

## **Copyright & Social Media**

With the extensive reach of social media today, many individuals and businesses are turning to these platforms to market their products and services. However, it is important to understand the correlation between social media and copyright laws. Copyright exist in the form in which the idea is expressed, not in the information or idea itself. Therefore, others may use the basic idea, but not the form in which it is expressed.

Compared to other intellectual property laws, copyright protection resides automatically in a work if the relevant prerequisites are met. The categories of work which are eligible for protection under the Copyright Act 1987 of Malaysia are literary works, musical works, artistic works, films, sound recordings and broadcasts.

When content is posted on social media platforms (such as Facebook, Instagram Twitter etc.), you do not automatically forfeit your copyright. Social media users agree to its Terms of Use when an account is created. For example, Pintrest's Terms of Use include the following provision:

*Pinterest allows you to post content, including photos, comments, links, and other materials. Anything that you post or otherwise make available on Pinterest is referred to as "User Content." You retain all rights in, and are solely responsible for, the User Content you post to Pinterest.*

### **More simply put**

*If you post your content on Pinterest, it still belongs to you.*

Basically, this means that a user may be directly liable for an infringement claim, which can be brought by a copyright owner for content that they post.

If you intend to post material on social media as part of your business strategy, the best way to avoid an infringement action is to obtain permission by way of written agreement. A written agreement in this regard is usually either done by way of assignment or license. If the agreement is by way of the former i.e. assignment, the copyright owner may choose to assign all of his exclusive rights to the copyright to the assignee, often by way of sale or gift. A license, on the other hand, is basically a permission given by the copyright owner to another to do an act in connection with the copyright work that would otherwise amount to an infringement of copyright.

When seeking permission, it is vital to clearly identify the type of content or material, its purpose and duration for use (amongst others). This is important because when you have permission to use someone's copyrighted work, the use you make of it should not exceed that which was expressly permitted. For example, permission to reproduce copyrighted work on certain specified material or platforms may not also include permission to perform that same work in a concert, if it is not included within the agreement.

Many websites which contain free stock images and royalty free music may include restrictions applicable to the use of such content therein. Your license to use these contents may be

limited to only certain types or ways of use. It is therefore important to review these terms and conditions in relation to its license for use, before acquiring it.

While most times you will need permission to use creative content found online, there are some exceptions, and these are construed as acts which are done by way of “fair dealing”.

Examples of these exceptions include the use of a copyrighted work for:

- Research
- Private study
- Criticism
- Review
- News reporting
- Parody

Malaysian law also allows for any other exceptions which are not considered damaging to the economic interests of the owner of the copyright.

The best way to avoid copyright infringement in the digital age is to be careful when using and sharing online content. If you are unsure, please consider legal advice from intellectual property professionals.

*Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.*



Aarathi Amerjit

For and on behalf of  
Gateway Law Corporation

Email:  
aarathi.amerjit@gatewayipasia.com



Samantha Lawrence

For and on behalf of  
Gateway Law Corporation

Email:  
samantha.pillai@gatewayipasia.com

*This article is intended to draw light on the correlation between copyright and social media, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 7 December 2020.*