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Copyright, Legal Issues, and Policy - 1804
Assignment 3: Copyright Reform
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Copyright Reform: User Agreements for Social Media Websites

There are many areas of concern for copyright law as the world enters a new phase in intellectual property brought on by the digital age. One of the many challenges facing the Copyright Office and our judiciary system is: how do the laws from the past apply to today? For instance, social media websites have proliferated in huge amounts due to the popularity of the internet, and users of these websites are thrust into user agreements without fully understanding their rights. There should be copyright reform that increases protection for users and the content they provide to these websites.

The current user agreement dynamic strongly favors these few large companies and limits the ability of the many creators (i.e., users of the social media websites), as the Constitution puts it, to exercise “the exclusive Right to their respective Writings and Discoveries.” When people sign up for accounts on social media websites, they are typically required to sign a user agreement, which includes terms and conditions of the use of the website, as well as a license agreement. They have no choice in the matter. For example, Facebook’s agreement grants them “A non-exclusive, transferable, sub-license, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License).”¹ This essentially gives Facebook free reign to do whatever they want with the content that the users post or create, whether they be images, videos or the text written by users. Even further, this content is automatically governed under this agreement, and they never have exclusive rights to the work because they are already in a non-exclusive agreement.

There are several problems with this current system. First, users typically do not fully understand these agreements nor do they even read the agreements.² Another caveat to this problem is that users are only simply required to click a box to indicate that they have read and understand the agreement. These agreements are even confusing to the employees of the websites. In one instance, a Facebook representative claimed that Facebook actually did own the rights of the posted materials.³ These broad and often confusing agreements provide a clear advantage to the company, allowing them to take economical advantage of its users and their content. For example, Facebook recently purchased the social media texting app WhatsApp and instituted new privacy policies allowing them to “share data, including your phone number, with

¹ “Statement of Rights and Responsibilities,” *Facebook.com*, accessed November 30, 2016, <https://www.facebook.com/legal/terms>.

² Rebecca Smithers and consumer affairs correspondent, “Terms and Conditions: Not Reading the Small Print Can Mean Big Problems,” *The Guardian*, May 11, 2011, sec. Money, <https://www.theguardian.com/money/2011/may/11/terms-conditions-small-print-big-problems>.

³ Jonathan Bailey, “Does Facebook Really Own Your Photos?,” *Plagiarism Today*, May 13, 2015, <https://www.plagiarismtoday.com/2015/05/13/does-facebook-really-own-your-photos/>.

Facebook, letting it better target adverts and improve friend suggestions.”⁴ While there is an advantage for users in that they get more diversified friend suggestions, this converts users’ “likes,” photo posts, and basically any intellectual property into cash for Facebook.

There are a couple of ways to solve this problem. Copyright law could be modified to require user agreements to be in more understandable language, or there could be requirements for users to view the page on which the user agreement is written or to require users to scroll down the page to ensure that they have read the agreements. There was even a case in the United Kingdom in which a copy recorded a video of a famous comedian explaining the agreements,⁵ which could be a useful solution to get users to actually view or, rather, listen to the terms of the agreement. A reform of this nature could provide users more opportunity to read the agreements, but also better opportunities to understand the agreements. Another possible revision could be to require aspects of the user agreements to be negotiable or allow users to opt in or out of certain sections. There could also be a tutorial type process that users would be required to complete before they have full access to sites. Finally, the most controversial option would for these social media websites to provide royalties for the content that the website uses for advertising.

Certainly, the social media companies would push back on these reforms. Any reform that would take users longer to sign up for their services could potentially dissuade them from using the sites. There of course is the cost factor too. For example, having multiple variations of user agreements could be cumbersome, and the cost and the complications that could stem from having to cull through different version of licenses could be debilitating, even for a company as large and well-funded as Facebook, for example. Furthermore, paying celebrities to participate in videos or having software engineers develop tutorials would incur their own costs. The risk of reform in the area could potentially dissuade new start-ups and could potentially have the opposite affect by not encouraging creativity.

Currently, people sign up for new social media websites on a daily basis and constantly sign user agreements without even reading, let alone, understanding the agreements to which they are bound. Under this reform, users would be better protected from larger corporations who do not have the same interests at stake as their users. These large corporations are making money off their users’ creativity and ultimately this reform would help protect any copyrightable material of users.

⁴ James Titcomb, “WhatsApp Is Now Sharing Your Phone Number with Facebook - Here’s How to Stop It,” *The Telegraph*, 12:22, sec. 2016, <http://www.telegraph.co.uk/technology/2016/08/25/whatsapps-new-privacy-policy-lets-it-share-your-phone-number-wit/>.

⁵ Rebecca Smithers and consumer affairs correspondent, “Terms and Conditions: Not Reading the Small Print Can Mean Big Problems,” *The Guardian*, May 11, 2011, sec. Money, <https://www.theguardian.com/money/2011/may/11/terms-conditions-small-print-big-problems>.