

COMPARING COPYRIGHT LAWS WITH OTHER REGULATORY FACTORS ON SOCIAL MEDIA

The author compared copyright laws with other regulatory factors such as the TOS (ie, terms of service) and the technological features on social media platforms.

The key finding is that **the users are exposed to mixed signals and conflicting expectations on social media platforms regarding the content-generative activities legitimate on these platforms.**

The author refers to the copyright laws of three jurisdictions – the United States, the United Kingdom and Australia – as well as to the terms of service and the technological features of the five social media platforms (namely Facebook, Pinterest, YouTube, Twitter and Wikipedia).

The author argues that the effectiveness of copyright laws as a regulator of content-generative behaviours is compromised by the uncertainties in the application of copyright laws and variations between those laws in different jurisdictions, as well as by inconsistencies between the application of either of the regulatory factors or the copyright laws.

The 'generativity' of social media platforms, in part due to their integration of technological features that encourage the creation, modification and dissemination of content, can increase the possibilities for copyright infringement on such platforms. These features can therefore be incompatible with the copyright regimes. On the other hand, the technological features that constrain content-generative activities limit the opportunities for users to interact with content and can reduce the risks of copyright infringement by users of the platforms. Although these features are aligned with the copyright regimes, their influence is limited since the constraints experienced by users can easily be overcome with external tools – on balance, the platforms encourage content-generative activities more than they constrain them

It is not possible for any regular social media user to have the level of understanding of copyright laws required to assess the legitimacy of the content-generative activities he or she undertakes, through the application of copyright laws to these activities.

The TOS are aligned with the copyright regimes to some extent, and the TOS and the relevant copyright regime reinforce one another when they are in alignment.

Three areas (the vesting of ownership under the TOS; the imposition of the TOS on third parties; as well as the choice of governing law and jurisdiction clauses) give rise to potential incompatibilities between the TOS and the copyright regimes, and so compromise the effectiveness of copyright laws in regulating the content-generative behaviours of users.

The conclusions drawn highlight the need to address the vulnerability of social media users, widely exposed to the risks of copyright infringement in the content-generative activities that they are 'nudged' to undertake on social media platforms.

The specific course of copyright reform to which the author points may lie in **expressly providing for the occurrence of content generation on social media as a factor to be considered, or as a specific purpose exempt from copyright infringement (as the case may be), under the respective copyright statute.** In that event the provision has to be compliant with international obligations under the respective treaties to which the countries are parties, including the three-step test. In particular, relevant considerations will include the specificity of the provision and whether content-generative activities are seen to constitute a narrow category of cases, as well as whether the content generated through these activities – leading to direct or indirect commercial benefits for the authors of such content on social media – is seen to conflict with normal exploitations of the relevant copyright works.

The UK reforms suggest that another alternative to fair use is to expand the fair dealing exception for the purpose of parody or satire in Australia to include pastiche, as in the case of the UK. Arguably, further consideration should also be given to designing an exception for the purpose of quotation which is along the lines of the limited form adopted in the UK. Yet another possible solution to address any potential unfairness of exposing social media users to copyright infringement for their content generative activities is to acknowledge more explicitly the regulatory role of social media platforms.

Table: Summary of Consistency Features

Regulatory factors		Consistency	Average consistency
Copyright: TOS	US	7,0	5,3
	UK	4,0	
	Australia	5,0	
Copyright: Technological features	US	4,0	5,7
	UK	7,0	
	Australia	6,0	
TOS: Technological features		6,0	6,0

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Corinne Tan (2018). *Regulating Content on Social Media: Copyright, Terms of Service and Technological Features*. UCL Press

