

## **Copyright, Authorship and Social Media**

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Thank you, Lauren.

## **Abstract**

This Dissertation examines the interrelation between copyright and authorship on social media platforms. It argues that it should be awarded with both a fair dealing exemption for the use of copyrighted material in those spaces and also a better protection of the copyright of original material produced for social media.

It further examines whether or not social media content should be awarded authorship status in order to support the claim for copyright. However, the findings suggest that due to the high level of prosumption on social media, authorship in the traditional sense cannot be granted; calling into question the copyright legislation these websites should receive.

## **Keywords**

Copyright, Social Media, Authorship, Prosumption, Fair Dealing

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## Introduction

The past three decades have seen the explosive development and growth of the Internet and, in the last ten years, the rise of social media networks that allow users from all over the world to connect, whether it is from a computer or their mobile phone. With the growing technical evolution of these websites in regard to usability, connectivity and operability, as well as popularity, the level of sophistication regarding content also rises. While this content is often original, it is also frequently based on other content, be it as gifs, quotes or reblogs of others' original content. This Dissertation considers two aspects arising from the increasing use of social media networks: the habitual copyright infringement of social media users as well as the lack of copyright protection for those users when it comes to their own work, and the appliance of the notion of authorship of work produced for social media.

This text examines and aims to determine whether amending current copyright law to include social media practice would automatically grant authorship and whether or not granting

authorship to social media users would allow them the absolute same rights as offline published authors.

Setting aside the use of social media for marketing and promotion of titles and brands and the associated risk of having one's copyright infringed as a result (although the copyright chapter deals with why these infringements are actually beneficial for marketing purposes), the main objective of this Dissertation is to acknowledge that an uncertainty regarding the copyright and level of authorship in social media could cause major legal issues for authors in the future due to the fact that today's generation a) is used to infringing on copyright habitually, often without even being aware that they are doing so and b) is used to incorporating knowledge gained through social media in their everyday speech and, ultimately, in their writing patterns. Based on the prosumption theory that a producer (writer) is also always a consumer (reader),<sup>1</sup> this could become problematic if an author, knowingly or unknowingly, includes material in their work that they found on social media and that is copyright protected.

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In the context of this Dissertation, "social media" means social networking platforms that allow the sharing and contributing of content, both original and sourced, from any user. In particular, this Dissertation focuses on Tumblr and Twitter. This is because they are the most popular text based social media platforms, but also because they routinely display content that is either an infringement of copyright or, if original, that would not be automatically recognised as authored. While the question of copyright and authorship on social media platforms might not seem like something traditional publishing should be particularly worried about, there are several points that make it research-worthy.

Since this Dissertation looks at two very different aspects of social media networks, the first two chapters are dedicated to each aspect respectively. Firstly, the chapter 'Whose Right Is It Anyway' considers the legal implications of using social media. It considers how, partly due to what

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<sup>1</sup> Nakajima, Seio. 'Prosumption in Art'. *American Behavioral Scientist*. XX/X (2011). p.2

Stokes calls the six characteristics of copyright infringement,<sup>2</sup> copyright is routinely infringed upon by social media users by (re)posting content they do not own and which legal repercussions it would have if someone decided to sue such an infringement. In order to do so this Dissertation examines the complicated situation of enforcing copyright on an international level, as well as the notions of secondary infringement and implied licences. At the same time it also considers the copyright and moral rights that users have when they do post original content on social media and how these rights are utilised by the platforms they use.

The second chapter, 'My Post, Your Post – Our Post?', then leaves copyright law behind and looks at social media usage as a form of authorship. In order to establish whether or not it is justified to call social media users authors, Hick's theory that authorship is always linked to taking and maintaining responsibility of one's work and that the authority to do so, in short the authority to be recognised as an author, is something given by others,<sup>3</sup> is applied to ascertain if that authority and responsibility exist on Tumblr and Twitter. Furthermore, the second chapter also takes Page's work on seriality in social media into account and considers whether or not authorship is possible online if the marker of authorship is the development of a narrative which demands seriality. Considering that 'slogans, short phrases, and expressions of common words are generally not copyrightable because they do not show the necessary modicum of creativity',<sup>4</sup> this Dissertation uses examples like David Mitchell's current Twitter story and six-word-stories to show that indeed length is not necessarily a prerequisite for authorship.

In the third chapter, 'Copyright and Authorship in Social Media', both aspects – copyright and authorship – are then drawn together in order to establish the answer to the questions if copyright in its current form can properly address the state of social media in its copyright law and if

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<sup>2</sup> Stokes, Simon. *Digital Copyright – Law and Practice*. 3<sup>rd</sup> ed. (Oxford: Hart Publishing, 2009) p.10f

<sup>3</sup> Hick, Darren Hudson. 'Authorship, Co-Authorship, and Multiple Authorship'. *The Journal of Aesthetics and Art Criticism*. 72/2 (2014). p.151

<sup>4</sup> Alm, Jessica Gutierrez. "'Sharing' Copyrights: The Copyright Implications of User Content in Social Media'. *Hamline Journal of Public Law and Policy*. 35/1 (2014). s.109

the (original) content of social media should be considered authored content, thus giving the authors the same copyright protection offline-published authors have for their work. In order to do so, it discusses the six characteristics of digital copyright, the democratisation of the Internet and the implications of the presumption theory on the originality aspect of content.

Since this Dissertation deals with some very Tumblr and Twitter specific vocabulary, a glossary has been added to the appendix to allow an easier understanding of the terms used throughout this Dissertation.

## Methodology

The research for this Dissertation was wholly secondary. In order to apply the research to the current social media landscape, examples from Tumblr and Twitter are used throughout the Dissertation. Due to the fact that social media is a very current phenomenon – fuelled equally by the continuous development of social media platforms and the ever-growing ability of smartphones to allow an unprecedented use of said social media because of their ability to capture and post any moment without delay (for example there is no need to develop photos or wait until one gets home to post something online) – literature on it is sparse, for even articles or books published within the last five years are often based on scenarios that simply do not apply anymore. For example, Lucas Hilderbrand’s excellent article on YouTube from 2007 is based on a website which, for all intents and purposes, does not exist anymore as it has developed and

changed so much since then that the arguments he makes are still valid in general terms, but they hardly describe the current YouTube experience.<sup>5</sup>

Another aspect which became clear is that a prerequisite understanding of social media unwillingly leads to a soft approach in research, as being actively involved in and knowledgeable of the platforms described can quickly lead to an assumed position of 'knowing it all'. It also sometimes hinders research because the researcher is so involved that a concept worth researching can be forgotten about simply because it is so ingrained in the day to day knowledge of users of these platforms that it becomes too obvious to be mentioned. This was the case with the idea of prosumption and prosumers, terms first coined in 1980 by Alvin Toffler and used to describe the merging of producer and consumer into one person.<sup>6</sup> While the idea behind prosumption is not new, it has become an even more intertwined process in the wake of Web 2.0.

The third biggest obstacle of this research was the fact that a lot of the work that has been done on copyright and social media has been written from an US point of view, because social media platforms are all exclusively run by US companies. Therefore, they did offer thought-provoking arguments (and a number of them will be mentioned throughout this Dissertation ) but one must remember to take their word with caution and to appropriate their points to the UK law. In other words, research on the subject of authorship, copyright and social media is carried out across a wide field of bordering subjects that have yet to fully converge – which of course is the very reason this Dissertation was written. In the following the most important aspects this Dissertation draws on are outlined to allow a theoretical foundation.

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<sup>5</sup> Hilderbrand, Lucas. 'YouTube: Where Cultural Memory and Copyright Converge'. *Film Quarterly* .61/1 (2007). p. 48-57

<sup>6</sup> Ritzer, George. Dean, Paul. Jurgenson, Nathan. 'The Coming of Age of the Prosumer'. *American Behavioral Scientist*. 56/4 (2012). p. 379

### ***Copyright Law***

Within the UK, copyright is regulated through the Copyright, Designs and Patents Act 1988 (1988 Act throughout the text), which rules on all definitions and exemptions regarding copyrighted work.

In order to provide a full understanding of copyright in general and in a publishing context, Garnett et al.'s *Copinger and Skone James on Copyright*, S.M. Stewart's *International Copyright and Neighbouring Rights* and Gillian Davies' *Copyright Law for Writers, Editors and Publishers* were invaluable. *Copinger* gives an extensive and comprehensive overview of copyright and thus supplements the at times extremely short wording of the 1988 Act, which can make it hard for non-legal readers to understand all of the act's aspects. Stewart looks at the greater picture of copyright and includes legislation of other European countries as well as international treaties that affect

British law. However, neither of them is particularly up to date. Stewart was published in 1989, although it seems that there are no more current editions and the copy of *Copinger* is one edition behind the most current one, having been published in 2005. Notwithstanding, both books fulfil the needs of this Dissertation as factual supplement to the 1988 Act, and read together they both give the reader a sound understanding of UK and international copyright law.

Davies' *Copyright Law for Writers, Editors and Publishers* delivers a highly informative text on the day-to-day struggles of complying with copyright at a publishing house. While not obviously applicable to a Dissertation on authorship in social media, Davies does provide valuable opportunities to compare the demands of offline publishing with online authorship.

For a historical understanding of the matter, Patrick Parrinder's *Introduction to Literary Copyright and the Public Domain* and David Saunders' *Authorship and Copyright* offer comprehensive analysis of the development of copyright in the UK and Europe since the 18<sup>th</sup> century.

### ***Digital Copyright***

Simon Stokes' *Digital Copyright – Law and Practice* as well as Charles Oppenheim's *Copyright in the Electronic Age* both address copyright in a digital context, without focusing on social media. Stokes is particularly interested in the transition from offline to online copyright and marks the six characteristics of digital copyright as:

- Ease of replication
- Ease of transmission and multiple use
- Plasticity of digital media
- Equivalence of works in digital format
- Compactness of works in digital format
- New search and link capabilities (Stokes, p.10f).

He explores the challenges that the global access to the Internet brings for infringing copyright and the above characteristics clearly show how difficult it can be to keep track of copyright in an environment that allows its users to easily share and transform content owned by others. He also notes that the Internet's survival depends on implied licences by copyright holders (Stokes, p.145), a point picked up by Alm, who states that 'the second-generation of social media that incorporates user-found content both encourages and prohibits copyright infringement' (Alm, s.129) due to the easiness of infringing online and the dependency of social media to have users post and share content (ibid.).

Whereas Stokes focuses more on the technical aspects of digital copyright, Oppenheim pays special attention to the question of international copyright. He agrees with Stokes's assessment that there 'is no such thing as an "international copyright" since copyright is a national property right' (Stokes, p.8), but reasons that this is not due to its characteristic as national property right, but because 'ground rules differ fundamentally from one country to another', making it impossible to establish any kind of universally applicable law.<sup>7</sup> He acknowledges the difficulty of publishers and rights owners that 'once an electronic copy has been made and is on a network, it is enormously difficult to police any further copying and therefore even the taking of one copy might not be fair dealing as it implies an invitation to take multiple copies' (Oppenheim, p.101) and thus proposes some version of a rights register that would allow to at least keep track of rights owners, for all digital but also particularly multimedia content (Oppenheim, p.107). Simultaneously, he echoes the sentiment of most of the authors read, that while there is a fundamental conflict between 'the rights holders' need to retain control and earn an income and the users' right to make use of the material'

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<sup>7</sup> Oppenheim, Charles. 'Copyright in the Electronic Age'. *Textual Monopolies: Literary Copyright and the Public Domain*, ed. by Patrick Parrinder, Chernaik Warren. (London: Office for Humanities Communication, 1997). p.105

Oppenheim, p.104), 'codifying current copyright practice regarding social media use would cause little if any negative impact to the creation of and commercial exploitation of copyrighted works'.<sup>8</sup>

### ***Copyright and Social Media***

As Oppenheim and Stokes above, Jessica Gutierrez Alm notes that the 'Internet is a place of open communication and sharing [which] both coincides and conflicts with the policy rationales of copyright law' (Alm, s.104). She argues that social media networks have 'fostered a generation of users who freely disregard copyright' (ibid.), and also 'leaves users with little bargaining power and questionable ownership rights in their own content' (Alm, s.115) due to the fact that users often do not act on or know about their copyrightable work and are also faced with the Terms of Service of the networks that transfer extensive licences onto the companies that run the networks (ibid.). While social networks rely on the sharing, and often as consequence copyright infringement, of material, they also must have a notification system in place in order to allow users to report a copyright infringement, which is an important feature for websites in order to maintain their safe harbour status (Alm, s.123). 'Safe harbour' is the idea that networks that provide space for users to upload their own content cannot be made responsible for the content that is then uploaded and any possible infringements this might cause (ibid.). As a result Alm concludes that 'the second-generation of social media that incorporates user-found content both encourages and prohibits copyright infringement' (Alm, s.129), creating a Catch 22 for their users, if it were not for the notion of implied licence (Stokes, p.73).

Lucas Hilderbrand and Steven D. Jamar both argue that copyright law should provide explicit exceptions regarding copyright in a social media context (Jamar, p.4; Hilderbrand, p.48). In the next chapter this line of arguing will be continued when it comes to analysing the way copyright is regularly

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<sup>8</sup> Jamar, Steven D. 'Copyright Aspects of User-Generated Content in the Internet Social Networking Context' *Journal of Internet Law*. (2012).p.4

infringed upon on social media networks. However, Jamar's argument that 'one should not need to wait for copyright to expire to use copyrighted work, even commercially' (Jamar, p.7f) seems too far-flung. His example that authors should be able to write stories based on Tom Bombadil –with the reasoning that Tolkien clearly will not write any more stories –for commercial gain (Jamar, p.8) seems to ignore the moral rights of an author. Moral rights exist for as long as the author's work is in copyright, i.e. until 70 years after their death,<sup>9</sup> and regarding the right to object derogatory treatment of the work, the 1988 Act clearly states that

- (a) "treatment" of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—
  - (i) a translation of a literary or dramatic work, or
  - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and

- (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director; and in the following provisions of this section references to a derogatory treatment of a work shall be construed accordingly (1988 Act, s.80 (2)).

Therefore, it would depend on whether or not Tolkien's estate considers the written work a 'distortion or mutilation' (ibid.) of the original text. Jamar's consideration that, especially for non-commercial use, copyright law should be amended to allow infringement to a certain degree (Jamar, p.6) is laudable. But his further argument that this should be extended to the use of work for commercial gain if it is clear that the original author will not produce any further material (Jamar, p.7) is, in the opinion of this Dissertation, a violation of an author's copy - and more importantly moral rights, and hence inadvisable.

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<sup>9</sup> Great Britain. 'Copyright, Designs and Patents Act 1988'. *Legislation.gov.uk*. (November 1988) <<http://www.legislation.gov.uk/ukpga/1988/48>> [first accessed 13 March 2014, last accessed 3 August 2014] s.86 (1)

Hilderbrand's article on copyright on YouTube is an interesting commentary on YouTube's need to balance infringement and original content and also offers some thoughts on the nature of authorship in a social media environment, however, it is also out of date. Written in 2007, it refers to a YouTube that, for all intents and purposes, does not exist anymore. The reason it is nonetheless included in this literature review and Dissertation is because his general remarks on the character of social media and its 'democratization of media memories and flow' and vice versa its ability to 'introduce new ways to regulate and deny access to content under the guise of enforcing copyright' (both Hilderbrand, p. 48) still apply and will be further examined in the next chapter.

While most of these authors touch the subject of authorship, in a creative sense, none of them consider the relation between copyright and moral right regulations on social media and the definition of authorship. In the next part of this literature review, several theories regarding the essence of authorship are outlined; these are then further examined in the second chapter before their relationship with copyright are fully discussed in chapter three.

### ***Prosumption***

When considering social media and authorship, the most significant theory is the theory of prosumption – the merging of consumption and production, consumer and producer, into one. The idea of the producer also always being a consumer is not new (Ritzer et al., p.379). It has been described as early as Marx, who already realised that the inherent, inevitable and dialectic interrelation between consumption and production for the role of producers and consumers is constantly changing within any individual (Ritzer et al., p.381), but the terms *prosumer* and *prosumption* were not coined until 1980 and have found renewed interest in the wake of the establishment of Web 2.0 in the 21st century (Ritzer et al., p.380). Particularly in a social media context, the idea of prosumption is an obvious concept, for it is the very idea of social media to be interactive and to thus constantly alternate between passive consumption and active production (cf.

Ritzer et al., p.382ff). Of course, especially in an intellectual environment the idea of prosumption has been established for as long as there have been writers.

In regards to prosumption on Web 2.0, however, Ritzer et al. raise the valid point that when ‘prosumers simultaneously consume and produce ideas on [...] social networking sites, [the] capitalist systems are able to exploit consumers and in the process earn even greater profits’ (Ritzer et al., p.383). Websites like Facebook, Twitter, Instagram or Tumblr thrive only because their users are willing to be prosumers without making any financial demands in return.

### ***Authorship Theories***

Writing is not as lonely a business as commonly perceived. Before a book is published, the manuscript will have gone through rewrites of the author and commentary and changes made by an editor (or more). If the book is research-heavy, either because it is a non-fiction text book for example or a historical novel, the people that help the author with their research have an impact on the final form and content of the book. As Darren Hudson Hick puts it (drawing on the example of film), ‘the dozens or hundreds of individuals involved in the making of a film collectively challenge the notion of films having a singular author’ (Hick, p. 147). The number of individuals involved in the shaping of actual content in publishing is considerably smaller than a film crew, but nevertheless, the number is higher than one, meaning that an author’s work is never fully their own creation. Still, it is the author we acknowledge as sole creator, just as we acknowledge a director as solely responsible for a film.<sup>10</sup> In his article, Hick links this acknowledgement to the authority an author is given to be an author by readers, or in the case of his study of Michael Crichton’s *Micro*, by an author’s estate (Hick, p.152). By analysing the specifics of joint (or co-)authorship and multiple authorship, Hick establishes what truly defines an author as creator of a work (and subsequently with the argumentation of this Dissertation as copyright worthy) is the authority that is given to them (Hick,

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<sup>10</sup> Of course, at times the reader acknowledges more than one author as creator when, for example, a book is the result of a collaboration.

p.151ff). Chapter two will heavily draw on the question of authority to establish whether and how social media users can claim to be authors. Further continuing from that point, chapter three then establishes as to which extent this authorship online can or cannot be equalled to offline authorship and thus demand the same legal protection.

Leaving offline writing behind, Ruth Page argues in *Seriality and Storytelling in Social Media* that seriality is a crucial aspect of the narrative and that therefore without seriality, no narrative and subsequently no (authoritative) writing can develop.<sup>11</sup> Page stresses the fact that 'the architecture and interfaces of social media mean that the organisation of narrative instalments ... reflects the tendency of social media genres to prioritise recency over retrospection' (Page, p. 36), making it difficult for a traditional narrative development to emerge. However, she also puts the general theoretical approach that narrative involves 'a temporal sequence of events that are also causally connected' (Page, p.35) into perspective by arguing that seriality, and subsequently narrativity, does exist in social media, as 'seriality is best understood as a relative rather than an absolute quality and should be approached from a contextual rather than a text-immanent perspective' (Page, p.49). In chapter two both the technical aspect of social media seriality as well as the content perspective are given consideration and the question is asked whether or not the presence (or lack) of seriality on social media echoes a presence (or lack) of authority and consequently authorship.

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<sup>11</sup> Page, Ruth. 'Seriality and Storytelling in Social Media'. *Storyworlds: A Journal of Narrative Studies*. 5 (2013) p.31

## Whose Right Is It Anyway?

- British And International Copyright And Its Appliance To Social Media -

Copyright, no matter which country's, is the embodiment of the idea that one's own, original work is to be protected to prevent another person from gaining commercially from said work without one's permission. While the details and enforcement of copyright regulations might vary across the world depending on cultural differences, the overall idea is universally the same. However, said cultural differences have wide reaching consequences when it comes to applying and enforcing copyright law across national borders. In order to fully illustrate the challenges copyright law encounters in social media spaces, this chapter analyses how national and international copyright law is affected when applied to online infringement of copyright and what difficulties arise from said infringement when the user is in a country different from the host website's server, including varying definitions of what is considered fair dealing. Furthermore, it presents the habitual nature of copyright infringement online and asks to what extent copyright laws need to take social

media into consideration when revising existing law. It also comments on how social media platforms treat the copyright and moral rights of their users. The third chapter uses the answers found in this chapter to further illuminate the interrelation between authorship and copyright and how the existence of either in a social media space inevitably means that the other will have to be recognised within this space as well.

### ***The Case for Copyright***

Copyright 'is the principal legal framework controlling the production and consumption of texts, its aim being to balance the interests of authors and producers on the one hand, and readers and users on the other'<sup>12</sup> and hence to 'protect the work of authors from unauthorised use.'<sup>13</sup> Although the idea of copyright seems fairly straightforward – if one creates original content, one has the copyright to that content – there are differences across the globe in the way copyright is legally manifested, executed and prosecuted.<sup>14</sup> These differences are often due to the overall culture of a country in regards to the way they interact with the idea of copyright. But it's often also a reflection of national history. For example, 'copyright law in Germany already stood at life plus seventy years, rather than the international standard term of life plus fifty years, ... to help compensate literary estates for the effects of the premature deaths of so many writers in two world wars' (Parrinder, p.6). Arguments for a unified, universal copyright law throughout the world in order to allow prosecution of copyright breaches no matter where they occur (Oppenheim, p.99) are amiable but unlikely to be realised, due to the different understandings of what copyright should and should not cover and what constitutes fair dealing (ibid.).

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<sup>12</sup> Parrinder, Patrick. 'Introduction: Literary Copyright and the Public Domain' in Parrinder, Patrick & Chernaik, Warren (eds). *Textual Monopolies: Literary Copyright and the public Domain*. (OHC: London, 1997). p.2

<sup>13</sup> Towse, Ruth. 'Introduction'. In Ruth Towse (ed.) *Copyright in the Cultural Industries*. (Cheltenham: Edward Elgar Publishing Limited, 2002). p.xv

<sup>14</sup> Oppenheim, Charles. 'Copyright in the Electronic Age'. *Textual Monopolies: Literary Copyright and the Public Domain*, ed. by Patrick Parrinder, Chernaik Warren. (London: Office for Humanities Communication, 1997). p.98ff

Fair dealing (or fair use in the US) is the idea that there are certain circumstances in which it is allowed to use someone else's work for one's own purpose without their permission (1988 Act, ch.3). In the UK, these exceptions regard the production of copies for personal use (for example for visually impaired people), news, criticism, review and research purposes. In other words, it is possible to quote excerpts of other people's work in this Dissertation without having to get permission from each and every one of them because British law considers using other's work for research fair dealing. In the US, fair use is determined through the four-factor-test, which determines whether or not a copyright breach has been committed.<sup>15</sup> The four factors are the purpose and nature of the use, the amount and substantiality of the portion used, the nature of the copyrighted work and the effect of the use upon the potential market.<sup>16</sup>

The culmination of a process started by the Statute of Anne in 1710, the Copyright, Designs and Patents Act 1988 is the current British law regarding copyright and its neighbouring rights. It states that 'copyright is a property right which subsists in ... original literary works and the typographical arrangement of published editions' (1988 Act, §1). The Statute of Anne was the first copyright act in Britain and already recognised that authors needed to be remunerated for their work in order to encourage and foster creativity (Parrinder, p.3f) and that the government had to use the law to ensure that this remuneration was ensured. The right to one's copy was regarded a property right, as opposed to the moral rights of the author. The moral rights of authors include all rights that are considered a reflection of an author's personality like the right to be named as author (Stewart, §4.39) and the right of integrity, which gives the author the right to allow or prohibit any modifications of their work, i.e. allowing film adaptations or prohibiting unauthorised or too much altered theatre productions (Stewart., §4.42). Within publishing, it is important that an author's

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<sup>15</sup> Proskine, Emily Anne. 'Google's Technicolor Dreamcoat: A Copyright Analysis of the Google Book Search Library Project'. *Berkeley Technology Law Journal*. 21/1 (2014). p.225ff

<sup>16</sup> United States. 'Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code'. *Copyright.gov*. (December 2011). § 107

moral rights have been asserted in order to apply,<sup>17</sup> which is why the rights page of any book (whether it be fictional or non-fictional) usually contains a variation of the sentence:

[Authors Name] has asserted their right under the Copyright, Designs and Patents Act 1988 to be identified as the author of this work.

### ***International Copyright***

Although there is no such thing as international copyright (Stokes, p. 8), most countries have agreed on treaties that regulate and govern international copyright issues. Of those, the Berne Convention is the single most comprehensive and important treaty regarding cross-border collaboration (Stewart, Ch. 5). It gives authors of any of the 167 contracting parties<sup>18</sup> automatic author rights in any of the other 166 countries (Stewart, §5.01), i.e. if one publishes a work in the UK, their property and moral rights are automatically protected in the US, as both countries have signed the Berne Convention, meaning that no one could publish or use any of said work without the author's permission, without them ever having to set foot into the country. In offline publishing this treaty is the very reason rights departments exist, for the only reason they can sell licences and copyright to other countries is because these countries acknowledge British copyright law. Online, it produces an interesting new angle on the question of copyright and authorship, for it means that, on the one hand, the copyright (as well as moral rights) of works produced online in any of the member countries is automatically asserted. On the other hand, it also means that copyright breaches outwith the US cannot be excused as ignorance or hoped to be forgotten because they occurred internationally, provided the infringing party is based in one of the member states.

In the United States of America, the 1976 Copyright Act decrees that only 'original works of authorship fixed in any tangible medium of expression' (Copyright Law, §102 (a)) are protected by copyright. Furthermore, the US Supreme Court clarified that only independently created works that

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<sup>17</sup> Davies, Gillian. 'Moral Rights, Satire and Parody: Don't You "Shizzle My Nizzle"'. *Copyright Law for Writers, Editors and Publishers*. (London: A&C Black, 2011). p.98

<sup>18</sup> WIPO. *WIPO-Administered Treaties – Berne Convention*.

<[http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=15](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15)> [accessed 15 July 2014]

show a 'modicum of creativity' are considered to fall into the category of original works. (Alm, s.124). Opposed to that, a modicum of creativity is not a requirement in British copyright law as long as the work in question is an original (Davies, p.76f). This simple formulation is one of the main differences in British and US copyright law when considered under a social media aspect. The following examples will be examined under both copyright laws and as to whether or not either law would grant them copyright and should thus also grant them author status.

### ***Fair Dealing – British Shortcomings and US Advantages***

The only way to avoid being sued for copyright infringement<sup>19</sup> is by passing it as fair dealing. As mentioned above British fair use allows works to be used without the copyright holder's permission in cases of research, critique, review and news. Clearly, none of this necessarily describes the way Tumblr uses copyrighted material. The following examples will analyse how the British and American fair dealing/use regulations hinder or help social media users to legally use copyrighted material.

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<sup>19</sup> At least theoretically, suing a Tumblr (or any other social media platform) user because of a reblog is in no way cost-effective and as pointed out, would likely be acquitted, depending on the state the trial were held in.



This is the beginning of a post that mixed scenes from *The Hunger Games* and *The Hunger Games: Catching Fire* with Tumblr text posts. Here, the photographic material is clearly still copyrighted and belongs to Lionsgate, who produced the film. Moreover, the text posts are from a variety of Tumblr users and while their usernames still appear as references, it is unlikely that the creator of this post gained permission for any of the components for this work.

The post below is a set of *Les Misérables* gifs subtitled with lines from the *Grease* song 'You're The One That I Want'. In this instance, the post was created by using two definitely copyrighted material sources – *Les Misérables* and the lyrics to 'You're The One That I Want' by John Clifford Farrar from the movie *Grease*.

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<sup>20</sup> Cheesecake Ripper. <<http://sweetfayetanner.tumblr.com/post/93455053163>> [accessed 1 August 2014]



Within a British context both of these posts are, regardless of whether or not the Tumblr text posts are considered to be under the protection of copyright, infringing copyright, since they do not in any way fit the UK's fair dealing exemptions for research, news, review and criticism. Even the

<sup>21</sup> Dépayement D'une Jeune Demoiselle. <<http://depayementdunejeunedemoiselle.tumblr.com/post/92542689683/knitmeapony-sort-of-incorrect-les-miserables>> [accessed 30 July 2014]

*Hargreaves Report*, which surveyed the state of copyright in the UK, does not mention social media uses.<sup>22</sup> The report does, however, demand an overall modernisation of copyright law to ‘cover the full range of media’ (*Hargreaves Report*, 5.33), even though social media platforms like the ones discussed in this Dissertation are not considered.

Opposed to that, US American copyright law’s fair use exemptions focus less on what the material is used for and more on the effect this will have on the market for the copyrighted material.<sup>23</sup> And since these posts have no effect whatsoever on the market for the *The Hunger Games* or *Les Misérables* films or books or the *Grease* soundtrack, they are permissible under US law. It is therefore not improbable that one of the reasons social media has developed at the speed and range it has over the past decade because the legal regulations surrounding fair dealing and use mean that a British start-up with the same model of interaction would hardly sustain itself since its very foundation would pose an intent to infringe copyright.

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<sup>22</sup> Hargreaves, Ian. ‘Chapter 5 Copyright: Exceptions for the Digital Age’. *Digital Opportunity: A Review of Intellectual Property and Growth*. (Newport: Intellectual Property Office, 2011). §5.32-5.38 <<http://www.ipo.gov.uk/ipreview-finalreport.pdf>> [accessed 20 July 2014]

<sup>23</sup> US Copyright Office. *Copyright – Fair Use*. (Washington, DC: US Copyright Office, 2012) <<http://www.copyright.gov/fls/fl102.html>> [accessed 28 July 2014]

## Secondary Infringement and Implied Licence



huggs5:

subite-vene-in-misha:

stuffinggoingtohellfor:

knitmeapony:

#make way for the booty parade

Reblogging again bc I've been watching it for awhile (for characterization purposes!) and I thought Widow was running a little, erm, poorly. But then I remembered her ankle got pinned under that beam when the Helicarrier was attacked and this AMAZING BITCH IS RUNNING ON A BROKEN ANKLE.

ain't no broken limb gonna stop the truly fierce one

No but the amazing thing is that things like that often get forgotten about in filmmaking. Oh she's got a broken ankle huh? Oh well, I'm sure the fans won't notice. BUT WE NOTICED AND THEY ARE AMAZING AT DETAIL IN THIS MOVIE.

posted 2 days ago via bigtuna108 - @broriarty

45,932 notes

#i never even caught that #damn #the avengers #natasha romanoff

\*24

The above post is a gif set from the *The Avengers* movie and will be used as an example for secondary infringement and the determination of fair dealing in social media. Secondary infringement applies if someone distributes a copy of a work they have reason to believe is an infringed copy.<sup>25</sup> Gif sets are routinely made by fans, not the copyright holder and thus the posting of a gif set means that copyright is breached and that it is subsequently breached every time it is reblogged. The original movie is owned by Marvel Studios, who in turn belong to the Walt Disney Company, and thus copyright lies with them. When the screenshot was taken, the post had accumulated nearly 46,000 notes, meaning that for that gif alone there were 46,000 instances of infringed or breached copyright. Considering the sheer endless amount of material taken from *The*

<sup>24</sup> Cheesecake Ripper. <<http://sweetfayetanner.tumblr.com/post/92793388923>> [accessed 1 August 2014]

<sup>25</sup> Garnett, Kevin et al. *Copinger and Skone Jones on Copyright*. 15th edition. (London: Sweet & Maxwell, 2005). §8.02

*Avengers* available on Tumblr and the fact that Marvel to date has released eight further Avenger movies, the scale of copyright infringement becomes enormous. So why is no one being sued?

The original post was uploaded by an US user, therefore the fair use rules will be applied first. Fair use is applied when four factors regarding the purpose and nature of the use, the amount and substantiality of the portion used, the nature of the copyrighted work and the effect of the use upon the potential market (Proskine, p.225ff). When answering these questions it quickly becomes clear that these kind of posts squarely fall into the fair use category. The purpose of the publication is clearly non-commercial, for posting anything on Tumblr does not gain private users any kind of economic gain. Secondly, the gif shows one second of an entire movie, obviously even gif sets that contain multiple gifs could never show enough material to be considered substantial. Thirdly, especially when upcoming movies are turned into gifs, the material comes from trailers published on YouTube, therefore one could argue that the copyright holder must have expected the material to be viewed and shared, even if it was shared in a transformative way (Stokes, p.145). Lastly, the effect of gifs and the like on the potential market is nothing but positive, which is likely the reason Marvel would never even consider whether or not it would be worth suing for breach of copyright. Even though the material used is technically speaking breaching copyright, they work almost like free publicity. The example shows the level of involvement that fans have with the films, bringing them to analyse miniscule details of scenes. Through this involvement any news break or new publication is announced, discussed and taken apart which only serves Marvel because it a) allows them to collect an incredible amount of information about their target market and their expectations and b) it forms a community that can be count on to spread the word about their material and to lobby for it if necessary.<sup>26</sup>

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<sup>26</sup> The TV show *Hannibal* was facing to be discontinued after the end of the first season and it was mainly due to extreme lobbying of fans particularly on Twitter and Tumblr that the show continued.

Even under British fair dealing, which is comparatively strict as it is based on research, review/criticisms or personal use as the only exemptions,<sup>27</sup> the above example should be permitted under the fair dealing ruling, because of the level of critical debate and reflection most of these comments show.

While secondary infringement is certainly something copyright law within a social media context would need to address, a lot of posts would probably be able to argue they posted their content due to an implied licence. According to Stokes, it 'can be argued that ... implied copyright licences are central to the effective functioning of the Internet' (Stokes, p.145). Below is an example of such an implied licence. The actor Robert Kazinsky, who plays a character in the movie *Pacific Rim*, tweeted about the key messages of the movie. His tweet was then shared across platforms from Twitter to Tumblr where it sparked a conversation and gained 11,082 notes when it was screenshot. Without an implied licence all of the 11,082 users who reblogged (rather than just liked) the post had theoretically infringed on Kazinsky's copyright. However, the argument can be made that due to the fact that Kazinsky posted something on Twitter, a public social media platform, he could never expect his tweet not to be shared. In fact, one could argue that it is the intention of social media platforms to be as widely shared as possible, since they all rely on user connectivity and interaction, which is achieved by users sharing their content.

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<sup>27</sup> UKCS. *Copyright Fact Sheets*. <<http://www.copyrightservice.co.uk/copyright/>> [first accessed 19 June 2014, last accessed 3 August 2014] §6

eestephee Source: brodinsons

**Robert Kazinsky** @RobertKazinsky

One of the key message of @PacificRim was that it takes the world to save the world not just one country.

Reply Retweeted Favorited More

22 RETWEETS 30 FAVORITES

3:08 PM - 27 Aug 13

bemusedlybespectacled:

yamatohatake:

random-fandom-man:

yet at the end of the day, its the american guy who gets the mission done... so close Pacific Rim.

just because he made the last move doesnt mean he "got the mission done"

he wouldn't have gotten anywhere without the help of his partner from japan and the help of australia and that was only closing the breach

australian men saved australia, russians saved russia, the chinese saved china

making the "final move" doesn't mean he "saved the world"

they all saved it

all raleigh did himself was eject the pilot pods

he wouldn't have gotten anywhere without mako and charlie and every other jaeger pilot on the planet

also, "getting the mission done" is "pushing a self-destruct button and ejecting his escape pod"

what is it raleigh says? "anyone can fall"

anyone could have completed the mission

his last move was the easiest move

it didn't make him special, it wasn't some sort of super-hard boss level that only the american dude could do

it was falling

and anyone can fall

#PacificRim

11,082 notes \*28

That being said, what about publishing photographic content? A professional photographer needs the consent of all subjects in their photos, otherwise they could risk being sued. But could a social media user be sued for posting a photo of someone else across social media? In other words, if one takes a photo and states the intention of posting it, for example, on Twitter, one could argue that their agreement (or rather absence of disagreement) to be included in that photo and the photo to

<sup>28</sup> Until Whenever. < [http://eestephee.tumblr.com/post/87626421090/bemusedlybespectacled-yamatohatake?utm\\_medium=email&utm\\_source=html&utm\\_campaign=post\\_photo](http://eestephee.tumblr.com/post/87626421090/bemusedlybespectacled-yamatohatake?utm_medium=email&utm_source=html&utm_campaign=post_photo) > [accessed 2 June 2014]

be posted online on one social media platform implies their agreement to be posted across other social media platforms like Facebook or Tumblr as well.

From the amount of question marks used in the last few paragraphs, it becomes apparent that copyright needs to make unambiguous rules for these kind of social media usage and sharing because in an increasingly online environment this will lead to issues not just with copyright but also privacy and neighbouring rights.

### ***Limitations of Copyright***

Likely some of the most despised words for any Internet user: ‘This video is not available in your region’. Mainly encountered on YouTube, they can equally be found trying to watch clips or episodes from TV or talk shows abroad or, as in this example, when trying to watch the *Tagesschau* – Germany’s oldest and most reputable news outlet in television. While the audio in this clip went on (about Germany’s 7:1 victory against Brazil in the World Cup semi-final), the words on the screen read: ‘Short Interruption (due to legal reasons these images cannot be shown online)’.<sup>29</sup> It stands to reason that it was impossible to watch the (presumably) Brazilian clips of the football because the ARD (the station running the *Tagesschau*) had only purchased the rights to show the video material via television.



<sup>29</sup> My translation.

<sup>30</sup> ARD. *Die Tagesschau* – 8 July 2014. Accessed on 9 July 2014 via the ARD Tagesschau Mobile App. (Screenshot)

This example shows the limitations of copyright and its inability to keep up with the world it is supposed to serve. Nowadays, Internet users expect to find everything they want, whenever they want, wherever they are because the Internet has no borders and should therefore not be bothered by laws that might apply offline – or such is the average thought. In truth, the very fact that copyright law still is highly nationalised means that a generation has been brought up which infringes on copyright with regularity. Software is freely available online that manipulates a computer's IP address to allow access to abroad websites in order to permit the user to watch shows or movies otherwise not available in their country. Considering the Berne Convention, one does wonder why such content is not made available in member countries, especially because the technology to do so exists.<sup>31</sup>

### ***Terms of Use – Social Media's Approach to Copyright***

While copyright law might not yet be prepared to address infringement within social media, the websites itself are attempting to police copyright issues themselves as much as possible - both to comply with the safe harbour restrictions for their websites (Alm, s.126) and to protect their users. However, they also use their Terms of Use to gain broad rights of the produced content. Twitter and Tumblr both include in their Terms of Use that the user grants the website

'a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed)<sup>32</sup>

and

'a non-exclusive, worldwide, royalty-free, sublicensable, transferable right and license to use, host, store, cache, reproduce, publish, display (publicly or otherwise), perform (publicly or otherwise), distribute, transmit, modify, adapt (including, without limitations, in order to conform it to the requirements of any networks, devices, services, or

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<sup>31</sup> American TV channels routinely allow access to their content for everyone either within the US or US military bases worldwide, proving that they can set very specific windows regarding access.

<sup>32</sup> Twitter. 'Terms of Service'. *Twitter.com*. <<https://twitter.com/tos>> §5

media through which the Services are available), and create derivative works of such Subscriber Content<sup>33</sup>

respectively. While both Terms of Services insist that this is mainly to enable the platform to function in full capacity (ibid.), Alm does point out that by signing up, users essentially give up their content for social media platforms to with as they please, which 'leaves users with little bargaining power [if they feel that their copyright has been infringed by the platform itself] and questionable ownership rights' (Alm, s.105). It also gives the platforms the power to use the users' content for their own financial gain,<sup>34</sup> ultimately exploiting free labour (cf. Ritzer et al., p.383).

Nonetheless, the Terms of Use of social media platforms also serve as protection for user generated content. The below example is in clear breach with Tumblr's 'Community Guidelines' which state that all content must be properly attributed and that it is prohibited for users to 'inject a link back to their own blog just to steal attention from the original'.<sup>35</sup> The post below is in violation of both these points since there is no attribution as to who the painter is and the link on the bottom that appears to direct to the original poster, is in fact not the source blog, as can be seen when checking the source box in the top right corner.

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<sup>33</sup> Tumblr. 'Terms of Service'. *Tumblr.com*. <<https://www.tumblr.com/policy/en/terms-of-service#dmca>> §6

<sup>34</sup> A most basic example is that higher user numbers mean that platforms can ask for more money from advertisers or start introducing schemes that users have to pay for in order to access them.

<sup>35</sup> Tumblr. 'Community Guidelines – Misattribution and Non-attribution'. *Tumblr.com*. <<https://www.tumblr.com/policy/en/community>>



[coverednaked.tumblr.com](http://coverednaked.tumblr.com) →

107,184 notes



\*36

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<sup>36</sup> Dépaysement D'une Jeune Demoiselle.  
<<http://depaysementdunejeunedemoiselle.tumblr.com/post/93034804823>> [accessed 28 July 2014]

## My Post, Your Post – Our Post?

31

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- The Question of Authorship Online -

Within the United Kingdom, the idea of an author owning their content was first established in the Statute of Anne in 1710 (Parrinder, p.3). Before the statute, the content of books belonged to the publisher who printed a book and entered it in the *Register Books of the Worshipful Company of the Masters and Keepers of Wardens and Commonalty of the Mystery or Art of Stationers in the City of London*.<sup>37</sup> The Statute of Anne and the subsequent legal battles and laws caused a legal, economic and cultural shift regarding the treatment and recognition of authors by publishers and the public alike (Parrinder, p.4f). Today, an author holds all property and moral rights for any given work they produce, whether under their real or a pen name, while having the opportunity to assign their property rights to another person or body, as assured under the Copyright, Designs and Patents Act

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<sup>37</sup> Saunders, David. 'Early Modern Law of Copyright in England: Statutes, Courts and Book Cultures'. *Authorship and Copyright*. (London: Routledge, 1992). p.35

1988. After having contemplated the legal issues of copyright in social media, this chapter now looks at whether or not social media users can claim authorship.

### ***Prosumption and Social Media***

The contemporary understanding of what an author is and subsequently which rights they own as such, are the result of centuries of continuous cultural and legal developments. Historically, the idea of an author in the modern sense was not established until the 18th century. A single look into the provenance of most literary works before the industrial revolution shows that those writings modern readers often perceive as the original source of a trope or storyline are re-imaginings or at times simply plagiarised versions of older and/or foreign stories. As Patrick Parrinder puts it:

Most early novelists and their publishers claimed a freedom to commit real as well as imaginary acts such as translation, misattribution, and the writing of counterfeits and sequels which would nowadays require licensing and could lead to prosecution and punitive damages. (Parrinder, p.3)

In the modern mind, originality is an essential aspect of authorship. However, as Jamar, Ritzer et al. and Seio Nakajima point out in their various articles, every work 'is derived from some other work or works' (Jamar, p.6), thus the originality of a work cannot stem from its exclusiveness, but rather the way old content is used as inspiration for new content.

It is not new that authors are inspired by other works. To return to one of the examples of the preceding chapter, Suzanne Collins' *The Hunger Games* was inspired by the author switching between TV channels and her knowledge of ancient mythology.<sup>38</sup> In social media, prosumption is a requirement in order for a platform to succeed. Tumblr and Twitter both rely on its users to produce content by or in addition to consuming others' content. Browsing Tumblr one also gets the overall feeling that the content produced and consumed on the website spills over into the offline activities

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<sup>38</sup> Margolis, Rick. 'A Killer Story: An Interview with Suzanne Collins, Author of "The Hunger Games"'. *School Library Journal*. Published 1. September 2008 <[http://www.slj.com/2008/09/authors-illustrators/a-killer-story-an-interview-with-suzanne-collins-author-of-the-hunger-games/#\\_](http://www.slj.com/2008/09/authors-illustrators/a-killer-story-an-interview-with-suzanne-collins-author-of-the-hunger-games/#_)> [accessed 28 July 2014]

of its users in regards to not just what they know and talk about but also the kind of validation they give that information – or not.<sup>39</sup>

Therefore, presumption is an integral part of authorship and social media. The reason its existence is stressed is due to the fact that while online the merging of knowledge and sources without proper attribution is at most frowned upon, offline it is a problematic legal issue that can result in damages and financial losses for both author and publisher. Additionally, future authors will have to resist their cultural social media upbringing that declares everything free for use without consequences or having to ask permission. Again, as it was mentioned in the first chapter, as long as the infringement stays within the social media boundaries, US law has a far more generous/liberal fair use doctrine than the UK, but as soon as this culture of infringement moves from social media into publishing, fair use or dealing is no longer acceptable and can cause legal issues.

#### ***For Sale: Baby Shoes, Never Worn – Seriality and Narrative in Social Media***

The title of this subsection is one of the first so-called six-word-stories. Often attributed to Ernest Hemingway, its actual origin is unknown. Similarly, Frederick Brown's opening to his short story *Knock*, 'The last man on Earth sat alone in a room. There was a knock on the door.' is often considered the shortest horror story ever written. Opposed to that, the law tends to see 'slogans, short phrases, and expressions of common words as generally not copyrightable because they do not show the necessary modicum of creativity' (Alm, s.124). Can this be reconciled? Ruth Page argues that seriality is a necessary component of developing a narrative which in turn is what turns words into a creative, copyrightable work. She does caution that social media's obsession with currentness causes content to be displayed non-chronologically, effectively destroying any attempt to build seriality and narrative in the traditional sense (Page, p.36). Anyone who ever had to scroll down their Tumblr and Twitter dashboard and had to read comments on posts that they have not even seen yet can attest to that flaw in the way social media is build. However, Page also argues that

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<sup>39</sup> The authority of information is addressed below.

'seriality is often a matter of degree, emphasizing the importance of attending to the relationship between narrative process and product' (Page, p.31) rather than a matter of chronology. When looking at six word stories under that point of view, it becomes clear that however short they might be, they establish a full narrative and storyline.



While this Dissertation by no means wishes to argue that every Tumblr or Twitter post is a masterpiece worthy of being taught in English classes, it does argue that at times both platforms can be used to express literary thoughts. And sometimes it is used to make one's writing publicly accessible.

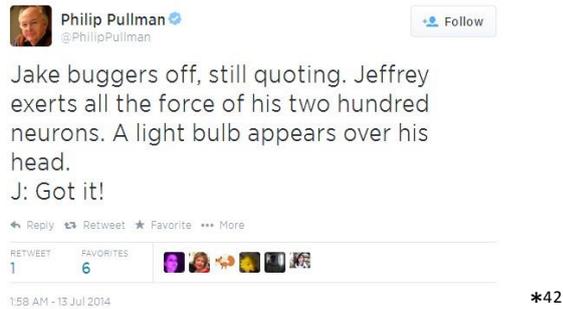


The author David Mitchell just published an entire short story on Twitter in 280 tweets (the above tweet is the beginning of the story). Philip Pullman on the other hand, has been telling the continuous adventures of Jeffery the Housefly since he joined Twitter a few years back.

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<sup>40</sup> Six Word Stories. @sixwordstories.  
<<https://twitter.com/sixwordstories/status/460762073870249984>> [accessed 28 April 2014]

<sup>41</sup> Mitchell, David. @david\_mitchell.  
<[https://twitter.com/david\\_mitchell/status/488563565838622720](https://twitter.com/david_mitchell/status/488563565838622720)> [accessed 13 July 2014]

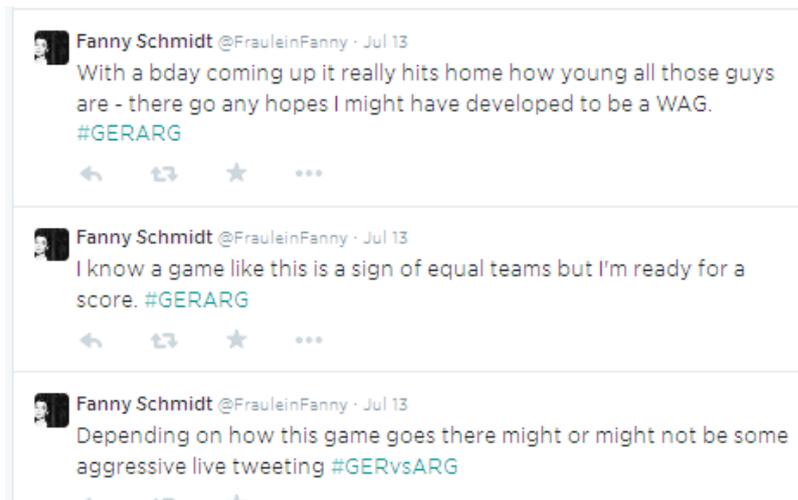


Furthermore, Page herself acknowledges that Twitter is often used in a manner that produces narrative, whether it is the fictional examples above or the live tweeting of events. Below is a live tweeting stream of the World Cup Final Germany against Argentina earlier this summer. While it could be argued that no real information is conveyed in the tweets, they do give a sense of seriality—even though they do have to be read from oldest to newest—and have a narrative that do convey some of the atmosphere of the game. In other words, someone who might not have watched the game could read the tweets and while they would not have a detailed commentary on the match, they would get a sense of what it was like.



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<sup>42</sup> Pullman, Philip. @PhilipPullman. <<https://twitter.com/PhilipPullman/status/488246167881662464>> [accessed 13 July 2014]



But how does seriality link to authorship? On the one hand, one could follow Page’s initial argument that seriality is necessary to narration which is what authorship is all about – stylistically, as well as legally, since copyright is not given to an idea but to the person ‘who has clothed the idea in form’ (Davies, p.18). On the other hand, if seriality equals narrative equals authorship, then the above tweet series must count as authored, since it does present a seriality –no matter how badly written.

### ***Power and Authority***

Not unlike the BBC, publishing as an industry has the mission to inform, educate and entertain.<sup>44</sup> It will never be an official statement, but - to employ the popular idiom - it comes with the territory. Before any book is published its contents are ‘scrutinized by their authors, revised by their editors and ultimately approved by their publishers. Each book is the result of a laborious process of research, redaction, and outlays of time, energy and money’ (Proskine, p.215). This process obviously varies depending on the subject (a novel will not concern itself as much with technical accuracy as an academic textbook or a cook book) but no matter what book a reader picks up in a book shop, they can rely on the fact that someone somewhere decided that this book was fit

<sup>43</sup> Schmidt, Fanny. @FrauleinFanny. <<https://twitter.com/FrauleinFanny>>

<sup>44</sup> See BBC Mission and Values

<[http://www.bbc.co.uk/aboutthebbc/insidethebbc/whoweare/mission\\_and\\_values/](http://www.bbc.co.uk/aboutthebbc/insidethebbc/whoweare/mission_and_values/)> [accessed 22 July 2014]

for the public— may it be in terms of subject area, accuracy of information, or simply spelling and readability. Furthermore, when reading a non-fiction book one can rely on the information being accurate and correct at the time of printing. Online, it's not unusual to come across the following, self-explanatory post:

You  [goodcleanchristianfun](#)



[goodcleanchristianfun](#):

[witcherwitch](#):

[doct0rsatan](#):

[minutemade666](#):

[angerr](#):

And people still continue to worship USA.

its because they're all fed with lies

Look at her expression. She has no fear.

Probably because that's Li Thi Van playing the role of "Village Chief's Daughter" in the feature film *Platoon* and the man holding a gun to her head would be William Dafoe, AKA the Green Goblin in *Spider-Man*

198,348 notes



\*45

Tumblr, like all social media, is not an academic platform. It is full of misinformation, extremist views, and trolls. The information spread across the Internet is in no way supervised or tested. It is easy to believe what one reads without actually checking the facts simply because we have grown up with the belief that everything that is written is likely right because it has been

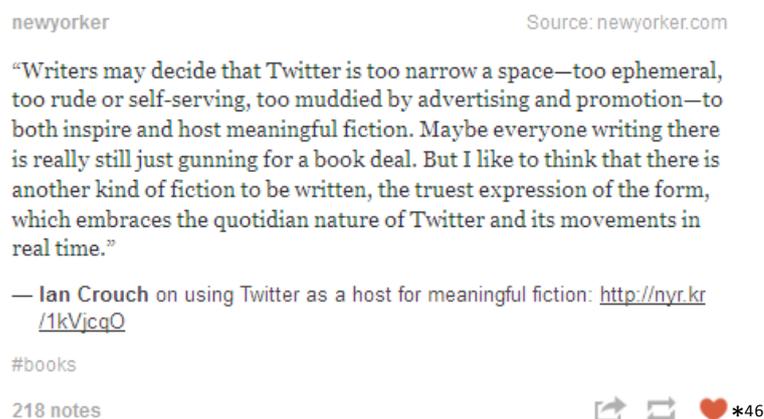
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<sup>45</sup> Dépaysement D'une Jeune Demoiselle.

<<http://depaysementdunejeunedemoiselle.tumblr.com/post/93687185453>> [accessed 1 August 2014]

published. Clearly, the authority of the original user (and likely future posts of that kind that anyone that encountered the mistake will read) has been tarnished and one is reminded that indeed anything posted on the Internet that lacks the backing of an authoritative offline source, can never be fully trusted. In a higher education environment this is shown by the fact that on line sources that are not based on offline sources tend to be regarded as not fit for purpose. As the 1988 Act shows, writing alone does not equal authorship (1988 Act, §1).

Assessing Hick's argument that authorship is linked to being given the power of acceptance, i.e. that it is the acceptance of the group an author writes for that makes them an author by giving them the power of authority (Hick, 152), the question must be asked how this authority is distributed on Tumblr. The following quotes are both taken from Tumblr. One is from the official Tumblr of *The New Yorker*, the other is from a Tumblr blog dedicated to debunk false facts circulating the Internet and particularly Tumblr. One gives a name and a link to a source text, the other reads 'a recent conversation with a colleague regarding social media'. Both say valid and interesting things, only one would ever be considered to be quoted in any kind of text that relies on authoritative knowledge.



<sup>46</sup> The New Yorker (Tumblr). <<http://newyorker.tumblr.com/post/92746545726/writers-may-decide-that-twitter-is-too-narrow-a>> [accessed 24 July 2014]

**If there is one thing I've learned from working on political campaigns, very little is more damaging than an activist who argues only one side of the story without recognizing the existence of the other; because your opinion, no matter how solid and seemingly factually based, is invalid the second your audience realizes they know more than you.**

**And the result of all of this is a generation of young activists who don't understand why they aren't being taken seriously.**

”

— a recent conversation with a colleague regarding social media (via [onawingandaswear](#))  
(via [roguesareth](#))

Source: [onawingandaswear](#)

\*47

In a grander concept, the distinction and acceptance of truth is always a matter of circumstance, experience and research. In order to award something as true and subsequently authoritative one needs the means to measure that truth. In today's society this is done by trusting in publishers and their ability to edit and proof their books properly. On social media platforms, there is no one to edit and proofread the information that is put in, therefore information in such spaces cannot by any degree be trusted. Only when social media content is backed by offline credibility — either because the account belongs to an institution or company that is given credibility offline or a well-known author, politician or scientist<sup>48</sup> — is it given the authority to be true. Most social media users lack this kind of credibility which could be used as an argument to deny them the label of authorship.

### Prosumption and Multiple Authorship

Prosumption is at the very heart of social media platforms. As it was said before, the websites rely on the user's willingness to not just consume but also produce content and to willingly

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<sup>47</sup> Fuck False Information. <<http://bullshit-internet-facts.tumblr.com/post/61802663243/what-we-see-through-social-media-is-a-generation>> [accessed 22 July 2014]

<sup>48</sup> Neil DeGrasse Tyson is famous for using his Twitter account to debunk science myths and explain everything from why there are seasons to why it was inevitable that Argentina won silver in the World Cup in 2014.

share their contents with others. This often leads to an almost accidental production of content that is appealing exactly because it was made by a variety of users without the coordination one would expect in traditional writing. Darren Hick defines co-authorship as the absence of compartmentalisation of a piece of work (Hick, 153). He stresses that collaborating authors become co-authors when they collectively take responsibility for the entity of their work, that co-authorship is signalled 'by *not* [sic] identifying which elements were written by whom' (ibid.). Clearly, this kind of authorship does not apply to Tumblr or Twitter. Every contribution is clearly marked by the user's name and the author of the original post has no power whatsoever over how their post is distributed and commented on, even if they try to execute some control. Furthermore, while Tumblr sends notifications if another user liked, reblogged or commented on one's post, it does not send out notifications for sharing the content to another website, meaning that it can end up all over the Internet in a form neither known nor approved by the original poster and it can there be altered further. At best, therefore, social media can be termed a space of multiple authorship. But while websites like Facebook, Twitter or Instagram work by allowing one individual to express their thoughts in a way that others can like or share or even comment on, the very nature of the representation of this interaction emphasises the focus on the first, original post. Tumblr on the other hand appeals to its users because it offers the chance to present added material to the original post in an equal manner, while maintaining a clear separation. To return to the example of the shared Twitter post about *Pacific Rim*, this Dissertation will now look at the implications regarding authorship rather than its copyright implications.



**Robert Kazinsky**  
@RobertKazinsky



One of the key message of @PacificRim was that it takes the world to save the world not just one country.

Reply Retweeted Favorited More

22 RETWEETS

30 FAVORITES



3:08 PM - 27 Aug 13

bemusedlybespectacled:

yamatohatake:

random-fandom-man:

yet at the end of the day, its the american guy who gets the mission done... so close Pacific Rim.

just because he made the last move doesnt mean he "got the mission done"

he wouldn't have gotten anywhere without the help of his partner from japan and the help of australia and that was only closing the breach

australian men saved australia, russians saved russia, the chinese saved china

making the "final move" doesn't mean he "saved the world"

they all saved it

all raleigh did himself was eject the pilot pods

he wouldn't have gotten anywhere without mako and charlie and every other jaeger pilot on the planet

also, "getting the mission done" is "pushing a self-destruct button and ejecting his escape pod"

what is it raleigh says? "anyone can fall"

anyone could have completed the mission

his last move was the easiest move

it didn't make him special, it wasn't some sort of super-hard boss level that only the american dude could do

it was falling

and anyone can fall

#Pacific Rim

11,082 notes



Clearly the original poster on Tumblr wanted to share the Tweet and its encouraging message. It was afterwards that random-fandom-man added their criticism which then sparked a discourse regarding the intentions and meanings of the movie. However, none of the participants – from the actor Robert Kazinsky who originally wrote the Tweet to bemusedlybespectacled who was the last one to comment on the post in this version – had any actual power over who read the post and with what commentary, how it was shared, and what a user might decide to delete when reblogging it. Because unlike Facebook or Twitter, any user can delete anything that has been written in a post when they decide to reblog it.

Another aspect to be taken into consideration is that Hick's presumes that even in a situation of multiple authorship the content and overall aim of the text is agreed upon (Hicks, p.150). This is not the case in any kind of social media for some of its appeal lies within the chance to have an opinion on everything and to announce said opinion, be it in gifs, comments or art. Subsequently, there is no kind of agreement between any social media users to, for example, take a certain route in their commentary, although they at times support something that has been said before. As an example of somewhat agreed commentary on a post, the below post will also show, however, that there does not need to be any relation between what the original poster intended for users to see in this painting and what the users then decided to comment on.



theroquefeminist:

kingsgrave:

skolita:

shiraqglassman:

jhameia:

kakapokitty:

kawaikunaii:

knockingghosts:

myartmoods:

The Hesitant Betrothed by Auguste Toulmouche (1866)

I have always adored this painting. Having the central female figure stare with awareness at her viewer is a very powerful move, and something not often given to women in paintings. It creates an engagement with the viewer, she sees you and she knows you are watching her. She is no longer an object in an image, she is a person.

You know she gon' kill the man she has to marry

I like how everyone else is totally excited the women are congratulating her, the little girl is so into being a flower girl.

And she's there in middle going "THIS IS SUCH BULLSHIT."

"the hesitant betrothed" there is NOTHING HESITANT about that expression

Whoa. This is really dramatic and unexpected :)

The "Fuck This Shit" Betrothed

This is the 'Isn't It A Tragedy She Was Widowed So Young' Betrothed, is what it is.

"the lesbian and her lovers plot a murder"

## Authorship and Copyright in Social Media

Thomas Jefferson once said that 'laws and institutions must go hand in hand with the progress of the human mind' (Proskine, p.213) and as has been proven in the past two chapters, laws and institutions have yet to acknowledge social media and its users as said progress which must be considered in their policy making. This last chapter draws together the issue of copyright in a social media space and the question of authorship in social media to answer the questions set out in the introduction: considering that copyright law so far still fails to make amends to the use of copyrighted material in social media, would amending said laws grant social media users automatically author status? What consequences would that imply? And if social media content does count as authored, must legislation apply the same rules to it than it does to offline authors? Reversely, what would the implications be if social media users were not granted copyright exemptions? Lastly, must all social media content fulfil the criteria of authorship in order for any of this to apply? It is understood that the copyright question in social media applies to two different

aspects of it. On the one hand, it is about whether or not the use of copyrighted material by users constitutes fair dealing or use and, on the other hand, it questions what rights the users have regarding their original content. Throughout this chapter Stokes' six characteristics of digital copyright and the notion of the Internet and social media as the great democratic equaliser are juxtaposed with the argumentation that while the last chapter proved that some content of social media platforms is definitely worth to be called authored, the very idea of prosumption as the basis of social media content makes it near impossible to demand copyright for it – or arguably makes it even more urgent.

In his work on YouTube, Lucas Hilderbrand successfully argues that social media fosters a 'new temporality of immediate gratification' (Hilderbrand, p.49) and this expectation of immediate gratification is what makes social media users so susceptible for copyright infringement. They see something they like and share it regardless of whether or not that content is under copyright protection. Granted, most content encountered online nowadays gives their audience the option to share for example an article or YouTube video with the click of a button, therefore implying that they grant the visitors of their website licence to use their content as they please. Stokes' six characteristics of digital copyright – ease of replica, transmission and multiple use; plasticity of digital media; the equivalence and compactness of works in digital form; and new search and link capabilities (Stokes, p.10f) – feed into that need for immediate gratification by, simply put, enabling it. Without having the technical abilities to do so, digital copyright as a whole and particularly copyright in social media would not be an issue. For if it would not be simple and easy to edit or reblog posts or post one's own (not necessarily original) content, the vast majority of users would never even consider doing it. Maybe one of the main reasons why social media content should not be given the same level of authorship as offline publishing is because the users themselves do not demand it. Hilderbrand points out that 'the Internet, Google and YouTube have accelerated and exaggerated [user expectations] for availability' (Hilderbrand, p.50) and by doing so they have formed an entire generation that is willing to just click 'agree' on any Terms of Service message

without reading (and comprehending it) if it gives them quick access to content. It is unsurprising that social media platforms take advantage of that behaviour.

Facebook for example states in their Terms of Service that by using their service one grants them a 'non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook'.<sup>50</sup> This goes so far as to grant them the license to continued use in case of termination, i.e. even though one might delete their account, the information, posts and photos they provided are still in Facebook's possession and can be used at their will (Alm, s.124). While this is a stark reminder of the fact that nothing ever truly disappears on the Internet, it only becomes harder to find, it also means that the user has no authority over what happens to the content they created, even when through the act of deleting their account it becomes apparent that they want their work destroyed. Facebook created this loophole by stating in their Terms of Service that 'this IP license ends when you delete your IP content on your account unless your content has been shared with others and they have not deleted it' (Facebook ToS, §2). While Facebook, due to its massive size and market share are likely an extreme example, they do echo what users of platforms like Tumblr and Twitter need to be aware of as well: since signing up to these platforms is free, they make their money by selling advertisement and collecting our data and content. Being given full copyright –in terms of cultural as well as legal understanding –is not in the best interest of these websites. Because once governments would include social media into their legislation making, the Terms of Services would likely not hold against that legislation and thus bringing into question whether or not social media as it is now could even continue to exist if such legislation would be included into copyright law.

However, based on Stokes' six characteristics of digital copyright and Emily Anne Proskine's assessment that 'in the digital world, controlling copying is less important than controlling access to

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<sup>50</sup> Facebook. 'Terms of Use'. *Facebook.com*. < <https://www.facebook.com/legal/terms> > [accessed 4 June 2014] §2

a work' (Proskine, p.238), this Dissertation would like to suggest that maybe the key to successfully incorporating the characteristics of social media into copyright legislation is by controlling not the content itself but the access to it, that is in the case of Tumblr to let a user know not just when their content has been liked or reblogged but more importantly give them the option to post content with a disabled share function, thus allowing the content owner to control not how many other users see and interact with their content but in what medium that interaction is taking place.

Of course, this is a flawed proposal. Especially on Twitter a single screen shot would bypass any such rules (although this would make it easier to prosecute any such infringement because they then clearly did act against the copyright holder's wishes) and on Tumblr reposting would take care of the same problem unless any such information were embedded in the meta data of not just the post but the actual file – which would demand a far higher technological knowledge than the average social media user has at this point and also could not be applied to text posts, since, if someone were adamant to copy it, it could simply be retyped. And last but not least, most users do not wish to restrict themselves to one medium.

Regarding the clear inclusion of social media use of copyrighted work into the fair use guidelines, as Jamar proposes, would actually be beneficial for copyright holders, particularly those that are already highly infringed. As Jamar points out, copyright was originally designed to serve as a motivator for artists of all kind to produce work and he argues that 'allowing these works [that are currently still infringing copyright] to flourish results in the very sort of thing copyright is supposed to encourage' (Jamar, p.9). It has been pointed out before in this Dissertation that the vast and intense discourse with specifically popular culture actually allows copyright holders to understand and address their market better and to gain a wider audience than they might have without that discourse. Therefore, from a financial point of view, granting social media use a specific fair use exemption would be in the best interest of copyright holders because that way social media users

could use material without having to consider whether or not they will have to deal with any repercussions, as currently,

a problem with relying on fair use in the context of user-generated content in the online social network environment stems (1) from the after-the-fact determination of fair use, (2) the uncertain application of it to many particular situations, and (3) the costs of defence if sued when the defence would be upheld. How many lay users creating non-commercial content would have the resources to defend a court case? (Jamar, p.10)

On the matter of authorship, the main argument against granting social media users the label of authorship is their lack of authority and responsibility when it comes to their work. As Hick's work and Tumblr examples revealed, once content is posted a user has no influence over how that content is used by others. Therefore social media users cannot be put in the same category as traditional authors, for offline authors remain their copyright and moral rights. Nonetheless, it should be mentioned that offline authors who use social media to expand on their writing repertoire, like David Mitchell or Philip Pullman, carry the authority and rights of their offline work into their social media existence.

The Internet offers the accumulated knowledge, humour, wit and imagination of everyone with an Internet connection on the tip of their fingers. The rise of social media and its inherent dependence on the human desire to share lives and experiences make it even easier to share that knowledge, humour, wit and imagination. Platforms like Instagram, Pinterest or Tumblr rely on content sharing in order to function successfully. However, the increasing creation of content outwith the traditional confines of printed publishing and thus seemingly outwith an environment with readily identifiable authors raises the question of what makes an author and what qualifies content as authored and subsequently how can this content be copyright protected?

Over the past three chapters, the interrelation between copyright, authorship and their space within social media platforms has been investigated. It has become clear that copyright infringement in social media and its defence for fair use is highly dependent on the national legislation one applies, which shows the main issue social media encounters is its internationality, as the global access to

social media platforms makes it impossible to apply copyright, which, after all, is a national property right (cf. Stokes, p.8). Furthermore, the nature of social media, to be *social*, i.e. to allow everyone access to all content and to share it with whomever one wants, is in direct contrast to the nature of copyright law, which depends on strict regulation of access and content alike (Alm, s.123). It also considered whether or not social media content can be considered authored content and thus deserve to be protected by copyright.

Authorship is based on theories that often do not translate into social media. The restrictive space allotted to social media content (for example the 140 character restriction on Twitter) means that it can easily be argued that content as short as most social media posts can hardly be considered a sign of authorship since their shortness does not allow seriality to develop and therefore no narrative can occur (Page, p.31). However, in the second chapter examples were given that the restriction of social media can actually be an asset to authorship and creativity (cf. *Seriality and Narrative in Social Media*). A main point against comparing online authorship with traditional offline authorship was their lack of authority over the text. Unlike offline authors, social media users have no way to ascertain their moral rights and in any way influence what happens to the content they post. Furthermore, the fact that social media relies not just on a constant and habitual infringement of copyright but also a high level of presumption are also indicators that traditional authorship does not apply on social media platforms.

In conclusion, both the undeclared status of social media use in national copyright legislation, as well as the peculiar situation of content on these platforms produces a sort of legal and cultural void where technically copyright and authorship should be granted due the traditional understanding of producing work. However, due to the fact that social media is everything but comparable to the traditional idea of publishing and copyright, it cannot be held to the same standards.

This Dissertation was based on secondary research and its main difficulty lay in applying the mainly US based work that had been done on the subject matter to a UK context where appropriate. Also, most works either concern themselves with the application of copyright in a social media context or the application of authorship. Additionally, while there is quite a lot of material regarding copyright and video or audio content online, as well as the Google Library Project, virtually nothing has been written directly concerned with either Tumblr or Twitter. This is, assumingly, because it is much harder to define and execute copyright in regards to a tweet or a Tumblr post, as opposed to video or audio material, which is a lot more palpable.

Naturally, the aspect of the interrelation between authorship and copyright considered by this Dissertation is by no means the only way to approach the subject. As mentioned in the closing remarks of the last chapter, social media users that are already established as authors offline are far more likely to transfer their offline rights onto the Internet, as they are given the authority to do so by the public both online and offline. From a less publishing-oriented point of view, it would be interesting to analyse how the infringement on video content helps or hinders ticket sales of movies or the popularity of national TV shows on an international level.

Since social media is such a new, fast-developing and constantly self-reinventing space, it is understandable that little research has been carried out so far as to how it will influence future legal and cultural developments. But it is a subject well worth our attention, since for all its youth, it has become a constant in everyday life and in the way we approach the world.

## Glossary

### *Web 2.0*

Web 2.0 is the term for the so-called second generation of the Internet, although it refers to the continuous technical improvement of the Web, rather than just one particular version in time. The improvements of the Web 2.0 made it possible to develop more sophisticated blogs, websites and social media platforms, which is why it is sometimes used as an umbrella term to describe the present interactive character of the Internet.<sup>51</sup>

### *Post*

A piece of textual, visual or audio content posted on a website.

### *Reblog/retweet*

The act of copying another user's post with the possibility to add one's own content without losing the attributions to the original poster. On Twitter, retweets are usually without added content due

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<sup>51</sup> Techterms. 'Web 2.0 Definition'. *Techterms.com*. <<http://www.techterms.com/definition/web20>> [accessed 15 July 2014]

to the restrictions of 140 characters.

### *Sharing*

The act of reposting content in another medium or website (i.e. sharing a Tweet on Facebook or a Tumblr post via email), without having the ability to add anything to the original format of the post and includes removing the metadata of a post. Note that reposting within one medium (e.g. reposting a Tumblr post on Tumblr) is against the Terms & Conditions of most social media websites, since it removes all reference to the original poster/author and makes the new poster appear as the original poster/author, i.e. the copyright holder.

### *Gif*

'A lossless format for image files that supports both animated and static images'.<sup>52</sup> Can be used to convey arguments and points that would not necessary be conveyed by still images.

### *Following*

Similar to friending someone on Facebook, following allows a user to be updated about anything the followed user posts within a website. However, unlike Facebook, following a user does not require the followed user to follow one back.

### *Tumblr*

Tumblr is a microblogging platform. Users are encouraged to follow other blogs, whose posts they then see on their dashboard, similar to the Facebook system. When they scroll down their dashboard, they can like, share or reblog any post they encounter. Furthermore, when they reblog content, users can add they own commentary, gifs or pictures to the post. When a post gets reblogged, the data surrounding the post shows the name of the blog a user reblogged the post from as well as the original poster and the notes (i.e. any interaction with the post by other users, be it liking or reblogging) a post has accumulated. A user has furthermore the chance to add meta data (tags) to any post to make it easier to find them when the respective tags are searched (note that

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<sup>52</sup> OED. 'Gif'. *Oxforddictionaries.com* <<http://www.oxforddictionaries.com/definition/english/GIF>> [accessed 24 July 2014]

those tags are also often used to convey messages that the user did not want to add as a proper comment, as tags cannot be reblogged unless another user copy and pastes them into the proper text body of the post). Any user can reblog any post as often as they wish.

Tumblr does not have privacy settings that allow users to only share certain content. Everything a user posts is accessible by everyone with or without a Tumblr account .

### *Twitter*

Twitter is a social media service that allows users to post updates (text, picture or video) of up to 140 characters (tweets). These tweets are accessible by everyone with a Twitter account.

Users can follow other users (persons, celebrities, news outlets...) and be followed by others. Like Tumblr, there is no mutuality necessary in following. There is no limit to how many tweets can be posted. In order to sort tweets to certain categories and to make them searchable within Twitter, they often contain hashtags (#). Using another account's Twitter name (including the @ sign) enables the mentioned user to be notified about being mentioned, allowing conversations with others (regardless of whether they follow each other).

name of the blog I see on my dashboard

sweetfayotanner londelle

Source: beowulfstis-ar.

original source/poster



High res ->

strawwoir

[stick-em-with-the-pointy-end](#)

[gallifreyan-gallimaufry](#)

[leqa74](#)

[thercthworan](#)

[beowulfstis-archive](#)

I want to go to this exact point and run around it saying "I'm in Sweden!" "I'm in Finland!" "I'm in Norway!" until I get tired

I aspire to great things in life

According to Google Maps, that point is in the middle of a small lake.

So we'll do it in January when it's frozen.

actually that's why they've helpfully cropped a big-ass cement block with a bridge surrounding it in the middle of the lake: for the *express purpose* of doing what OP aspires to do



what a time to be alive

why is it the Scandinavians are so awesome?

#HEY ASHLEY COOK #I CAN STAND THERE #marquesscpambroke #geography

177 191 notes



Tags: they allow to provide meta data but also to include any kind of commentary that the user does not wish to have reposted or feels inappropriate to include in the overall thread

Share (outwith Tumblr), Reblog and Like function

notes, i.e. amount of times it was liked or reblogged

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Cheesecake Ripper.

General: <<http://sweetfayetanner.tumblr.com>>

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<<http://sweetfayetanner.tumblr.com/post/93455053163>> [accessed 1 August 2014]

Dépayement D'une Jeune Demoiselle.

General: <<http://depayementdunejeunedemoiselle.tumblr.com>>

<<http://depayementdunejeunedemoiselle.tumblr.com/post/92542689683/knitmeapony-sort-of-incorrect-les-miserables>> [accessed 30 July 2014]

<<http://depayementdunejeunedemoiselle.tumblr.com/post/93034804823>> [accessed 28 July 2014]

<<http://depayementdunejeunedemoiselle.tumblr.com/post/92553319208>> [accessed 22 July 2014]

Fuck False Information.

General: <<http://bullshit-internet-facts.tumblr.com>>

<<http://bullshit-internet-facts.tumblr.com/post/61802663243/what-we-see-through-social-media-is-a-generation>> [accessed 22 July 2014]

Until Whenever.

General: <<http://eestephee.tumblr.com>>

<[http://eestephee.tumblr.com/post/87626421090/bemusedlybespectacled-yamatohatake?utm\\_medium=email&utm\\_source=html&utm\\_campaign=post\\_photo](http://eestephee.tumblr.com/post/87626421090/bemusedlybespectacled-yamatohatake?utm_medium=email&utm_source=html&utm_campaign=post_photo)> [accessed 2 June 2014]

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