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10/18/2015

Assignment 2

Part 1

Early last week, Twitter suspended two accounts - SB Nation and Deadspin - for using sports .gifs to comment on newsworthy events. Apparently it is a fairly common thing that a wide variety of publications rely on fair use to distribute news in this way. This decision by Twitter was sparked by several large sports companies - the NFL, the Big 12 and Southeastern sports conferences, and the UFC - contacting the social media website about the content. Only the UFC is mentioned as having requested that SB Nation and Deadspin's accounts be suspended. The two accounts have since been restored, but implications as to social media's impact on fair use are now put into question. Previously, the belief was that because the widespread usage of the .gif format without regulation was essentially permission to use them as they please. After all, publishers can't directly benefit monetarily from .gif usage, and the leagues and companies never made even one comment about the practice. No litigation has been pursued yet, but it wouldn't be surprising if at least one company follows through. The UFC, and their parent company, Zuffa, have a history of following through with a wide variety of copyright cases (and also winning them), and seeing as how they were the primary instigator behind this move by Twitter, it would not be terribly surprising if they filed a case. The UFC has made their position clear - they claim to make usage guidelines readily available for those parties that wish to use their content, but also make it part of their standard operating procedure to issue takedown requests.

While the offended companies may make the claim that third party publishers can in fact make money off of their .gifs (by using them to increase site traffic), to me it seems no different than normal news stations using a clip to talk about the same instance. The nature of the .gif is such that even though it is a moving image, the information it provides is contained and succinct. Even the case we studied where the whole of the circus act was broadcast in its entirety on the evening news went far beyond anything that these online publishers seem to have violated. Of course, the other side to this argument concerns the implications if SB Nation and Deadspin's .gif usage falls under fair use: because the internet is so vast, where is the line to this rule, and how many people could potentially lose out on income all over the world if this is decided? Furthermore, Nellie Drew, a law adjunct professor at the University at Buffalo Law School, believes that technology has outpaced that of fair use law, and while it is known that news sources can use clips fairly safely under the umbrella of full use, it is also assumed that these news sources provide a story to go with them. On twitter, one hundred and forty characters can hardly constitute as a news story, and so it can be imagined that there would be some grey area in regards to using .gifs on that particular social media website. In this way, does the .gif serve as marketing for the website through their twitter account? While they may have used it in a transformative way in their news article, that content isn't available on Twitter. Where - speaking

of physical proximity - does the fair use permission end? While it might be good practice to ask for permission first, news on the internet today simply doesn't allow for that type of timeline, and as time goes on, that courtesy will become more and more a pipe dream.

This is truly a tricky situation - on one hand, if no regulation is provided soon, potentially millions of people's work could be used in similar ways. But if too much regulation is applied, some websites may no longer be able to legally function - either way, it seems like there will be some sort of potential market impact if a court rules in on this situation. Indeed, if Twitter becomes more militant with their enforcement of this type of policy, what ramifications does that hold for their own website? Will their own business drop off as people become afraid of how their posts become interpreted? There is very little legislation within regards to how copyright works on the internet - more grey area is present than with that of traditional mediums. Obviously there are issues to be solved, but the ramifications will have strong, rippling effects as to how it effects the inner workings of how people use not only social media, but to an extent, the internet at large.

Part 2

I think a film archive's usage of a film may qualify for fair use if their museum or library's (assuming they are an archive for an access institution) usage of the film is used to comment on another topic. For example, if a museum has an exhibit about Hitchcock and plays his films as a part of the exhibit, these films are then being used in a transformative way to comment on the director, rather than being used as whatever the film's original intent was. While some Hitchcock films fall into the public domain, his entire filmography does not, and the copyrights aren't even all held by the same account. The sway of any potential trial may very well depend on how much of the film they use - less is definitely more advantageous in this case. To air the entire film might toe the line, but to use clips, or a mashup would put it more firmly under the umbrella of fair use. As our reading suggested, if there was active curatorial comments being made - in person or by some other real time medium while the films play - the institution's fair use claim would be strengthened. Furthermore, if the institution doesn't readily market or advertise that these films are playing, the market effect will be significantly diminished, as it is apparent that the films are not being solely used as a attendance generator for the institution.