Mundane Content on Social Media: Creation, Circulation, and the Copyright Problem

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Abstract

This article examines the practices of social media users and explores how people value, protect, and circulate content on social media platforms. Legal scholarship shows us that much of the mundane online distribution and consumption of media infringes copyright law and as a result raises complex questions around the distribution and circulation of content. Through exploring this misalignment between copyright law and everyday social media practices, this article identifies existing norms on social media platforms and asks whether they could provide guidance for a future copyright reform agenda. Drawing on a series of group interviews with people who identified as regular users of social media, we explored emergent norms of attribution and circulation. Applying a grounded theory approach, an emergent thematic analysis of the data uncovered a range of responses coalescing around the themes of attribution, platform norms, and commercialization. The data show that people make complex and nuanced decisions around when they should attribute content, seek permission to use content, or allow others to use their content. We suggest that these decisions are informed by the vernaculars of each platform and a critical assessment of the broader commercial logics of social media, which results in many people placing a greater importance around attribution. The authors conclude by proposing that rather than stretching the logic of a legal framework that is increasingly not fit for purpose for everyday social media content distribution, policymakers should take into account these emergent practices on social media platforms when considering reform opportunities.

Keywords

copyright, attribution, content, practices, vernacular creativity, spreadable media

The widespread production and distribution of content is a central aspect of most popular social media platforms. Memes are posted across platforms, videos are shared in group chats, and images are sent, screenshotted, and re-circulated (see Douglas, 2014). This is largely due to a combination of technological advances and emergent media production and consumption habits. These changes have supported the increasingly broad (or "spreadable") distribution of online content, and caused structural change across the media industries (see Jenkins, Ford, & Green, 2013). Media businesses have responded to these developments by relinquishing some control of their intellectual property to fans, and an extensive body of literature has explored how fans and companies have attempted to negotiate this changing relationship (see Freund, 2016; Jenkins, 2006; Jenkins et al., 2013). Other researchers have noted that people in online creative communities have also had to adjust to this new environment. These studies show that communities reach compromises about when content can circulate; debate about ownership, sharing, and attribution (Perkel, 2011,

2016); and engage more directly with intellectual property law as a result (Fiesler, Feuston, & Bruckman, 2014; Humphreys, 2008).

However, there has been much less focus on how ordinary people who do not actively participate in fandom culture or an online creative community have reacted to these changes. This is despite the fact that most people who use social media are also negotiating similar questions around ownership and attribution as producers, distributors, and consumers of media. Indeed, it is likely that people have had to establish norms around sharing content on social media, like the fans and online creators discussed above, while retaining a similarly limited understanding of how major areas of intellectual property law (like copyright) operate in practice. The

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article contributes to the literature by exploring how ordinary people negotiate these tensions with respect to their own online content production as well as their consumption and circulation of other content on social media platforms. This approach extends the literature by discussing these issues beyond the context of an active fandom culture or an online creative community. Drawing on a series of group interviews with people who identified as regular users of social media (which we defined as using social media at least once a week), we explore what norms are present and whether copyright plays a role in these considerations.

We begin by outlining our methodological approach and explaining how we ensured a group interview could confidently address everyday practices as well as a complex legal framework like copyright law, before moving on to consider existing studies in the area. We argue that communication and media studies scholarship that explores how sharing norms relate to law has largely focused on specific forms of creative practice to the exclusion of more mundane forms of content production, particularly on social media.[1] We draw on legal scholarship to show that these everyday activities raise equally complex questions around the copying and distribution of content and are worth investigating in their own right. Through this process, we also detail some of the legalities of copyright as it relates to social media. Following this, we outline our findings, which reveal that ordinary people take a complex approach to managing the creation and circulation of content, variously referencing platform aesthetics, labor, copyright law, and broader notions of cultural value in the process. We conclude by reflecting on how these emerging norms challenge existing understandings of copyright law.

Copyright, Sharing, and Social Media: Motivations and Methodology

We undertook this research because we were interested in seeing whether people using social media platforms would care as much about intellectual property as participants in online creative communities (Fiesler et al., 2014; Humphreys, 2008; Perkel, 2011, 2016). It made sense that creators (whether amateur or professional) who had put significant effort into their work would be interested in questions of ownership and attribution. However, would people invest in these issues if all they were doing was producing mundane content (like the occasional post on Instagram) and consuming a broad selection of social media content? We were also interested in exploring the misalignment between copyright law and social media practices. How were people solving issues around attribution and ownership, if they were not following the law as it stood?

To explore these questions, in late 2016 and early 2017, we held four semi-structured group interviews of two to six people who identified as regular users of social media (at least once a week) in Sydney, Australia. Eleven respondents identified as female and five respondents identified as male, and all quoted respondents have been given pseudonyms. Interviews ran from 40 to 60 min and were held in a group (or partnered) format to facilitate discussion between respondents. We asked people about their social media use, ownership, differences between amateur and professional content, and online etiquette around re-using work. At this point, it is worth emphasizing that the legal framework of copyright law is central to many of these questions and has inspired some of the existing research into sharing norms (Fiesler et al., 2014; Humphreys, 2008). We knew that people would not address copyright specifically. Indeed, the above scholarship has shown that most people retain a limited knowledge of copyright law when engaging in online practice (Fiesler et al., 2014; Humphreys, 2008; Perkel, 2011, 2016). Therefore, we structured our interviews in such a way that we could relate our findings to broader debates around copyright law and social media, by focusing on questions of ownership and attribution. We asked questions such as the following:

> When you are using social media and seen an image or video you enjoy, does it matter where it came from?

> Do you ever repost or regram other people's posts or images? What do you feel is the correct etiquette in that situation?

We were also interested in finding out whether other motivations drove particular decisions around sharing or protecting content. Using a semi-structured interview format allowed respondents to contribute meaningfully to discussions and provide additional context beyond our initial questions around copyright and norms. The interviews were audio recorded and then transcribed. We then undertook an emergent thematic analysis of the data using a grounded theory approach and responses coalesced around the following themes: attribution, platform norms, and commercialization. Our findings are only relevant to common law jurisdictions. This is because the literature we draw on comes from these jurisdictions and because we held interviews in Australia, which has a common law legal system.

We also viewed respondents as complex actors who operated across the spectrum of copyright law (Craig, 2011; Meese, 2018). Instead of approaching non-professional creators as consumers, who simply engaged in media consumption, people in group interviews discussed their own experiences creating content, strategies used to distribute and protect their content (if any), as well as their use of other copyrighted material (legal or otherwise). The designation of "ordinary" was also an important descriptor in our recruitment strategy. We were keen to recruit people who could talk about their everyday social media use, as opposed to the creative labor that previous research had looked at. As a result,

we cast our recruitment net widely and had a relatively broad minimum requirement that respondents needed to use social media at least once a week. This meant that we spoke to respondents who came from a variety of professional backgrounds, from students and researchers to amateur photographers and marketing professionals. Our respondents used social media in distinctly different ways and so we do not present our results from the group interviews as conclusive. Instead, we frame them as initial research into this area and an indicative example of conversations occurring around copyright, distribution, and social media.

Copyright Law, Norms, and Social Media

Existing research has shown that particular online creative communities establish vernacular conventions around the spread of content. For example, Sal Humphreys (2008) has conducted a detailed study of how people negotiate intellectual property on the forums of the social networking site Ravelry, which is dedicated to "knitters, spinners and crocheters" (p. 125). She notes that "[p]eople are aware of copyright and also very unsure of how it works" (Humphreys, 2008, p. 127) and often draw on legal and moral discourses, as well as their own professional or non-professional backgrounds as designers, to make ethical distinctions around issues that have been raised in the community (such as when people should reuse patterns). A similar trend is evident in Katharina Freund's (2016) study of "fan-vidders" on YouTube. Her detailed ethnography of this fan community found that they retain a complex understanding of what constitutes infringement as it relates to their practice. She (Freund, 2016, p. 1358) notes that vidders are "copyright-savvy" and engage in a range of activities to develop some legal certainty around their practice, from placing disclaimers alongside their videos to exclusively sharing videos among the community (as opposed to the broader public). These studies show that even though the formal enforcement of copyright law is not prominent online, many of the norms that structure this environment retain a nuanced appreciation of foundational principles of copyright law.

Furthermore, research by Dan Perkel (2011, 2016) on another artistic community has shown that people are particularly conscious about how their work circulates online. His ethnography of Deviant Art (a social network based around artists) found that there was significant disagreement among members about whether to introduce tools that allowed members (and not just creators) to share content from Deviant Art across the Internet. His study revealed that the community retained a strong "romantic ideology of authorship and creativity" (Perkel, 2016) and did not support the sort of sharing and remixing, which, Perkel suggests, is presumed to be a natural feature of amateur or semi-professional creation. However, as noted above, much of this research has focused on specific online creative communities. We know much less about how individuals relate to their mundane content production online, and how they feel their everyday content production (such as the occasional Instagram post) should be treated.

It might appear that an individual's mundane production and consumption of online media is not an issue. People who expend a lot of labor to produce something presumably have a clear interest in protecting the work. Similarly, debate regularly emerges around the use of corporate intellectual property by fans, especially when a particular media organization has not authorized certain uses (see Jenkins, 2006). In contrast, most people are not looking to exploit their holiday photos commercially and if someone copies a photo and posts it on their social media profile without permission, the two parties are unlikely to go to court. However, much of the mundane online distribution and consumption of media infringes copyright law and as a result raises equally complex questions around the distribution and circulation of content.

John Tehranian (2007) shows how everyday activities can ultimately involve significant levels of copyright infringement through a brief description of "an ordinary day in the life of a hypothetical law professor named John" (p. 543). While he details a range of scenarios, the following passage highlights how the everyday distribution of media online can easily lead to infringement:

> Before leaving work, [John] remembers to email his family five photographs of the Utes football game he attended the previous Saturday. His friend had taken the photographs. And while she had given him the prints, ownership of the physical work and its underlying intellectual property are not tied together. Quite simply, the copyright to the photograph subsists in and remains with its author, John's friend. As such, by copying, distributing, and publicly displaying the copyrighted photographs, John is once again piling up the infringements. (Tehranian, 2007, pp. 544-545)

The hypothetical John is ultimately liable for US $12.45 million at the end of the day (Tehranian, 2007, p. 546). While he lives in the United States, where copyright owners can claim a significant amount of statutory damages, Tehranian (2007) makes a convincing argument that this gap between law and norms is unsustainable in any jurisdiction. He notes that even without recourse to dedicated online copyright infringement (i.e., online piracy), America is, "technically speaking, a nation of constant infringers" (Tehranian, 2007, p. 543). This is the case in the majority of other common law countries such as the United Kingdom or Australia (see Tan, 2018). Regardless of the issue of damages, there is an obvious problem when various everyday activities directly conflict with legislation.

While Tehranian (2007) does not provide examples relating to social media, a mismatch between copyright law and everyday practice exists there too. Corrine Tan (2018) has

explored the extent of this discrepancy in some detail. Drawing on a hypothetical example of an ordinary person ("Jane"), Tan shows how simple activities like using existing content already published on social media can potentially infringe copyright in various jurisdictions. Her research also examines the design of social media platforms and finds that it encourages people to engage in content generation, which, she notes, "can increase the possibilities for copyright infringement on such platforms" (Tan, 2018, p. 158). Examples of such design elements include relatively basic things like the option to post a status update or the presence of a share button. As Tan goes on to explain, the simple act of motivating people to produce or share content can lead to infringement. For example, while "Jane's simultaneous sharing of [a Pinterest] collage on Facebook and Twitter" (Tan, 2018, p. 181) through the use of a share button is legal in the United States and the United Kingdom, it infringes copyright in Australia.

Importantly, Tan also emphasizes the detailed analysis of relevant legislation and policies she had to undertake to work out when "Jane" was infringing copyright. She explains that she has to address "multiple copyright subsistence issues" (Tan, 2018, p. 81) (i.e., whether the work was copyrighted), the prospective infringement of multiple rights, and apply copyright exceptions (if relevant). In addition, she has to navigate the ongoing uncertainty about the relevant jurisdiction and legislation that applies because "there is no clear direction provided under existing international conventions" (Tan, 2018, p. 57). Following this analysis, it is easy for Tan to make the convincing case that "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" (Tan, 2018, p. 81).

The above legal scholarship focuses on the legalities surrounding copyright law but it tells us a few important things about everyday practice and social media. It emphasizes the relevance of studying the production, distribution, and consumption of mundane content. Both Tehranian (2007) and Tan (2018) show that even when people are engaged in everyday tasks, a real conflict between law and practice exists. Indeed, this analysis makes perfect sense once one considers the various activities a person might undertake on social media that may fall foul of copyright law, such as posting a photo on another social media platform. They also argue that this mismatch presents a potential risk to individuals by leaving them open to possible legal action (however remote). Finally, and most importantly for this article, they show that law is not able to provide practical guidance to individuals about how to manage their own content or the content of others. Indeed, copyright can cast trivial tasks such as sending photos in an email as infringement and so subsequently underlines the importance of norms. If the law is unable to provide guidance (even at a vague level), people turn to a range of other factors to make decision about when to share content or provide attribution on social media.

Below, we outline our data collected through the group interview process. It shows that people invest in the content they produce and attempt to be conscientious about the content they consume and distribute. As suggested above, people draw on a range of sources to establish norms. Sometimes this includes referencing a vague notion of what copyright stands for, but in other cases, people talk about the vernacular of a platform (Gibbs, Meese, Arnold, Nansen, & Carter, 2015), how they value particular forms of content, or whether people appear to have expended some level of creative effort. John Tehranian (2007) argues that a "vast disparity" exists "between copyright law and copyright norms" (p. 539). The examples stand as evidence of this. While people were conscious of the goals of copyright, their behaviors often did not align with law. However, their actions were logical and well justified, ultimately revealing a nuanced understanding of the changing media environment. As a result, we suggest that the answers below could stand as a useful guide for policy and platform design and contribute to the broader project of better aligning copyright law with everyday media practices.

Group Interviews: Distribution and Platform Vernaculars

Our respondents reported using a range of social media platforms but mainly discussed content production, consumption, and distribution in relation to three social media platforms: Facebook, Instagram, and Twitter.[2] Our first finding relates to the distribution of content within and across platforms. We asked respondents a range of questions about what motivated them to engage in this activity on different platforms (if at all) to ascertain whether legal restrictions around redistribution had any bearing on their practices. Our series of discussions revealed that many respondents made clear distinctions between Instagram, Twitter, and Facebook when circulating content but justified their different approaches to circulation with reference to expectations around engagement and presentation on particular platforms instead of copyright law. We identified this recognition of intersections between platform design and collective practice as discussions around "platform norms" in our thematic coding. However, this thematic code can be more accurately framed as respondent recognition of "platform vernaculars," the "shared (but not static) conventions and grammars of communication, which emerge from the ongoing interactions between platforms and users" (Gibbs et al., 2015, p. 257). Indeed, clear demarcations between platforms were based on an understanding of each vernacular, with regular users of particular platforms articulating stronger views about how one should use them.

To provide a brief example of this tendency, we will turn to one respondent, Ella, who used Facebook and Instagram

regularly and occasionally used Twitter. She drew on both social and technical reasons to justify her approach to sharing and redistribution. She described Facebook as a place where "you can share stuff, but you can't really as well [. . .] you can also overdo it" (Ella, Group Interview 1, personal communication, 15 November 2016). In this response, she was conscious of her potential audience and existing social relationships when it came to sharing content, supporting previous research conducted on sharing (see Kennedy, 2015). In contrast, when it came to Instagram, she was strongly opposed to regramming and stated that she liked "to keep it just original" (Ella, Group Interview 1, personal communication, 15 November 2016).[3] This can be clearly linked to a preference for a particular visual style, as earlier on in the interview Ella noted that Instagram was "more for pictures [. . .] aesthetics" (Ella, Group Interview 1, personal communication, 15 November 2016).

Other committed Instagram users shared this view. Georgia and Chris discussed reposting on Instagram, one of their primary social media platforms. Georgia only used Facebook and Instagram and, while Chris occasionally used Twitter and lurked on Reddit and Imgur, he identified Facebook and Instagram as his "regular" platforms. When asked whether they reposted on Instagram, they responded as follows:

> Chris: I never repost anything on Instagram.
>
> Georgia: No, me neither.
>
> Chris: Because I think it looks ugly when you use those repost apps. (Group Interview 3, personal communication, 6 March 2017)

In addition to stating he did not repost content, Chris retained a similar preference for a particular Instagram aesthetic like Ella. His brief critique of mobile applications that allowed people to repost content on Instagram suggested that the main vernacular on Instagram was the opposite of "ugly" and that this was the main reason he did not redistribute content there.

Respondents also drew on various platform vernaculars to position Twitter as space where content could circulate freely, making a contrast between this platform and the intimate environment of Facebook. Kate was one of the more engaged respondents throughout our series of group interviews and used a number of social platforms regularly. In contrast to other respondents who would list two or three platforms and then state they only used one "occasionally," Kate stated that she used Facebook, Twitter, Instagram, and YouTube. She had firm opinions about the use of each platform and argued that Twitter's global reach meant that you could "take what you want," whereas Facebook was "more private, more intimate" (Group Interview 2, personal communication, 1 March 2017). In a similar fashion, Mark (a heavy social media user like Kate) stated that Twitter was

"more about sharing [and] conversation" and there was general agreement among other respondents when he mentioned this (Group Interview 1, personal communication, 15 November 2016).

What was interesting about these responses was that respondents commented on platforms that they used regularly. It was evident that their ongoing use gave them specific knowledge of the intent of the platform design and the dominant practices on that platform. This meant that we could not identify a central logic of redistribution that would hold true across all platforms as people made contextual decisions around the sharing and redistribution of content. Indeed, this was evidenced by the lack of contributions from respondents when we were discussing a platform they did not use. For example, when prompted to discuss the redistribution of content on Twitter, Chris stated that he was a "[b]ig re-tweeter" (Group Interview 3, personal communication, 6 March 2017). Entering the conversation, another respondent Elaine simply stated, "[d]on't use it" and went on to discuss norms around sharing on Facebook (Group Interview 3, personal communication, 6 March 2017). Elaine's unwillingness to comment on Twitter shows how important platform vernaculars are when informing decisions around sharing. Respondents could not (or were not willing to) identify norms for platforms that they did not use and preferred to redirect conversation to platforms they were comfortable with, underlining the contextual nature of decisions around the distribution of content.

Indeed, this connection was most evident if we return to Mark and Kate. Like Kate, Mark stood out because of his consistent social media usage across multiple platforms. Mark stated that he "has to have everything" (Group Interview 1, personal communication, 15 November 2016), showing a marked similarity to Kate's extensive social media diet (discussed earlier). Mark and Kate's literacies around particular vernaculars were evident when prompted to talk about sharing and reposting norms across different platforms. Mark stated that Instagram was "definitely original content," Facebook was "for sharing things that you want to share with your network and maybe some of your own original content," and, as noted earlier, that Twitter was for sharing and conversation (Group Interview 1, personal communication, 15 November 2016). Kate articulated a similarly clear view about content distribution when responding to a hypothetical question about how she would feel if a stranger shared her content. She justified it both in terms of prospective audiences and intimacy, stating, "Facebook is a tighter circle, Instagram getting wider, Twitter, boom" (Group Interview 2, personal communication, 1 March 2017). She continues explaining, "that's why with Facebook maybe I feel a bit funny about people sharing my content [whereas on] Twitter it's sort of like, '[w]ell anyone can take it, I don't really care'" (Group Interview 2, personal communication, 1 March 2017).

The above discussion shows that our respondents regularly consider platform vernaculars when deciding whether to re-circulate content or to allow the redistribution of their own content. It also underlines the importance of building literacies around these vernaculars as respondents who used platforms regularly had stronger opinions about how they should operate. Indeed, people we spoke seemed to retain a particular mental typology of how content should circulate on particular platforms. Many of our respondents viewed Twitter as a space where their own content and the content of others should circulate freely. While Facebook was more contested, people were aware that content could circulate here; however, some respondents questioned whether this should take place for a range of economic and social reasons. Conversely, Instagram was presented as a site for original content with respondents keen to not only retain control of their own content but also unwilling to incorporate other people's content on their personal social feeds. Drawing from these interviews, it was clear that individuals carried an "ideal" model of how content should circulate on the platforms they use and made decisions about sharing content accordingly. While there were similarities in how our respondents viewed Twitter and Instagram, of course other individuals may have different understandings around how these platforms should operate.

Group Interviews: Attribution and the Profit Problem

In addition to discussing how sharing and redistribution was managed on social media platforms, respondents also had a lot to say about attribution online and the broader economic structures that sit behind social media platforms (see Fuchs, 2017). In these conversations, the question of copyright came to the fore. Respondents wanted to separate their discussions around sharing and reposting from commercial exploitation and drew a clear line between non-commercial circulation discussed in the section above and the commercial exploitation of copyrighted content. One respondent, Angela, explained that "social media [was] a culture where people borrow, and give, take all the time," but also noted, "[i]t's when people start profiting off it. That's when people find an issue" (Group Interview 3, personal communication, 6 March 2017). In the same conversation, Chris argued that "[a]s soon as a profit motive is put into that, it feels like a bit of a violation of a code." He was particularly concerned about the monetization of social content by "pages or websites [that] parlay posting into a whole business model like 'Lad Bible'" (Group Interview 3, personal communication, 6 March 2017). While one of us (as the interviewer) noted that the Lad Bible provides £100 to people who submit their content,[4] Chris still expressed general disquiet around the financial inequities that could emerge from commercializing social media, a place where people should be able to express themselves freely (Group Interview 3, personal communication, 6 March 2017).

Andrew, a respondent in another group, went further than disquiet, stating, "if it's for profit then it is outright theft. If it's obviously promotion, it could be borderline theft" (Andrew, Group Interview 4, personal communication, 8 March 2017). These were indicative examples from a broader suite of responses showing that people were generally aware of the potential commercial viability of social media content and the inequities that could emerge between individuals and commercial media companies who could leverage their "vernacular creativity" (Burgess, 2006). Unlike discussions about norms around sharing and redistribution, these positions did not track to particular forms of social media use and were consistent across the sample.

We suggested that proper attribution could provide one possible solution to the problem of tracking and managing the spread of content online. Respondents were positive about attribution as a practice but engaged in the practice haphazardly. For example, Ella noted that it was difficult to protect content, but that attribution was important, saying, "[y]ou can't really do anything" about the spread of content but "[as] long as you credit it, that's okay," a statement that Angela agreed with. However, when asked later whether she attributed all the content she used, Ella explained that "[y]ou don't know where the original source was [. . .] because there's so many copies." This was a common problem with one respondent, Emilia, arguing that the actual design of Twitter and Facebook did not support adequate attribution. She felt that the platforms did not prompt people to "think about copyright" when they were consuming and sharing content (Group Interview 2, personal communication, 1 March 2017). These examples were typical of the responses in our data. Respondents were supportive when asked whether people should attribute content, but, when asked specifically about their regular practices, admitted that they did not do so.

However, respondents were able to provide a more fine-grained account about what was worthy of attribution when asked to consider their own creative production, with most coalescing around a Lockean approach to copyright law, tying the value of their work to the amount of labor they had expended (see Craig, 2011). For example, Emilia explained,

> Like if it's just a meaningless joke or something, you know, I'd probably be like, "Look, someone shared it, I'm glad they found that funny." But if it was something I put a lot of time and effort and time into and was part of my values and my core and what I'm trying to achieve, you know that'd be another story because they're taking my personality and branding it as their own. (Group Interview 2, personal communication, 1 March 2017)

Georgia made a similar point, stating that she would be worried about the reuse of her content if "it was something that I had done myself [...] I had created myself." She placed this work in opposition to her Instagram profile, which was

largely pictures of "artworks that I see on the street" (Group Interview 3, personal communication, 6 March 2017).

Respondents also made the point that attribution was also easier to sustain within particular online communities. One respondent noted that regular contributors to the Instagram reading community #bookstagram watermarked their photos prior to circulation. Other respondents identified a similar practice of ensuring attribution and recognition of the original creator in the food community on Instagram. Angela noted that individuals who reuse a photo taken by someone else would use a camera emoji and tag the original account (with an @) to provide credit to the creator:

> Angela: Definitely on Instagram. If you have a blog or even just an Instagram feed [. . .] Say, you're a foodie. Whether you have a blog or not [. . .] [i]t's a constant dialogue with other foodies around you. People are very careful. They don't have to use one of those reposting apps, but they'll use that little emoji thing.
>
> Georgia: Regram thing. That regram thing.
>
> Angela: Not necessarily. They'll just use that camera emoji in the text, in the copy. That's definitely done. They're very careful with doing that because it's also their peers, their colleagues, their friends, but I don't really know about other sectors using Instagram. (Group Interview 3, personal communication, 6 March 2017)

While Angela identified this practice as emerging within the "foodie" community, the use of a camera emoji to signal that a post has been copied is a relative common practice on Instagram. It is also viewed as professional best practice (Walters, 2016).

These examples show that our respondents valued attribution and identified it as an important way of locating and respecting creative work in a "spreadable" media environment (Jenkins et al., 2013). Certain respondents also articulated that people should expend a certain level of personal labor to warrant attribution; however, this specific criterion did not form part of their own attribution practices, which were haphazard at best. We were also surprised that respondents mentioned various attribution practices across different Instagram communities during these discussions. These examples stood as evidence of regramming and ran counter to the ideal platform vernaculars presented by other respondents. While more research needs to be conducted around these specific communities, we suspect that these attribution practices are grounded in community norms in a similar way to other creative communities studied in the literature (Fiesler et al., 2014; Freund, 2016; Humphreys, 2008; Perkel, 2011, 2016). This suggests that our respondents' general claims about Instagram as being a repository for original content could be true in relation to their own personal experiences and ideals, while also recognizing that particular communities may use the platform to spread content to achieve community-specific goals.

Norms and Copyright: Challenging Exclusivity and Embracing Attribution

This article presents an overview of how people negotiate the broad distribution of content on social media outside the confines of an online creative community. What stands out from the data is that everyday users of social media platforms are aware that their content can spread to other platforms and are conscious that their mundane production can become commercially valuable in certain contexts. Interviewees also established various legal, ethical, and aesthetic justifications to support their circulation practices with regard to their own content as well as the content of others. It is particularly notable that respondents viewed social media as a non-commercial space and believed that some platforms were more supportive of content circulation than others. Subsequently, this research shows that the complex engagements with copyright law that have been identified in online creative communities (Fiesler et al., 2014; Freund, 2016; Humphreys, 2008; Perkel, 2011, 2016) also occur more generally on social media platforms.

It is important to contextualize this finding. People are not actively engaging with the technicalities of copyright law when they produce, distribute, or consume media. Instead, these results show that people are conscious of the concepts that copyright seeks to regulate, such as ownership or attribution. However, there is limited guidance on the appropriate way to share or redistribute content. Furthermore, because social media platforms are so large and disaggregated, there are no centralized community discussions around ownership and attribution, which regularly occur on online creative communities (Perkel, 2011, 2016), As a result, people draw on other resources to guide their everyday practice. This implies that people value their own mundane content as well as the content of others (to some extent), and shows that tensions around the production, distribution, and consumption of content are not just limited to amateur creators producing works on Deviant Art, for example.

Tehranian (2007) argues that this gap between law and norms presents a real risk to individuals. We agree with him in two respects. First, it is evident that much of what occurs online is what Tim Wu calls "tolerated use." That is, people are engaging in "millions of usages" that "do not fall into a clear category but are often infringing" (Wu, 2008, p. 617). He suggests that many people are avoiding lawsuits simply because a copyright owner has a lack of interest or because it costs too much (Wu, 2008; see also Gervais, 2009). We argue that even if the risk of a lawsuit is minimal, the fact that many people are technically in breach of copyright and only avoiding further action due to the disinterest of a copyright holder is still not an ideal situation. Second, we suggest that

there is a broader public interest in ensuring respect for this legal framework. Copyright underwent a crisis when peer-to-peer technology became popular, with many people viewing copyright as no longer relevant to online distribution (see David, 2010). While the stakes are not as high in this example, there is an ongoing interest in ensuring that copyright aligns with dominant practices of production, consumption, and distribution as best it can. Jessica Litman (2001) has made this argument since the early 2000s, noting that "[t]he less workable a law is, the more problematic it is to enforce" (p. 195).

We identify two key challenges that copyright faces in a "spreadable media" environment (Jenkins et al., 2013). The first is the issue of attribution. What emerged from the group interviews is that producers and consumers value attribution but that it is hard to achieve in practice. The increased value of attribution makes sense when one considers how the media environment has shifted. Publication and circulation are now easy to achieve, but *visibility* is still difficult. Subsequently, audiences are conscious of ensuring that work can be traced back to the original creator when circulated (if possible). The challenge for copyright is that moral rights, the current framework for enforcing attribution, is rarely deployed in non-continental jurisdictions and has an extremely limited remit in the United States (Adler, 2009, 2016). Copyright holders have a right to attribution under moral rights, but they do not regularly bring actions (i.e., sue) when these rights have been infringed (especially in non-continental countries). This means that while a legal solution to the lack of attribution is available, it does not get used (Sainsbury, 2003).

The second challenge is the notion of exclusivity. Copyright is organized around the regulation of copies, granting an author with an exclusive right to their work, which functions as a critical plank in the commodification of cultural markets. However, as Nicolas Suzor notes, this model is organized around a model "fundamentally predicated on artificial scarcity" (Suzor, 2013, p. 314), which (we suggest) does not mesh with an emerging "spreadable" (Jenkins et al., 2013) environment. While there may be valid arguments about maintaining exclusivity in transnational commercial contexts, concerns about exclusivity seem to be marginal at best when considering this small-scale circulation. Indeed, the majority of respondents in our group interviews displayed a negotiable relationship to the exclusivity of copyrighted work (albeit not in those terms), with respondents supporting or rejecting the circulation of copyrighted work based on the broader platform vernaculars that were in operation, rather than through reference to copyright law.

Copyright is still organized around an industrialized system of creative production even though it has become increasingly relevant to the sort of small-scale production, consumption, and distribution occurring online (Litman, 2001; Tehranian, 2007). Our provocation is simply that copyright should change to better account for these new models of content production and circulation. While we have some ideas about changes that could take place, our goal in this article is not to outline a reform agenda. Instead, we wanted to show that in the absence of specific guidance from copyright law or platforms, people are gradually developing practices around content sharing. In addition to emphasizing the importance of practice as a formalizing mechanism (Kennedy, Meese, & van der Nagel, 2015; Murray, Piper, & Robertson, 2014), it shows that ordinary people are leading the way when it comes to developing new approaches to valuing, protecting, and circulating content. At a minimum, the data show that the relative importance assigned to attribution and exclusivity in copyright law need to be reconsidered. Following from the above, we suggest that the norms emerging on social media platforms could serve as a guide for future copyright reform, as foreshadowed in the beginning of this article. Rather than stretching the logic of a legal framework that is increasingly not fit for purpose in particular sections of the online world, copyright policymakers could do worse than study these emergent (and often highly nuanced) practices around content on social media platforms when considering future reforms.

Notes

1. In making this distinction, we set aside the work of Jenny Kennedy (2015) and Nicholas John (2013a, 2013b) who have examined sharing and intimacy as well as the concept of sharing. We also do not address work in communications, which has explored file sharing, and copyright (such as Vaidhyanathan, 2003). Our focus is on communications and media studies literature that examines sharing and law as it relates to the development of norms, exemplified by the literature we have cited.
2. The other platforms mentioned were SnapChat, LinkedIn, Imgur, Reddit, the dating platform Tinder, and social discovery app MeetUp.
3. Regramming refers to the act of posting someone else's Instagram post on your profile. There are mobile applications that will assist with this process or it can be done manually.

4. The Lad Bible submission page says, "Watch out to see if your content gets featured on TheLADbible official Facebook page—if it does, you will receive £100" (see http://beta .submissions.theladbible.com/upload/89b91411-bff3 -4b5c-98fb-5096a38ef2ad/1e969342-5a01-45d1-a2f4 -7fe9412420a8).

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References

Adler, A. (2009). Against moral rights. *California Law Review*, *91*, 263–300.

Adler, A. (2016). Fair use and the future of art. *New York University Law Review*, *91*, 559–626.

Burgess, J. (2006). Hearing ordinary voices: Cultural studies, vernacular creativity and digital storytelling. *Continuum*, *20*, 201–214.

Craig, C. (2011). *Copyright, communication and culture: Towards a relational theory of copyright law*. Cheltenham, UK: Edward Elgar Publishing.

David, M. (2010). *Peer to peer and the music industry: The criminalization of sharing*. London, England: SAGE.

Douglas, N. (2014). It's supposed to look like shit: The Internet ugly aesthetic. *Journal of Visual Culture*, *13*, 314–339.

Fiesler, C., Feuston, J., & Bruckman, A. S. (2014). "I am not a lawyer": Copyright Q&A in online creative communities. In *Proceedings of the 18th International Conference on Supporting Group Work* (pp. 291–294). New York, NY: ACM.

Freund, K. (2016). "Fair use is legal use": Copyright negotiations and strategies in the fan-vidding community. *New Media & Society*, *18*, 1347–1363.

Fuchs, C. (2017). *Social media: A critical introduction*. London, England: SAGE.

Gervais, D. (2009). The tangled web of UGC: Making copyright sense of user-generated content. *Vanderbilt Journal of Entertainment and Technology Law*, *11*, 841–870.

Gibbs, M., Meese, J., Arnold, M., Nansen, B., & Carter, M. (2015). #Funeral and Instagram: Death, social media, and platform vernacular. *Information, Communication & Society*, *18*, 255–268.

Humphreys, S. (2008). The challenges of intellectual property for users of social networking sites: A case study of Ravelry. In A.Lugmayr, F.Mäyrä, H.Franssila & K.Lietsala (Eds.), *Proceedings of Mind Trek, ACM SIGMM/SIGCHI* (pp. 125–130). New York, NY: ACM.

Jenkins, H. (2006). *Convergence culture: Where old and new media collide*. New York: New York University Press.

Jenkins, H., Ford, S., & Green, J. (2013). *Spreadable media: Creating value and meaning in a networked culture*. New York: New York University Press.

John, N. (2013a). Sharing and Web 2.0: The emergence of a keyword. *New Media & Society*, *15*, 167–182.

John, N. (2013b). The social logics of sharing. *The Communication Review*, *16*, 113–131.

Kennedy, J. (2015). *Sharing in networked culture: Imagination, labour and desire* (Doctoral thesis), Swinburne University of Technology, Melbourne, Victoria, Australia.

Kennedy, J., Meese, J., & van der Nagel, E. (2015). Regulation and social practice online. *Continuum: Journal of Media & Cultural Studies*, *30*, 1–12.

Litman, J. (2001). *Digital copyright*. Amherst, NY: Prometheus Books.

Meese, J. (2018). *Authors, users, and pirates: Copyright law and subjectivity*. Cambridge, MA: MIT Press.

Murray, L. J., Piper, S. T., & Robertson, K. (2014). *Putting intellectual property in its place*. New York, NY: Oxford University Press.

Perkel, D. (2011). *Making art, creating infrastructure: DeviantART and the Production of the Web* (Doctoral dissertation). University of California, Berkeley. Retrieved from http:// www.escholarship.org/uc/item/6fg9f992

Perkel, D. (2016). Share wars: Sharing, theft, and the everyday production of Web 2.0 on DeviantArt. *First Monday*, *21*. Retrieved from https://journals.uic.edu/ojs/index.php/fm/article /view/6795

Sainsbury, M. (2003). *Moral rights and their application in Australia*. Sydney, New South Wales, Australia: Federation Press.

Suzor, N. (2013). Access, progress, and fairness: Rethinking exclusivity in copyright. *Vanderbilt Journal of Entertainment and Technology Law*, *15*, 297–342.

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

Tehranian, J. (2007). Infringement nation: Copyright reform and the law/norm gap. *Utah Law Review*, *3*, 537–550.

Vaidhyanathan, S. (2003). *Copyrights and copywrongs: The rise of intellectual property and how it threatens creativity*. New York: New York University Press.

Walters, K. (2016). How to Regram: Best practices for reposting Instagram content. *Hootsuite*. Retrieved from https://blog .hootsuite.com/how-to-regram/

Wu, T. (2008). Tolerated use. *The Columbia Journal of Law & the Arts*, *31*, 617–635.

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