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## IS THE SOCIAL MEDIA INNOCENT AS IT SEEMS?



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## IS THE SOCIAL MEDIA INNOCENT AS IT SEEMS?

In today's our modern world, social media has become an inseparable part of the individuals. According to the report named "Digital in 2017 Global Overview" published by We Are Social and Hootsuite, the numbers of internet users reached to 354 million in 2016 by 10% increase compared to 2015, active social media users increased by 21% and reached to 482 million. (References: <https://wearesocial.com/special-reports/digital-in-2017-global-overview>, <https://hootsuite.com/de/newsroom/press-releases/digital-in-2017-report>)

As the numbers increase, considering the disadvantages that each development brought along with; the disputes and violations have inherently increased due to the fact that in particular the Internet and the social media have made communication so fast and easy.

The platforms such as Instagram, Twitter and Facebook, which we check out just after waking up, have made each of the users a content producer. Millions of users can share contents like photos, music, book, and quotes within seconds through such platforms. Well, are we aware that posting a tweet to get retweets or sharing a photo to get likes is not always innocent as it looks? At this point, it is necessary to define the concept of the shared content legally and explain how the copyright infringements will be occurred on social media.



A simple definition of copyright is the right legally belongs to its' creator on a work based on an idea and workshop. According to the Law on Intellectual and Artistic Works (FSEK) numbered 5846; work is defined as any intellectual or artistic product bearing the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work. Photographs, sculptures, cartoons, poems, stories, and novels are some examples of the work. After the creation of the owner, the work has occurred legally (ipso jure); in other words, if a creation provides the necessities of a work, it begins to be protected without any registration or enrollment. For this reason, "copyright infringements" have been so controversial.

Let's assume that we share an image on Instagram or Facebook which is not taken by ourselves and appears anywhere on the Internet. This is in fact one of the most typical and controversial situation faced on social media whether a copyright infringement exists. When such cases are considered in detail, we often face a copyright infringement.

In order to determine whether there is a violation of intellectual property rights in a user's share, the legal assessment is required. First of all, it should be determined whether the visual and / or audio element that is copied exactly or largely quoted is considered "work" under FSEK. In this context, if there is a situation that goes beyond the "things" of a person's daily standards, truly reflects the originality, and bears the specialty of the its owner and the content can be

considered among the categories indicated in FSEK; then this content is most likely an original work. Although this is the rule, in concrete situations, the systematic of this assessment may vary.

It should be noted that the term of “work” does not express masterpieces; it only means the things that exceed the ordinary production of the individuals. Therefore, a photo taken by a social media user who is not a photographer by adjusting the frame and the angle and different from ordinary ones might be described as a work and can benefit from the protection of FSEK.

One of the reasons for such kind of violations on social media is the unlimited sharing of content on the social media by the users. Besides, no control can be made regarding copyright violations before the content sharing on social media due to the nature of the Internet. Therefore, anyone who shares content on social media has a potential to infringe copyright.

## **Is There a Violation of Intellectual Property Rights in This Content?**

As stated above, first step to consider a violation of intellectual property rights is to determine whether the content which is subject to violation is a work.

If the content has the characteristics of an original work, the next step is to determine if there is a violation. According to FSEK, a written permission of the owner is required in order to share a work in any platform. There are certain exceptions to this rule such as news content, education, or scientific studies. Yet, even if permission has been obtained from the owner for the work to be shared or used in any way, as a rule, the name of the owner should be included when it is shared. Therefore, there are numerous violations relevant to each other and not a singular violation, when a person shares a content of another person on his own social media accounts without permission like it is his own.

## **Who is Responsible for the Violation?**

First, it should be noted that, in accordance with Law numbered 5651 and FSEK, if there is a violation of intellectual property rights in social media, the person responsible for this violation is the user of that social media account. In other words, it is the holder of that account. Although these contents are shared on a website or application in a digital platform, the relevant application or website serves only for the purpose for individuals to create their own accounts and share them under these accounts. For this reason, their legal status is considered as hosting service provider as a rule. As a rule, the account holder is responsible for the illegality activities performed by the related social media accounts. In the light of this information, the account holder who is responsible for sharing the content containing the violation in the social media accounts is also responsible for the violation of the intellectual property rights. It is



generally not an acceptable defense that third parties are sharing the contents in their social media accounts. If a person has such a claim, he should be able to prove this in a way and also be able to show that he has not caused this problem with his own negligence.

## **The Rules of the Social Media Platforms**

Besides the legal rules, social media platforms explain the procedures they have carried out on the violations of intellectual property rights in their user contracts. The reason of this situation is that violations of intellectual rights have increased irrepressibly. Most companies located abroad express that they will generally implement Digital Millennium Copyright Act (DMCA) in user contracts. In accordance with this copyright law, copyright infringing content might be removed, access can be disabled, and the user accounts can be blocked if the violation of a right is determined regardless of the laws of the local country. Sanctions can also be applied, such as suspending the accounts of users have multiple infringements to prevent further violations.

In addition, it is observed that the platforms are encouraging right holders to license the digital content in order to reduce the numbers violations on social media. Creative Commons (CC) is the leading player in this sector which is a non-profit organization in digital licensing and has the slogan” some rights reserved”, not “all rights reserved”. For example, when sharing videos on Youtube, you can specify the terms of use through the CC license icons by selecting one of the CC licenses when uploading the video. In this way, the copyright holder permits the use and editing of his work in certain ways and conditions, and the whole Youtube community is also given the opportunity to benefit from the work without permission of the author.

As it is seen, before the violation happens, even there is no preventive action, social media platforms have developed themselves a lot in recent years in order to cease the violations.

## **Actions against the Violation**

The rules of law should be considered jointly with user agreements of the social media platforms. In Turkish law, there are certain ways to apply against the violations of intellectual property rights like the foregoing. Firstly, since there is an “infringement”, it is always possible to claim compensation under the FSEK. To implement this sanction, the author of the right must apply to a court and the relevant court shall rule the existence of the violation and compensation.

Additionally, due to the fact that these violations are occurred in digital platforms, “warn-remove” principle are brought to the agenda. Depends on the concrete case, the warning might be sent to the individual shares the content or the social media platform ho. Nevertheless, according to law no. 5651, in some specific situations it could be ruled to deny the access to the certain content by criminal court of peace. Therefore, the case must be evaluated very carefully and it should be applied to the appropriate legal procedure.

# Answers. Not theories.

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