

# Cyberspace and Intellectual Conflict

By

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## *Abstract*

*The advent of social media has revolutionized personal and business relationship, sharing of content on social media sites has increased; in result conflicts with intellectual property being shared online rise. The concept of ownership's of one's creation is recognised and enshrined in the Berne Convention. The invention of the printing press in the 1400s gave media the tool and capability to cater to 'mass media'. Social Media is driven by primary means of distribution, primarily organized for the end user's to share content. For example, My Space was primarily formed by users to share their music. Connecting people with friends and acquaintances is the central focus of social media. In the paper I would like to highlight with all this technology and innovation in the digital world has effected and created conflicts within law. The user-generated content shared on social media triggers copyright, privacy concerns and leakage of trade secrets by employees on social media. How with the advent of social media the empowered users in today's digital world can have adverse effects. Example Wiki leaks was an organization known for publicly sharing classified secret information from anonymous sources which highlights the threats of content being shared online. How authorities across World are trying to develop a mechanism to control the capability of innovation that the digital world before us possess, the innumerable issues and problems it can encounter and solve, while there being a flip side to this situation where the same innovation can lay the foundation of civil wars; and collapse the manner in which the societies function.*

## **Introduction**

Social Media works through the minds of numerous global networks, and how laws should govern the intellectual property when sharing of such content goes cross-borders. In that instance there is already conflict of laws present when that article, post, video, or audio surfaces on social media and becomes viral the confusion of which jurisdiction and which law in that jurisdiction will be applicable comes into question. Digital work once received by user at a computer terminal, can be reworked and retransmitted to one or any computer terminals anywhere across World. Digital media is present in fluid patterns which allows the transmitters and the receivers of that article to switch roles. The flexibility in the system impacts the creation and airing of that article in result increasing when it surfaces on global network.

There is state of flux present in the geographical space and cyberspace, the difference between Intellectual Property and Cyberspace is that in the world of art and literature, claiming intellectual protection can be accessed and pinpointed to a geographical location from where the work originated. But the advent of cyberspace authors can create and collaborate work and publish the same on the global network, it is no longer possible to geographically localize works in the territory of cyberspace. William Ford Gibson popularized the concept of cyberspace, and is credited for predicting a rise in virtual environments, and World Wide Web (WWW), stated “space that wasn’t space”<sup>1</sup> meaning with the innovation of cyberspace intellectual property could no longer be pin-pointed to a specific geographical territory. Intellect work in regard to geographical sense can be traced back to lines of communication that radiate from specific centers of publication to audiences. In Social sites there is intricate information, thousands of permutation, increasingly dense interconnection and networks thus increasing the instance of conflict between laws and making it inaccessible from the source of the transmitter to trace.

## **Conventions on Intellectual Property**

Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and most countries have reached a consensus on the interests that these treaties serve to protect intellect across border. “Berne Convention imposes the principle of national treatment, which requires that courts govern copyright claims in Berne – protected works by choosing the

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<sup>1</sup> William Gibson, Count Zero 38 (1986)

law of Berne country where copyright protection is sought.”<sup>2</sup> Therefore any intellectual property right holder who is entitled to claim the benefit of the Convention will enjoy in all the member states, the same protection as a national of those States.

Also the Berne Convention provides protection under Article 5 (2) which states that foreigners may not be discriminated against on the basis of technicalities of their national law. “The ‘Independence’ of national copyright laws means that no deprivation of intellectual property rights by domestic legislation will be recognised in other member States.”<sup>3</sup> Article 5 (2) of the Berne Convention states that the applicable law, is the law of the country for which protection is sought.

Digital Millennium Copyright Act (DMCA) was enacted in October 1998 to satisfy two major goals “(i) implementation of World Intellectual Property Organization [WIPO] 1996 treaty; (ii) creating limitations on liability for internet service providers for copyright infringement with respect to certain activities.”<sup>4</sup>

### **Copyright and Social Media**

Social media must accommodate and not interfere with Identified Copyrighted works. The technical measures taken in such occurrence “(i) have been developed by a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process (ii) be available to any person on reasonable and non-discriminatory terms; and (iii) not impose substantial costs or burdens on service providers or their system or networks.”<sup>5</sup>

Section 512 (c) of DMCA which provides safe harbor, does not apply where a service provider has ‘actual knowledge that the material or an activity using the material on the system, or in the absence of such knowledge, knows of facts from which infringing activity is apparent. The set standard for such circumstances is requiring and showing that the service provider turned a blind eye to the red flags of obvious infringement. If the service provider has such knowledge, it must

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<sup>2</sup> Berne Convention, supra note 32, at Article. 5(1)

<sup>3</sup> S.M. Stewart, International Copyright And Neighboring Rights pg.38-39

<sup>4</sup> The Digital Millennium Copyright Act of 1998 Copyright Office Summary  
<http://www.copyright.gov/legislation/dmca.pdf>(December 1998)

<sup>5</sup> 17 U.S.C § 512 (i) (2) (A) – (C)

act expeditiously to prevent access to such infringing material to seek safe harbor under provision S.512 (c) of DMCA.

Digital Millennium Copyright Act has a detailed process of take down provision which the Social Media providers must comply with if and when author of intellect believes that his work is being infringed. DMCA detailed process under which “(i) copyright owners notify service providers of accused infringements; (ii) service providers ‘promptly notify’ accused subscribers that the accused material has been removed or disabled; and (iii) accused subscribers may respond by notifying the service provider that it has a ‘good faith belief that the material was removed or disabled as a result of mistake of misidentification.”<sup>6</sup> The service provider of social media must be informed of the potential infringement by being served a Takedown Notice will shall entail the following specifics: the service provider must receive a written communication that is signed by the copyright owner; identified the copyrighted work which is claimed to be infringe; identifies the material with sufficient information to allow the service provider to locate the infringement; include information sufficient to enable service provider to contact the infringing party; includes a statement verifying that used of accused infringing material is unauthorized; ad includes a statement verifying that the information in the notice is accurate and the signature on the Notice is authorized owner or acting on his behalf. The notice of takedown if fails to comply with the above six requirements will not be regarded as having furnished the service provider with knowledge of infringing activity.

## **Cyberspace**

Cyberspace has been defined if “It was a place, albeit an abstract place, where land was free for the taking, explorers could roam, and communities could form with their own rules.”<sup>7</sup> To understand the complexities of this field will always be defined by human activity. Cyberspace is an informational domain which is used to create, organize, manipulate, assimilate and disseminate data such as data theft on scale so vast that states security interests can be threatened, without any physical damage. The field of cyberspace and digital context, identifying and holding certain factors accountable is challenging. The most difficult hurdle is the

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6 17 U.S.C §§ 512 (c), 512 (g) (2)(A) and 512 (g)(3)(C) respectively

<sup>7</sup> David R. Johnson & David Post, Law and Borders-The Rise of Law in Cyberspace, 48 STAN. L. REV. 1367 (1996).

insufficient law enforcement on these subject-matters and cooperation between states. To understand the functions of Cyberspace one needs to understand the operational effects of it. The numerous social providers i.e. Facebook, Google, LinkedIn, Myspace, Orkut, Twitter, and YouTube all of them works on a similar platform of virtual space to understand their operational effect will give us a better understanding of the functioning of that virtual state. Youtube is a social website that allows users to upload videos to their own created channels online on the site so other users can view the videos. The basic sharing of videos, empowers the User who can use “Youtube’s account settings page to manipulate playback, sharing, advertising, and profile settings in result giving him the choice of making the video for private sharing or public sharing.”<sup>8</sup> Youtube states in its terms of service that Youtube does not own user-uploaded content, just a domain for sharing the user-uploaded content. The terms of service reinforces the idea that the user owns the content by requiring users to agree that they “own or have necessary licenses, rights, consents, and permissions to publish Content”<sup>9</sup> they publish on this domain. By using the domain the user grants to Youtube a “worldwide, non-exclusive, royalty-free, sub-licensable and transferable license to use, reproduce, distribute, and prepare derivative works of display, and perform the content in connection with the Service.”<sup>10</sup> Users are not permitted to ‘distribute in any medium any part of content without Youtube’s prior written authorization, unless Youtube makes available the means for such distribution through functionally offered by the Service’<sup>11</sup> Violation of this section would result from an unauthorized copying and distributing Youtube content and claim under the Computer Fraud and Abuse Act 18 U.S.C.A. § 1030 (CCFA).

Youtube’s terms of service includes provision regarding Copyright, which can be broken down into three categories: (i) copyright material owned by Youtube; (ii) user generated material; and (iii) copyright protected material which third parties own but uses have uploaded to Youtube. Youtube’s copyright reporting mechanism is in line with Digital Millennium Copyright Act. DMCA provides hosting sites with limited immunity if they have registered a DCMA agent with Copyright office and if the provider has in place DMCA copyright policies which posted on

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<sup>8</sup> Youtube Help <https://support.google.com/youtube/answer>

<sup>9</sup> <http://www.youtube.com/t/terms>

<sup>10</sup> <http://www.youtube.com/t/terms>

<sup>11</sup> <http://www.youtube.com/t/terms>

website are consistently enforced. Youtube has an established system of intricate details which if satisfied can also be accessed to understand the operational working of the Youtube. They ensure that they following all policies and legislation which have been made in that effect to restrict and report any unusual activity on the domain.

Freedom to express oneself through a chosen mode of communication becomes virtually meaningless if access to that information is not protected. Intellectual freedom implies a circle, and that circle is broken if either freedom of expression or access to ideas is stifled.”<sup>12</sup>

Facebook is aimed towards a mission to “give people the power to share and make the world more open and connected”.<sup>13</sup> The user’s profile page has a numbers of tabs that allow the user to alternate between the different features of his profile, including his ‘wall’, ‘info’, and ‘photos’. This is significant amount of personal information gathered to form a profile of the user which may be subjected to disclosure on a social media website for public to identify. The Facebook’s terms of service explicitly mention that the user own all of the content and information he posts on Facebook, and can control the same through the Privacy and Application Settings. Facebook also has extensive network of online forms and other reporting mechanisms available almost constantly throughout the site. The concept of cyberbullying was created with the advent of social sites which offered online interaction with one another for which Facebook under Terms of Service has mentioned suggestions and how to prevent the same. Facebook has extensive and customizable privacy settings so the user can tailor make his profile according to conditions he desires.

Market and self-regulation will be key components to enhance and create effective standard for cyberspace. The timing of enforcement of legislation is critical in the Information Age and the right kinds of restriction on different forefronts to access information online needs to be monitored. The legislation will promote democratic deliberation and individual self-determination in cyberspace. The activities online are cloaked in uncertainty this situation has a negative impact on individual determination as it becomes difficult to engage in necessary deliberation.

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<sup>12</sup> Intellectual Freedom Manual, ALA Office for Intellectual Freedom, 1996

<sup>13</sup> <http://www.facebook.com/facebook?v=info>

In conclusion there needs to be defined obligations that limit use of cyberspace, build a mechanism which transparent in processing systems and provide limited procedural and substantive rights and increase external oversight. The electronic communications has created new virtual space in which rule of law has to evolve, as the law in place now deals with territorially based system applicable to clearly demarcated spheres. For example, the law of cyberspace must now how to tackle with person who exist only in the form of an e-mail address and who purposed identity may or may not correspond to physical characteristics in the world. Law of cyberspace must be prepared to deal with person who manifest themselves only by means of particular I.P. address or domain name. Clear Boundaries have to be set to demarcate and encourage rapid differentiation between rules and defining the subjects of legal discussion.