

An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instagram

Copyright is inherently intertwined with the development of technology, and none more so than the advent of the Internet and sharing technologies. More recently, social networks have become the latest challenge for copyright law and policy. This article builds on the literature recognises the underlying conflict in between copyright and social networking; namely the fact that the basic implication of copyright is the restriction of copying, whereas the ethos of social networking is the promotion of sharing. In particular, this article focuses on the disparity between the restricted acts of copying and communication to the public under copyright law and the encouragement of sharing on social network platform Instagram. In doing so, it contextualises the debate surrounding copyright and social media, and provides an understanding of the legal implications of using Instagram. As such this paper analyses 1) infringement of copyright protected work on Instagram, and 2) user-agreement and licensing of copyright material on Instagram.

This study concludes that the disparity between the principles of copyright and social media lead to confusion and vulnerability of users. Therefore, it is suggested that Instagram should better inform its users of the implications of sharing third-party content as well as the terms of its user-agreement. This could be done by implementing a copyright strategy, which includes a notice and takedown system as well as investing in producing educational content for users.

Keywords: Copyright, copyright infringement, photographs, social media, Instagram, image sharing

1 Introduction

The growth of social networking sites (SNSs) in recent years has facilitated the ability of users and organisations to share information. Social network platforms enable individuals and organisations to communicate, share, market themselves and reach out to wider audiences (Lundell, 2015). Particularly using images [N.2.] and videos, which could be protected as artistic works under section 1(1)(a) of the Copyright, Designs and Patents Act (CDPA 1988).

Social media platforms encourage users to share content; both original content and third-party content. To do this, social media platforms offer tools such as retweet, re-post and share (Facebook 2017; Twitter 2017). Social media platforms are lucrative digital businesses, mainly making their revenue through advertising. For example, it was estimated that Instagram would reach approximately \$4bn in revenue in 2017, and it is estimated that Instagram ad revenue could reach over \$10bn in 2019 (Levy, 2017). Therefore, the networks encourage sharing, since the more people that use their platform, the more valuable the advertising, which is their main source of revenue.

This philosophy of sharing on social media networks contrasts with the implications of copyright law, which regulates the use of literary, artistic and dramatic works. In particular online, the law restricts the acts of copying and communicating copyright works to the public

without the permission of the rights holder (s. 17,20 CDPA 1988; 17 U.S. Code § 501). As such, the development of social media networks and the sharing culture has had a significant impact on the ability of copyright to fulfil its regulatory purpose. The effectiveness and relevance of copyright regulation is challenged in view of social networking.

Recently, the importance of social media platforms in relation to copyright regulation has been recognised in the political discourse. For example, the UK Intellectual Property Office (IPO) has recently published a report about the impact of social media on intellectual property infringement (Collopy and Drye 2017). The research found that according to industry groups, together with government and private enforcement agencies, counterfeiting online encompasses a range of activity such as impersonation, fan pages, social media pages transacting business, promotion and the proliferation of websites selling counterfeits and offering fake special offers. The report argued that social media plays a significant and growing role in the sale and distribution of counterfeited and pirated goods. The researchers describe social media as 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 indicated that social media sites were the second most common 'location' for investigations into counterfeiting (Collopy and Drye 2017).

As such, the UK IPO research report presents a snapshot from 2015 which suggests that social media plays a role in facilitating intellectual property (IP) infringement. The report highlighted, as is perhaps fairly evident in today's cultural society, that social media is a factor in the IP equation. According to a recent study by Common Sense Media (2015), which surveyed 2,600 young people, teens spend 9 hours a day on social media. The study also concluded that the key value of media for the young people surveyed was watching TV and listening to music. Social media is therefore the main platform for electronic word of mouth (eWOM) [N.1] - the online version of the oldest form of marketing: Word of Mouth - and is clearly a key player in the online consumption and sharing of copyright protected material.

Instagram is selected for the case study as it has become one of the most popular social networking sites for image sharing (Moreau, 2017). 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. However, Instagram has been highlighted as having particularly ambiguous user-agreements and users are generally unaware of the copyright implications. As emerging case law demonstrates, Instagram is quickly becoming a social networking platform which leaves users vulnerable to third-party action for copyright infringement.

Instagram's content includes images, short video clips and 'stories' which are temporary video clips. Video content is restricted to a maximum of 60 seconds and story videos are 15 seconds which are live for 24 hours. Instagram is mainly used to share photographs, although video watching on the network is growing fast. According to Instagram (2017), the amount of time users spend watching video has increased by more than 80 percent year-over-year. Although more videos are created by brand, photos still have been receiving higher engagement from Instagram users (Instagram 2015). According to a report, photos are on Instagram generate 36% more engagement than video content (Mendenhall 2017). This paper focuses on images on Instagram, as its main source of content and the subject matter of the emerging case law. However, there is no doubt that the analysis also applies to the 60 second video clips. Whether or not the 24 hour live stories ever become the subject of a copyright infringement claim remains to be seen. Whilst it is less likely, due to the temporary nature of the clip, it is not impossible. What would be interesting, is if the courts considered copyright to subsist in a live story, since it is a requirement for copyright works to be in permanent form (S.3(2) CDPA 1988). This is discussed in more detail below under the heading, who owns the images on Instagram?.

In considering the jurisdictional remit of this investigation the researchers considered that Instagram is a San Francisco based company, its user-agreement is governed by the law of state or federal court located in Santa Clara, California and the majority of the relevant case law has come from America. However, Instagram users are worldwide - 30 percent of internet users worldwide have an account (Statista, 2016) and so it would be too narrow to restrict the study to the geographical area of the USA. In looking further afield, the UK provides the most regional distribution of traffic to Instagram from Europe (Statista 2016). Instagram reached 22 percent of the UK population in the second quarter of 2016. While 88 million active users are from United State, 14 million of active Instagram users are from the UK (Statista 2016). As such, this paper focuses on the law of the UK and USA.

This paper considers the impact of the disparity between copyright law and online social networking. To address this, the paper explores the relationship between copyright and social media, and then considers in detail Instagram and image sharing as a case study. It considers aspects of the relationship between Instagram and images sharing, such as the user agreement – debating if it is fair or reasonable to ask users to agree that they will not infringe copyright on a platform that encourages sharing? Further aspects are considered such as the licence included within the agreement that allows Instagram a broad use of their user's images and the issues that may arise for users who may wish to licence their work elsewhere. It is particularly important for photographers to be aware of the terms of service, because if they licenced an image to a third-party under an exclusive licence, posting the image on their Instagram account would violate that licence.

The disparity between the principles of copyright and social media leads to confusion and the social media network seems to mislead the users. Whilst it is unlikely that Instagram would ever bring an action against its own users for copyright infringement for policy reasons, the emerging case law suggests that Instagram users are becoming increasingly vulnerable to action from third party copyright holders. This paper suggests, therefore, that Instagram has a responsibility to better inform its users of the implications of sharing third party content. Further, it could be argued that a notice and takedown system, together with a user education tools, would be an effective way forward for the social network. These suggested are set out in more detail below.

In order to do this, this article first considers the purpose of copyright as tool to facilitate creativity by rewarding creators for their work. This is considered in light of the development of copyright regulation in response to new technologies. This takes the discussion up to the advent of the Internet and sharing technologies. The article then discusses the disparity between copyright regulation and social network platforms. In doing so, the article focuses on image sharing and Instagram. In particular, the paper considers the terms and conditions of the platform, as well as ownership issues and the infringement of copyright protected photographs on Instagram by way of copying.

2 The purpose of copyright and the regulation of content

The primary purpose of copyright is to encourage creativity by rewarding creators for their work (Laddie, Prescott and Vitoria 2011). As such, copyright gives creators the ability to restrict other people's use of their work. Thus, copyright infringement occurs when a person does any of the restricted acts without authority from the copyright owner. The restricted acts that are most relevant to online use of copyright materials are copying (s. 17 CDPA 1988) and communication to the public (s. 20 CDPA 1988).

The restricted act of copying is, as Mr Clarke stated in the second reading of the CDPA 1988 Bill: *"The most fundamental is...the right to prevent copying."* Drassinower

(2015) noted that *“copyright law is not a prohibition on copying but rather an institutionalized distinction between lawful and wrongful copying”* (p.2). However, the broad application of copyright infringement online has resulted in a shift in the meaning of copyright protection. As Lessig (1999) stated: *“Basic functions like copying and access are crudely regulated in an all-or-nothing fashion. You generally have the right to copy or not, to gain access or not”* (p.129). In the context of sharing content on social networks, a copy of the image is made each time a photograph is posted, re-posted, shared, or retweeted.

Infringement by way of ‘communication to the public’ (s.20 CDPA 1988) is considered one of the most controversial and contentious developments in copyright law. The right of communication to the public exemplifies the application of copyright regulation onto online activity and *“lies at the heart of modern copyright law”* (Keane 2013; p.165). ‘Communication to the public’ was introduced by the Copyright and Related Rights Regulations SI 2003/24982003 under Section 20 of the CDPA 1988. This section provided the restricted act of communication to the public by electronic transmission (s. 20(20) CDPA 1988). The right was established in Article 11bis(1) of the Berne Convention, as the Advocate General Sharpston stated in : *“The history of Article 11bis(1) ... can be seen as a series of attempts to enhance protection of authors’ rights in the light of technological developments. The author’s right to authorise a performance of his dramatic or musical work had been granted from the outset in 1886.”* (*Sociedad General de Autores y Editores de Espana (SGAE) v Rafael Hoteles SL* [2006]) The first appearance of a communication right was in the 1928 Rome revision of the Berne Convention 1886. It was consolidated in the Brussels revision to provide authors with the right to authorise communication by way of three separate acts (1948, Article 11bis).

In 1995 at the Fifth Session of the International Bureau of World Intellectual Property Office (WIPO), the USA submitted a comment that the Berne Convention failed to recognise the right of digital transmission (WIPO Memorandum Fifth Session). Further, at the Sixth Session the US proposed that digital transmission would be covered by the right of communication to the public, were transmission would not result in a copy (WIPO Memorandum Sixth Session). Thereafter, the 1996 WIPO Copyright Treaty, to which both the UK and USA are signatories, rationalised and synthesised protection by establishing full coverage of the communication right for all protected works of authorship (Ginsburg, 2004).

These provisions were an attempt at adapting communication to the digital age (Reinbothe and Von Lewinski 2002). The intention was to provide a technology-neutral right that could also encompass any future technical developments (COM (90) 78, 1990). These updates were implemented in European law by way of the Information Society Directive 2001/29/EC.

Dixon and Hansen (1996) recognised that the right is broad and beneficial for rights holders: *“Regardless of the manner or medium in which a protected work is accessed, authors would continue to enjoy the right to control economically meaningful exploitation of their works in the digital world.”* Using social media networking tools to upload, post, or reposting unauthorised third-party images would, therefore, likely constitute a communication to the public. As such, infringement of copyright protected material can easily occur when users are sharing third-party content on social networking sites.

2.1 Copyright and development of sharing technology

Copyright regulation and technology are entwined and bound together as a *“close and inevitable relationship”* (Jones 2010, p.2). As Groves stated: *“Every major leap forward in the history of copyright law is linked to a technological leap forward”* (Groves 1991, p.1). As such, the development of copyright law can be seen as responses to changes in the

environment to encompass new technologies. Sherman and Bentley (1999) explained that changes in the law could *“be seen as attempts to modernise the law, to bring it in to line with the cultural and technological changes”* (p.65). Therefore, each development in copyright regulation is connected to the development of a new technology; from the first Copyright Act 1710 which was adapting to the challenges of the printing press (Jones, 2010). Thereafter sound recordings, films, broadcasts (s. 1(1)(b) CDPA 1988), computer programs (s. 3(1)(b) CDPA 1988) have all had an impact on the scope of copyright law (Groves 1991). Hence, copyright regulation is a product of its time. As new technologies have advanced, copyright has adapted (Bracha 2013).

The Internet and the development of sharing technologies have been particularly problematic for copyright regulation due to the increased pace of technological advance. As Moore’s Law forecast, the rate of technological power increases by double every 2 years and lowers in price accordingly (Mollick 2006). Lessig (1999) stated that technological changes have previously been gradual and that the enabling of cheaper and easier copying had been only by degrees, and over an extended period of time. This allowed the law time to react by slowly modifying its protections and extending them where technology seemed to be eroding them. It is argued that the latest challenges to copyright law; the Internet and online sharing technologies (Hardy 1997; Hargreaves 2011), has increased at such a rate of accessibility:

“Digital assistants in our pockets...provide at any time and any place a gateway to all people and information in the global village.” (Van Santen, Khoe and Vermeer 2010; p.111-112).

As a result of the development of Internet technologies, consumption behaviours altered, changing the way that copyright protected material is used and valued (Peitz and Waldfoegel 2012). Online technology has enabled users to share and connect online with millions of other people across the world. The technology allows limitless dissemination, and together with the encouragement of social networks, sharing has quickly become an established part of modern culture (Levine 2012). For example, Facebook statistics state that it has more than 1 billion active users who share 30 billion pieces of content every month (KISSmetrics Report). Sharing has now become a complete functionality of web-pages and social networking platforms (Tapscott and Williams 2008). It has become impossible to control the spread of information on the Internet; as soon as content is online, it is accessible and sharable.

However, research has demonstrated that users are unaware of whether their activity online is legal. For example, the Palfrey et al (2009) study revealed that when students were asked ‘do you know what copyright means?’ 84% responded yes, but their subsequent description of copyright was either wholly or partially incorrect. Furthermore, there is general recognition that illegal activity online is a social norm, with no moral implications (Bowrey 2005). As early as 2003, surveys indicated that a substantial number of young people believed that sharing digital music was morally acceptable (Hanway and Lyons 2003). The Strategic Advisory Board for Intellectual Property Policy (SABIP) concluded in 2009 that: *“There is also substantial evidence that many individuals do not perceive software piracy to be an ethical problem at all”* (SABIP 2009, p.37). This was supported by a study in 2010 that found students to have *“relatively high levels of anti-copyright norms”* (Depoorte, Van Hiel and Vanneste 2010, p.1278). In this study the researchers stated that: *“The younger demographic are convinced that file sharing technology has many beneficial uses and that copyright law is out dated or biased towards music publishers”* (p.1266). More recently, a study in 2012 (Bahonovich and Collopy) continued to find that the younger population did not have moral or ethical concerns about the practice of online copyright infringement. According to the 2015 Kantar Media study, awareness and understanding of copyright infringement

remains confusing for users. The study found that 40% of Internet users claimed to be either 'not particularly confident' or 'not at all confident' in terms of what is and is not legal online.

These studies demonstrate that the development of new technology has had a significant impact on the way that copyright works are consumed and used. In recognising both the benefits and the challenges that online technological developments bring, the Secretary of State Ben Bradshaw stated that *"the digital revolution has brought huge benefits and opportunities for a country such as Britain that is creative, innovative and flexible, but such rapid change also brings challenges. The overriding challenge...to address is that of keeping the legal framework that applies to our digital and creative sectors up to date in such a fast-moving world"* (Hansard 2010).

This article has established that the development of the Internet and sharing technologies has had an important impact on the use and regulation of copyright protected material. In light of this, it is important to remember that the creation of the Internet was based on the idea of communication (Berners-Lee 2000). The original intention for the development of the technology that has now become the Internet, was for military communication, commissioned by the US Department of Defence (Leiner). Nevertheless, in the first recorded description in 1962 J. C. R. Licklider of MIT envisioned a globally interconnected set of computers through which everyone could quickly access data and programs; naming the concept the Galactic Network. Subsequently in March 1989, Tim Berners-Lee proposed the idea of a linked information management system which ultimately led to the development of the World Wide Web. Berners-Lee (2008) has revealed how it took 18 months to persuade his company that the technology he was building should be royalty free for anybody to use and has expressed his aspirations for *"one web that is free and open."* However, he has also recognised the importance of intellectual property: *"Intellectual property is an important legal and cultural issue. Society as a whole has complex issues to face here: private ownership versus open source and so on"* (BCS 2011, p. 44).

The Internet has been considered to facilitate the sharing economy through new technologies that allow instant interaction and communication of an unlimited range of content to a global audience (Livingstone 1999). The Internet therefore, created an extension to communication as a concept (McQuail 2011). While Internet refers to a massive network of networks which connects millions computer together, the World Wide Web (WWW) is a way to access *"information over the medium of the Internet"* (Beal, 2010). Furthermore, Kalyanaraman and Sundar (2008) identified that *"one of the unique features of the World Wide Web as a mass medium lies in the fact that message sources are indistinct from message receivers"* (p.239). This suggests not only an extension but a transformation in the meaning of communication altogether.

Ultimately, it is noted that the nature of the Internet was intended to be an open, sharing network. However, this is contrary to the restricted acts of copying, as explained above, which are intended to stop the unauthorised sharing of copyright protected materials. This disparity has only increased with the development of social media and sharing networks.

2.2. Defining social media and social networks

This section considers the definition of social media and discusses the developments of social networks and sharing platforms. Social media incorporates a wide range of tools and technologies. It has been defined by Mangold and Faulds (2009, p. 358) as: *"...a wide range of online, word-of-mouth forums including blogs, company-sponsored discussion boards and chat rooms, consumer-consumer email, consumer product or service rating*

websites and forums, Internet discussion boards and forums, moblogs (sites containing digital audio, images, movies, or photographs) and, social networking websites..."

A number of communication platforms have enhanced as a result of different applications and purposes (Ngai, Moon, Lam and Tao, 2015). Accordingly, the term 'social media' has become confused by academics and managers, being commonly seen as interchangeably related to the concepts of Web 2.0, social networking, user generated content and virtual social worlds (Kaplan and Haenlein 2009). In trying to provide a clear understanding of social media, several definitions of social media for various applications and purposes have been provided. For example Mangold and Faulds state that "*Social media is hybrid in that it 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 capabilities.*" (2009, p.359). Henderson and Bowley add that *social media is a "collaborative online applications and technologies that enable participation, connectivity user-generated content, sharing of information, and collaboration among a community of users."* (2010, p.239).

As a summary of the social media definitions, with the existing role of new online media, social network platforms support new forms of social interaction and collaboration (Chu and Kim 2011; Park and Lee 2009; Shu 2013) through different platforms. Currently, there are more than one hundred social media websites that can be clustered into broad categories such as SNSs including Facebook, Instagram and Twitter, user-generated content websites such as blogs, YouTube, and virtual platforms such as Second Life (Kaplan and Haenlein 2009; Smith and Zook 2011) where users can interact with each other. Kaplan and Haenlein (2009) defined social media sites as "*Internet based applications that help consumers to share opinions, insights, experiences and perspectives*" (p. 565). These newly invented social media tools and technologies provide fundamental functions that allow people to observe and generate global text, image, audio, and video content (Akar and Topçu 2011) as well as exchanging ideas through interaction. Hence, social media sites have witnessed growth in recent years (Ghosh et al. 2014), as the core type of online information transfer and social interaction (Raacke and Bond-Raacke 2008) is constituted by the most prevalent and fastest growing types of Internet site (Nielsen-Wire 2010).

Although there does not appear to be any agreement about what exactly social media is and what concepts it encompasses among academic researchers and managers alike (Kaplan and Haenlein 2009), social media provides great study opportunities for researchers (Kwak et al. 2010). With a growing interest in digital interactivity, recent research on social media has begun to focus on consumers' behaviour, specifically in relation to consumer interaction and activities on social media (Heinonen 2011).

Social networking sites (e.g. Facebook) and micro-blogging sites (e.g. Twitter) are the most popular social media applications. With SNSs that provide a significant amount of interaction and communication to users (Hughes et al. 2012), the Internet-based applications have been personalised (Mir and Zaheer, 2012) with personal profiles created by users. These communications are provided by different social media websites, and social media users publish, share and exchange information through different platforms entitled as social media, such as blogs (e.g. Blogger, Wordpress), microblogs (e.g. Twitter), SNSs (e.g. Facebook, Twitter), video sharing sites (e.g. YouTube, Vimeo, Dailymotion) and image sharing sites (e.g. Instagram, Pinterest). Globally, users of SNSs have increased by 175% from 88% 2007 to 2011 (comScore, 2011). We Are Social's (2016) comprehensive industry report shows that the number of social media users has grown by 10% and increase of 219 million in 2016. Social networking sites have become the third largest method for people to interact with their friends and family (OfCom, 2012). Seventy-two per cent of UK adults use SNSs at least once a week (OfCom, 2015). Facebook is the most popular SNS globally with 1.87 billion users in total (Statista, 2017a). Twitter mainly focuses on micro-blogging rather

than social networking through a short message format of up to 140 characters. It has 319 million monthly users (Statista, 2017b). Pinterest is a photo sharing website, and is the fastest growing SNS, reaching 10 million monthly unique visitors (Statista, 2017a).

Social networking sites promote new functions of communication such as publishing, sharing, networking, collaborating and discussing. Through the consumers' interest in social media, and their user-generated content on SNSs such as Facebook and Twitter, these consumers have become highly active through participating in marketing activities with reviews, shares and comments. According to industry research, people spend most of their time on social media sites (comScore, 2013) when they are online. This high popularity of social media has meant that social media sites have received enormous attention from businesses and brands. Burson-Masteller (2012) stated that 79 Fortune 500 companies use social media sites, mostly Twitter. Sixty-three per cent of marketers plan to increase their use of SNSs, including Facebook and YouTube (Social Media Examiner, 2016). These sites are considered by brands as more influential tools than other traditional communication tools for the purpose of spreading brands' message (Dilenschneider, 2012). Accordingly, social media platforms have taken on a new hybrid role in integrated marketing communications to help marketers and organisations build a strong relationship with their consumers (Gilly et al. 1998; Luarn and Chiu 2014; Mangold and Faulds 2009).

The importance of social media in today's society is unquestionable, particularly in light of keeping copyright regulation relevant and fit for purpose. Having provided an overview copyright and the development of new technologies and social media, this article now turns to consider Instagram. As Instagram has become one of the most popular social networking sites for image sharing (Moreau, 2017). The following sections address Instagram as a social network and goes on to consider the regulatory implications of copyright ownership and infringement.

3. Image sharing on Instagram

Instagram is a popular SNS that allows users to share image-related content in three different forms: videos, picture and story. This platform offers users an opportunity to keep and share their daily life moments with friends through videos, temporary picture shares and image shares through filters (Hu, Manikonda and Kamphampati 2014). Videos and photos have become a key part of social media online presence. According a survey conducted by Pew Research Center (2013), 54% of adult Internet users share photos and videos which are created by them. These image creators have grown from 46% last year. While 52% of Internet users share images, 26% of Internet users share videos are created by themselves (Pew Research 2013). Recently, Instagram have become a vital platform for users to create their presence though images and video sharing. While, people share approximately 80 million photos daily (Instagram Press, 2017), 67% of posts shared on Instagram are videos.

Instagram, which was acquired by Facebook in 2012, was been launched in 2010, and has since reached 500 million daily active users in 2017 (Statista, 2017). Instagram was bought by Facebook in 2012 and it became the fastest growing social networking site in worldwide (Knibbs, 2014). Users share 95 billion photos and videos everyday on Instagram (Instagram, 2017). The success of Instagram was supported by the Pew report which noted image related content (e.g. videos and pictures) has become key social currencies online (Rainie, Brenner, and Purcell 2012). The features of Instagram have provided similar social networking opportunities as Twitter allows a user. Instagram makes visual sharing attractive to users who want to share images and videos in real time (Thornton, 2014). For example, a user has followers who can see images that the user shares and the user do not have to follow these followers. Also, privacy settings allow users to choose if their images are publically available to others, or not. If the images are public, it means any Instagram users

can see the images [N.3]. Instagram users can also view users Instagram accounts on Google search. Through this setting, when users let other users see and contribute to the content through likes, comments etc., they consequently reduce the one to one conversation. In this sharing-creating environment the legal issues, particularly in relation to copyright are quickly becoming more apparent (Bauer, 2015).

SNSs were created to help users to connect with each other easily through sharing, creating, reviewing different contents including pictures, images and videos. Particularly, Instagram is known as a platform that offers features that allow users to share image related content. However, all SNSs including Instagram, provide an opportunity to infringe copyright works, particularly where users make their content publically available (Bauer, 2015). Instagram also allow its users to use hashtags allow photographers to categorise their work in specific field (Thornton, 2014) and help users to find specific images they are interested in. As Instagram allows only video images share, it makes image easy to copy. Additionally, Instagram allows users to have an unique “post once-share many” concept (Clawson, 2015) that is not often used by users on other social networking sites. However, some argue that although rights-holders copyright may be infringed, there can also be positive impacts from users sharing their content. For instance, users sharing content reduces the necessary efforts required in marketing (Cuddy, 2015).

This section has introduced Instagram and the attributes of the social network. The following sections discuss the terms of use and consider the legal implications of creating and sharing images on Instagram.

3.1 Instagram’s terms and conditions of use

Before users can sign up to and use Instagram, they must agree to the terms and conditions of use. The terms and conditions of SNSs have attracted attention from users and policy makers alike, particularly in relation to the ownership of content. One key issue that has been raised is that the terms of use are rarely read by the users. In addition, the language of the terms can be complicated and unclear, and so the users do not always understand the legal implications (Wauters, Lievens and Valcke 2014). Instagram has been highlighted as having particularly ambiguous content in their terms of use (Constine, 2015).

The following sections consider Instagram’s terms and conditions of use, particularly in relation to ownership of the content and infringement of copyright through sharing of images. Before going into these areas, it is worth noting that the governing law of Instagram’s terms is California. As such, the user agrees that any dispute with Instagram itself will be resolved exclusively in a state or federal court located in Santa Clara, California. However, should a user be sued by a copyright holder, this could take place in any number of different locations – perhaps the location of the copyright holder or of the infringer, depending on the circumstances. This is one of many confusing elements to the regulation of social networks, since the law is territorial but the Internet is global.

3.2 Who owns the images on Instagram?

Copyright law provides that the owner of the copyright in a work is the creator and thus, in the first instance, the copyright holder of a photograph is the photographer (s. 11(1) CDPA 1988). Instagram’s terms of use state that it does not claim ownership of user’s content (Instagram 2013, Rights 1). However, the user grants Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use their content (Instagram 2013, Rights 1). To break it down, this means the following:

- Users can licence their work to third parties (non-exclusive);
- Instagram has free use of the user's content (royalty-free);
- Instagram can pass the rights it has been granted to use the content, to a third-party without the creators permission (transferable – meaning Instagram can freely assign or convey the rights granted to them by the users to a third party, usually in relation to an assignment);
- Instagram can licence the use of the users content to third parties (sub-licence – meaning Instagram can licence the content licenced to them, to third parties);
- Instagram can do this anywhere, without geographical restriction (world-wide);
- Instagram can edit, share, copy and communicate the user's content to the public (use)

As such, 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. As a result, an image owner will have little recourse against Instagram or it's affiliates that they sub-licence to (Georgiades 2018). Unfortunately, users do not tend to read such agreements. Even if the users did read the licence, this is unlikely to deter them from joining and using Instagram, **due to its popularity**, as demonstrated above.

However, it would be vital for a photographer to be aware of these terms, particularly if they licenced an image to a third-party under an exclusive licence, posting the image on their Instagram account would violate that licence. Consequently, the terms of use have not been well-received: *“People have the right to be upset as this is yet another example of a non-user friendly agreement”* (The Fashion Law 2012). In response to this backlash, Instagram released a statement:

“Instagram users own their content and Instagram does not claim any ownership rights over your photos. Nothing about this has changed. 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, 2012).

However, the terms of the agreement remain, as explained above, that users grant a non-exclusive, free, worldwide licence to use the images in anyway (Instagram 2013, Rights 1). This, together with the unaffected popularity of Instagram, demonstrates that whilst there was backlash, the user's social benefit of the service overrides their concerns about copyright. From Instagram's perspective, perhaps it is necessary for them as a private company to protect themselves and have access to their users content for advertising and marketing purposes. However, this paper argues that Instagram should be doing more to protect their users.

It is also worth noting that the same rules do not apply to Instagram's content. The terms of use state that any content owned by Instagram is protected by intellectual property law and therefore, users are not permitted to remove, alter or conceal any copyright or trademark content, reproduce, modify, adapt, create derivative works, perform, display, publish, distribute, transmit, broadcast, sell, license or otherwise exploit the Instagram content. This may seem hypocritical from a user's perspective, although, from an intellectual property perspective it is normal practice to protect your brand's good will. However, this is problematic for other Application (App) developers. There are a number of apps that are not created by Instagram but are created by third-party app developers to work in conjunction with Instagram. For example, there are a number of apps (e.g. Repost for Instagram, Reposter, Insta Save) that allow users to re-post or monitor their follower activity – options

not provided within Instagram itself. Hence, there has been backlash from developers over Instagram's restrictive nature of their terms of use in this context (Panzarino 2013). As with the terms of user, it appears that Instagram continues to uphold its restrictive approach, and despite the negative feedback on these issues, it continues to be successfully growing as a social network.

As noted, there are different ways that a user can create content on Instagram; by uploading photographs, uploaded video clips and short temporary videos called stories. Users can also publish their images through using sixteen different filters in order to manipulate their images and videos. Each of these elements has the option to add an Instagram filter – this is an editing or modification tool which changes the appearance of the image or video. Instagram also allows users to edit content for example by cropping, adjusting shading, brightness and colour. Instagram also helps users to share their content through adding # symbol and by mentioning other users' name through using @ symbol (Hu et al. 2014). These technological features are the essence of the sharing platform, however, they evidentially leave copyright protected material vulnerable to being copied, edited and communicated (Tan 2015).

If a user uploads their own content they are clearly the copyright holder of their original image. However, it is common practice for users to screen grab images from their newsfeed and repost the image after applying a new filter. Does this constitute a derivative work and as such a new copyright protected work? The situation is unclear where someone uses photograph enhancing tools distort or modify an image (Georgiades 2018). Creativity does not exist in a vacuum, it is a reflective of the societal climate at the time. As society develops and shifts, as does the art and so must the law (Lewis, Jessica 2016).

Original Images and photographs are protected by copyright as artistic works under s1(1)(a) CDPA 1988. The threshold for originality requires the creators use their own skill, labor and effort (*University of London Press Ltd v University Tutorial Press Ltd* 1916) or intellectual creation (*Infopaq International A/S case v Danske Dagblades Forening* 2009). The difference between these two definitions has been widely discussed (Derclaye 2010; Rosati 2010). Some state that it appears to have had limited practical implications (Rahmatian, 2016) whilst others argue that it has changed the originality test to a certain extent (Liu 2014). As such, both CJEU and UK case law are considered.

The CJEU has explained, that photographers could meet this standard by making creative choices in setting up, shooting and developing the photo, and so “*the author of a portrait photograph can stamp the work created with his ‘personal touch’.*” (Painer Case C-145/10) The Court concluded that nothing in any EU directive “supports the view that the extent of protection should depend on possible differences in the degree of creative freedom in the production of various categories of works.” (Painer Case C-145/10) Therefore, the Court held, the protection enjoyed by a portrait photograph cannot be inferior to that enjoyed by other works, including other photographic works. The UK IPO have provided guidance suggesting that it is unlikely that an image is simply retouched or digitised would be deemed ‘original’ because there of the minimal scope for a creator to exercise free and creative choices (Copyright Notice Number: 1/2014, 2015.) In relation to Instagram, users have the option to add a ‘filter’ that changes the appearance of the image, or edit the photograph with options such as reducing shadows, increasing brightness. This level of editing is restricted to the software Instagram provides and may be done thoughtlessly. However, in light of the above case law it is still possible that these works may meet copyrights originality threshold.

As such, the evolution of the conception of authorship, particularly relative to technological developments, has resulted in the adaptation of artistic expression. In the infamous Monkey Selfie case (Case No.: 15-Cv-4324), photographer David Slater was

arguing that he was the copyright owner of an photograph taken by a monkey. He's argument was based on the fact that he made the creative choices in the photograph and he added his on personal creativity by editing the image. This mirrors the finding in the Red Bus Case (2012) where Judge Birss considered the scope of photographic copyright by reference to three aspects which could be considered original: (i) Residing in specialities of angle of shot, light and shade, exposure and effects achieved with filters, developing techniques and so on; (ii) Residing in the creation of the scene to be photographed; (iii) Deriving from being in the right place at the right time. The decision in this case was controversial, and Deming (2017, p.93) argued that it should raise alarm and that the idea/expression dichotomy should be addressed as from the perspective of policy. He goes on to argue that copyright should instead be more generous in allowing borrowing to promote innovation, and it is imperative that the application of the idea/expression dichotomy reflect such a sound policy. (Deming 2017, p.93)

One such example of works deriving from Instagram images is the famous satirical image of Kanye West kissing himself (Lewis 2016). This work began as photograph of Kanye West and his wife Kim Kardashian kissing, taken by Getty Photographer Jason Merritt. Jen Lewis modified the image, swapping Kim with Kayne to create a satirical work and posted it to Instagram. Subsequently, artist Scott Marsh turned the Instagram image into a street art mural in Sydney. Marsh then sold a print of the mural for \$100,000 (Lewis, Jan 2016). In this instance, the work would be considered a parody and therefore falls within the copyright exceptions as mentioned above. Nevertheless, it demonstrates the remarkable shift in modern usage of copyright images in relation to Instagram.

There is also an argument regarding the "selfie" photograph that was taken by Ellen DeGeneres at The Academy in 2014. The Academy was sponsored by the phone company: Samsung. The camera was given to DeGeneres by Samsung by its advertising agreement with the Academy in 2014 (Schlackman, 2014). In general, if the camera was hired by the photographer, the photographer holds the copyright. In contrast, in some cases copyright holder can be the party that hires the camera. After this selfie was shared in different SNSs sites (e.g. Instagram, Twitter, Facebook); this case was investigated by Eric Spiegelman who is a Los Angeles Entertainment Lawyer, suggested "Ellen DeGeneres came up with the idea for the selfie and proceeded to execute it. In the process of producing the selfie, it became apparent that she needed a crew, and Bradley Cooper took it upon himself to be this photographer. Ellen DeGeneres, of course, consented to his involvement. At that moment, the services of Bradley Cooper were employed by Ellen Degeneres for some non-financial compensation (the added fame of being a part of Hollywood history, perhaps).... Usually, when an individual creative contribution becomes part of a "work made for hire," it's clearly spelled out in a written contract. Here, the parties did not have enough time to draw up an agreement. But Bradley Cooper has been working in Hollywood long enough to know that when he is employed in the production of a picture, it's always a "work for hire" situation. On every movie he's ever made, he signed a contract stating as much. Everyone who contributes anything creative to a film signs a similar agreement. As such, Bradley Cooper is aware of the standard business practice of this industry and can be reasonably expected to operate in the same way in the absence of a written contract" (Schlackman, 2014). On the other hand, according to entertainment lawyer Ethan Kirschner, copyright of the image is Bradley Cooper's who pressed the shutter. Kirschner explains the case as "it's always been the person who pressed the shutter who's technically the person that owns copyright". When courts decide who owns the copyright, "...they gave it to the person that literally pressed the button" (Bump, 2014). On the other hand, there is an argument regarding that Samsung could own the copyright of the image. However, it was discussed that Samsung cannot own the copyright. It can be argued that does Bradley who took the selfie or Ellen who own the phone, have the copyright of the selfie? Kirschner stated that "if Samsung had an agreement with Ellen that they would exclusively own the rights to the photo, that may not then apply to Bradley".

In summary, the original content uploaded by users is owned by them, however they grant a very generous licence to Instagram which allows them extensive use of the images. Through the use of modification tools it's possible that users could be creating derivative works, but there is yet to be an application of the law in this area. It is noted that users do not tend to read or understand terms of use and this is a criticism that Instagram has faced. It is particularly important for photographers licencing their work to recognise that if they post their work to Instagram it falls under a generous licence which includes sub-licence rights. Since, not being aware of this limits their capacity to licence their work elsewhere or could lead them to be in breach of a licence, user-agreement and copyright laws. The following section moves on to consider infringement of copyright works on Instagram.

3.3 Copyright infringement of images on Instagram

As mentioned above, it is an infringement of copyright to copy or communicate a work to the public without permission of the rights holder (or without the benefit of one of the copyright exceptions mentioned above). Copyright law embraced photography, and has emphasizing the photographer, rather than the subject, to be considered the author (Rose 1993). However, the professional photographer creating a studio portrait no longer represents the creation of most photographs. More commonly, photographs are created using smart phones and social networking platforms such as Instagram. Therefore, due to users sharing third-party content on Instagram, infringement of copyright material is prevalent.

The Instagram's terms of use state that users warrant that they own the content that they post and that the content does not violate, misappropriate or infringe on the rights of any third-party, including, but not limited to, publicity rights, copyrights, trademark and/or other intellectual property rights. In addition, users are guarantying that any third-party content that they upload has consent, or a licence from the copyright holders (Instagram T's and Cs para 7).

As explained in the previous section, SNSs encourage users to share their own and other user's content, through sharing tools and "linking" (Font, 2012). The sharing of their own and other's content benefits the social network and increases their advertising revenue. However, this contradicts Instagram's own term of use. On the one hand, the terms and conditions state that users will not post third-party content without consent or infringe copyright; and on the other hand, the networks are promoting the sharing and using of third-party content. Therefore, users will be confused about what they can and cannot do. The behavioural norms of social network usage thus contradict the terms of use and the principles of copyright protection. As Thornton's (2014) study found that Instagram users grapple with the ethical and legal usages of images. In a cultural "remix" environment that finds unauthorised uses of copyright material a social norm, it is difficult to comprehend the legitimacy of the legal regulation that restricts the use of images on social media.

It is suggested that the legality of image use on social media is complex and poorly communicated: *"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, p.89).

Moreover, the social network platforms encourage sharing and yet contradict this in their terms of use. Lessig (2008) highlighted how the online environment is one which facilitates the ability to acquire, combine and manipulate media and paradoxically,

incriminates the same activity: *“a world in which technology begs all of us to create and spread creative work differently from how it was created and spread before?”* (p. xviii).

Whilst there have not been any court proceedings pertaining to copyright infringement of images on Instagram in the UK, there have been a number of high profile disputes. For example, Gigi Hadid shared a photo of herself on her Instagram, which was taken by Peter Cepeda (TFL, 2017). As the photographer, Cepeda was the copyright holder of the image and therefore the use of the image was an act of infringement. It was argued that it was “willful and intentional, in disregard of and with indifference to the rights of Cepeda” (TFL, 2017). Despite Cepeda making numerous demands to Hadid and her team to remove the infringing photo, they refused to remove the picture, which received 1.2 million likes on Instagram. Cepeda reported the photo to the U.S Copyright Office as he licensed his photo to The Daily Mail and TMZ not to Hadid, the photo has not been removed by Hadid and her team. Additionally, the image did not include copyright watermark of Cepeda (TFL, 2017). Subsequently, numerous prominent, commercial, online publications copied and re-posted the photograph, without a license and crediting Hadid or Instagram but not Cepeda. He is seeking compensation for damages, including any profits realised by Hadid and/or IMG attributable to the photo. Since no exception applies, the use of a copyright protected work without the permission of the copyright holder in this instance would like constitute an infringement of the work. Furthermore, as Cepeda (2017) argued, the photograph had commercial value which was diminished as a result of it being pulsihed on Instagram (TFL, 2017). However, as with many cases of this nature, it is likely that the parties will simply come to an agreement outside of court. This is particularly common the USA since running the risk of statutory damages for copyright infringement is desirable to avoid.

This dispute exemplifies a new trend relating to copyright and image sharing on social networks, where users are also acquiring revenue through their accounts. For example, Khloe Kardashian has faced legal action in relation to a photograph herself she posted on her own Instagram (Xposure Photos 2017). The photograph was owned by Xposure Photos, a photo agency that represents over 40 photographers worldwide, who filed the complaint in the U.S. District Court for the Central District of California (where Kardashian resides). Xposure claims Kardashian posted the photograph along with the caption “going for a meal at David Grutman’s Miami restaurant, Komodo” in September 2014, without licensing this with the copyright holder. The Photograph was created by author Manual Munoz and licensed for limited use to The Daily Mail, which published it on 13th September 2016 together with a copyright notice and watermark. The following day the photo was posted on Kardashian’s Instagram account, with the watermark removed and remains there. The claimant argued that the photograph is of high value and that the defendant’s use of the image on Instagram has destroyed its market value. The complaint also draws attention to the fact that Kardashian draws revenue from her Instagram as a marketing tool. As a result, the complaint seeks an action for injunctive relief, statutory damages, monetary damages and requests a trial by jury, which subjects the defendant to liability for statutory damages under Section 504(c)(2) of the U.S. Copyright Act 1867 in the sum of up to \$150,000 per infringement. The outcome of this case remains to be seen. As with the above mentioned case, this matter also seems to demonstrate a clear infringement of the copyright holder’s rights. The responsibility of Kardashian is also heightened in this case since she draws a significant revenue from her Instagram usage since under 17 U.S. Code § 506 a1(A) using a copyright work for commercial advantage is deemed criminal infringement. However, due to the high profile of the Kardashian, it is likely that the parties will settle out of court to avoid negative press.

Finally, this article turns to consider the legality of screen capture [N.4]. Screen capture (otherwise known as screen capping) is a functionality of smart phones rather than of social networks. However, it is relevant here as it is the most common way in which users copy images from Instagram. Under subsection 17(5) of the CDPA 1988 it is deemed an

infringement of copyright to broadcast a work without permission: “*Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.*” This section of the CDPA 1988 was actually carried forward from the Copyright Act 1956. The intended meaning was defined in the case of *Spelling Goldberg v BPC Publishing* (1981), where the Court held that taking a ‘still’ from a film and publishing it in the form of a photograph was an infringement of the copyright in the film. When considering the application of this section to the digital society, it is interesting to consider the phenomenon of the screen capture as a modern parallel. Screen capture allows a still of a video clip, or an image of the screen display or the direct copy of a work. Therefore, it could this be considered the same as taking a photograph? The exhibition of original works is not restricted by copyright (*Bookmaker’s Afternoon Greyhound Services* 1994). This might suggest that the right to control digital reproduction should not enable the copyright owner to control the display of works in a computer monitor or screen.

Although this question has not been posed in a UK Court, it did arise *inter alia* in the U.S. under the Copyright Act, 17 U.S.C. § 101 et seq., and the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512. ECF 1 in the matter of *Hoge v Schmalfeldt* (Civil Action No. ELH-14-1683 2014). Blogger Mr Hoge sought an injunction against the defendant for sharing his work on social media platforms, including the use of image capturing. The injunction was not granted. However, Tan argued that this could have been a policy decision to shield social media sites and services providers “*given that the screenshot capturing function is made available by the operating systems of digital devices, users are inclined to take such functionalities for granted. If the specific injunction Mr Hoge sought was granted, it would have grave implications on how we may be compelled to turn away from the conveniences technological advancements have afforded us, and such counter-intuitive directives cannot be reasonable*” (*Tan* 2015).

Minister for the Department of Culture, Media and Sport Edward Vaizey stated in March 2016 that taking a screen shot of an image from social media App; Snapchat, would constitute infringement of copyright: “*Under UK copyright law, it would be unlawful for a Snapchat user to copy an image and make it available to the public without the consent of the image owner. The image owner would be able to sue anyone who does this for copyright infringement. Snapchat photos are automatically deleted after 10 seconds. The Snapchat Privacy Policy states that if Snapchat is able to detect that a recipient has taken a screenshot of an image, they will try to inform the original poster. However, Snapchat advises users to avoid sending messages which they would not want to be saved or shared*” (*Rt Hon Edward Vaizey MP, Department for Culture, Media and Sport, 2016*). From a legal perspective this is logical, however, in light of the current cultural and behaviour practices it is less convincing. There are two main reasons for this. Firstly, as a result of modern technology on smartphones and devices taking a screen shot is something that has become a daily habit and social norm in today’s society. Users tend to save images as notes or to share. Secondly, the enforceability against taking a screen shot is also not viable. The infringement of the copyright work only becomes relevant once the work is used, for example when shared. This is something that could have been resolved by the private copying exception, mentioned above, but for now remains technically illegal and practically a daily habit, thereby demonstrating a disparity between the law and modern culture.

One strategy being used to try to combat this is by using a hashtag for permission, for example from Macky’s #macky’s love campaign where users share their photos with their favourite Macky’s product and share it on Instagram with a hashtag #macyslove. When the selfies are shared, they directly go to Macy’s photo gallery. Hence, users acknowledge that they give consent to this organisation (Miller, 2015). This is a simple strategy that adjust the the user behaviour but still aims to retain some acknowledgment of the copyright holder.

However, it is argued that more needs to be done. Instagram should acknowledge better responsibility for its users. It could for instance, introduce a copyright education strategy, much like YouTube's "copyright school" which users who are found to be infringing copyright are required to undertake in order to continue with their account. YouTube are more motivated by their Internet Service Provider status, and upon consideration, it could be argued that Instagram also fall within the same criteria. Instagram would then also be required to provide a Notice and Takedown Service, which would provide a level of protection for their users and increase awareness of copyright regulation. Notice and Takedown has been found to be foundational provision in relation to online service providers (Urban, Karaganis, and Schofield, 2016) and should be utilised by Instagram.

4. Conclusions and Recommendations

This article has discussed the development of SNSs in light of copyright regulation. Copyright law prides itself on the idea that it motivates the creation and spread of knowledge and culture. However, social networks such as Instagram have found a new incentive. They promote the sharing of content by their users, and are able to generate revenues from advertising. In isolation this may, at first, appear to be a problem that has solved itself. But, unfortunately the issue is that whilst the social networks may be benefiting financially, the photographers and content owners are not necessarily reaping the same benefits. The main issue for copyright to overcome is that it is based on the idea of restricting content, and today's society has shifted in its consumption habits to that of a sharing culture.

This article has highlighted how the terms of use of Instagram have been controversial in granted a generous licence from the users to the platform. Particularly, the consequences of the terms for a photographer means that when licensing their work to a third-party under an exclusive licence, posting the image on their Instagram account would violate that licence. Further, the paradox between copyright regulation of images and the promotion of sharing third-party content was demonstrated through a discussion around copyright infringement on Instagram, through sharing, editing and screen capture.

The disparity between law and cultural use of copyright material, particular image sharing on social networking sites, is evident from this study. How the law will adjust to keep up with this adaptation is creativity and creative use remains to be seen. One thing that is clear is that art and creativity are much more adaptable and malleable than the law, as Foucault (1984) argued; art is positioned to function according to a new mode.

Exploring the relationship between copyright and social media, in particular Instagram and image sharing, it can be seen that tensions are mounting and the law is becoming further removed from technology and the subsequent cultural behaviours. The disparity between the principles of copyright and social media leads to confusion and the social media network seems to mislead the users. Instagram, whilst providing a popular service, is seen to have a considerably unfair user-agreement. The social networking site, whilst encouraging sharing – for the benefit of advertising revenues – leaves users increasingly vulnerable to copyright infringement claims. This paper suggests, therefore, that Instagram has a responsibility to better inform its users of the implications of sharing third party content. For example, Instagram could adopt a Notice and Takedown system, as well as introducing a copyright education tool.

This paper has contextualised the tensions arising between copyright regulation and social media behaviour, particularly focusing on infringement of images on Instagram. However, it this is a novel area of research and the outcomes of cases is eagerly awaited. There is a need for much more research in connection with this emerging issue. For example, research considering other Social Networking Sites such as Facebook, Twitter or

Pinterest. Whilst the paper has made some recommendations, further research is needed to determine the viability of both legal and business strategy solutions to the issues raised in this paper. Finally, this paper considered in particular the law of the US and UK, however, more research is required in relation to jurisdiction; the regulation of social networking sites and the impact of localised jurisdiction on global networking users.

Notes

1. The word images refers to digital photographs taken on mobile phones and digital cameras; images that were first generated on photographic film and any digital images created from them; and images such as diagrams and illustrations (Copyright Notice Number: 1/2014, 2).
2. The process of spreading information through the Internet was first defined as online WOM behaviour (OWOM); but from 2004 onwards, the term electronic word-of-mouth became prevalent (Hennig-Thurau et al. 2004; Bronner and De Hoog, 2010). As such, the term eWOM will be used for the paper.
3. Instagram images do not appear in Google search, in order to see an Instagram image you have to view it on Instagram.com or the Instagram Mobile Application and therefore become an Instagram user by default.
4. Screen capture is a digital photograph taken of the interface that the screen of the device is currently displaying, a common feature on smartphones, tablets or through the print screen option on a computer.

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