content that is published regarding the company, thereby protecting its brand and limiting its liability exposure.

Sweepstakes, Contests, and Other Promotions
As with any marketing campaign, conducting a promotion through social media can be an effective means of reaching a broad audience and capturing the attention of consumers through fresh, appealing, and interactive marketing formats. Like social media itself, promotions are by their very nature interactive and can thus be seamlessly integrated with social media outlets in a manner that heightens consumer interest in a marketer's brand. Promotions involving prizes incentivize consumer conduct in a manner that increases exposure to the promoters brand and, as such, are self-promoting -consumers are more likely to inform people they know about a promotion if prizes are offered. Social networking sites and other social media allow consumers to spread the word about a promotion quickly and with ease. Thus, promotions are an optimal means of exploiting the viral nature of social media.

Privacy and Data Security Issues Concerning the Use of Social Media
Using social media to promote one's brand, products, or services can also implicate privacy and data security issues. It is important for companies to be aware of these issues and take appropriate measures to minimize their exposure to liability related to personal data collection, use, and maintenance. Social media companies like Facebook and Twitter generally have their own privacy policies that govern their use of consumer data and third-party conduct on the social media platform with respect to personal data. Marketers utilizing third-party social media outlets should ensure that their marketing campaigns do not encourage consumers or any other parties to engage practices that would violate the social media company's privacy policy, and marketers should also ensure that they are abiding by the policies as well. Companies that administer their own blogs and/or other social media platforms should also maintain comprehensive policies that disclose the company's data collection, use, and storage practices, and any responsibilities that third parties have as regards privacy and data security. Operators of social media platforms must fulfill the promises they make in their privacy policies and elsewhere with respect to data security and privacy, and they must maintain reasonable personal data protection procedures.

Retaining Records Related to use of Social Media
Companies using social media should retain records related to such use for a reasonable period of time in the event the records are needed in connection with a regulatory investigation or other legal proceeding. Information and communications conveyed through social media channels may become relevant to a legal or self-regulatory proceeding, and may ultimately be the subject of a subpoena or other compulsory process. Indeed, the legal action may not directly involve a company that has custody of relevant social media exchanges or information, but a regulatory, court, or other authority may nevertheless compel the company to

produce the materials. Further, records related to a company's use of social media may also ultimately prove useful in supporting a company's position in a legal proceeding or in connection with a threatened proceeding. Recent case law has imposed harsh penalties for spoliation of electronic records evidence and raised the bar for maintenance and production of electronic files such as databases, emails, and even personal data assistants in anticipation of and during litigation. Accordingly, it is important to implement sound records retention policies and procedures with respect to social media projects. Companies should consult with counsel for assistance in designing a sound policy that takes into account business requirements, current case law and relevant statutes of limitation. Social networking sites can be effective platforms for advertising and marketing endeavors. Increasingly, marketers are using such sites as a vehicle to spread the word about a product or service through advertisements, promotions and other means. But marketing campaigns utilizing social networking sites unavoidably involve various third parties –including consumers, the social media outlets, marketing affiliates and potentially other third parties. Marketers must be aware of the legal issues raised by the involvement of these parties. In particular, campaigns that leave certain components of the campaign in the hands of the sites and/or users – as when users are encouraged to disseminate their own announcements regarding the marketing campaign through a social media outlet – can carry liability risks for marketers. By structuring campaigns properly and taking other steps to minimize legal risks, marketers can cash in on the marketing opportunities that social networking sites and other social media present without leaving themselves vulnerable

VII. CONCLUSION:

Social media is new and uncertain territory for many of us, but one thing that is certain is that social media involves communicating and/or sharing a variety of content in a variety of formats and forums. With the rapid growth of social media, more and more libraries and organizations are developing guidelines and policies that tell users how to conduct themselves when using Facebook, YouTube, Twitter, blogs, wikis, virtual worlds, and other channels. Preventative measures should be taken to avoid or limit unauthorized use of new trademarks. Such preventative measures should be built into corporate workflow processes for selecting, approving and rolling-out new brands. For example, standard operating procedures should include not only clearance and federal registration for new trademarks, but also registration of domain names corresponding to new/proposed trademarks (including exact matches and variants), registration of new trademarks as usernames/vanity URLs with selected social networking websites, and establishment of brand-specific social media groups and dedicated social media pages. As the use of social media continues to increase, it is critical for trademark owners to be vigilant in monitoring use of their trademarks in social media. Such monitoring should be focused on social media web sites that are most relevant to the trademark owner's customer base.

The considerations discussed above are summarized as below:
For New Brands we need to:
- Perform clearance studies to confirm availability of new/proposed trademarks for use / registration
- Register domain names corresponding to new/proposed marks
- Reserve vanity URLs, usernames and groups names corresponding to new/proposed marks with social networking websites
- Establish dedicated web/social networking pages corresponding to new/proposed marks
- Register cleared marks

For Existing Brands, we need to:
- Identify highly relevant social networking websites for monitoring
- Monitor relevant social networking websites for use of owned trademarks
- In the event of unauthorized use:
    a. Consider nature and commercial impact of the use
    b. Consider sending a cease and desist letter
    c. Consider lodging a complaint with the social networking website
    d. Consider collaborating with the unauthorized user

Various tools exist for quickly determining the extent of use of a trademark on most social networking/social media websites. Trademark owners and managers should consult with trademark counsel having social media expertise to identify areas for likely trademark abuse, and to prioritize marks for additional protection measures in the social media context.

In social media, Copyright related issues that you may want to consider for your own policy are:
- Determining ownership of content
- Understanding fair-use and its application
- Obtaining permission to use copyright protected content

Determining ownership of content: Determining ownership of content may take some investigation, time and creativity. If you are lucky, the copyright owner's name will be clearly marked on the content. In many cases, however, you will need to contact a publisher or Website owner or initiate some online searches to determine who owns the content. Websites often post content

owned by others and may not be able to provide you with permission, but they can sometimes guide you to the correct copyright owner.

Obtaining permission to use copyright-protected content. Always assume that the content you wish to use is protected by copyright, even if that content is found through a search engine or does not contain the copyright symbol ©. Unless you have reason to believe otherwise, you should obtain permission before you use the content. Doing your best to obtain permission without successfully obtaining it does not permit you to use the content. Hence it is important to ask and understand the following important questions in this context: is the content copyright protected? Are you following copyright compliance in using the content? Does it have fair-use application?

These questions are pertinent regardless of whether the content you are using consists of text, music or images. Images from stock agencies can be a wonderful way to enhance a blog or other social media, and stock agencies generally have plain-language licenses stipulating how licensed images may be used. The use of images in social media is generally allowed, but always check the specific license terms of the stock agency with which you are working. This same approach applies to the use of music in social media.

The organization's treatment of copyright in its social media policy or guidelines may take no more than a sentence or paragraph or run several pages. Know your audience and the level of information they can absorb and the guidelines they can and will follow. Once you have put your social media policy or guidelines in writing, your job has only just begun. Next, you need to educate your organization about copyright and make sure everyone is aware of, and familiar with, the guidelines or policy. You may also need to amend them every year or two, as both the law and social media can change rapidly. Thus originality can be maintained, ownership of original content can be protected and infringements can be curbed by understanding and abiding by the terms of Intellectual Property Rights in the Social Media space.

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