



Rigorous empirical  
research on  
intellectual property

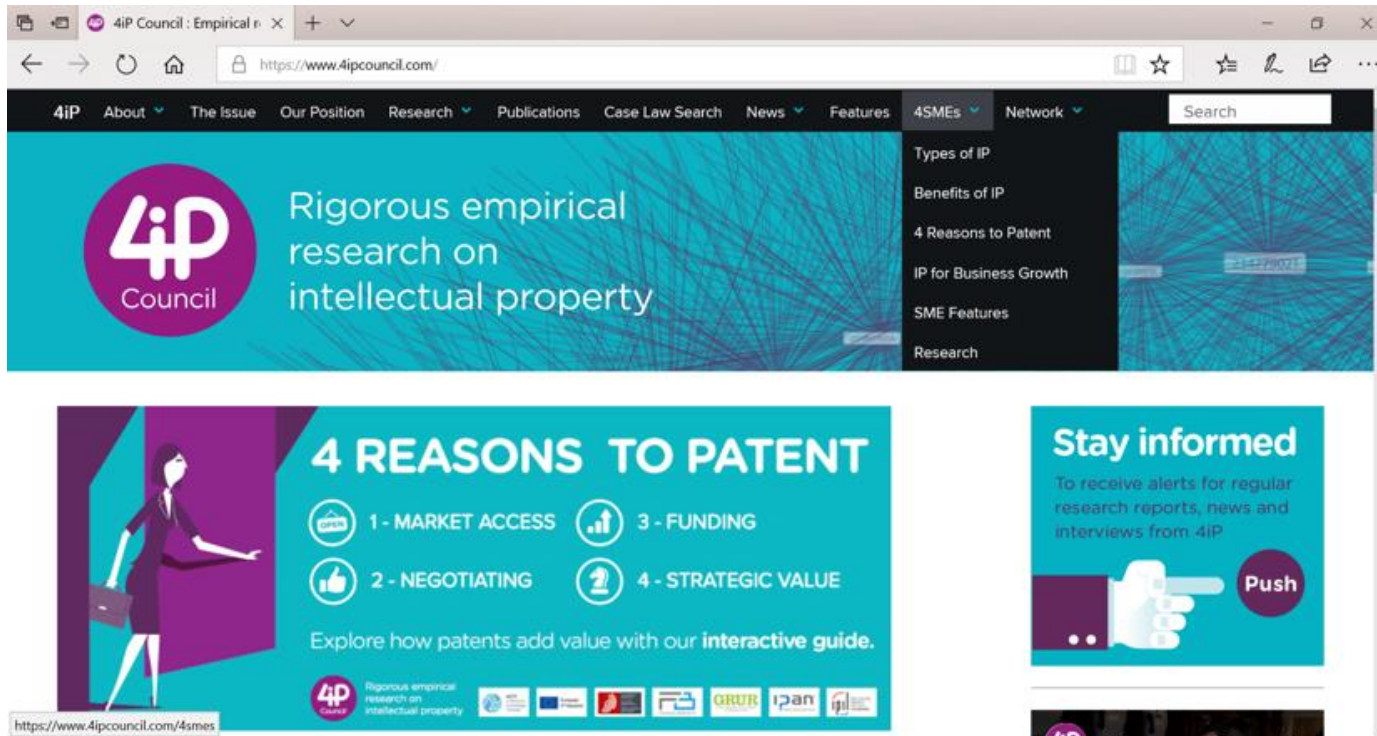
## What you need to know about copyright and social media.

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Coming up!

- **4 Reasons to Copyright** will be released end February / early March
- **Next webinar** – 10 March on Field-of-use pricing of SEP licenses with Dr Eskil Ullberg
- Click the **Stay Informed** banner on [www.4ipcouncil.com](https://www.4ipcouncil.com) to hear of our research, webinars, new materials, events, competitions and more. And why not sign up @4ipcouncil on twitter!

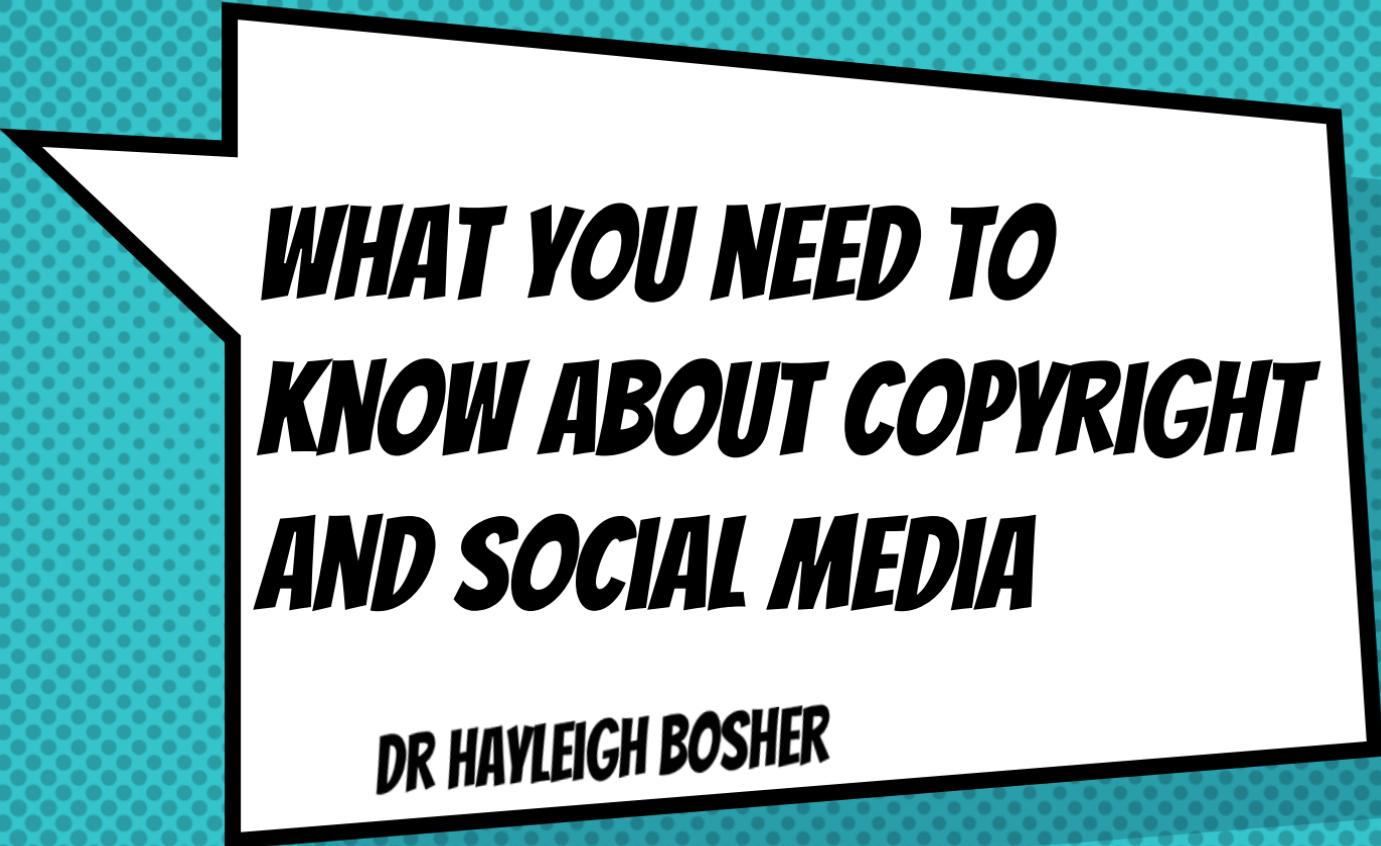
|  |  PATENTS   |  COPYRIGHTS   |  DESIGNS*   |  TRADEMARKS   |  TRADE SECRETS   |
|---|---|--|--|--|---|
| <b>What do they protect?</b>  | An invention: a new and innovative way of doing something, or solving a technical problem.<br><a href="#">See also:</a><br><a href="#">Home</a> <a href="#">Home</a> <a href="#">Home</a>   | A work: an original intellectual creation.<br><a href="#">See also:</a><br><a href="#">Home</a> <a href="#">Home</a> <a href="#">Home</a>  | A new and original visual appearance of a product.<br><a href="#">See also:</a><br><a href="#">Home</a> <a href="#">Home</a> <a href="#">Home</a>  | Distinctive signs that identify brands of products/services.<br><a href="#">See also:</a><br><a href="#">Home</a> <a href="#">Home</a>   | Any type of useful information for business that is secret and kept confidential.<br><a href="#">See also:</a><br><a href="#">Home</a> <a href="#">Home</a>   |
| <b>Examples of what is protected</b>  | Inventive products and processes in all lines of business.<br>For examples of successful inventions to SMEs:<br><a href="#">See more</a>  | Audio-visual works, pictures, graphics, architecture, databases, software, designs, literature, novels, poems, plays, music and video, dramatic works.<br><a href="#">See also:</a> <a href="#">More</a>   | Packages, containers, furnishings, graphic symbols, computer icons, typefaces, graphical user interfaces, logos and masks.<br><a href="#">Home on designs</a> <a href="#">More</a>   | Words, personal names, designs, letters, numerals, colours, shapes, packaging, sounds.<br><a href="#">Home on TMs</a> <a href="#">More</a><br><a href="#">See also:</a> <a href="#">Home</a> <a href="#">Home</a>  | Any confidential information: business methods, customer lists, R&D data, financial information, cooking recipes, software, datasets, know-how, algorithms.<br><a href="#">Home on trade secrets</a> <a href="#">More</a> |
| <b>How are my rights protected?</b>   | Prevents unauthorised making, using or selling of the patented invention.   | Prevents the work being (without authorisation) copied, published, distributed or made available online.<br>Protects the integrity and attribution of the work.<br>Related rights: Public performance and display of the R work.<br><a href="#">See also:</a> <a href="#">More</a> | Prevents unauthorised use of an identical or similar visual appearance for the same kind of products and/or services.<br><a href="#">See also:</a> <a href="#">Home</a>  | Prevents unauthorised use of distinctive signs for the same or related products/services.<br><a href="#">See also:</a> <a href="#">Home</a> <a href="#">Home</a>   | Prevents others from using the confidential information, as long as it remains secret.<br>Allows to claim monetary compensation in case of unlawful disclosure of the confidential information.                           |
| <b>How long is my innovation protected?</b>                                     | Up to 20 years  | Lifetime of the author +50 to 70 years after death (depending on the country)  | Up to 25 years for registered designs  | Indefinitely, subject to use in commerce and renewals  | Indefinitely, provided it is not revealed   |
| <b>Do I have to register it?</b>  | Yes, filing an application to a patent office is required.<br>More on patent applications in:<br><a href="#">EPD</a><br><a href="#">EPD</a><br><a href="#">SIPMA (DE)</a><br><a href="#">INPI (FR)</a><br><a href="#">UK IPO (UK)</a> | No, copyright protection arises automatically with its creation.<br><a href="#">See also:</a> <a href="#">Home</a>   | No, but it is highly advisable. Unregistered designs are protected only from unauthorised copying and they have shorter term of protection (up to 3 years versus up to 25).<br>More info in:<br><a href="#">EU IPB Handbook</a><br><a href="#">EUIPO</a> | Yes. Three routes to registration:<br>National protection:<br><a href="#">GERMANY</a><br><a href="#">FRANCE</a><br><a href="#">UK</a><br>EU-wide protection:<br><a href="#">EUIPO</a><br>International protection:<br><a href="#">WIPO Madrid System</a> | No  |
| <b>How long does it take?</b>   | 3 to 5 years  | N/A  | 3 to 12 months, depending on the country   | 3 to 24 months, depending on the country   | N/A   |
| <b>How much does it cost?</b>   | Medium to high (from 5000€)   | If registered, low (from 50€)  | Low to medium (500€)   | Medium (5000€)   | Nothing   |
| <b>How do I start?</b>  | <a href="#">IPB Guide to Europe</a><br><a href="#">Patent Basics</a>  | <a href="#">IPB Guide to Europe</a><br><a href="#">Understanding Copyright and Related Rights</a>  | <a href="#">Design Basics</a><br><a href="#">Designs</a>   | <a href="#">Trademark Protection in the EU</a><br><a href="#">Trademarks Basics</a>  | <a href="#">Trade Secrets in the EU</a><br><a href="#">How to manage confidential business information</a>  |



\* Depending on the national law and the type of design, they may also be protected as works of art under copyright. In some countries, designs are protected under patent law as "design patents".

# How do I use intellectual property to grow my business?



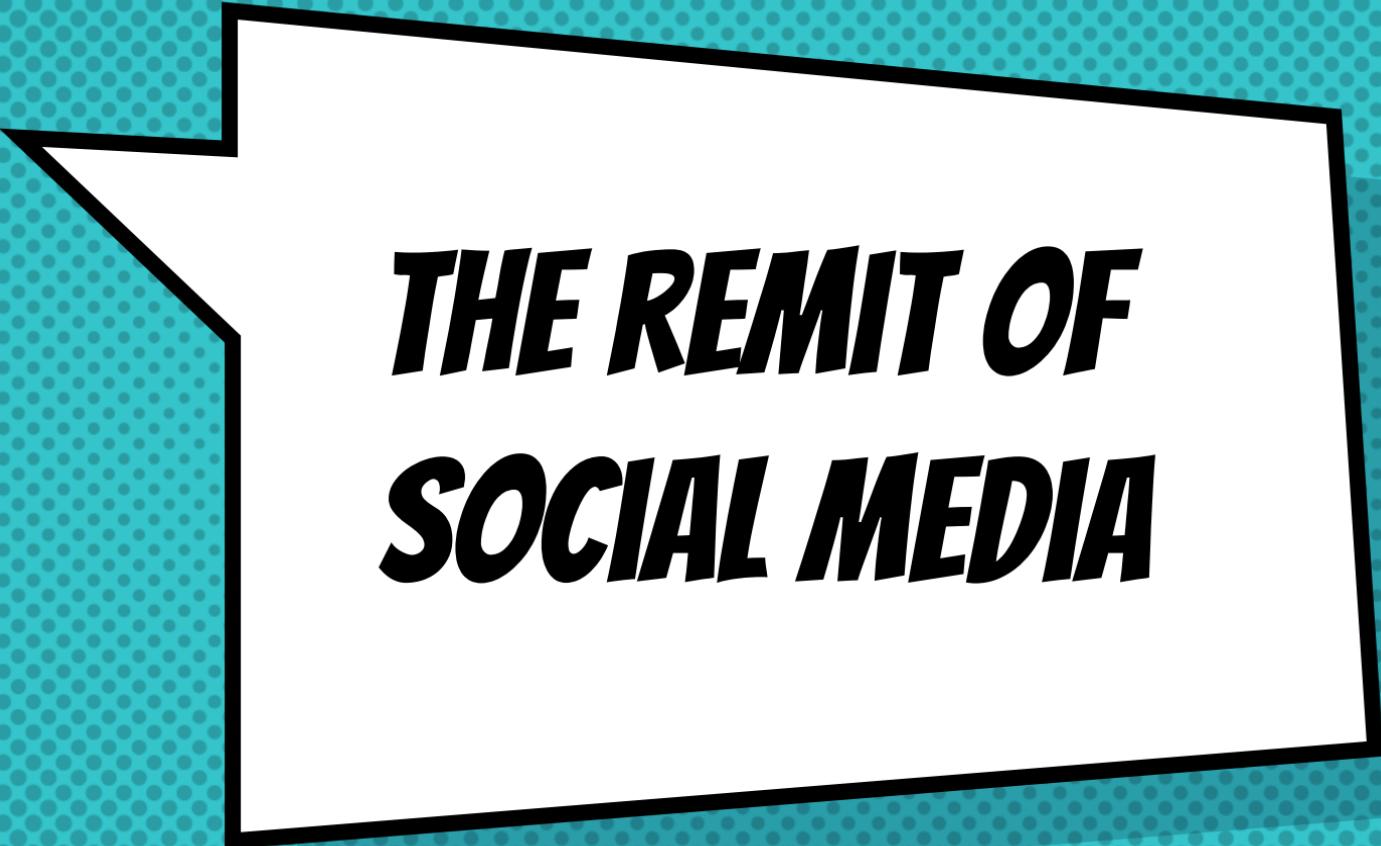


***WHAT YOU NEED TO  
KNOW ABOUT COPYRIGHT  
AND SOCIAL MEDIA***

***DR HAYLEIGH BOSHER***

# ***COPYRIGHT & SOCIAL MEDIA USAGE***

- × **The remit of social media** – how it is being used and what that means in relation to counterfeit goods.
- × **Copyright works on social media** – copyright protects photographs and videos, but should everything on social media be protected?
- × **Copyright infringement on social media** – we all share content on social media, but is it illegal, and what are the risks?
- × **The terms and conditions of social media platforms** – we all have social media profiles but how many of us have read the terms and conditions that we have agreed to?
- × **Social media in education** – social media is a great tool for education, but what can we do to better inform and protect teachers and students?



***THE REMIT OF  
SOCIAL MEDIA***

# ***SOCIAL MEDIA***

- × Hybrid that springs from mixed technology and media origins that enable instantaneous, real-time communications, and utilizes multi-media formats and numerous delivery platforms with **global reach** (Mangold & Faulds, 2009)
- × Collaborative online applications and technologies, enable participation, connectivity user-generated content, **sharing of information**, and collaboration among a community of users (Henderson & Bowley, 2010)
- × A group of Internet-based applications that build on the ideological and technological foundation of Web 2.0, and that allow the creation and exchange of **User Generated Content** (Kaplan & Haenlein, 2010)

# ***SOCIAL MEDIA SUCCESS***

Twitter's advertising revenue totalled \$545 million, an increase of 60 per cent year-over-year



Facebook, valued at \$54 billion, reached profits of \$3.894 billion, advertising revenue rise to nearly \$70 billion in 2019



Instagram approximately \$4bn in revenue in 2017, and it is estimated that Instagram ad revenue could reach over \$10bn in 2019



## ***SOCIAL MEDIA USAGE***

- × 40% of the world's population use social media (as of June 2018, 55.1% of the world's population has internet access!)
- × 2.77 BILLION people on social media
- × As of 2017, 81 percent of the United States population had a social networking profile
- × Facebook was the first social network having surpassed the 1 billion monthly active user mark and as of the first quarter of 2017
- × On average, global internet users spend some 135 minutes per day surfing social networks

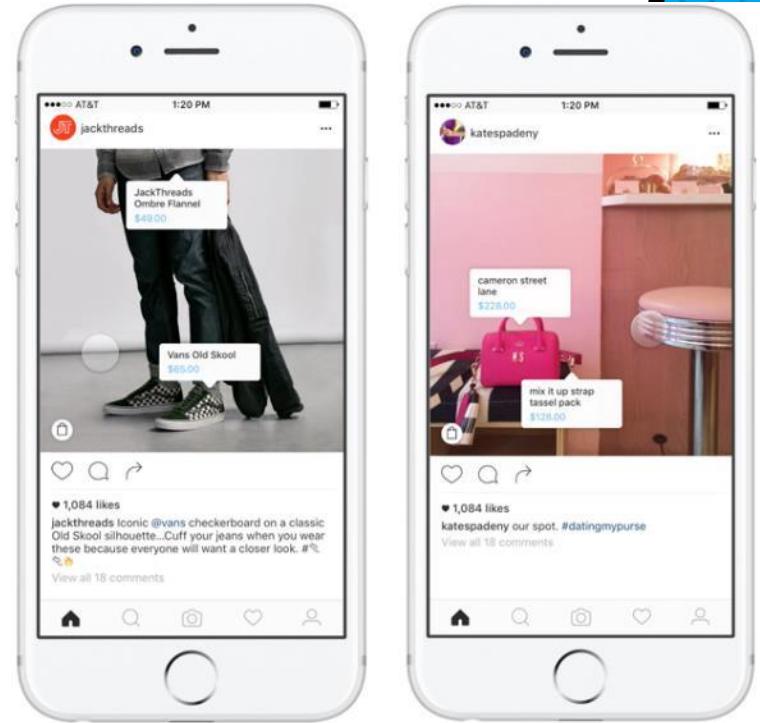
## ***HOW SOCIAL MEDIA IS BEING USED***

- × Whilst social media is a relatively new concept, it is also a constantly developing and expanding in its purpose and function
- × Escalating in popularity, with an estimated 45% of the world's population now using social media and are spending on average 136 minutes per day on social networks.
- × This has led to increased revenues for social media platforms
- × Developments in the functional abilities of platforms
- × Provide for sharing of images, videos, and information as well as streaming, temporary images and videos, shopping online.

# SHOPPING SOCIAL

Instagram, the bastion of influencers, has launched Instagram Shopping, a new feature enabling products spotted on its platform to be purchased in one click

looking to launch an autonomous e-commerce app IG Shopping, which would allow registered sellers to sell their products directly



# COUNTERFEIT GOODS

- × IPO Share and Share Alike report: counterfeiting online encompasses a range of activity such as website impersonation (cloning brand web pages), fan pages (creating fake business pages on Facebook), social media pages transacting business, promotion and the proliferation of websites selling counterfeits and offering fake special offers.
- × Social media plays a significant and growing role in the sale and distribution of counterfeited and pirated goods.
- × Social media is a 'haven' for counterfeiters, who disseminate through open and closed group pages, as well as utilising 'likes' and 'retweets', and fan pages. Furthermore, evidence from Trading Standards indicates that social media sites were the second most common 'location' for investigations into counterfeiting.



Intellectual  
Property  
Office

## Share and Share Alike

The Challenges from Social Media  
for Intellectual Property Rights

# ***SOCIAL MEDIA STRATEGY***

Social media can be a great for business but be aware of the risks of counterfeit goods on social media. Be vigilant in checking.

Take action – all social media platforms have notice and takedown procedures – report infringers

Communicate to your customers legitimate purchasing options



***COPYRIGHT  
WORKS ON  
SOCIAL MEDIA***

# ***COPYRIGHT***

- × Copyright protects (among other things) literary and artistic works as well as other things such as film.
- × On social media copyright protected content might be text, photographs, videos.
- × It lasts 70 years after the death of the creator
- × Gives the rightsholder the ability to stop others copying, publishing, or communicating their work to the public...
- × Copyright law is territorial and is different in different countries... this is obviously a challenge since the internet is global!

## ***COPYRIGHT (TRIES TO) RESTRICT COPYING***

- × Purpose of copyright is the creation and dissemination of culture, knowledge and information
- × It “achieves” this by restricting copying to allow the creator to licence / sell their work for remuneration
- × Social media content – information, pictures & videos = copyright protected material. Artistic works, Literary works, sound recordings, films Section 1 CDPA 1988

## ***SOCIAL NETWORKS ARE FOR SHARING***

- × Over 95 million photos and videos are shared on Instagram every single day and over 40 billion photos and videos have been shared on the platform since its conception
- × The philosophy of sharing on social media networks contrasts with the implications of copyright law
- × Social networks ENCOUAGE sharing of own content and other people's content

## ***COPYRIGHT WORKS ON SOCIAL MEDIA***

- × Copyright protects original works
- × The originality threshold was clarified in the case of [Infopaq v Danske Dagblades Forening \(C-5/08 2009\)](#) as the “authors own intellectual creation”
- × Includes the creators ability to exercise free and creative choices, expressing their personal creativity.

## ***DO INSTAGRAM IMAGES HAVE COPYRIGHT?***

- × Although photographs have always been manipulated and edited, the numerical and computational methods made easy to use in photo editing software have significantly changed our perception of what image editing can achieve.... Where snapshots are concerned, easy and automatic editing applications have become common tools for touching up, enhancing, and cropping images (Sarvas and Frohlich 2011)

## ***SHOULD EVERYTHING ON SOCIAL MEDIA BE PROTECTED?***

- × With so much content being posted on social media daily, the question arises whether or not the content is original and therefore protectable. The growing volume of content is the result of technological developments and changes in social behaviour and creativity. More people own devices that enable photographs to be taken and uploaded to social media platforms.
- × it could be argued that the platforms introduce levels of limitations to the creative decision making of the photographer such as the size of the image as well as the editing and filtering options. Perhaps it is time to re-evaluate the standard of originality in copyright in light of the increase in the volume of technologically-enabled content.
- × In the case of [Land Nordrhein Westfalen v Dirk Renckhoff 'Córdoba' \(C-161/17\)](#) the rights holder was able to enforce copyright of a popular image of a bridge, but the question of photograph qualifying for copyright was not raised.

# ***SOCIAL MEDIA STRATEGY***

As present, photos and videos posted on social media are likely to be copyright protected.

Nevertheless, know that when posting it will be shared – so decide what you want to share and what you want to keep.

Be aware of sharing other people's content.... ->



***© INFRINGEMENT  
ON SOCIAL MEDIA***



# ***INFRINGMENT***

- × We all share content on social media
- × Sharing other people's copyright protected content on social media is technically an infringement of their copyright
- × We are seeing more cases of people being pursued for posting a photo on social media



# **USERS** at **RISK**

The risk of posting on social media is becoming higher, particularly since there are now companies and software searching the internet for opportunities to ..

## ***KARDASHIAN V EXPOSURE***

- × Khloe posted photo of herself on her Instagram
- × Photo was taken by photographer Manual Munoz
- × Xposure is photo agency
- × Licenced to Daily Mail by Xposure/ Manual Munoz
- × Next day on Khloe's instagram with watermark removed
- × Sued for Copyright infringement
- × for injunctive relief, damages and trial by jury
- × Settled out of court...

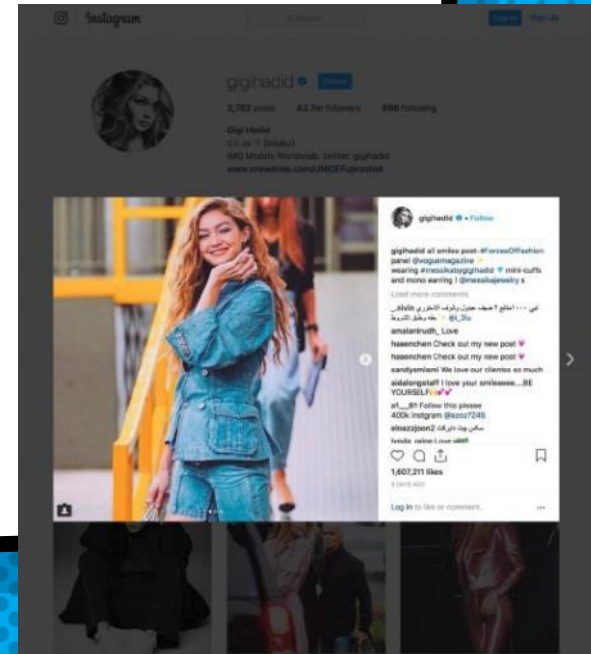


## ***GIGI HADID 2017***

- ✗ Hadid removed a watermark and posted a photo of herself on her Instagram
- ✗ Despite numerous demands to Hadid to remove the infringing photo, she refused to remove the image, which received 1.2 million likes on Instagram.
- ✗ Peter Cepeda had licensed the photo to The Daily Mail and TMZ but after Hadid's post, the photo was then used by several other publications, crediting Hadid with no mention of Cepeda.
- ✗ The photographer brought a claim against Hadid, seeking compensation for damages, including any profits realised by Hadid and/or IMG attributable to the photo.
- ✗ Settled the matter out of court.

# GIGI HADID V EXPOSURE

- ✗ On 12 October 2018, she posted a picture of herself to her Instagram account
- ✗ Xclusive brought a civil complaint against Hadid in New York seeking a trial by jury and damages for copyright infringement
- ✗ In the claim Xclusive argue that Hadid's Instagram account includes at least fifty (50) examples of uncredited photographs of Hadid in public, at press events, or on the runway, posted by Hadid without license or permission from the copyright holder. The claim states that Xclusive believes these acts of infringement are wilful and intentional, in disregard of and with indifference to the rights of copyright holders.



# Land Nordrhein Westfalen v. Dirk Renckhoff

Photographer Dirk Renckhoff sued the state of North-Rhine Westfalia because a student had included Renckhoff's photo of the city of Córdoba in an assignment which her school made available on its website.

The photograph had originally been published on a website of an online travel magazine with the consent of the photographer. The student had downloaded the photograph and copied it into her assignment



# ***EXCEPTIONS***

- × Parody
- × Education
- × News Reporting
- × Quotation, Criticism & review
- × Text and Data mining
- × Research & Private Study
- × Libraries, Archiving, Museums, Disability
- × Orphan Works
- × ~~Private Copying~~

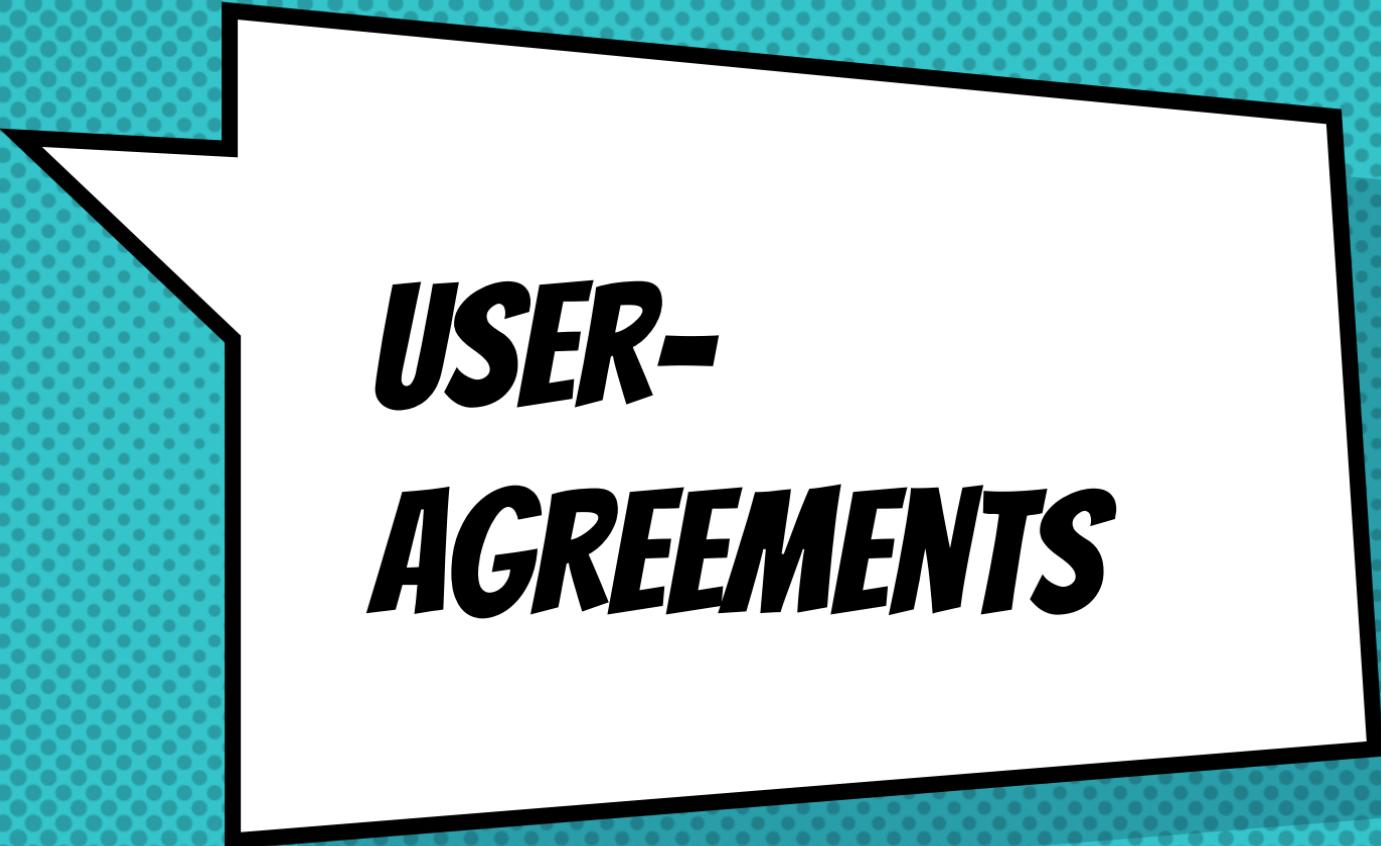
# ***SOCIAL MEDIA STRATEGY***

Sharing other people's content on social media without permission can be a risk as it is likely copyright infringement

Sharing using the utilities within social media such as share on LinkedIn and Facebook are less risky

Screen-grabbing and posting – even with acknowledgement is more risky

Exceptions may apply but are narrow and specific



***USER-  
AGREEMENTS***

## ***WE DON'T OWN YOUR CONTENT SAID INSTAGRAM...***

- × “Instagram users own their content and Instagram does not claim any ownership rights over your photos...We respect that there are creative artists and hobbyists alike that pour their heart into creating beautiful photos, and we respect that your photos are your photos. Period. I always want you to feel comfortable sharing your photos on Instagram and we will always work hard to foster and respect our community and go out of our way to support its rights”

(Kevin Systrom co-founder, Instagram)



## ***HOWEVER...***

- × “You grant us and our affiliates a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any data, content, and other information made available by you or on your behalf in connection with your use of our Platform. This license survives even if you stop using the platform feature.”

[www.instagram.com/about/legal/terms/api/](https://www.instagram.com/about/legal/terms/api/)





Instagram

## ***SO WHAT THAT MEANS IS...***

Users grant a non-exclusive licence to Instagram and their unnamed affiliates

Instagram has free use of the user's content (royalty-free)

Can pass the rights to any third-party without the creators permission (transferable, sub-licensable)

Content can be used anywhere (world-wide)

Can edit, share, copy and communicate the user's content to the public (use)

Even content not owned by user but uploaded by user (made available by you)

# ***CREATORS BEWARE***

- ✗ Would be vital for a photographer to be aware of these terms
- ✗ If they licenced an image to a third-party under an exclusive licence, posting the image on their Instagram account would violate that licence
- ✗ Makes it difficult for lawyers to advise their clients, saying “don’t use social media” is not helpful!

## ***WE DON'T OWN YOUR CONTENT SAID INSTAGRAM...***

- × Whilst Instagram does not own the content per se, it does have virtually all the rights of someone who is the rights-holder, aside from the fact that it is not an exclusive licence.
- × User's don't read Ts & Cs
- × Even if they did, would it make a difference?



***OH.. BUT DON'T FORGET..  
YOU WARRANT THAT ALL CONTENT  
IS NOT INFRINGING***



Instagram



“Under no circumstances  
Shall Instagram be liable  
to you for any amount”

“To the maximum extent  
permitted by applicable law,  
you hereby release and waive  
all claims against Instagram”

“You represent and warrant that you own  
or have secured all rights necessary to  
display, distribute and deliver all content...

**To the extent your users are able to share  
content through Instagram, you represent  
and warrant that you own or have secured  
all necessary rights for them to do so in  
accordance with Instagram's available  
functionality.”**



## ***CONTRADICTIONS & CONFUSION***

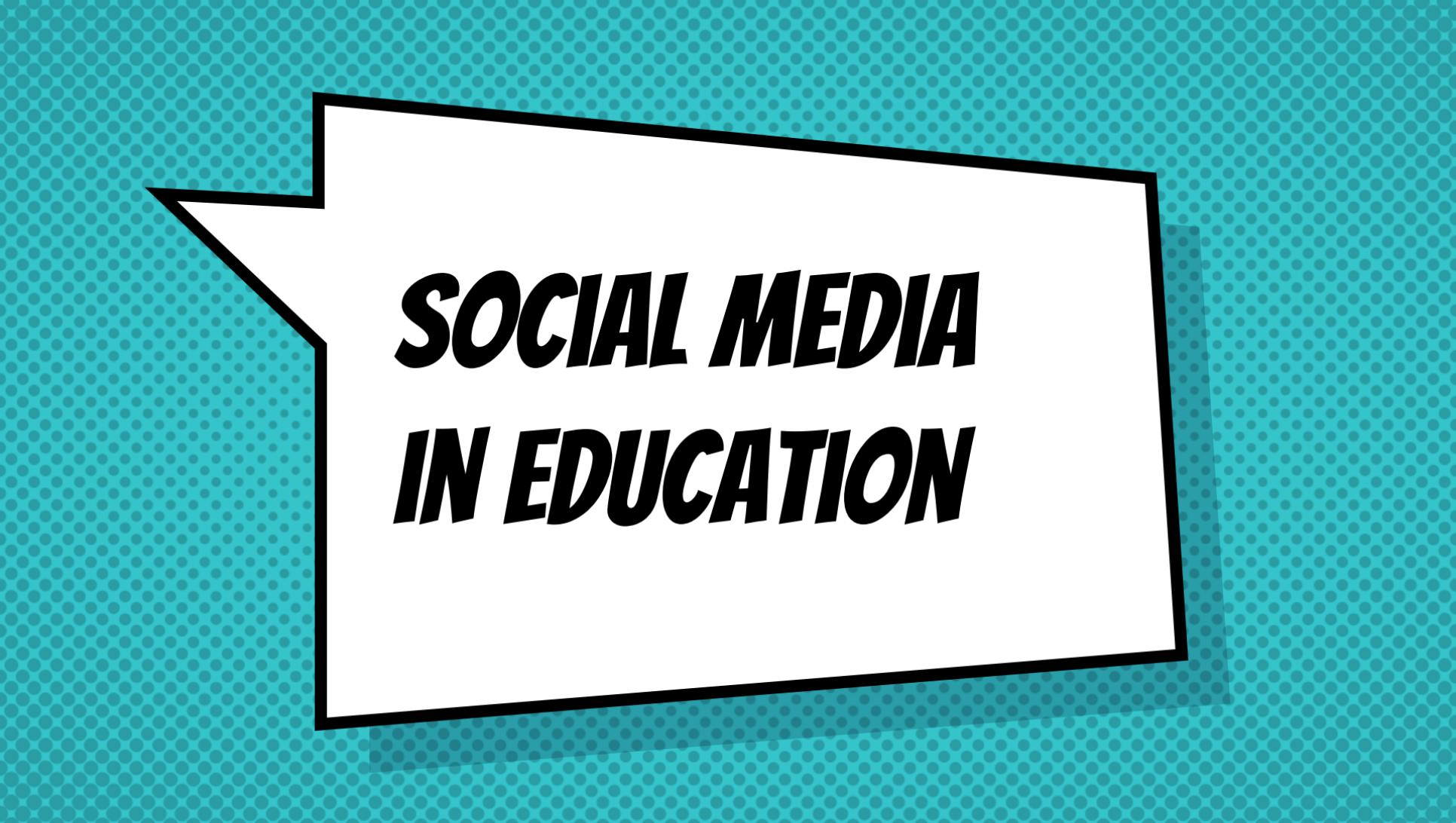
- × Instagram users warrant that they own the content that they post or it does not infringe
- × Yet encourage sharing, which means we are always in breach of our Instagram Ts & Cs...
- × The Ts & Cs are misleading and complicated, higher than the reading age of 13 – min for users
- × Adds to issues of confusion over what is copyright online... users do not know what is / is not legal.

# ***MEANWHILE...***



In September 2018 The Paris Court of First Instance found that Twitter's Terms of Use (not dissimilar to Instagram's) were void and unenforceable because they were "abusive" towards users. Twitter, which could face fines of up to 30,000 Euros, will now have to remove the terms and replace them with ones which are compliant.





***SOCIAL MEDIA  
IN EDUCATION***

## ***SOCIAL MEDIA IN EDUCATION***

- × Social media is a great tool for education, but what can we do to better inform and protect teachers and students?
- × social media is being increasingly used in the classroom, and as a medium for teaching and learning
- × E.g. as way to communicate with students, or as a method of assessment
- × Increasing communication and open discussion, engaging students through current media, and creating collaborative and experiential learning opportunities

# ***COPYRIGHT FOR TEACHERS***



## ***TEACHING WITH SOCIAL MEDIA***

- × under certain conditions teachers and students can use copyright protected content without permission of the copyright owner.
- × In the UK, copyright exceptions allow the use of any type of work for the purpose of teaching (‘for the sole purpose of illustration for instruction’) as well as performing, playing or showing literary, dramatic or musical works in the course of activities of an educational establishment.
- × Must be for non-commercial purposes.
- × Some exceptions for education can only be relied upon in the absence of a relevant educational licensing scheme.

# EDUCATIONAL ESTABLISHMENTS

- × Things done for the purposes of instruction – s.32
- × Anthologises for educational use – s.33
- × Performing, playing or showing work in the course of activities of an educational establishment – s.34
- × Recording by educational establishments of broadcasts – s.35
- × Copying of extracts of a work by educational establishments – s.36
- × Lending of copies – s.36(A)
  
- × The copyright exceptions for using materials in education is narrow.
- × Government guidance “minor uses, such as displaying a few lines of poetry on an interactive whiteboard, will be permitted, but uses which would undermine sales of teaching materials will still need a licence.”
- × The law states that it is okay to use work protected by copyright under these conditions:
  - × 1. the work must be used solely to illustrate a point;
  - × 2. the use of the work must not be for commercial purposes;
  - × 3. the use must be “fair” (which broadly speaking means that you only used what you needed in order to illustrate the point, without prejudice of the rights of the author)
  - × 4. it must be accompanied by a sufficient acknowledgement.

# ***EDUCATIONAL ESTABLISHMENTS***

- × The copyright exceptions for educational use only apply where a relevant licence is not available. You can check with your University Library, but it is likely that your University has licences such as the following:
- × a HE licence from the Copyright Licensing Agency, for copying extracts of books for the students
- × a licence from the Educational Recording Agency for television broadcasts for use within a classroom
- × These licences also come with their own caveats, so it's important to find out which licences and/or exceptions you are relying on in your teaching. If a University is found to be infringing copyright it risks fines, legal fees, the cost of resources as well as possible reputational damage.

## ***OUTSIDE THE CLASSROOM***

- × Neither the licences nor the copyright exceptions in this field apply outside of educational settings.
- × This means that if the work was created as part of student or teaching activities and includes copyrighted works
- × In order to exploit it commercially they would need either to remove the protected material or to get permission to use it from the copyright owners
- × In order to share on a public platform the same would apply
- × The current law would also restrict sharing on private or restricted groups

## ***KEY ISSUES***

- × Copyright exceptions for educational institutions only apply within the walls of the classroom, between teacher and student.
- × So, if you upload your teaching materials to Facebook with copyright images or a recording of your lecture to YouTube that contains music or film clips, you're likely outside the remit of the permissions.
- × Once you upload content to a platform, you grant them the right to share it (under the user agreement, for more on this see 10 things you should know about Instagram's terms of use.) So, this could mean you are licensing your work without knowing it, or worse, sub-licensing someone else's work without permission!

# ***LAND NORDRHEIN WESTFALEN V DIRK RENCKHOFF (C-161/17)***

- ✗ The case arose in Germany, where the photographer Dirk Renckhoff sued the state of North-Rhine Westfalia because a student had included Renckhoff's photograph of the city of Córdoba in an assignment which her school subsequently made available on its website.
- ✗ The photograph had originally been published on a website of an online travel magazine with the consent of the photographer. The student had downloaded the photograph and copied it into her assignment
- ✗ Advocate General : a flexible interpretation of the educational exception that gives greater weight to the right to education/compliance with the 3 step test (no harm to possible financial benefits to be gained from the presence of the photograph on the Internet )
- ✗ CJEU: decisive that the school website made the photograph accessible to all the visitors to that website



# ***STRATEGY***

Using social media in education can have many benefits – communicating & connecting with students and

Using copyright protected content can be allowed under copyright exceptions and institution licensing – inside the walls of the classroom

Sharing third-party copyright protected content – photos and videos – risks copyright infringement claims

**Universities need to update their copyright policies accordingly**



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***THANKS!***

- × The IPKat Social media posts
- × 10 things you should know about Instagram Terms and Conditions
- × Sharing Your Teaching Materials Through Social Media, CLA blog
- × Bosher H, Key Issues Around Copyright and Social Media: Ownership, Infringement and Liability, JIPLP (2020)
- × Bosher H. and Yesiloglu S., An Analysis of the Fundamental Tensions Between Copyright and Social Media: The Legal Implications of Sharing Images on Instagram, *International Review of Law, Computers & Technology*(2018)
- × IPO, Share and Share Alike Report



# Q & A