
Social Media Law Blog

Highlighting Legal Issues Regarding Social Media

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Companies Using Pinterest, Be Careful Not to Get Pricked

By Rachel Tarko Hudson on April 26, 2012

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Pinterest has seen its number of daily visitors increase by 145 percent since the beginning of 2012, now counting 11 million users on its site, according to recent reports. It is a powerful social media tool by any standard, however, in recent months, with its meteoric rise, concerns have also surfaced about potential copyright issues. Needless to say, companies are clamoring to gain access to this vast and ever increasing pool of users, but they should (and can) proceed with caution in order to stay on the right side of the copyright issues.

What is Pinterest?

If you are not among the 11 million users, Pinterest is a site that allows users to “pin” content of their own and from around the internet on an attractive display that looks much like a corkboard you would have at home or in your office. In this format, users can then follow other users’ “pinboards” and re-pin items they see on Pinterest on their own pinboards. Pinterest is linked through an app to Facebook and Twitter and provides a “Pin It” button for web browser tool bars and for websites allowing users to easily pin things to their pinboards as they see them. There is of course also a mobile phone app.

So What is the Problem?

Pinterest is set up to encourage users to pin content they find on the internet on their pinboards, but these users may not always have the right to post these images on Pinterest. It is still unclear what rights are necessary to be able to pin content on Pinterest. The pins usually involve posting entire images, so if users do not own or have a license to the image, they may not have the right to pin it. Some, however, have argued that the images are more like thumbnails with links and thus that it is potentially a fair use. In any event, the Terms of Use for Pinterest’s site place responsibility for content posted by users with the user. Thus, a user represents and warrants that she has the right to pin the item and to grant the right to others to re-pin it and agrees to indemnify Pinterest from liability for infringement.

This policy creates several issues. First, it places the burden for any infringing activity on users. Second, it may not protect Pinterest in the first place. Pinterest could still be the subject of claims for contributory copyright infringement for its actions (encouraging or aiding infringement through the site) and inactions (not taking more affirmative steps to prevent infringement). Finally, re-pinner may also be at risk if they re-pin infringing content when it is highly unlikely that the original user who pinned the item had permission to do so.

Pinterest's Response

Pinterest has taken several steps to address concerns over copyright issues on its site. Pinterest has a Digital Millennium Copyright Act (DMCA) Policy in effect. The DMCA provides a safe harbor for organizations like Pinterest that potentially protects them from liability for infringement. The safe harbor applies when the site provides a mechanism for copyright holders to report alleged infringement to the site and then the site promptly removes the allegedly infringing content. Pinterest also offers a "no pin" code. Copyright holders can add the code to their content so that it cannot then be pinned on Pinterest, a so called opt out.

Recently, Pinterest has said that it (and its lawyers) feel that the site is protected by the DMCA. The company contends that its activities fall squarely under the safe harbor of the DMCA and that they are committed to responding efficiently to all reports of copyright infringement.

Pinterest also revised its terms of service on April 6, 2012, in addition to making other changes to its legal policies and other disclosures. The license grant from users to Pinterest no longer gives Pinterest the right to sell the pinned content. This change should alleviate some of the copyright concern. The license grant from users, however, is still fairly broad, although limited to the Pinterest site. Pinterest also made changes to make it easier for copyright holders to report copyright violations to Pinterest. Finally, Pinterest changed the Pin Etiquette rule encouraging pinners to avoid self promotion to now only encourage them to be authentic. This change comes in response to critiques that by telling pinners to avoid self promotion, Pinterest was encouraging them to post other people's content, possibly in violation of copyright laws.

Does That Settle the Issue?

Not really. If the DMCA protects anyone, it is Pinterest and not its users. The DMCA does not provide any protection against liability to users for copyright infringement and if a user frequently posts material that is the subject of complaints of infringement, the user can have her account disabled. But the DMCA may not even protect Pinterest. To come under the DMCA safe harbor, you cannot have actual knowledge of infringement on your site. It is unclear how the general knowledge standard would apply in the case of Pinterest.

The opt out code is helpful to users as it protects them (and Pinterest) from the copyright holders who are most concerned about their content being posted on Pinterest. It also protects people and businesses who do not want their content to be pinned on Pinterest. Simply not posting content with the opt out code may not be enough, however, to protect either Pinterest or users just because they post content that does not include the code. The DMCA policy also helps copyright holders who want to prevent unauthorized use of their content on Pinterest. If you find unauthorized pins of your content on Pinterest, you can notify Pinterest through the process posted in their legal section in order to have that content removed.

The "Pin It" button appearing on a website is likely the most promising development. If a copyright holder places a "Pin It" icon with her content, it may act as an implied license to pin that content on Pinterest.

The changes to the terms of service and other disclosure language will help alleviate some of the concern

about copyright issues by making it easier to address copyright infringement, relieving concern about what Pinterest will do with images, and by removing some of the social pressure to pin other people's content. However, these changes are likely only a step in the right direction and not a panacea.

What Now?

The risks do not mean users cannot use Pinterest without violating copyright laws. So long as you own the rights to your content, you can pin it and others can re-pin it. When users pin content, they grant others the right to re-pin it on Pinterest. If you re-pin content that it is reasonable to believe was pinned by someone who can grant you the rights they are granting, then you are likely protected from infringement. For example if I post photographs that I take of a room in my home or a company posts images of its products, it is reasonable to rely upon the license I and that company are granting you to re-pin the image using the functionality of the Pinterest service. If I, on the other hand, pin one of Annie Leibowitz's photographs of Miley Cyrus on Pinterest, it is unlikely I had permission to do so, and thus it might be unreasonable for other users to rely on my license to re-pin that image. As noted above, a relatively safe practice is to Pin content that contains the Pin It button. Users on Pinterest should also be aware of the rights to their own content that they are giving away when they post on Pinterest. You are granting to other users the right to re-pin the item on Pinterest and thus are giving up some control over that content.

Users, businesses included, who use Pinterest carefully should be able to navigate the waters successfully and open their products, services, creations, and inspirations up to the rapidly growing base of Pinner. Like any new online service there is some uncertainty and some risk, but by exercising care, much can be mitigated.