

How does copyright law affect content on Facebook?

Recognize limits of 'fair use' doctrine

Several callers to the Missouri Press Association hotline in recent weeks have raised questions about issues that probably impact many of you, so this month I want to touch on a couple of those. Then I'll give you a tip I think will really benefit you when questions about these and a multitude of other matters come up each day.

Recently, a newspaper in the state was covering a homicide story. While searching for photos to go with the story, it happened onto a photo on Facebook of one person involved in the incident. The paper staff was puzzling over whether to use the photo in its coverage online and in its print edition.

Could it legally use that photo? Other newspapers appeared to be using Facebook photos, the staff determined, but online resources left them questioning the legality of using those photos.

Questions like this raise layers of issues, particularly those related to copyright. We've discussed some of this before. You know that the first issue is who owns the copyright to the original photo and are there defenses, particularly "fair use," that would permit you to use the photo? Knowing that it's posted on Facebook, how does that impact this issue?

If you have information on a copyright holder of the photo, the "best practices" argument would be that giving credit is always a proper thing to do. But I realize most Facebook photos are obviously candid shots. Can a newspaper use such a photo without permission? The doctrine of "fair use" as a defense for a claim of unauthorized use of a photo is, in truth, a complex one. There are many

nuances, which means you should not glibly use this doctrine anytime you want to use a photo without permission.

Still, I feel fairly comfortable saying that if a newspaper is covering a developing news story and the use of the photo is limited solely to its news coverage, such a use falls clearly within the parameters of "fair use." Such a use would be deemed to be an exception to a copyright infringement claim.

(Yes, the newspaper may charge for its print edition or for access to its website and therefore some revenue is generated, but there is existing case law around the country that supports that the primary purpose of a journalistic endeavor is to cover news, not solely to make a profit, so courts have recognized this "fair use" as unrelated to depriving the copyright owner of revenue.)

Does its placement on Facebook create any issues? The answer to that is found in the Facebook Terms of Use, which are online. There you will find, "When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you..." That's about as clear a statement as one needs.

Feel free to make use of Facebook photos online and in your print editions without concern. (But it still is a good idea to identify Facebook as your source for the photo, so it's clear you make no claim of ownership.)

The next question I want to address has a similar answer. Can a newspaper make use of material found on YouTube?

All of the arguments above apply, but

there's one additional nuance. In order to protect you from claims, the advice most lawyers gave originally was not to embed the materials in your website but to link to them on YouTube. Now YouTube has created an "Embeddable Player" for people who are willing to have content embedded on other websites.

If you are looking at a YouTube video and considering using it on your website, and it contains an Embeddable Player, then you should feel free to embed the material on your own website.

Finally, as promised, a tip to make your life easier. Missouri Press has worked recently on the Legal Hotline page on its website. For a long time there have been articles there that are really helpful (in particular, an article on legal notices from July 2003 I have frequently referred callers to).

Now the Legal Hotline page (www.mopress.com/legal.php) has a Google Search box that allows you to search all the uploaded columns for specific content.

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DON'T QUIT calling the hotline! I'm still here for you! But at times, if you think you remember reading something about a subject, you might check out the search box. There is a lot of good information in articles contained in the magazine in past years, and I'm hoping this additional resource will benefit you.

Finally, thank you to Kent Ford for editing the column all these years. We'll miss you, Kent! A good editor makes all the difference in the world for a writer. Without them, we're nothing!



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