

Intellectual Property & Social Media

(Whose IP is it anyway?)



PG Diploma In Cyber Law
NALSAR University of Law, Hyderabad
Contact Class; October, 2019.

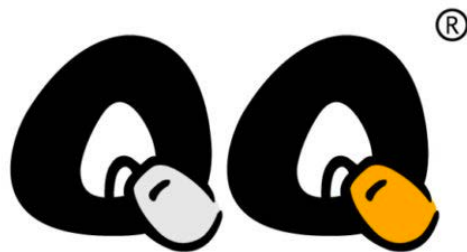


Social Media

- **Social media** are interactive computer-mediated technologies that facilitate the creation and sharing of information, ideas, career interests and other forms of expression via virtual communities and networks.
- The variety of stand-alone and built-in social media services currently available introduces challenges of definition.
- There are some common features:
 - Social media are interactive Web 2.0 Internet-based applications.
 - User-generated content, such as text posts or comments, digital photos or videos, and data generated through all online interactions, is the lifeblood of social media.
 - Users create service-specific profiles and identities for the website or app that are designed and maintained by the social media organization.
 - Social media facilitate the development of online social networks by connecting a user's profile with those of other individuals or groups.



SixDegrees.com, launched in 1997, is often regarded as the first social media site.





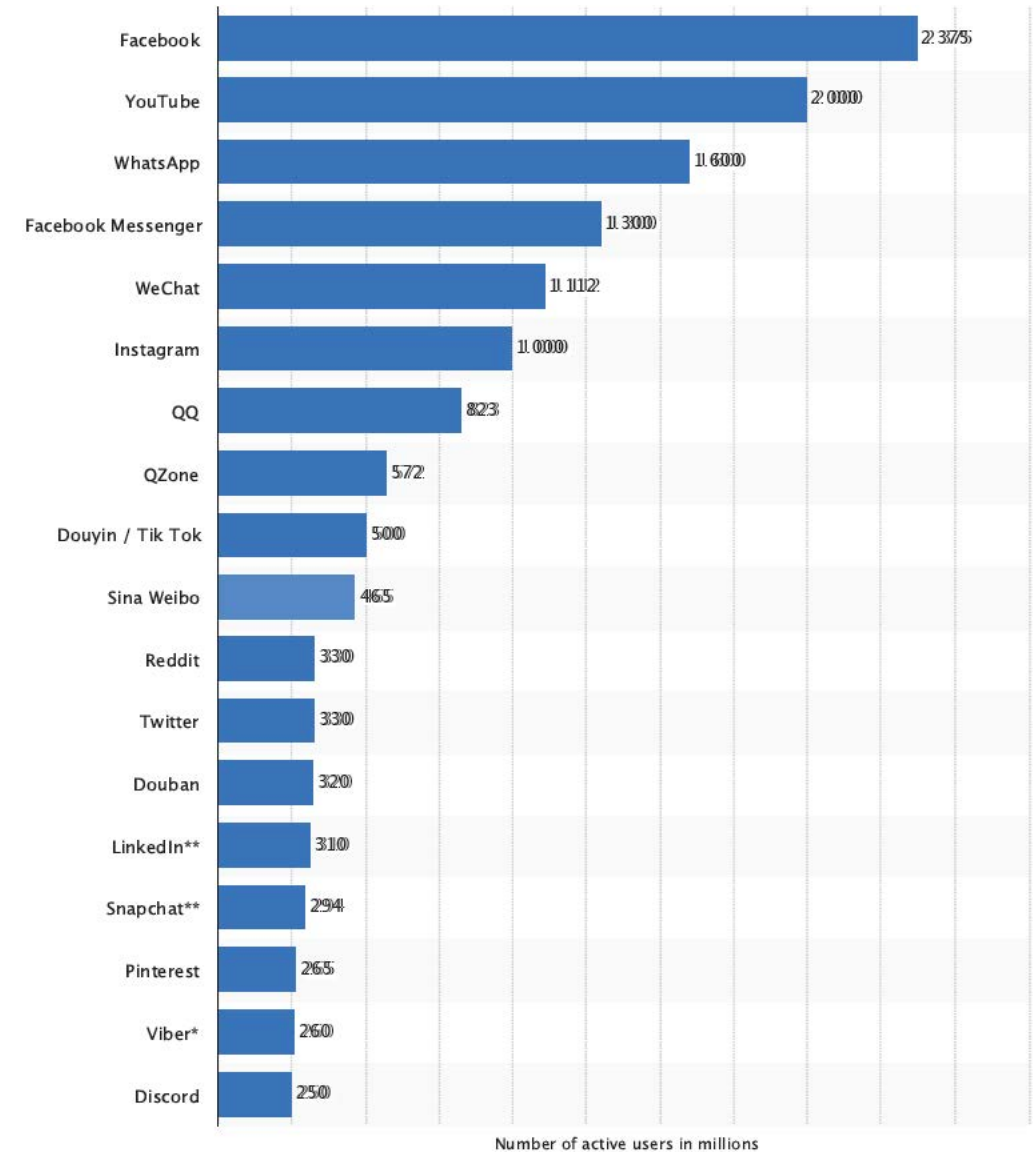
"Social media" are really just technologies that facilitate conversations.



Type of social media	Corporate Function					
	Customer					
	R&D	Marketing	service	Sales	HR	Organisation
Blogs						
Business networks						
Collaborative projects						
Enterprise social networks						
Forums						
Microblogs						
Photo sharing						
Products/services review						
Social bookmarking						
Social gaming						
Social networks						
Video sharing						
Virtual worlds						

Importance: (empty) none or almost none; low; medium; high; very high

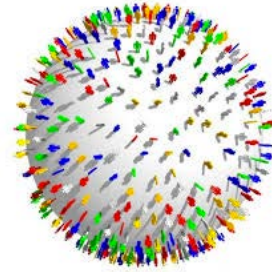
Social Media: Users



"Most popular social networks worldwide as of July 2019, ranked by number of active users (in millions)". Statista.

Retrieved 2019-09-20.

Democratic Republic of facebook (virtual)



2.37 Billion

Territory



Ethnicity

“[It] is a device that allows people to get together and control their own destiny, much like a nation-state.”

*- David Post
Law professor, Temple University.*

Democratic Republic of facebook (virtual)

..... Such polities are “*imagined communities*” in which each person feels a bond with millions of anonymous fellow-citizens. In centuries past, people looked up to kings or bishops; but in an age of mass literacy and printing in vernacular languages Horizontal ties matters most

*Benedict Anderson-
Political Scientist*

Online communities were transcending the limits of conventional states—and predicted that members of these communities would find it “*difficult to stand neutral in this international space*”

*Lawrence Lessig
Code Version.2*



Sovereignty

Diversity



Atheists to Zen



Azerbaijani to Zulu



The Changing Paradigm

?

50

25

5

1.5

1,000,000



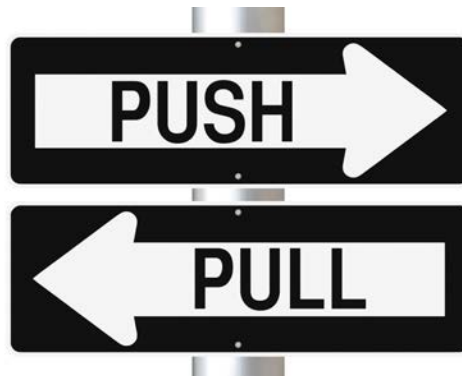
Push-Pull Technology

Push Technology

- Radio or Television, are passive technologies, which broadcast or beam.
- information and advertisement to the audience.
- This is a one way process.
- Merely giving information for the listeners to decide.

Push-Pull Technology

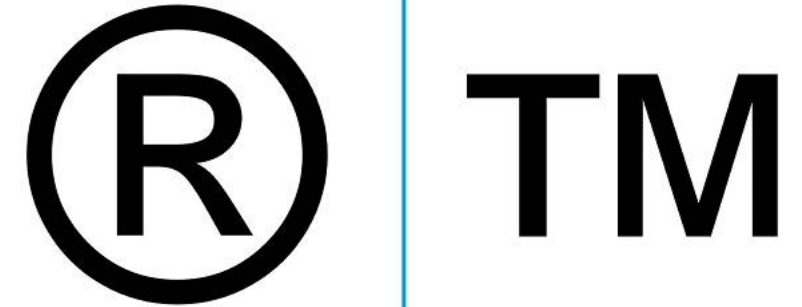
- In the case of “internet” it is a two way process or “*push and pull*” technology.
- The users interact, share information, can sell or buy their goods and can even date each other and marry !
- Functions are no way comparable to the passive technologies-
- Social Media operates in that space



IP Issues in Social Media



- Copyright
- Trademark
- Trade Secret
- Patents





Copyright in Social Media

- User Generated Content - Your rights
- User Posted Content - Others rights

- The content in social media is governed by the Copyright law of the land
- *Fair Use* will be the only clear legal cover
 - 1) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
 - 2) The nature of the copyrighted work;
 - 3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - 4) The effect of the use upon the potential market for or value of the copyrighted work

Copyright in Social Media



- You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your photos and videos are part of the Content) -..... twitter
- By submitting, posting or displaying Content on or through the Services, you grant us 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) <<https://twitter.com/tos?lang=en/>>

- You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:
- •For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License).



Copyright in Social Media



- WhatsApp does not claim ownership of the information that you submit for your WhatsApp account or through our Services.
- You must have the necessary rights to such information that you submit for your WhatsApp account or through our Services and the right to grant the rights and licenses in our Terms.

- If you believe your copyright-protected work was posted on YouTube without authorization, you may submit a copyright infringement notification.
- Be sure to consider whether fair use, fair dealing, or a similar exception to copyright applies before you submit.
- These requests should only be submitted by the copyright owner or an agent authorized to act on the owner's behalf.



[<https://www.youtube.com/yt/copyright/>](https://www.youtube.com/yt/copyright/).

Related Rights in Social Media



- “Twitter respects the intellectual property rights of others and expects users of the Services to do the same.
- We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us...
- We reserve the right to remove Content alleged to be infringing without prior notice and at our sole discretion...”

- “We respect other people's rights, and expect you to do the same.
- You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law.
- We can remove any content or information you post on Facebook if we believe that it violates this Statement.
- We will provide you with tools to help you protect your intellectual property rights. To learn more, visit our *How to Report Claims of Intellectual Property Infringement page*.”



Oscar, 2014 - Selfie

Selfie



Selfie ??

- *A selfie is a spontaneous photograph taken with a smart phone and an outstretched arm. It is a photo taken of oneself and sometimes oneself with one's friends.*
 - The selfie in question was a photograph of Ellen, Bradley Cooper, Meryl Streep, Kevin Spacey, Julia Roberts, and others, taken at the Academy Awards ceremony.
 - The Phone belonged to Ellen who attempted to take a selfie positioned it and later gave it Bradley Cooper to click the image as Bradley had a vantage point to click it.
 - Then it was tweeted by Ellen.
 - Associated Press later took the permission to re tweet the image, which went viral.
- Are selfies copyrightable?
 - The Phone belonged to Ellen and the angle was positioned by Ellen but Bradley Cooper took the actual shot- then who owns the copyright?
 - Ellen was hired by the Academy to do the show and in such case what is the right of the Academy?
 - Do you need to take a permission / licence to re-tweeting selfies as the main purpose of tweeting is to re tweet?
 - Lesley Ellen Harris

<<http://www.copyrightlaws.com/creators/who-owns-the-copyright-in-selfies/>>

Trademarks in Social Media

■ Parody

- A parody is an imitation of a writer, artist, subject, or genre in such a way as to make fun of or comment on the original work. Parodies are often exaggerated in the way they imitate the original in order to produce a humorous effect.

■ Impersonation

- Impersonation is an act of pretending to be another person for the purpose of entertainment or fraud.

■ Cyber Squatting

- Cybersquatting (also known as domain squatting) is registering, trafficking in, or using an Internet domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else.

■ Trademark Infringement

- Trademark infringement is the unauthorized use of a trademark or service mark on or in connection with goods and/or services in a manner that is likely to cause confusion, deception, or mistake about the source of the goods and/or services.

Trademarks in Social Media

Parody

- “Twitter users are allowed to create parody, commentary, or fan accounts.
- Twitter provides a platform for its users to share and receive a wide
- range of ideas and content, and we greatly value and respect our users' expression. Because of these principles, we do not actively monitor users' content and will not edit or remove user content, except in cases of violations of our Terms of Service.”



Impersonation

- “Impersonation is pretending to be another person or entity in order to deceive.
- Impersonation is a violation of the Twitter
- Rules and may result in permanent account suspension.”

Name Squatting

- “Name Squatting: You may not engage in name squatting.
- Accounts that are inactive for more than 6 months may also be removed without further notice.”

Trademarks in Social Media



Cyber Squatting

- “If you select a username for your account we reserve the right to remove or reclaim it if we believe appropriate (*such as when a trademark owner complains about a username that does not closely relate to a user's actual name*).”

TM Infringement

- “Using a company or business name, logo, or other trademark-protected materials in a manner that may mislead or confuse others or be used for financial gain may be considered a trademark policy violation.
- Accounts with clear intent to mislead others will be suspended; even if there is not an explicit trademark policy violation, attempts to mislead others may result in suspension.”



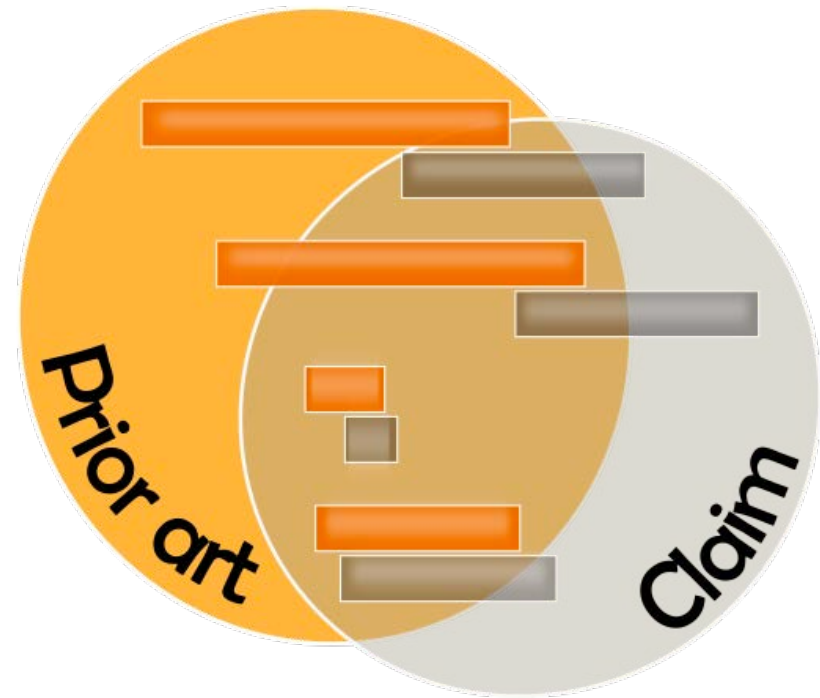
Trade Secrets in Social Media

- Any blog post.
- Any tweet on the ongoing project.
- Posting any You tube content.
- Sharing on FB.



Patents in Social Media

- Disclosure of the elements of Patents will kill the novelty of the invention and thereby will render it as unpatentable.
- Prior Art element will include print / digital / oral disclosures.



Monkey Business



- On July 2011, British photographer David Slater travelled to a national park in North Sulawesi, Indonesia, to take pictures of the local wildlife.
- He claims he placed his camera on a tripod as the monkeys were curious about the equipment, and clicked a few shots.

- He claims he then changed the camera settings and that one monkey in particular, was drawn to the reflection of the lens. The monkey then went on to take a few pictures.
- In 2014, it triggered a dispute between Mr. Slater and Wikipedia, when the online encyclopaedia uploaded the picture and tagged it as being in the public domain, reasoning that monkeys cannot own copyright. .
- On When Mr. Slater tried to get the picture removed, Wikipedia did not relent, and the so-called monkey selfie is still listed on that site as public domain material.

Monkey Business

- Then, in September 2015, the campaign group PETA (People for the Ethical Treatment of Animals) sued Mr. Slater in a California court on behalf of the monkey (named Naruto in the suit) to assert copyright over the picture, claiming that the selfie “*resulted from a series of purposeful and voluntary actions by Naruto, unaided by Mr. Slater, resulting in original works of authorship not by Mr. Slater, but by Naruto.*”
- •In January 2016, the trial judge dismissed the action on the basis that even if Naruto had taken the pictures by “*independent, autonomous action,*” the suit could not continue as animals do not have standing in a court of law and therefore cannot sue for copyright infringement.
- The parties reached a settlement out of court. While the exact terms of the settlement are unknown, lawyers for PETA have said that the deal includes a commitment from the photographer to pay 25 % of all future royalty revenue to the monkey sanctuary where Naruto lives.

Who's IP is it Anyway?

- IP in Social Media and its implications to be part of the Institutional IP Policy
- Require the employees to be aware of the IP issues in Social Media
- Require an Institutional strategy to handle IP in the imploding world of social media.
- Companies should always include a social media statement in their intellectual property agreements, contracts and policies.



A Social Media Policy



- The social media policy should outline and explain the following:
- Information about the confidential and proprietary agreements;
- How confidential information is protected by the company;
- How shared information is used and stored;
- How to use the company's intellectual property (trademarks, logos, brands, copyrights)
- Information about IP rights;
- Company spokespersons permitted to speak, write, or represent the company online and on social media;
- The appropriate steps and procedures for addressing IP infringement and defamation; and
- Protocol for online conduct and activities of employees.

Risks for the Average Social Media User

- The risks of sharing on social media aren't just limited to content creators.
- If you post a video or image online without the permission of the creator, you could be infringing their IP rights.
- The law of copyright is designed so that, if someone has created something, they get to decide who accesses it.
- Don't be misled — most content isn't 'copyright free'
- If you're a creator of content and you do discover that your content is being shared without your permission, social media platforms do have online tools which allow you to have the material removed.
- An image or video should only be shared or used online in one of the three following scenarios, where:
 - copyright is owned because you created the content yourself
 - a licence has been granted or you've bought the copyright
 - the use of the photo or video is considered '*fair dealing*'



Not all Sharing will get you into Trouble

- Despite scare stories like this, not everything that you share has the potential to get you into trouble.
- materials which explicitly state they're in the public domain and available for use can be freely used — for instance, stock photos from free photo libraries and some content licensed under Creative Commons licences. However, these do contain some restrictions for commercial use, so again, make sure you read the small print.
- The law also provides for a limited number of exceptions to copyright infringement. This includes works used for non-commercial research or private study, as well as the criticism, review or reporting of current events.
- However, the exceptions are limited and need to be considered with care before reliance is placed on them.



Tips to Protect Your Creations



Don't
Forget!

- If you do post videos or images on social media, here are some tips to help you protect and track your work:
- Inform people that you're the creator of the work and that you hold the copyright for it, by using the copyright symbol © with your name and possibly the year of creation, next to your work. This encourages people to seek permission if they wish to reproduce it.
- You may want to consider adding digital watermarks to your images or videos — many editing programmes can help you do this.
- Only share low-resolution images. This can limit the range of infringements that occur and means people will have to seek you out in order to access a higher quality image.
- Link your images and videos back to your website, where you have control of your terms and conditions. On other sites like social media platforms, you're operating under their terms and conditions.
- Keep track of the images you publish and which social media platforms you've published them on. This may help you in the event of an infringement.



Dr. Anindya Sircar

Visiting Faculty

NALSAR University of Law, Hyderabad

<Anindya_Sircar@yahoo.com>