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COPYRIGHT AND SOCIAL MEDIA: A PRELIMINARY CASE STUDY OF PINTEREST

*Elizabeth Townsend Gard**
*Bri Whetstone***

I. INTRODUCTION: WHERE SOCIAL MEDIA AND COPYRIGHT MEET

Social media fills our lives in ways unimaginable less than a decade ago.¹ For the whole of copyright history since the invention of the printing press, we were static observers of the world—consumers of culture. Now, we have now become active participants in making and distributing culture.² It is a user-generated revolution of proportions we have only begun to explore.³ In short, Web 2.0 is thrilling and, for copyright law, presents unprecedented questions and changes.⁴

“Web 2.0” was a term coined by Tim O’Reilly and Dale Dougherty to describe a new post-dot-com-bubble phenomenon.⁵ The Internet had suddenly become more interactive rather than static. Where before consumers merely read books, attended movies, or sang a song in their living room, those same consumers of culture have been turned into users who generate culture that, more often than not, is posted on the Internet in any number of environments—Facebook, Flickr, Blip.tv, YouTube, Wikipedia, even reviews at Amazon, to name just a few. By 2012, terms like “mashups,” “uploading,” “re-pinning,” “liking,” and “commenting,” are part of the common language, and nearly every school-aged child has been to YouTube to see funny videos of all kinds. We keep in touch with family by status updates at Facebook and posting photographs to Flickr. When we are stumped on a particular subject, we quickly turn to Wikipedia. When

* Associate Professor, Tulane University Law School. Thanks in particular to Mississippi College Law Review Editor-in-Chief Justin Ponds and our neighbor school, Mississippi College School of Law, for inviting me to the Social Media and the Law CLE/Symposium, which forced us to think more seriously about our longer-term project. This is the first piece in a larger project that will focus on Social Media and Copyright Law.

** Class of 2013, Tulane University Law School. Before law school, Bri worked at LucasArts in the Business Affairs Department, where she got her start in Terms of Service and social media. She graduated from Tulane University *cum laude* with honors in English and Film Studies.

1. In 2009 and again in 2011, we held the “Future of Copyright” speaker series at Tulane University Law School. In 2009, the predominant theme was user-generated culture and how that was altering copyright law, and by 2011, the predominant theme was how copyright would survive this revolution.

2. Ron W. Gard & Elizabeth Townsend Gard, *The Present (User-Generated Crisis) is the Past (1909 Copyright Act): An Essay Theorizing the “Traditional Contours of Copyright” Language*, 28 CARDOZO ARTS & ENT. L.J. 455 (2011).

3. See Jaqueline D. Lipton, *Cyberspace, Exceptionalism, and Innocent Copyright Infringement*, 13 VAND. J. ENT. & TECH. L. 767 (2011); Edward Lee, *Developing Copyright Practices for User-Generated Content*, 13 NO. 1 J. INTERNET L. 1 (2009).

4. Lauren E. Schwartzreich, *Internet Evidence from Start to Finish: Consequences of Web 2.0 in Employment Litigation*, ST033 A.L.I.-A.B.A. 1273 (2012).

5. Web 2.0, WIKIPEDIA, http://en.wikipedia.org/wiki/Web_2.0 (last visited Aug. 15, 2012).

we dream about our wedding, we pin all the possible ideas for a dress we come across as we surf the web onto a virtual pinboard at Pinterest.

Web 2.0 has pervaded our everyday life and has changed who we are as human beings and as individuals. And yet, all of these activities exist within the old world—a world made up of legal and social norms created before user-generated content. In particular, the laws governing user-generated content fall to the copyright system, which regulates not only the relationship between an individual creator and society's use of her work, but also serves as the main legal protection for the system itself (encompassing the underlying software, copyright infringement in inappropriate uses, fair uses of works, and online service provider safe harbor protection for user-generated liability).

Many ponder how user-generated culture is changing copyright. Should there be a non-commercial exception to copyright infringement, as Diane Zimmerman and others have suggested?⁶ Should we adopt Jessica Litman's notion of a personal-use exception?⁷ Can fair use cover the new uses we see at social media sites? Will the work of groups like Center for Social Media help us grapple with the expectations and needs of different groups of users, from documentary filmmakers, to librarians, to the general public?⁸ Or will other contract-based mechanisms replace copyright, as we see with YouTube's "Copyright School"?⁹ The future is uncertain because cultural norms are changing in this new user-generated world. These are the big questions that scholars, practitioners, content industries, technology companies, and the average user are all pondering.

This Paper, however, is taking a more pedestrian approach to understanding the massive impacts of user-generated content, Web 2.0, and social media's relationship with copyright law. The Paper will try to understand this world by looking at one social media website in particular: Pinterest.

Pinterest is a social media website devoted to gathering photographs—usually of products, fashion, redecorating, and other cool image-intention culture—and placing them onto a virtual pinboard of one's own making. "In other words, it's an online-shopping, scrapbook-making, catalog-saving, Manila-folder-stuffing hoarder's dream come true."¹⁰ The site has risen in popularity very quickly—eleven million users in merely a year—and by 2012, the site was ranked the third most visited social media site in the U.S.,

6. Diane L. Zimmerman, *Living Without Copyright in a Digital World*, 70 ALB. L.J. 1375 (2007).

7. Jessica Litman, *Lawful Personal Use*, 85 TEX. L. REV. 1871 (2007).

8. See Center for Social Media, <http://www.centerforsocialmedia.org/> (last visited September 5, 2012). The American University Center for Social Media has created Best Practices for many groups and topics, including documentary filmmakers, poets, and librarians.

9. Nick Bilton, *Youtube Sends Copyright Offenders to School*, THE BITS BLOG (April 14, 2011, 2:57 PM), <http://bits.blogs.nytimes.com/2011/04/14/youtube-sentences-copyright-offenders-to-school>.

10. Kendra Nordin, *Pinterest: An Image-Sharing Internet Sensation*, THE CHRISTIAN SCIENCE MONITOR (March 9, 2012), <http://www.csmonitor.com/Innovation/Tech/2012/0309/Pinterest-An-image-sharing-Internet-sensation>.

with Facebook and Twitter occupying #1 and #2.¹¹ Pinterest became controversial in the winter of 2012 for its practice of encouraging their users to actively pin by relinking and uploading others' photographs without asking permission. It is something that happens on every social media site, but for some reason, Pinterest caught the attention of photographers, and now even Flickr has embedded code allowing its users to prevent their photographs from being re-pinned. With the attention, questions of copyright have become part of the discourse surrounding Pinterest.¹²

This Paper sits within a larger, year-long research project to compare a dozen social media websites to better understand the role of copyright law within user-generated culture in a social media context. The final result of that project will be the creation of a website that will assist users in navigating questions of copyright that are distinct from the copyright policies of a particular site, giving users assistance in understanding "Terms of Use."

Part II will begin with an overview of how the project began. Part III will turn to Pinterest as a case study, examining its rise. Part IV then turns to Pinterest's "Terms of Service" and the recent controversy surrounding their Terms. Part V discusses the basics of copyright within a social media context, using Pinterest as an example. Part VI concludes with general thoughts on how Pinterest and other social media websites may be altering the traditional contours of copyright law.

II. THE PROJECT BEGINS

A. *An Overview of Our Inquiry*

This inquiry began from three sources: 1) our work at Tulane on the Durationator™ Copyright Experiment; 2) Dr. Elizabeth Townsend-Gard's invitation to participate in the Law and Social Media Symposium presented by the Mississippi College School of Law; and 3) the previous work of co-author and rising-3L Bri Whetstone, whose focus on social media at LucasArts reflects her continuing interest in pursuing that line of inquiry. The opportunity to begin our great social media and copyright experiment was too great to pass up.

Social media pervades much of our lives. Our norms are being developed as we all learn to live in a social-mediated world. How does law operate and mediate our lives in the context of social media? For our part, we

11. See Teena Gomes, *Leveraging Pinterest for B2B Marketing: 6 Practical Tips*, CUSTOMER THINK (Mar. 9, 2012), http://www.customerthink.com/blog/leveraging_pinterest_for_b2b_marketing_6_practical_tips. See also Todd Wasserman, *Pinterest is Now the No. 3 Social Network in the U.S. [STUDY]*, MASHABLE (April 6, 2012), <http://mashable.com/2012/04/06/pinterest-number-3-social-network/>.

12. In a recent article by Aribah Khanum entitled "Ten Things to Avoid When Using Pinterest," the author addressed copyright: "Be careful about the copyright issues: Some people argue and quarrel on this issue that pinning is violating the obligation of copyright. A lot of sites promoting themselves through pinning they make it easy for you to pin their content but they also want credit for it so after pinning this kind of pictures you must embedded the real source." Aribah Khanum, *10 things to avoid when using Pinterest*, THE NEWS TRIBE (July 11, 2012), http://thenewstribе.com/2012/07/11/10-things-to-avoid-when-using-pinterest/#.T_2UViL8mEc.

are interested in copyright. Many more elements exist—privacy, criminal investigations, etc. But for us, we see the activities of the sites themselves as grounded in copyright law. And so, we started to look at how copyright law was communicated to the average person—could they understand the system in which they agreed to play? Were the laws clear? We also wanted to know how copyright law was presented to the user of a particular site. We wanted to know if copyright law was distinctly interpreted for each social media site, or if common visions of the role of copyright law and copyrighted materials existed within the system itself. We have come away feeling that copyright law could be better communicated to users and that social media websites themselves have a conflict of interest in being the provider of that information. Our larger project, in the end, hopes to suggest a standard for social media sites in communicating copyright law and information to its users.

In this Paper, we ask many questions. How is copyright law presented and communicated to users of the particular social media platform? This includes Terms of Service, copyright pages, how the system itself is structured, and links to outside information pages. Second, how does copyright law actually operate within the particular social media site? What are the norms? Would they pass muster under current copyright law? How easy is it to follow copyright law? What impact does the particular site have on our vision of what copyright law allows and disallows? This Paper is our first trial run by looking at Pinterest.

We have also seen the connection of social media to our ongoing research on copyright and duration. At Tulane University Law School, we have been working on a software tool to help determine the copyright status of every cultural work in the world. We have spent thousands of hours researching and coding every country in the world.¹³ But as it turns out, determining whether a work is under copyright or in the public domain is just one question—and often not even a necessary question—within a social media context. Traditionally when one wanted to use a work, one would determine if it was still under copyright. If not, then one was free to use it any way one wanted without asking permission. If it was still under copyright, one contacted the copyright holder and asked permission. Alternatively, if one was using only a small amount of the work or using the work in a transformative manner, one could assert a fair-use defense.

Social media seems to be transforming our relationship with cultural objects. We link, re-pin, repost, upload, comment upon, and mash cultural works on such a furious level that the old traditional ways seem quaint. And yet traditional copyright law continues to exist—quite vibrantly. We

13. “The Durationator™ is a web-based tool which seeks to make the past usable one query at a time by providing legal information regarding the copyright term of any given cultural work.” THE DURATIONATOR, <http://www.durationator.com/> (last visited June 4, 2012); see also Elizabeth Townsend-Gard, *About the Durationator*, THE DURATIONATOR, <http://www.durationator.com/about.php> (last visited June 4, 2012).

wanted to understand how our project, the Durationator™ Copyright Experiment, fit within this larger, new revolution, and to do that, we had to expand our research to understand two related but distinct areas of copyright law, in addition to understanding the terms of protection and ownership of copyright.

Finally, we wanted to explore the intersections between traditional protections under copyright and those developed in the wake of the Internet. Traditional copyright law in the social media context is mediated, at least in part, through Section 512 of the 1976 Copyright Act. An amendment added in 1998, Section 512 provides a safe harbor to online service providers from copyright infringement occurring through their users' activities.¹⁴ Each social media website, to take advantage of this safe harbor, must meet certain requirements. The larger study will look into how Section 512 is being implemented and how the elements of Section 512 are being communicated to content owners and users of copyrighted works. But that is only one part of how copyright law affects social media. Section 512 protects online service providers from liability from user-generated content.

We also want to focus on the user-generated content itself and the user creating the works within a social media context. What does a user do at the particular site? Does code allow or discourage copyright infringement? How is copyright law itself explained and implemented into the system? When users provide content, how is copyright explained about that content? What norms have developed, and are they in keeping or in contradiction to traditional copyright law? In short, how does the system interact with traditional copyright infringement, and what norms are now being put in place?

B. Structure of Our Research Project

The larger Copyright and Social Media project will look at a dozen social media sites and ask several questions. We want to understand the experience of the site in relationship to copyright law. So we begin with an overview of the social media website itself. These questions will form the basis of our data gathering, and from there we will make summaries and conclusions. We envision the study of each social media site as three-parts: 1) *Introduction and Experience*; 2) *Terms of Service/Use*; and 3) *Copyright*.

First, we will ask the following basic questions as an *Introduction and Experience of the Social Media Website*:

- 1) What is the particular site? What is its purpose?
- 2) What is the basic history of the site?
- 3) Is there any specific, culturally-relevant information regarding the site?
- 4) What does one do at the site? We will search out examples of the kinds of social media taking place and what users do.

14. Digital Millennium Copyright Act, 17 U.S.C. § 512(c) (2006).

Second, we will evaluate the *Terms of Use* and examine how this compares to the experience above. Bri Whetstone will run this part of the study, as before entering law school, she did an extensive project on comparing over thirty terms of use in social media as part of her employment with LucasArts. She is utilizing that experience in our year-long project during her 3L year.

Third, in *Copyright at the Social Media Site*, we will have four areas of inquiry into copyright law itself at the particular site:

- 1) Copyright Policies. What happens when one signs up regarding copyright law? How does one become aware of copyright at the particular site, and how accessible is the information? How do the policies reflect application of the law in that particular environment?
- 2) Copyrighted Images. Is it clear who owns the particular image being linked or uploaded? What kind of license is attached to the image, and how easy it is to understand one's licensing or sharing options? How easy is it to contact the copyright holder of the image? Is this work under copyright or is it in the public domain, and how easy is it for those coming to the image later to verify the answer?
- 3) The Workings of Fair Use. How well does the site explain fair use? How much is fair use part of the site's structure and reliance on users' uses? Are there new modes of fair use operating? Are users relying on traditional notions of fair use? How much are the concepts of "transformative-ness" and market replacement playing a role?
- 4) Linking, Uploading, Commenting, etc. What does the user actually do, and how much is copyright law implicated? Are the links market replacements for the original work? Does uploading require a user to confirm the ownership and/or copyright status of the work? Is it clear to a user where copyright law sits within the uses they are engaged?
- 5) Section 512 and All Its Complexity. How does the site explain and implement Section 512? What is the approach of the site to implementing and explaining Section 512? Does it include Section 512(f)? Does the site include a put-back system? How is the system operated behind the scenes?

We will end each study with *Conclusions and Recommendations*, which will sum up our findings and give recommendations specific to the site itself and to users coming to the site.

We have so far targeted Wikipedia, YouTube, Flickr, Facebook, DeviantArt, Tumblr, Etsy, Roommates.com, Law Guru, and Pinterest, but we assume as we get further into the project, more social media sites will be added that are relevant, and we will expand our inquiry. This initial Paper

focuses on Pinterest—and gives us a trial run of how the larger project will approach the empirical research over the next few months.

III. PINTEREST: A CASE STUDY

A. Introduction

Pinterest is a social media site that within the space of a year made a huge splash and is now garnering attention with regard to copyright laws.¹⁵ What makes the case of Pinterest interesting is that it holds elements of *all* the social media sites and so gives us an initial window in which to explore what these kinds of sites do, how the activities interact with copyright law as we know it, and how sites like this appear to change custom and law, and (as we see with Pinterest) suggest how traditional notions of copyright law may push back on the new business model. This Part is our first attempt at sorting out how we will proceed with case studies for the larger project. Through the early publication of this Paper, we are encouraging feedback on our method and categories, as well as other ideas on how to improve the larger study. We plan to release the individual studies, as well as the final results.

1. What Is Pinterest?

Pinterest is a form of window-shopping in a user-generated world. People organize photographs of products they dream to own (usually linked to the products themselves) to inspire them in creating whatever project they are working on, or they merely spend some time dreaming and surfing. Pinterest is a virtual pinboard designed to “organize and share all the beautiful things you find on the web.”¹⁶ Users create a pinboard, where they are then able to either link to photos they find on the web or upload a photo. One may link to images, but currently, there seems to be no way to link to text only. This is a world of images, with small bits of text underneath the image or comments about the image posted.

2. What One Does at the Social Media Site?

Pinners mostly do two things at Pinterest: 1) pin images on their pinboards; and 2) look at others pinboards, where they re-pin or comment. Here is an example. One can search for photographs of something particular—“Ikea countertops.” What comes up is page after page of pinboards where individuals have copied onto their own pinboards the official Ikea countertop photographs (recognizable with the product floating in white and not necessarily because it attributed or linked back to Ikea), copied professionally-taken photographs that look like they come from a magazine, or copied photographs of Pinners’ own Ikea countertops (or someone else’s amateur photograph).

15. Websites are now explaining how Pinterest works, as in the case of <http://www.tennessean.com/article/20120310/LIFE01/303100008/Piquing-Pinterest>. Others are starting to suggest how businesses could use Pinterest. See Gomes, *supra* note 11.

16. *What is Pinterest?*, PINTEREST, <http://pinterest.com/about> (last visited June 4, 2010).

For example, Charles Lawrence pinned a photograph of an Ikea countertop from kleypas.blogspot.com.¹⁷ When you click on the photograph or the link, you are taken to the DIY blog “This and That,” which describes one person’s ordeal and excitement over redoing their kitchen.¹⁸ So in this example, we have linked a photograph to a site where all of the photographs are presumably owned by Vanessa at “This and That.” This is how Pinterest is supposed to work. If you go to Charles Lawrence’s other pinboards, you see that he has fifteen pinboards: “Garden/Yard,” “Domicile,” “Bathroom,” “DIY,” “Infographics,” “Travel,” “Humor,” “Products,” “Closet Ideas,” “Colors,” “Decals,” “Good Habits,” “Historic Resources,” “Making furniture,” and “Pallets.”¹⁹ Users can choose preset categories or make up their own.

Pinterest does other things. It allows people to re-pin products. So for example, sticking with Charles Lawrence’s pins, he pinned, via Amanda Blank-Smith, a pots and pan storage organizer found at Amazon.com for \$20.²⁰ The photograph was directly from pantree.com, interestingly, instead of Amazon.²¹ The photo itself did not seem to take you to the product, but a link below the photograph did.²² The photo was an official photograph of the company. A lot of Pinterest’s links and photographs are similar to this. For example, an elaborate chalkboard decal affixed to a high-end, stainless-steel refrigerator was pinned by Amanda Blank-Smith via Alica Jacob.²³ When you click on the photograph, you are taken directly to the website of the decal maker, WallCandy Arts.²⁴

Sometimes the links, however, seem to have gotten lost. For example, in following a link on Ikea countertops, we encountered another site outside of Pinterest where someone had gathered examples of workspaces.²⁵ One in particular caught our eye. It had no link or information from which it came, and when we pinned it, this was replicated.²⁶ Because we pinned it as a link, the photograph would now link back to this site, but clearly that was not the originator of the photograph.

As to text, sometimes people write something about the photograph they are posting. For example, regarding one example of an Ikea countertop: “This is how my blue walls and white cabinets would look with

17. Vanessa, *This and That*, BLOGSPOT, www.kleypas.blogspot.com (last visited July 12, 2012).

18. *Id.*

19. Charles Lawrence, *Charles Lawrence*, PINTEREST, <http://pinterest.com/cwlawrence/> (last visited August 30, 2012).

20. Charles Lawrence via Amanda Blank-Smith, *Products*, PINTEREST, <http://pinterest.com/pin/198932508509842649> (last visited June 4, 2012).

21. *Id.*

22. *Id.*

23. Amanda Blank-Smith via Alicia Jacob, *For the Home*, PINTEREST, <http://pinterest.com/pin/266134659199932868/> (last visited June 4, 2012).

24. *Chalkboard Decal—Rococo*, WALLCANDY ARTS, <http://wallcandyarts.com/chalkboard-decal.html> (last visited June 4, 2012).

25. *Workspace Design Inspiration*, HOME-DESIGNING, <http://www.home-designing.com/2010/08/workspace-design-inspiration> (last visited Aug. 30, 2012).

26. Elizabeth Townsend Gard, *Exploring Copyright in Social Media Context*, PINTEREST, <http://pinterest.com/pin/85005511686614142/> (last visited Aug. 30, 2012).

the butcher block countertops I want from IKEA :-)"²⁷ Sometimes there is no text. Other times, the text is merely a description of the product. For example, most of the photographs found on Pinterest for "Loubitons" were professional photographs of the shoes, with little to no comment from those pinning the photographs. For example, Alison Lee wrote, "Loubitons."²⁸ Charity Daw wrote, "LOUBITONS #burlesque #xtina."²⁹

But in other instances, small bits of commentary create an interesting compilation that is more than just gathering all of the photos one can find on "Ikea countertops." Looking again at a pinboard of Charity Daw's, she titles the pinboard, "I prefer style over fashion."³⁰ With 161 pins, she has posted linked photographs of various stylish women, and under each photograph, she has commented.³¹ Some are one word: "[E]xcellent!" she writes under a vogue photograph from tumblr.com.³² "Perfect 50s swimsuit," she writes under another.³³

One more layer exists. Other Pinterest users comment upon the pinned works and re-pin the images. According to RJ Metrics, almost eighty percent of the pins are re-pinned, making "[t]he viral potential . . . unsurpassed."³⁴ So that is what people do at Pinterest—gather onto virtual pinboards photographs, particularly of fashion, products, and other cultural elements, where they comment and re-pin.

You can follow particular "pinners."³⁵ Pinterest creates a board that displays the pins of those you follow. So if there are five new photographs from one pinner, those will each be displayed. There is also a left hand column that lists recent pinning activity. But what is a bit strange about Pinterest is that, until recently, you gained little to no information about the pinner. Lots of individuals are identified little other information is provided. In recent months, they have added a short description section below one's name. Now, one can also connect one's Pinterest page to her Facebook, Twitter, and other social media pages, as well as identify her geographic location. Pinners are no longer pinning in a vacuum but are connected to their lives outside of Pinterest.

27. Carla Wallace, *For the Home*, PINTEREST, <http://pinterest.com/pin/85005511687652603/> (last visited Sept. 14, 2012).

28. Alison Lee, *Alison Lee*, PINTEREST, <http://pinterest.com/pin/130393351680693048/> (last visited June 4, 2012). The image itself had no link.

29. Charity Daw, *Charity Daw*, PINTEREST, <http://pinterest.com/pin/109353097171617703/> (last visited June 4, 2012). The image itself again had no link. Another of Charity Daw's boards that is particularly creative is *But can I wear it on my head?*, PINTEREST, <http://pinterest.com/charitydaw/but-can-i-wear-it-on-my-head> (last visited June 4, 2012).

30. Charity Daw, *I prefer Style over Fashion*, PINTEREST, <http://pinterest.com/charitydaw/i-prefer-style-over-fashion/> (last visited June 4, 2012).

31. *Id.*

32. Charity Daw, *My.Little.Pony*, PINTEREST, <http://pinterest.com/charitydaw/my-little-pony/> (last visited June 4, 2012).

33. Daw, *supra* note 30.

34. Gomes, *supra* note 11.

35. There are now lists of the most popular pinners. *Top Pinners*, REPINLY, <http://www.repinly.com/> (last visited Aug. 30, 2012).

There are other features at Pinterest that have received less attention. You can post videos.³⁶ There is a link to popular pins.³⁷ And there is a gift section, listing gifts in various price categories from \$1-20, \$20-50, \$50-100, \$100-200, \$200-500, \$500+.³⁸ It is always unclear who is posting. The price is placed in a diagonal banner on the photograph, and the photograph links to an outside source.³⁹ Currently there are a lot of products that link back to Etsy, which is self-described as “more than a marketplace: we’re a community of artists, creators, collectors, thinkers and doers.”⁴⁰ Most of Etsy’s merchandise is handmade items, some of which can be specialized.⁴¹ Etsy has included the “Pin It” button for each of their items.

But in the end, Pinterest seems to be about window-shopping, dreaming, and actual shopping. For example, we were looking for a backpack with zombies. Pinterest came through; we immediately found a zombie backpack that linked to the website for purchase.⁴² The website is more efficient than going to any one site or even doing a Google image search.

3. History of Pinterest

Pinterest has not been around for very long—only two years—and it is still invite-only as of July 2012.⁴³ But its rise has been meteoric. The Christian Science Monitor called it “[a]n image-sharing Internet sensation.”⁴⁴ In January 2012, Pinterest had over eleven million users, a forty-percent increase from the previous month and a 4000% increase from six months before.⁴⁵ By February 2012, they had reached seventeen million users. Currently, it is being widely reported that “Pinterest is driving more referral traffic on the web than Google+, YouTube, Reddit, and LinkedIn combined.”⁴⁶ As of March 2012, Pinterest ranked fifty-fifth in traffic, with twenty million page views per day.⁴⁷ On August 16, TIME magazine listed Pinterest as one of the top fifty best websites of 2011.⁴⁸ By February 2012,

36. *Videos*, PINTEREST, <http://pinterest.com/videos> (last visited June 4, 2012).

37. *Popular*, PINTEREST, <http://pinterest.com/popular/> (last visited June 4, 2012).

38. *Gifts*, PINTEREST, <http://pinterest.com/gifts/> (last visited June 4, 2012).

39. *Id.*

40. *Community*, ETSY, <http://www.etsy.com/community> (last visited June 4, 2012).

41. *Etsy*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Etsy> (last visited Aug. 30, 2012).

42. One version of the pin: Tina Mearse, *Creepy McCreeperton*, PINTEREST, <http://pinterest.com/pin/17521886020730311/> (last visited Aug. 30, 2012). The website where one can purchase it is <http://www.younghouselove.com/2011/07/another-unsuccesful-attempt-to-keep-it-cool/>.

43. Dave Wieneke, *What is Pinterest, and why should anyone care?*, ECONSULTANCY (March 13, 2012 10:47 AM), econsultancy.com/us/blog/9290-what-is-pinterest-and-why-should-care.

44. Nordin, *supra* note 10.

45. Gomes, *supra* note 11.

46. *Id.*

47. *Pinterest.com Estimated Website Traffic Net Worth \$43.8 Million USD*, FREEWEBSITEREPORT.ORG, <http://www.freewebsitereport.org/www.pinterest.com> (last visited March 30, 2012).

48. Cristian Galletti, *What's the history of Pinterest? How did it get started? What's the Story Behind It?*, QUORA (Oct. 3, 2011, 8:55 AM), <http://www.quora.com/Whats-the-history-of-Pinterest-How-did-it-get-started/answer/Cristian-Galletti>.

Pinterest was the third most trafficked social media website, behind Facebook and Twitter.⁴⁹

Pinterest also has big investors. Ben Silbermann, Evan Sharp, and Paul Sciarra are the co-founders of Pinterest.⁵⁰ Silbermann began his career in technology by working for Google; Sharp has an architecture background; Sciarra and Silbermann were college friends. Sciarra left Pinterest this year and is now the entrepreneur in residence at Andreessen Horowitz, a venture capital firm invested in Pinterest.⁵¹ Infusions of capital from venture capital firms allow Pinterest to remain operational, since the site is not currently monetized. Most recently, Rakuten, a Japanese company, invested \$100 million in Pinterest.⁵² Venture capital firms like Andreessen Horowitz, Bessemer Venture Partners, and First Mark Capital own substantial shares of Pinterest.⁵³

4. Is There Any Specific, Culturally-Relevant Information Regarding the Site?

Currently, eighty percent of Pinterest users are women, and fifty-five percent of its users are between twenty-five and forty-four years-old.⁵⁴ “[P]interest found its most passionate users among the Midwestern scrapbooking set—a mostly female group—who have turned to it to plan weddings, save recipes, and post ideas for kitchen renovations.”⁵⁵ However, that demographic is changing as its popularity rises. For example, celebrities pin. In March 2012, Mashable ran a story of the top twelve celebrities to follow on Pinterest, which included Ryan Seacrest, Mark Zuckerberg, Michael Kors, Julie Benz, Yoko Ono, Alanis Morissette, Alyssa Milano, Nina Garcia, Paula Dean, Felicia Day, Martha Stewart, and Ashley

49. Sean Ludwig, *Pinterest now the third most popular social network after Facebook & Twitter*, VENTUREBEAT (Apr. 5, 2012, 5:37 PM), <http://venturebeat.com/2012/04/05/pinterest-third-most-popular-social-network/>.

50. Alyson Shontell, *Meet Ben Silbermann, The Brilliant Young Co-Founder Of Pinterest*, BUS. INSIDER (March 12, 2012), http://articles.businessinsider.com/2012-03-13/tech/31158694_1_google-experience-products-silbermann-said; Paul Pretunia, *Working Out of the Box: Pinterest Co-Founder Evan Sharp*, ARCHINECT (March 16, 2012), <http://archinect.com/features/article/39788357/working-out-of-the-box-pinterest-co-founder-evan-sharp>.

51. Alexia Tsotsis, *Pinterest Co-Founder Paul Sciarra Leaves, Ben Silbermann Officially Takes On CEO Role*, TECH CRUNCH (April 2, 2012), <http://techcrunch.com/2012/04/02/pinterest-co-founder-paul-sciarra-leaves-ben-silberman-officially-takes-on-ceo-role/>.

52. A. Ananthalakshmi, *Pinterest Financing Values Company at \$1.5billion*, YAHOO (May 17, 2012), <http://news.yahoo.com/pinterest-raises-100-million-funding-wsj-054313003—sector.html>.

53. *Pinterest*, CRUNCHBASE, <http://www.crunchbase.com/company/pinterest> (last visited Aug. 30, 2012).

54. Cynthia Boris, *Pinterest Tops Twitter for Referral Traffic*, MARKETING PILGRIM (March 9, 2012), <http://www.marketingpilgrim.com/2012/03/pinterest-tops-twitter-for-referral-traffic.html>. Interestingly, in the UK, Pinterest is more popular with men! Vikki Chowney, *More male Pinterest users in UK than female: infographic*, ECONSULTANCY (Feb. 15, 2012, 10:53 AM), <http://econsultancy.com/us/blog/9021-more-male-pinterest-users-in-uk-than-female-infographic>. UK has a smaller pool—only 200,000 as compared to 12 million in the U.S.—but in the UK 56% of the users are men and 44% are women.

55. Jessi Hempel, *Is Pinterest the next Facebook*, CNN MONEY (March 22, 2012, 5:00 AM), <http://tech.fortune.cnn.com/2012/03/22/pinterest-silbermann-photo-sharing>.

Benson.⁵⁶ “[R]eese Witherspoon gushed to Conon O’Brien that it was a ‘collection of the most amazing, wonderful craftiness on earth!’”⁵⁷ Pinterest actually has a page devoted to celebrity boards: “Your top source for finding celebrity profiles on Pinterest. We even included the links to each account!”⁵⁸

Politicians themselves have gotten into the act. The Maryland Governor, Martin O’Malley, is promoting an entrepreneurial contest by having contestants pin ten images to make a pitch in either the category of “student entrepreneur” or “bootstrappers,” with prizes that include a MacBook Air and an iPad.⁵⁹

The Romneys have had their brushes with Pinterest. Ann Romney has a Pinterest account.⁶⁰ But it has been the parody or commentary boards that have made news. Mitt Romney has been a particular target. First, there is “Fake Mitt Romney Pinterest Page,” which had no identifying marks that it was actually fake and now appears to have been taken down by Pinterest.⁶¹ Another pinboard focuses on the reported luxury hotels of the Romney campaign in January 2012: “All of these hotels appear under ‘TRAVEL: LODGING’ in Mitt Romney’s January 2012 campaign finance report.”⁶² A third Pinterest site has about a dozen etch-a-sketch pins focused on Romney,⁶³ playing on a news story where Eric Fehrstrom, a Romney advisor, claimed the presidential campaign would reset after the Republican primary, “likening it to an Etch a Sketch toy in which pictures get erased and redrawn at will.”⁶⁴ A fourth Pinterest site, “Mitt Romney’s Toys,” posts all the kinds of toys that Mitt might own, with commentary.⁶⁵ These boards, however, seem out of the norm of how the site is really being used at the moment, but transformation of that use could obviously occur.

56. Samantha Murphy, *12 Celebrities to Follow on Pinterest*, MASHABLE (March 23, 2012), <http://mashable.com/2012/03/23/pinterest-celebrities>. There are many of these stories identifying celebrities on Pinterest.

57. Hempel, *supra* note 55.

58. *Celebrities on Pinterest*, PINTEREST, <http://pinterest.com/dailydot/celebrities-on-pinterest> (last visited June 4, 2012).

59. Gus G. Sentemens, *Maryland Governor Uses Pinterest for Startup Contest*, THE BALTIMORE SUN (March 30, 2012), http://articles.baltimoresun.com/2012-03-30/business/bal-20120330_1_winners-contest-guidelines-angel-investors.

60. Matt Vasilogambros & Ethan Klapper, *Ann Romney Joins Pinterest: Pinterest used by Romney’s wife—and some campaign critics*, NATIONAL JOURNAL (February 21, 2012, 2:33 PM), <http://www.nationaljournal.com/2012-presidential-campaign/ann-romney-joins-pinterest-20120221>.

61. The fake page was located at <http://pinterest.com/mittromneygop> but is no longer available. We had this confirmed by Erica Billups of The Outcast Agency, who spoke with us off the record about Pinterest and their approach to copyright. She confirmed that they had received a trademark takedown notice from Romney, and they had removed the offending imposter.

62. *Luxury Hotels of the Romney Campaign*, PINTEREST, <http://pinterest.com/thinkprogress/luxury-hotels-of-the-romney-campaign> (last visited June 4, 2012).

63. *Etch a Sketch-in*, PINTEREST, <http://pinterest.com/gteresa/etch-a-sketch-in> (last visited June 4, 2012).

64. Alexander Burns, *Election 2012: The Etch a Sketch Campaign*, POLITICO (March 22, 2012, 9:10 PM), <http://politico.com/news/stories/0312/74318.html>.

65. *Mitt Romney’s Toys*, PINTEREST, <http://pinterest.com/drzymalas/mitt-romney-s-toys> (last visited June 4, 2012).

Even President Obama has joined Pinterest!⁶⁶ By the end of March 2012, his campaign had a Barak Obama Pinterest site.⁶⁷ In less than a week, the site had boards which included “Obama-inspired recipes,” “Pet Lovers for Obama,” “Just the Facts,” “Obama 2012 in action,” “Faces of Change,” “The First Family,” “Obama Art,” and “Obama 2012 Store.”⁶⁸ For instance, a picture of President Obama and a dog, Bo, appear from barackobama.tumblr.com with the caption, “Buddies.”⁶⁹ Within a week, it had 192 likes, 18 comments, and 170 re-pins.⁷⁰

It’s not just politicians. The U.S. Army has a Pinterest profile as well.⁷¹ As of July 2012, they had 31 boards and 831 pins. Categories include “Thank a Soldier’ Notes,” “Honor the Fallen,” “Veterans,” “Army Style and Fashion,” “Training,” “Welcome Home,” and “Basic Combat Training.” Each contains images and accompanying text.

Corporations have boards, and it appears that here the connection to users is most great. Most of the time individual users are pinning photographs and ads from various places like Gap, Target, Walmart, and more high-end fashion designers. Some companies have their own board, as in the case of Gap.⁷² It is interesting to note that Gap has not yet added the “Pin it” button to their website. Moreover, at Pinterest there is no specific search function to find companies yet. One imagines that will come shortly.

The DIY house remodeling crowd has joined in as well. The website Young House Love holds their own “Pinterest Challenge,”⁷³ where one is challenged to make one of the things that one has pinned. As of the summer 2012, they have had three Pinterest Challenges.⁷⁴ In many ways, Pinterest (at the moment) is their domain—mostly women who redecorate their homes, dream of weddings, and raise children while sharing images, ideas, photographs of beautiful bathrooms, recipes, crafts, and other elements of their world. It will be interesting to see if Pinterest expands or becomes a niche social media website. The current demographic has great numbers, as Pinterest has risen to the #3 spot for social media websites. Girl power.

66. Julie Boorstin, *Pinterest's Growth Comes Back to Earth*, USA TODAY (March 30, 2012, 1:48 PM), <http://www.usatoday.com/tech/news/story/2012-03-30/cnbc-pinterest-growth/53893824/1>.

67. Natalie Jennings, *President Obama Joins Pinterest*, WASH. POST (March 27, 2012, 4:10 PM), http://www.washingtonpost.com/blogs/44/post/president-obama-joins-pinterest/2012/03/27/gIQAAZHIeS_blog.html.

68. Barack Obama, PINTEREST, <http://pinterest.com/barackobama> (last visited June 4, 2012).

69. Barack Obama, PINTEREST, <http://pinterest.com/pin/276408495849974655> (last visited June 4, 2012).

70. *Id.*

71. U.S. Army, PINTEREST, <http://pinterest.com/usarmy/> (last visited Aug. 30, 2012).

72. Gap, PINTEREST, <http://pinterest.com/gap> (last visited June 4, 2012). Interestingly, the link provided at the board goes not to Gap’s website, but to its Facebook page.

73. Sherry, *Can You Smell That Smell?*, YOUNG HOUSE LOVE (Mar. 7, 2012), <http://www.younghouselove.com/2012/03/can-you-smell-that-smell/>.

74. Sherry, *Another Unsuccessful Attempt To Keep It Cool*, YOUNG HOUSE LOVE (July 26, 2011), <http://www.younghouselove.com/2011/07/another-unsuccessful-attempt-to-keep-it-cool/> (describing the first competition).

C. Experience of Pinterest from a Copyright Perspective

Copyright law affects Pinterest on two levels: 1) the users and copyright; and 2) Pinterest's safe harbor under the Copyright Act. (The software itself also holds a copyright, but we will put that aside for now.) Pinterest has recently gotten a good deal of press on whether the activities of "pinning" constitute copyright infringement. The Business Insider wrote, "[P]interest might be the most illegal network to hit the Internet yet. More illegal than Napster. More illegal than MegaUpload."⁷⁵ This seems pretty inflammatory language, and so this section will look at which elements of Pinterest could be infringing and which are covered by Section 512, a safe harbor for online service providers.

1. A User's Copyright-Specific Experience

Pinterest operates around the concept of pins. Pins are images, which are sometimes accompanied by text, though not necessarily. Originally, the boards were called "galleries," but the idea, beginning with its first website in February 2010,⁷⁶ was the same: "Pin up anything you find online — recipes to make, clothing to buy, art that inspires . . ." ⁷⁷ One can add a "Pin It" Button to one's browser,⁷⁸ upload a photograph, or "Pin It" from the website itself. More and more "Pin It" buttons are popping up on other websites as the site grows in popularity. You can also get an App for your iPhone.

The images being pinned are generally not owned by the pinner. Instead, they come from a variety of sources on the Internet. So, what does copyright law look like when one is pinning images? Most of the photographs seem to be linking to the website, where one can find more information about the image—the recipe, where to buy the product, etc. It seems that in the last six months, it is becoming normal to link to the original photograph rather than to upload a photograph.

For example, when I (Dr. Townsend-Gard) repin works, the text of others appears below, and I can delete, revise, and add my own text; I am creating a small derivative work without their permission. I am taking someone else's expression and altering it. Who owns the expression written with the pins? I can re-pin the photograph and change the comment, or I can repin the photograph and make it seem as if the original comments are my words. There are no quotes and no citation to another source. The

75. Kevin Lincoln, *Pinterest Might be Enabling Massive Copyright Theft*, BUS. INSIDER (February 17, 2012), http://articles.businessinsider.com/2012-02-17/tech/31070312_1_copyright-holder-napster-you-tube. Note, the author also writes, "[a] case involving J.D. Salinger's attempt to stop his letters from being published established that a copyright holder always has the right to control the use of his work, even if it means he'll make less money." *Id.* This actually is NOT the holding in the *Random House* case, which points to one more reason not to trust this article. *Salinger v. Random House, Inc.*, 811 F.2d 90 (2d Cir. 1987), *reh'g denied*, 818 F.2d 252 (2d Cir. 1987)

76. *Your Interests, Visualized*, WAYBACKMACHINE, <http://web.archive.org/web/20100202235045/http://pinterest.com/#> (last visited Aug. 30, 2012).

77. *Id.*

78. *Goodies*, PINTEREST, <http://pinterest.com/about/goodies/> (last visited Aug. 30, 2012).

act of pinning in some ways becomes an act of plagiarism. There is no distinction between my comments and that of others. And yet, this image is now part of my board. Additionally, I found the indistinction of authors in another instance when I downloaded a photograph of a quilt and then uploaded the picture. The picture now looked as if it was my quilt creation. These two parts of the system—editable comments that do not indicate the original source and the capability of uploading photos with no references to an original source—are two aspects of the system that, from a copyright perspective, seem troubling. For the most part, though, most images are being linked to an original source, which takes care of the second worry.

To illustrate this relationship between pinning and copyright, consider an example involving two photographs—one picture of a sewing room and another of raw bacon. In the photograph of the sewing room, someone has figured out how to hang many large rulers.⁷⁹ Following the link from the photograph itself, we find its origin point. The picture itself is found on Flickr under an account called “athomesewing,” with no real name given.⁸⁰ This presents interesting elements for copyright—the common practice of creating a Flickr account with no real name attached (although one could email and find out, of course). Why is this a problem? Think about this photograph in a traditional copyright setting—duration, asking permission, and even (though not required by the law directly in the U.S.) a right of attribution, or moral rights.

The image of the sewing room is protected by copyright, which is based on the life of the author plus seventy years.⁸¹ However, we do not know the author’s name. The standard copyright term, then, for a pseudonym is ninety-five years from publication or 120 years from creation.⁸² We know that it was created on July 13, 2008. But what constitutes publication? Surely posting a work on Flickr and then having it repined over and over would constitute publication.

But there are more immediate questions regarding the copyright for this particular image. For this photograph, the uploader has chosen “All Rights Reserved.” This means that they claim all of their Section 106 rights under the 1976 Copyright Act, including rights to copies, derivative works, and distributions to the public. But they have also allowed linking to the photograph through Facebook and Twitter, and they have even allowed others to download the photograph in various sizes. Downloading the photograph infringes on the uploader’s “All Rights Reserved.” If I (as a user) never understand how this can be, and I download the photograph, have I now become a copyright criminal, even though Flickr and the owner of the copyright allowed me to *choose* the size I wanted the picture to be

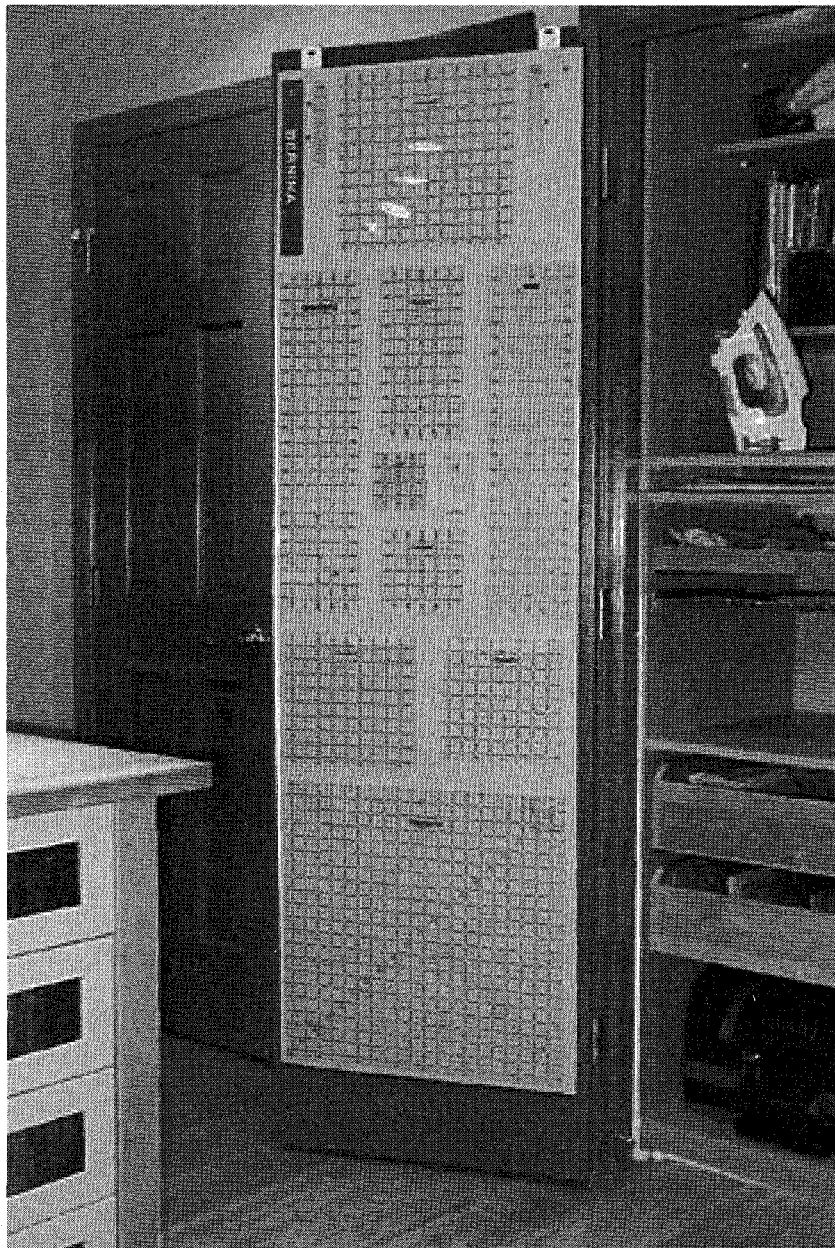
79. Angie Ware Beattle, *Sewing Rooms & Ideas*, PINTEREST, <http://pinterest.com/pin/285626801337210437/> (last visited Aug. 30, 2012).

80. *Ruler Organization*, FLICKR (July 13, 2008), <http://www.flickr.com/photos/athomesewing/2672771818/in/photostream/>.

81. Copyright Act of 1976, 17 U.S.C. § 302(a) (2006).

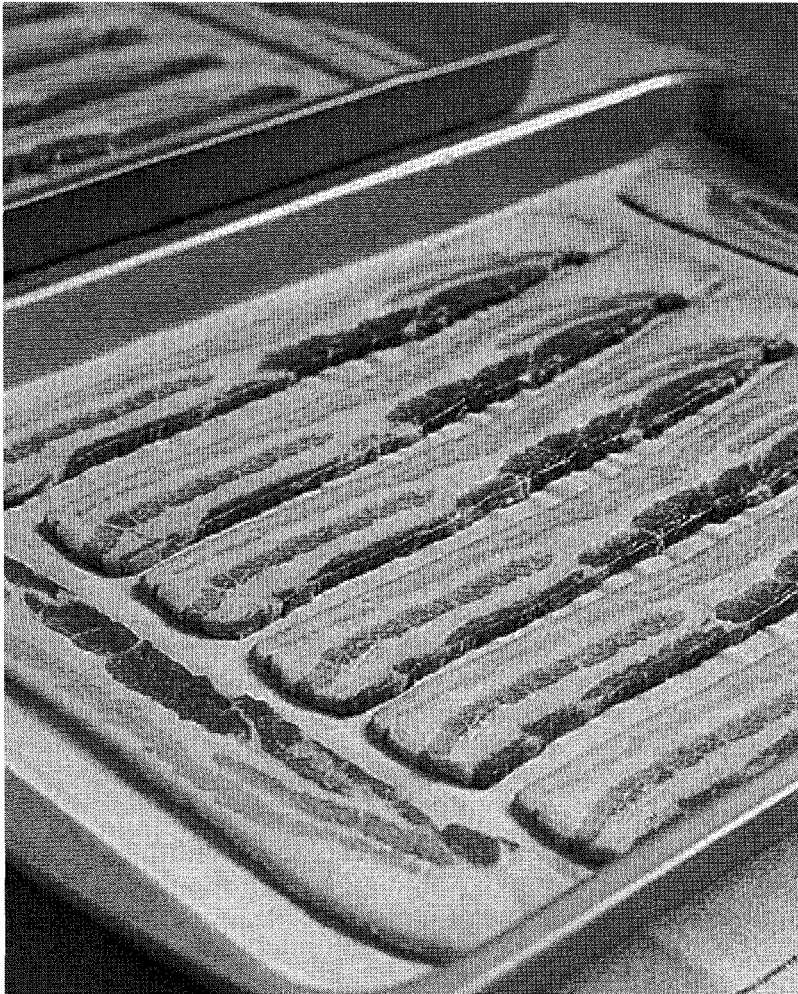
82. *Id.* at § 302(c).

downloaded? Flickr and copyright will be discussed in its own study, but for now, one can see how these social media platforms overlap. How does downloading and then uploading the photograph of the sewing room differ from linking to it when I create my pin? Is one legal and the other illegal? And so I have downloaded the picture of the sewing room and included it in this law review Article. (Of course, even if I am infringing, I am surely covered by fair use.)



(SEWING ROOM)

Another picture under a Pinterest board titled “Breakfast” has a picture of bacon, and under that picture is a quote from Martha Stewart without reference to where the quote is from.⁸³ The photograph itself happily links back to the Martha Stewart website (which does not provide the quote), where she explains how to cook bacon in the oven.⁸⁴ When we go to the website for this photograph, we see that one can like it, pin it, share it with Google+, tweet it, and share it with StumbleUpon—all linking to the original photograph, keeping the original source of the photograph with the image. You can also download the image by clicking on the photograph. So, I downloaded it, too, and included it in this Article.



(BREAKFAST)

83. Angie Ware Beattie via Diane Taylor, *Breakfast*, PINTEREST, <http://pinterest.com/pin/285626801336970108/> (last visited Aug. 30, 2012).

84. For the recipe, see *Classic Martha Ideas*, MARTHASTEWART.COM, <http://www.marthastewart.com/275110/classic-martha-ideas?lpgStart=1¤tslide=7¤tChapter=1#/264476> (last visited Aug. 30, 2012) and *Less Mess Bacon*, MARTHASTEWART.COM, <http://www.marthastewart.com/264476/less-mess-bacon?center=0&gallery=275110&slide=264476> (last visited Aug. 30, 2012).

Again, one wonders what steps an owner should have to take to ensure I do not violate their Section 106 rights under copyright law. If Martha allows me to make a copy by downloading the photograph, is this a non-exclusive license to use it, and in what ways can I use it? Is there some implied license that it is ok to copy and download this photograph? What if I wanted to sell t-shirts with this photograph, or if my version (using the photograph) became really famous and sold for millions of dollars? What are the limits of my use of this photograph? And now that I have the photograph, am I infringing? I am not sure. It seems because it is so easy to download the photograph, somehow what I have just done should not be considered exactly *illegal*. And yet

a. Pinning Etiquette

Distinct from its Terms of Service (analyzed below), Pinterest establishes its “Pin Etiquette.” Pin Etiquette has interesting copyright implications. Pinterest was meant to share interesting images around the web and not to be a place to showcase one’s own work. But pinning others’ images means one is trafficking in others’ *copyrighted* images.

To begin, Pinterest claims that the guidelines of Pin Etiquette are “based on collective input from people using Pinterest.”⁸⁵ That is, they are community standards rather than Terms of Service. “These are suggestions to help keep our community positive and to ensure that every pin is useful to other people.”⁸⁶ The idea that a pin needs to be useful and that community should be positive are two interesting propositions. First, usefulness is not something one thinks of with Facebook posts or other postings. Part of Pinterest’s community goals is circulation of images. For copyright, which is about a copyright owner controlling *circulation*, this becomes even more interesting. Second is the notion of “positive.” Pinterest is a positive place—a place where beautiful things exist and where we all imagine our world will include the perfect kitchen, perfect crafts, perfect breakfast, and perfect life. It is selling a 21st century “Martha Stewart-ness” times ten. The next generation of Martha Stewarts are pinned, linked to, and commented upon. We all agree to love it—a positive place of escape where everything is beautiful.

As of summer 2012, Pin Etiquette has four guidelines.⁸⁷ First, “Be Respectful.” Pinterest writes, “Pinterest is a community of people. We know that individual tastes are personal, but please be respectful in your comments and conversations.”⁸⁸ The second guideline is “Be Authentic,” which they describe as being who you are. We are not sure what that means exactly or what they are attempting to say. A common benefit or

85. *Pin Etiquette*, PINTEREST, <http://pinterest.com/about/etiquette/> (last visited Aug 30, 2012).

86. *Id.*

87. *Id.* The last guideline asks for suggestions on how to make Pinterest better, and so it is really not a guideline at all.

88. *Id.*

problem for social media, depending on who's being asked, is the anonymity of an online persona. It is the Facebook vs. Reddit dichotomy. One side has users' real names, faces, and location, while the other provides complete anonymity, allowing users to be whoever they want to online. Since Pinterest has recently added a profile section where users can add their photo, link to their Facebook account, and post their location, it seems Pinterest is encouraging some kind of accountability from its users.

The third guideline is "Credit your source." Pinterest writes, "Pins are the most useful when they have links back to the original source. If you notice that a pin is not sourced correctly, leave a comment so the original pinner can update the source. Finding the original source is always preferable to a secondary source such as Image Search or a blog entry."⁸⁹ Here, Pinterest presumes that the images will come from links and that pins are most useful when you can go to the original source. From a copyright perspective, this is fairly interesting. Linking to an original source, from a copyright perspective, is good, while uploading is not so good. The first guideline also suggests leaving a comment for the pinner if the link does not work, and it also suggests linking from an original source rather than a secondary source. Say you pin the Durationator™ image from the Durationator™ site, and in the comment say, "A great place to determine the copyright status of works." That pin is entering the system for the first time, and at that point, Pin Etiquette *suggests* including a link to the primary website. That pin, then, will get repinned (presumably without alteration) and that link will remain steady and stable. Others may alter the commenting but not usually the link.

Identifying one's source of materials is not required under U.S. law; we have no right of attribution, as in other countries with moral rights. However, we see more and more that the right of attribution matters to people, even if not to the law. Of course, we have other aspects of the law—unfair competition and passing off—that could apply in right of attribution cases. But there is something about being named and identified, at least in our present age, that seems to matter to people. Creative Commons licenses, in many ways, come down to permission (106 rights) and attribution. To "[b]e respectful" in linking to the original source, the guideline suggests you leave a note if you find a pin that does not credit the source, and you use the original source rather than a secondary source, if possible. What is interesting is that when one pins, there is no natural place to *include* the source. The link comes up (when one is linking from a website) but not when one uploads a source. There is no place to put any right of attribution qualities to the image; only the space for comments exists, which is small, and it is up to an individual pinner to do. So while the guidelines suggest one credit the original source, the system has no mechanism to do that. Moreover, the system *has* built-in information about the image when I use the "Pin It" button on my browser—including the link to

89. *Id.*

the website in which I found the image. For example, I pinned an image of the cover of Lego Harry Potter, Years 1–4, for the Xbox360 from a cheat site. My pin now shows the image, the title of the image, and where it came from—in this case, “From *mycheats.lup.com*.”⁹⁰

The fourth Pin Etiquette guideline is “Report Objectionable Content.” No nudity, hateful content, or materials that encourage people to hurt themselves is allowed. This connects to Pinterest’s “Acceptable Use” policy, which is distinct from their “Terms of Service” policy. Among the elements one agrees to, along with no child pornography and pins containing illegal content, one agrees not to “infringe[] any third party’s Intellectual Property Rights, privacy rights, publicity rights, or other personal or proprietary rights.”⁹¹ This raises two questions: 1) how much are the other elements enforced; and 2) what happens (including with intellectual property) when one violates the agreement? Have they terminated accounts? How strict is this world policed? We are doing more investigation for the larger study.

But I was curious, particularly about the nudity and about pins that encourage people to hurt themselves, both examples of objectionable content. A quick search turned up many “naked baby” pictures, but in a quick search, no indecent images were found. Type in “suicide” and some images do come up—for example, a book falling off a shelf, with the caption, “A book commits suicide every time you watch Jersey Shore.”⁹² There seems to be an old-fashioned painting of a suicide, and there are other similar artistic images. However, when you try to go to the link in any of these, a message pops up that reads, “Could not fetch pin :-/.” So, Pinterest seems to be policing images in their “Acceptance of Use” policy in some manner.

b. Copyright Law Explained at Pinterest?

The basic concept of copyright is that the creator or owner of a work can control the right to copy, distribute, and make new versions of the work, as well as control a host of other rights. Pinterest and other social media platforms play havoc with this idea by redistributing images over and over. In a traditional setting, this would have been unheard of; however, times and expectations change. We also see that in many cases the copyright holder is involved, whether the image is linked to the original website or somewhere the product is sold—but not always.

So the first question to consider is how copyright is presented to the user of Pinterest. Are basic principles of copyright explained? How is copyright law communicated? The “Copyright and Trademark” is the last item under Pinterest’s “About” page, with each having its own tab. We can guess from the beginning that Pinterest’s copyright page is about protecting Pinterest under Section 512 and not about educating users on abiding or

90. Townsend-Gard, *supra* note 26.

91. *Terms & Privacy*, PINTEREST, <http://pinterest.com/about/use/> (last visited Aug. 30, 2012).

92. Nicole Fletcher, *I Love Reading Like Crack Loves an Addict / Suicide*, PINTEREST, <http://pinterest.com/pin/192951165254677977/> (last visited Aug. 30, 2012).

understanding copyright laws within the context of their site. The page on copyright begins, “Pinterest [] respects the intellectual property rights of others and expects its users to do the same.”⁹³ We have already seen many instances where information about copyright law might be helpful to the user—the difference between linking and uploading, for instance. Is this page where a user can understand copyright law in the context of creating a board and pinning at this site? For instance, does one own the copyright in the board that one creates? How does one keep from violating the fourth principle of Pin Etiquette?

Very little guidance is given to the user. Instead, after the first sentence that Pinterest respects intellectual property, the next sentence focuses on Pinterest’s rights to terminate or disable users’ accounts that repeatedly infringe or “are repeatedly charged with infringing the copyrights or other intellectual property rights of others.”⁹⁴ This raises interesting considerations. First, the user is not given any information or guidance on exactly what infringement is. How does an average user know? Notably, one need not be found guilty of infringing but need only be accused of infringing repeatedly.

The next paragraph on the site focuses on the requirements of the Digital Millennium Copyright Act (“DMCA”), as required by law for Pinterest to gain a safe harbor provision as an online service provider. Pinterest presents copyright on its “Copyright” page, then, in the context of the obligations required of Section 512.⁹⁵ A copyright complaint form is included as well. Section 512 is a part of the 1976 Copyright Act that provides a safe harbor to online service providers, protecting them from infringement as long as they follow specific steps. That means that when a user uploads a particular image, Pinterest is not liable if that image is found infringing. To take advantage of the safe harbor, Pinterest is required to put in place a system.

Our larger project will compare the different application of the Section 512 requirements in each social media platform we study. For now, we would point out that the safe harbor provision is protecting Pinterest, and it has nothing to do with protecting or educating the site’s user. We are finding already in our preliminary study that Pinterest and others engaged in a copyrighted world protect themselves from legal harm, while not educating or advising their users of how copyright works within their system. In the end, our project’s goal is to provide a third-party resource for users of social media platforms to understand how they are engaged with the law in the activities they perform and how copyright law works within the particular uses they engage in at that site.

A copyright complaint form (another requirement for the Section 512(c) safe harbor available to online service providers) is a quick way for a

93. *Copyright & Trademark*, PINTEREST, <http://pinterest.com/about/copyright/> (last visited Aug. 30, 2012).

94. *Id.*

95. *Id.*

copyright holder to report infringement. Every social media site now has just such an easy way to report infringement, and our larger study will compare them. What is interesting at Pinterest is that a copyright holder must check that they are an owner or that they are authorized to act on behalf of the owner, also acknowledging in a separate check-box: “I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use).”⁹⁶ Nowhere, however, has Pinterest explained “copyright material . . . not authorized by . . . the law.” Pinterest has provided no information regarding fair use or other uses allowable under the law. Yet a copyright complaint form requires the owner or authorized agent to accept that they have analyzed fair use and other elements under copyright law before sending in a complaint form. This becomes particularly problematic for those sending in notices, especially after the Prince and dancing baby case, where the court found Viacom should have done a fair-use analysis of a baby dancing to a barely audible Prince song before Viacom sued the mother for posting a video online (creating a derivative work of the original song).⁹⁷ Pinterest is trying to encompass the case’s holding within its complaint form, but it has not educated the copyright holder on what it means. Our larger study looks in great detail at this phenomenon—considering both the new requirement (and how it relates to traditional notions of copyright law) and Section 512(c).

For now, one can see the problem. Users are engaged in activities in the copyright realm—pinning images, commenting and re-pinning, and creating boards. Yet no guidance is given on the site. However, if a user missteps, there is a legal mechanism in place to deal with the legal infraction, even though no guidance is given to the copyright owner who feels that his rights have been violated.

IV. TERMS OF SERVICE ANALYZED⁹⁸

A. *Pinterest’s Original Terms of Service*

According to Pinterest, it used a “standard set of Terms” when the site launched.⁹⁹ Until recently, these standard Terms had been effective since March 29, 2011.¹⁰⁰ In many ways, the original Terms of Use were “standard” for a social media site. It laid out definitions of terms, defined “ownership” of both content owned by the site (“Pinterest Content”) and content added by members (“Membership Content”), and provided a list of general prohibitions for user activity.¹⁰¹ Like many other social media sites, it required members to grant a

96. *Copyright Infringement Notification*, PINTEREST, <http://pinterest.com/about/copyright/dmca/> (last visited Aug. 30, 2012).

97. *Lenz v. Universal Music Corp*, 572 F. Supp. 2d 1150 (N.D. Cal. 2008).

98. The Terms of Service section was written by Bri Whetstone.

99. Email from Pinterest to its members (March 23, 2012) (on file with author).

100. *Terms & Privacy*, *supra* note 91 (follow “Past Terms of Service” hyperlink).

101. *Id.*

worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, view, and otherwise exploit such Member Content only on, through or by means of the Site, Application or Services

while still disclaiming any ownership in member content.¹⁰²

Perhaps even more “standard,” while Pinterest mentions copyright several times and even has a separate policy addressing copyright infringement specifically (addressed above), Pinterest never takes a step toward defining or explaining copyright law at the most basic level.¹⁰³ There are at least five instances where Pinterest prohibits members from doing anything that might be copyright infringement.¹⁰⁴ The problem with using standard Terms with a site like Pinterest is found in the way the site functions; it would be easy for the average user to think posting images from around the web would not constitute infringement. Pinterest never stops to ask users about the images they are uploading or linking, and it never gives examples of what would be allowable and what would constitute infringement. While the site enumerates each of its exclusive rights to copyrighted material owned by Pinterest, it does not mention that the copyright owners of images being posted have these same rights.¹⁰⁵

102. *Id.*

103. *See Copyright & Trademark, supra* note 93.

104. Pinterest states:

You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Site, Application, Services, or Site Content except as expressly permitted in these Terms. . . .

. . . .

. . . [N]either the Member Content nor your posting, uploading, publication, submission or transmittal of the Member Content or Cold Brew Labs' use of the Member Content (or any portion thereof) on, through or by means of the Site, Application and the Services will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

. . . .

. . . [You will not] [p]ost, upload, publish, submit, provide access to or transmit any Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy

. . . .

. . . .

Cold Brew Labs [respects] copyright law and expects its users to do the same. Cold Brew Labs has adopted and implemented a policy that provides for the termination in appropriate circumstances of registered users or other account holders who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders. Please see Cold Brew Labs' Copyright Policy at <http://pinterest.com/about/terms.html>, for more information.

Terms & Privacy, supra note 91.

105. *Id.*

B. Controversy Ensues

In February 2012, almost a year after its Terms of Service were first enacted, Pinterest began getting kickback from copyright holders. Specifically, Flickr blocked Pinterest users from “pinning” or posting images from Flickr in order to “protect its users’ copyrighted images”¹⁰⁶ By adding a “do-not pin code,” Flickr prohibited images from being easily added to a user’s Pinterest account.¹⁰⁷ Some Flickr images can still be “pinned” if the content is marked by the Flickr user as “safe” or “public” or if the user has added the Pinterest sharing button.¹⁰⁸ In Flickr’s “Help Forum,” users can find out how to turn off sharing to Pinterest, but the site warns:

It is important to remember however that if a photo can be viewed in a browser it can be downloaded or someone can take a screen shot and upload somewhere else. There is no way to 100% guarantee that your photos won’t show somewhere else if you decide to share them.¹⁰⁹

This action by Flickr forced Pinterest users to consider their own use of images on their pinboards. One avid user who is both an artist and an attorney recounted in a blog post about how she “tearfully deleted” her Pinterest boards.¹¹⁰ When blogger Kirsten Kowalski first read the Terms of Service of Pinterest, she was bothered that Pinterest discouraged users from posting their own work or other forms of self-promotion.¹¹¹ (In recent months, this element seems to have faded from the Pinterest site, though the Terms clearly state that a member must be the owner of the material posted or have authorization to post it; anything she posts must not be in violation of a third party’s copyright or a violation of any other intellectual property right.) Kowalski then explained the defense of fair use and even recounted the Ninth Circuit case of *Kelly v. Arriba Soft Corporation*,¹¹² which discussed fair use of thumbnail images (though she notes Pinterest does not use thumbnails of the images being posted).¹¹³ After looking through the warranties and limits on liability Pinterest claims in its Terms, Kowalski determined that anything posted in violation of copyright law would be on the shoulders of the user—not Pinterest.¹¹⁴ This, of

106. Francis Bea, *Flickr Update Blocks Pinterest Pins of Copyrighted Photos*, DIGITAL TRENDS (Feb. 25, 2012), <http://www.digitaltrends.com/social-media/flickr-update-blocks-pinterest-pins-of-copyrighted-photos>.

107. *Id.*

108. *Id.*

109. *Help/FAQ/Sharing, Can I turn off sharing to Tumblr or Pinterest?*, FLICKR, <http://www.flickr.com/help/sharing/?search=pinterest#33650092> (last visited June 4, 2012).

110. Kirsten Kowalski, *Why I Tearfully Deleted My Pinterest Inspiration Boards*, DDK PORTRAITS (Feb. 24, 2012), <http://ddkportraits.com/2012/02/why-i-tearfully-deleted-my-pinterest-inspiration-boards>.

111. *Id.*

112. 336 F.3d 811 (9th Cir. 2002).

113. Kowalski, *supra* note 110.

114. *Id.*

course, is Pinterest's right. By allowing users to post content freely without any editorial supervision on their end, Pinterest falls under the Digital Millennium Copyright Act's safe-harbor provisions for Internet service providers.¹¹⁵ Kowalski warned that copyright holders have no problems bringing suits, and she reminded readers how Napster went after teenagers.¹¹⁶ Ultimately, her conclusion for legal "pinning" was to delete all the images that she does not own. She wrote that she must either quit Pinterest or that she must only upload either her own work or work she has a license in.¹¹⁷

Kowalski also offered a solution for users to prevent copyright infringement: instead of discouraging users from posting their own images, users could upload images and then grant Pinterest a right to use the images on the site, which would then allow other users to re-pin these images.¹¹⁸ In essence, it would create a bank of photos that any user would be allowed to re-pin. But is this really a solution? First, it assumes that it would be the copyright holders who originally upload the images. While uploading personal work may be discouraged by the Pinterest community, this is not *prohibited* by the Terms—in fact, having ownership or authority of your posts is *required*. Obviously, it is not this type of work that is problematic from a copyright perspective. Second, this only addresses one aspect of how users pin and does not address issues in linking from other websites.

C. Pinterest's Terms of Service 2.0

Following the backlash from the copyright controversy, Pinterest contacted all of its users on March 23, 2012, to announce new Terms of Service that would become effective April 6, 2012.¹¹⁹ In the email, Pinterest 1) disclaimed any right to sell a member's content, 2) prohibited pins that encouraged self-harm or self-abuse, 3) simplified tools to report copyright

115. See *infra* Part V.B.

116. Kowalski, *supra* note 110.

117. *Id.*

118. Kowalski writes:

What's even more frustrating in all of this is that Pinterest could make things at least a little easier on everybody by at least allowing people to re-pin internally on the site without concern for violating copyrights. Here is how: In Pinterest's Terms of Use, by uploading photos to Pinterest, you specifically grant a license and right TO Pinterest to use your images on the site. They specifically state that this license is transferable It would be so easy for them to simply, in turn, grant YOU a license to use images on the site that are posted by others, to the extent they hold a lawfully granted license. . . . Instead, they say only that the user is granted a "limited, non-exclusive, non-transferable license, without the right to sublicense, to access, view, download and print any Pinterest Content solely for your personal and non-commercial purposes." "Access, view, download and print." The words "upload," "pin," "post," "display" or similar terms are glaringly absent. Ugh. So still you have no right to publish work from another photographer even though Pinterest holds a license to all work uploaded to its site (at least to the extent the person posting had a right to transfer such license in the first place).

Id.

119. Email, *supra* note 99.

and trademark infringement, and 4) added new language for future features like private boards.¹²⁰ Were these the only things changed? Were the Terms simplified or was copyright addressed?

In short, the new Terms are a simplified, more conversational version of the former. While for the most part the substance of the Terms have not changed, it is now easier to understand what rights users retain to their material, what rights they grant to Pinterest, and perhaps most importantly, *why* these rights are granted.¹²¹ Now, Pinterest explains that it requires a “non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, display, reproduce, re-pin, modify (e.g., re-format), re-arrange, and distribute your User Content on Pinterest for the *purposes of operating and providing the Service(s) to you and to our other Users.*”¹²² Pinterest is not trying to take users’ content but needs these licenses in order for the site to function.

The new Terms also address copyright differently. Again, the substance has not changed, nor has Pinterest explained or provided examples of copyrighted material, but it at least better warns that users should be aware of their own uses, stating:

It is important that you understand that you are in the best position to know if the materials you post are legally allowed. We therefore ask that you please be careful when deciding whether to make User Content available on our Service, including whether you can pin or re-pin User Content on your boards.¹²³

Perhaps even better, Pinterest now links to www.ChillingEffects.org in case any user wants to learn more about copyright and fair use—but not on their “Copyright” page.¹²⁴ Further, Pinterest has used “Intellectual Property Rights” in a much broader sense:

[W]e mean all patent rights; copyright rights; moral rights; rights of publicity; trademark, trade dress and service mark rights (and associated goodwill); trade secret rights; and all other intellectual property and proprietary rights as may now exist or hereafter come into existence, and all applications for any of these rights and registrations, renewals and extensions of any of these rights, in each case under the laws of any state, country, territory or other jurisdiction.¹²⁵

120. *Id.*

121. *See Terms & Privacy, supra* note 91.

122. *Id.* (emphasis added).

123. *Id.*

124. *Id.*

125. *Id.*

This is certainly beneficial to Pinterest as a catch-all, but this section actually seems to break with the more simplified, easier to understand tone of the rest of the Terms. Finally, likely as protection for Pinterest, the Terms redefine the license granted to users. Instead of the old “limited, non-exclusive, non-transferable license, without the right to sublicense, to access, view, download and print any Pinterest Content solely for your personal and non-commercial purposes,” now Pinterest grants users:

a license to use the Service, including accessing and viewing Pinterest Content, for your personal, noncommercial use to allow you to express yourself, discuss public issues, report on issues of public concern, and engage in parody as expressly permitted by the features of the Service.¹²⁶

Essentially the Terms of Service are the same, with one notable difference: the new Terms can actually be understood by the average user. It makes clear possible copyright issues with use of the site and even recommends third-party sites that explain copyright. Since users are the bread and butter of social media sites like Pinterest, these sites should at least take the responsibility of writing Terms of Service in easy to understand concepts. Copyright never has to be scary if sites are transparent about what rights they claim and users’ responsibilities in terms of content.

V. COPYRIGHT AND PINTEREST ANALYZED

For the purpose of this early study, we will only start to explore the issues we have observed at Pinterest. Activities on Pinterest can be divided into three categories: 1) linking to third-party materials; 2) uploading one’s own copyrighted (or public domain) works; and 3) uploading unauthorized third-party materials. All of these activities are governed by two areas of copyright law: 1) copyright infringement (for the users); and 2) Section 512 for Pinterest itself. This Part looks at the system Pinterest has developed generally in the context of traditional copyright infringement and Section 512. In the larger study, these Parts will be more fully developed.

A. *Traditional Copyright Infringement*

For the larger study, we will research how much actual, traditional copyright infringement occurs at social media websites, whether social norms are changing our concept of copyright law, and what role fair use plays in what occurs at social media websites. Pinterest is similar to many social media websites in the activities that occur—linking to others’ materials (with images of that material appearing as part of one’s personal page) and uploading images (whether one’s own or someone else’s). Are these activities illegal?

126. *Id.*

Traditionally, copyright law has worked in a particular way when it comes to an infringement lawsuit. To assert a claim of infringement, a copyright holder must show they hold a valid copyright in a registered and copyrighted work.¹²⁷ This means that the work still must be under copyright (the term has not expired) and that the person complaining actually holds a legal interest in the copyrighted work.¹²⁸ The work also has to have been registered at the U.S. Copyright Office in order to bring a suit in federal court.¹²⁹ To prevail, the plaintiff must prove first that there was copying (either through direct access or circumstantial evidence) and that the copy contained unauthorized copying (elements that are copyrightable rather than facts, public domain works, etc.).¹³⁰ It is a laborious process, requiring a significant inquiry into the factual situation and the law of that particular jurisdiction. Once infringement has been found, the defendant can assert a number of defenses, including fair use.¹³¹ That, too, requires a fact-intensive analysis involving a large body of caselaw.

In the social media context, most of that in-depth analysis is pushed to the wayside, and a new system overtakes the question of copyright infringement. Section 512, however, only provides a safe harbor for the service provider.¹³² Users are still liable for copyright infringement. But it appears from our early research that in many cases, the take-down procedure and the cease-and-desist letters sent directly to users are substitutes for the traditional copyright infringement and fair-use analysis; in our opinion, this may lead to fairly dangerous results. The study will continue to explore this idea, particularly with linking and uploading of photographs.

There are two contexts in which Pinterest users upload photographs. First, one could upload an image that a user owns—for example, a picture of a barbeque taken and uploaded by the user or a photograph of one's own redesigned kitchen. These are legal to upload because the user is the copyright holder and has the authority to create a reproduction and publicly distribute the copy to the world.¹³³

Alternatively, a user could have downloaded a third-party photo and then uploaded it without permission. To upload a pin, one chooses an image file from one's computer and the particular board to pin the item to. One can add commentary, but there is no requirement or even a field within the pinning experience to explain where the image came from (is it your own?), what the source of the image is (you likely could add the URL into the commentary), or whether the work is even under copyright or in the public domain. Take, for example, the picture of raw bacon previously discussed and downloaded. That photograph can now be uploaded without

127. See *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

128. See generally JANE C. GINSBURG & ROBERT A. GORMAN, *COPYRIGHT LAW* Ch. 6 (Foundation Press 2012).

129. Copyright Act of 1976, 17 U.S.C. § 411 (2006).

130. See *Salinger v. Colting*, 607 F.3d 68, 83 (2d Cir. 2010).

131. Copyright Act of 1976, 17 U.S.C. § 107 (2006).

132. Digital Millennium Copyright Act, 17 U.S.C. § 512 (2006).

133. Copyright Act of 1976, 17 U.S.C. § 106 (2006).

restrictions, and no requirements are included (e.g., verifying that “I am the copyright holder” or providing a link to the original site of the photograph). In fact, if one wants to include information, the only space is the short comment box. The bacon image now sits without a link or reference on a board.¹³⁴

To provide another example, we also pinned Botticelli’s *The Birth of Venus*. We gave no right of attribution. We gave no URL to the website. We gave no information on the copyright status of the work. We simply pinned it at Pinterest. We could claim it was ours. This seems to invite pure copyright infringement.

The larger study will address these issues and compare them to other practices in the social media context. Our early conclusions seem to be that while Pinterest allows both linking and uploading currently, it might consider limiting user activity to linking. If they continue to allow uploading, it would be a good idea to have a more vigorous process to alert users to situations where they are actually infringing works and to encourage linking over uploading, if there is a choice.

While some Pinterest users may be committing infringement by uploading, or even linking, could it be possible that their uses are covered by fair use? Itai Maytal, an associate at New York law firm Miller Korzenik, has suggested that Pinterest add a small bit of code that would require a comment from a user with each pin, thereby getting closer to a fair use of the work.¹³⁵ Others believe that what Pinterest users are doing qualifies as a personal use, a category that Jessica Litman has long believed should be covered by fair use.¹³⁶ Still others have contemplated that not only is the use transformative—placing fifty possible hats to purchase for one’s wedding in one place—but that each Pinterest board may also be protected by copyright as a compilation, meeting the *Feist* standard of selection, arrangement, and coordination.¹³⁷

B. Section 512

Section 512 of the Copyright Act gives online service providers a safe harbor from the infringing activities of their users.¹³⁸ The safe harbor applies only to copyright infringement (not patent or trademark). The statute itself is complicated. In particular, Section 512(c) focuses on hosting “any infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider”¹³⁹ For example, if a social media website allows comments or creates posts with photos, these activities would be

134. Townsend-Gard, *supra* note 26.

135. Matt Lynley, *This Tiny Feature Could Keep Pinterest from Getting Sued for Massive Copyright Infringement*, BUS. INSIDER (March 8, 2012), http://articles.businessinsider.com/2012-03-08/tech/31135048_1_caption-copyright-image-owners.

136. See Litman, *supra* note 7.

137. See generally *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).

138. Digital Millennium Copyright Act, 17 U.S.C. § 512 (2006).

139. *Id.* § 512(c).

eligible for Section 512(c). Think even of Amazon, where users post reviews and even their own photographs of the product. Obviously, sites like Pinterest contain all kinds of materials where users post materials on the system controlled by a service provider. By following the requirements of Section 512(c), Amazon and Pinterest are not directly liable for infringing acts of their users.

To meet the requirements, a service provider must have a Designated Copyright Agent, and the website must include the contact information of the agent. For Pinterest, the Designated Copyright Agent contact information is given on the “Copyright” information page.¹⁴⁰ Section 512 requires a notice-and-takedown regime when copyright owners suspect copyright infringement of their works.¹⁴¹ This system operates in very specific ways. A copyright holder submits a “takedown” notice to the service provider.¹⁴² Once the notice is received, the service provider takes down the infringing materials, or alternatively, denies access to the infringing works.¹⁴³ The service provider is also required to notify the user that a takedown notice has been filed and that the materials have been removed or access has been denied.¹⁴⁴ The question we are investigating is how much information on the requirements of copyright infringement is being communicated and included in the requirements of the takedown notice. How does one know that an actual copyright holder has filed the takedown notice? Is one required to provide information that the work is under copyright? Is the work registered with the U.S. Copyright Office (affecting the kind of damages available and the ability to pursue the matter in court)?

Section 512 allows for a counter-notice system and putback.¹⁴⁵ Service providers are not required to implement the second part of the system, but if they include a counter-notice system, the service provider gains additional protection against users who without the system would be able to use the service provider for inappropriate takedown.¹⁴⁶ The service provider then notifies the copyright holder within ten days or the disputed copyrighted work is restored.¹⁴⁷

How do Pinterest’s provisions stack up? As already mentioned, it has implemented a basic takedown and counter-notice regime. It provides a “copyright complaint form,” which is now becoming very standard. Interestingly, though, under its “Copyright Policy,” Pinterest does more than

140. *Copyright & Trademark*, *supra* note 93 (Pinterest Copyright Agent, 635 High Street Palo Alto, CA 94301; copyright@pinterest.com; 650-561-5407).

141. 17 U.S.C. § 512(c).

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* § 512(g).

146. *Id.*

147. *Id.*

many other sites in terms of its DMCA notifications.¹⁴⁸ In our larger project, we will delve into a deeper comparison of the many systems in place. But our concern, of course, is how copyright law is communicated to users—particularly Section 512(c)—and how social media sites protect themselves rather than their users. In this respect, Pinterest fails miserably. We think social media sites can do more.

VI. INTERIM CONCLUSION AND LOOKING TO THE LARGER PROJECT

In epic proportions, Pinterest presents a wonderful case study of a social media platform engaged in the world of copyright law. How does a user within the system understand his participation, and how can our research help make the legal relationship more clear? We hope in the end to provide practical information, both general and site-specific, to help users understand how best to protect and enjoy themselves in their copyright activities.

This case study has helped us formulate our larger study. And so we thank our neighboring law school for the invitation to participate in the Social Media and the Law Symposium. Because it was an invitation to a symposium that also functioned as a CLE, we started to think of these issues in a practical way, which helped orient our research and thinking. We see this project as a study that would assist the users of social media, helping them understand the legal regime they have entered by creating an account, posting a photo, or “liking” and relinking. The Pinterest case study has helped us consider what the study will look like, and we will continue to work on this example, as well as many others, in the coming months.

So would we engage in activities at Pinterest? Linking presents no problem for us. Uploading our own images is ok too, although we wish we had more control over its future use through Creative Commons licensing or other mechanisms. It seems better to upload the image to Flickr, and then link to Pinterest, as in the case of the sewing room example. In many ways, Pinterest would do well to only allow linking and require users to upload the image on a different system. Ultimately, it will be interesting to see how Pinterest evolves as it matures.

148. Note: Pinterest has not dated their Copyright Policy page. This Part is operating under the assumption that this page is in its original form and has not been changed by the new Terms except as provided for explicitly.

