SOCIAL MEDIA AND THE ART OF INTELLECTUAL PROPERTY THEFT

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ABSTRACT: This essay looks at the way intellectual property is treated on the Internet, specifically on social media in terms of sharing work not created or owned by the person sharing it. The article overviews both business and artistic interests inherent in the spread of copyrighted material online before moving to the historic antecedents of such actions, most notably – illegal music records. Another important issue considered in the article is the use of copyrighted material for self-expression, particularly in the form of memes. Through the use of both contemporary and historical examples, the author explores the challenges and benefits of such use.

KEYWORDS: Intellectual Property, Selfie, Social Media, Fair use.
Social media is the collective of online communications channels dedicated to community-based input, interaction, content-sharing and collaboration (Rouse, 2013). In other words, as society moves swiftly into the twenty-first century, being online has become an integral part of life. There are numerous ways to interact with websites, from static comment fields to interactive messaging systems on platforms such as Facebook or Twitter. In terms of business usage, social media can function in multiple ways as well, from the marketing of new products to connecting with established customers or creating opportunities for new business connections (Rouse, 2013).

However, as the remaining parts of the above definition are being discussed, specifically in the ideas of “content sharing” and “collaboration,” where conflict occurs and a problem is encountered which, even though it has been in existence for centuries, has never reached the problem of proliferation seen with the advent of digital duplication and distribution made easier through the auspices of social media. The problem inherent is the theft of intellectual property (IP), which of course must lead to discussions of not only what is theft, but, exactly, is meant by “intellectual property.”

According to the World Intellectual Property Organization (WIPO), “intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce” (WIPO). In effect, when something (be it tangible or intangible) is created, said creator owns the product and therefore control the rights to the usage of that product. Where the problems begin to occur is in ease with which digital files can be copied across social media, let alone the proliferation of pirate sites such as ThePirateBay.org and KickAssTorrents among many others. In the past, if one wanted to create a duplicate of a piece of intellectual property, a famous piece of art for example, and then sell that replica, the barrier to entry was quite high. There was a skillset necessary to recreate the IP which may have taken a number of years of training or the procurement of specialized tools and instruments. To this day, debates rage over the provenance of artworks ascribed to historically significant artists where two nearly identical pieces hang in two reputable museums, each claiming the original as their own (Berger, 1972).

In the digital age, though, this is not a hindrance. A perfect copy can be created at the touch of a button and then disseminated instantly to any number of recipients. The question then becomes one of intent and ownership, the contention being that a large number of cases of what could legally be considered theft of intellectual property is, in fact, a misapprehension that the spreading of
said intellectual property is actually theft. Part of this confusion arises from the “content sharing” which, as noted, is part of the definition itself of social media. The viewer sees a picture or other piece of intellectual property and shares it with their social media circle, thereby widening the reach of the piece, but at the same time, possibly committing a crime.

On March 2, 2014, Twitter, the Internet site devoted to sending out 140 character “tweets” was overwhelmed by views and retweets (the name given to the process by which anyone can retransmit a tweet of someone else whose profile is open to the general public (Twitter.com, 2017)) of a picture sent out by Ellen DeGeneres who was host of the 2014 broadcast of the Academy Awards. During the show, DeGeneres took a “selfie,” a picture of herself and several other celebrities in attendance at the telecast. The picture which featured such Hollywood heavy weights as Angelina Jolie and Brad Pitt, Meryl Streep, Julia Roberts, Jennifer Lawrence and Lupita Nyong’o was taken at arm’s length (meeting the Oxford living dictionary’s (2017) informal definition of selfie as “A photograph that one has taken of oneself, typically one taken with a smartphone or webcam and shared via social media) by Bradley Cooper, who was also featured in the group photo, which has probably become one of the most famous selfies in the world.

The reason for its inclusion here is two-fold. The first is that the retweets themselves (which were asked for by DeGeneres in an attempt to garner the most “retweets” ever – which she did, besting the then current record by several factors) show the ease with which a piece of intellectual property can spread. The second, though, is more worrisome. When the Associated Press news service contacted DeGeneres’ staff to secure permission to use the photo in an accompanying article (the proper way to secure rights), it was granted. The issue lies in the fact that at first glance, DeGeneres may not have owned the photo nor the right to grant permission for its use. That right quite possibly belonged to Bradley Cooper as the person who actually pushed the shutter button (Bump, 2014).

So did the users of Twitter and other social media instantly become complicit in a crime when sharing the Academy Award selfie? If so, then what is the justification for the creation and dissemination of so-called memes on social media? The two definitions of meme offered by the Oxford Dictionary (2017) are that it is both “an element of a culture or system of behavior passed from one individual to another by imitation or other non-genetic means,” as well as “an image, video, piece of text, etc., typically humorous in nature, that is copied and spread rapidly by Internet users, often with slight variations” suggest that
sharing is, by definition, what creates the meme and how behavioral information passes through a cultural system. Here, the progenitor of the meme makes a change in the original piece of art, whether subtle or overt, to have it reflect their own biases and opinions before passing it along for others to read, enjoy and possibly make their own changes before, once again, passing it along. There are now websites devoted to meme creation where images which have garnered status are coupled with text generators giving anyone with anything to say the means and outlet to do so. Have, then, the original creators of the intellectual property on which the meme is based relinquished their rights or is it simply a matter of theft in the guise of artistic freedom?

By reframing the argument as a commerce versus art, though, things begin to get considerably more blurry and more complicated. Those stark terms of “art” and “commerce” strip emotion from the context. As commerce goes, the example of a filmmaker revisiting a hit, or even a timely piece of fluff, from the past serves as a way to draw a crowd from among the same people who feel “a warm pang of nostalgia while looking at Instagram (another outlet for social media) pictures of last week’s dinner” (Greenspon, 2015). At the same time, though, it could be argued that this is a way for filmmakers to put their own artistic stamp on something they perhaps loved from their youth, marking their own foray into that realm of nostalgia.

Creative people love to play the game of “what if” – to propagate their own artistic sensibilities on the stories which should be told. Creators want to make it their own. This is nothing new, actors do it all the time on the stage. Shakespeare stopped writing in 1616 and even then only had 30 something plays. Yet they are constantly being restaged. Romeo and Juliet or Hamlet or Prospero are constantly being put through their paces, reimagined through the particular creative lenses of contemporary actors or directors or designers.

Musicians do the same thing. Recording the music of an admired colleague or “covering” a tune beloved from the past is a way to show deference and respect. In the 50s, it was common for a songwriter to release a tune and have several competing versions on the radio at the same time. Even today there are tribute albums released and even big names like David Bowie who, for the first several years of his career, almost always included at least one cover version on each of his albums. There are entire musical careers predicated on remaking someone else’s songs, but no one ever complains about that. When done by professionals, rights are sought out and original creators compensated though. On YouTube, the social media video sharing site, anyone can record their version of a song
and release it for the world to hear without paying the original creators or even asking for their permission. Marcel Duchamp put a mustache on the Mona Lisa, renamed it L.H.O.O.Q., and it is considered fine art (Greenspon, 2015).

Ultimately, any approach to intellectual property and its usage on social media has to ask two questions: who owns the intellectual property and what rights do social media users have in reference to the fair usage of said property? What rights does buying a book, for example, transfer to the buyer? Well, in simple terms, the purchaser is acquiring the right to read the book in the format in which it was purchased, i.e. the physical form itself – the book. But this is why when the hardcover is purchased, the purchaser doesn’t immediately receive the paperback, digital and audio versions upon their release, or tickets to the film made from the book. And one certainly does not get the right to distribute the book in a social media forum.

What about music? This gets even more complicated and the technology which has been referenced here several times is ultimately to blame. Dating from the time of the invention of the home cassette recorder, one could sit and wait for the radio to play a favorite song and then record it right off the airwaves. Then, getting a little older, a component system with a tape deck was purchased to create what Library of America Editor-in-Chief Geoffrey O’Brien once called “the most widely practiced American art form” – the mix tape (Rosen, 2004). This was a soul-baring love letter and personal artistic statement all rolled into one, and a good one could take hours to make (Greenspon, Who Owns This, 2013). Because the quality of the recording was diminished (like a bad photocopy) and the creators were not selling or mass producing them, they passed below notice. Make no mistake, they were still illegal. The Recording Industry Association of America (RIAA) (granted, a financially concerned party) is on record in the New York Times as saying “money did not have to be involved for copying to be illegal” (Gallagher, 2003).

Then the world went digital. Now, a mix CD can be created in a matter of minutes and the quality is exactly the same as the source material and the RIAA took notice. No, someone creating a mix CD may never get caught, but if caught, the fines can be quite intimidating. The argument on the side of having the RIAA continue to turn a blind eye is that this “grass roots” distribution introduces people to bands and artists they may never have heard of and, ultimately, will encourage them to go and buy the music for themselves. To be clear, an initial CD burned from original purchased music intended solely for the use of the original purchaser is perfectly legal. The law is broken when that same CD is
given to a friend (which, really, is the whole point of a homemade mix tape to begin with).

And yet, the mix CD (or today, the digital transfer of music from Mp3 player to Mp3 player) proliferates because the one question which cannot be asked and should be is “who is it hurting?” When looking at intellectual property from the angle of “who is it hurting?” a justification can almost always be made that there is no one actually being hurt, certainly not physically and emotionally and slightly less, monetarily. Once that happens, then ethically the transgressions become easily justifiable and one can morally denounce the legal issues involved.

Therefore, the only way to approach the topic of intellectual property theft on social media is by identifying if one's usage of said property falls under the doctrine of fair use defined as “any copying of copyrighted material done for a limited and “transformative” purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner” (Stim, 2013). Memes, then, are considered fair use. But copying this essay, is not.
REFERENCES


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SOCIALINĖS MEDIJOS IR INTELEKTINĖS NUOSAVYBĖS VAGYSTĖS MENAS

SANTRAUKA

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RAKTINIAI ŽODŽIAI: intelektinė nuosavybė, asmenukės, socialinės medijos, sąžiningas naudojimas.