Legal issues in Social Media

Olivier Charbonneau
Associate Librarian, Concordia University
PhD (Law) Candidate, U Montréal
Culturelibre.ca | OutFind.ca
@culturelibre | @OutFindCA

The Law forbids what technology allows

Our social norms have not yet adapted, that is why we revert to « hard law »

Copyright
Privacy & personal information
Anonymity & image rights
Speech issues:
Libel, defamation, hate, freedom

Trademarks
Patents
Secrets

...
Copyright / Droit d’auteur

Artistic, literary, dramatic, musical, works

© = contrôle

(1) Protect a work’s economic market (right-holder)
(2) Protect the creative endeavour (creator)

Copyright / Droit d’auteur

Artistic, littéraires, dramatiques, musicales

Œuvres artisiques, littéraires, dramatiques, musicales

Everything we use in social media!

Œuvres

Tout ce que nous utilisons sur les médias sociaux!

Copyright

Droit d’auteur

Economic + artistic right

Sole Right to exploit

(produce, reproduce, execute in public, publish; + adapt, translate...)

Automatic (fixation, originality)

Term (public domain)

Transfer in writing (contract)

Moral right (integrity, paternity)

Droits économiques + artistiques

Droit exclusif d’exploitation

Droit d’auteur (fixation, originalité)

Durée (domaine public)

Transfert par écrit (contrat)

Droit moral (intégrité, paternité)
Absolute Control?
Contrôle absolu ?

«La propriété c’est le vol!» (Proudhon)
«He who lights his taper [candle] at mine receives light without darkening me»
(Jefferson)

Contrôle absolu ?
Not exactly / pas exactement

Fair dealings / Utilisation équitable
(Fair use)
& Exceptions

Contrôle absolu ?
Not exactly / pas exactement

Fair
Else, get permission!

Sinon, obtenir permission!

Copyright Methodology
Copyright = control

All rights reserved
But
IF
Fair dealings
Else
IF
Exceptions
Else
Obtain license (permission)
USE (but moral rights)

Privacy & Personal Info

• Data for your identity
  – Name
  – Student record
  – Credit card numbers
  – Date of birth
  – ...

• Data protection

Source: OECD, 1980

Anonymity & Image rights

• Not allowed, unless “public interest”:
  – engaged in a public activity or has acquired a certain notoriety
  – previously unknown individual is called on to play a high-profile role
  – accidentally places him or her in the photograph in an incidental manner.

Aubry v. Vice Versa, ¶ 58
So… what are we to do?

Ask for permission,
Transfer risk
Keep records
Or refrain from using information

Contracts!
Wavers, Permissions, Licences

Policies!
VPIRSG-2, -4, -6, -9, VPRGS-9,
Academic Codes

Or refrain from using information

Further reading
- CÉRIFIO, Gérer les enjeux et risques juridiques du Web 2.0, 2012
- Concordia University Libraries, Copyright Guide
- Copyright Act, R.S.C. 1985, c. C-42
- Murray, Louis J. and Samuel E. Trosow, Canadian copyright: a citizen’s guide

“Code is Law” (Lessig)

“A contract is an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation”
(Qc Civil Code, s. 1378)