

Social Media, Libraries, and the Law

Social Media, Libraries, and the Law

Thursday, March 17, 2011

Time: 12:00pm to 1:00pm

Speaker: Mary Minow

Agenda

- Terms of Service: Flickr, Facebook, Twitter
- Creating content
- Protecting Library from User Content
- Special Issues with Children
- Social Media Policies

Terms of Service Flickr, Facebook, Twitter etc



APPS.GOV

Federal government
negotiated
terms of service
amendments

Note: Twitter terms acceptable to U.S.
General Services Administration

<https://www.apps.gov/>
https://forum.webcontent.gov/?page=TOS_agreements

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Social Media, Libraries, and the Law

Federal Model Terms of Service

- No ads
- No indemnification
- Change governing law
- Termination only for breach
- Allow agency spiders
- Modify user content – limited to format/display
- No endorsement of products
- etc.

<http://go.usa.gov/liIM>

State and Local Governments FACEBOOK

Jan. 2011 – National Association of Attorneys General and National Association of State Chief Information Officers negotiate Facebook agreement
<http://www.naag.org/attorneys-general-negotiate-facebook-agreement-for-state-government-use.php>
https://www.facebook.com/terms_pages_gov.php

Creating Content

IMAGES

http://www.infopeople.org/training/webcasts/webcast_data021index.html
https://secure.wikimedia.org/wikipedia/en/wiki/Wikipedia:Public_domain_image_resources

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Finding Public Domain Images

Facts
Recipes
Ideas
Dedicated works
Government works (U.S.)
Expired works

Music, Videos

<http://search.creativecommons.org/>

http://infopeople.org/rural/training/webcasts/webcast_data/321/index.html

Protecting Library from User Content
Defamation, False Information, Negligence
... You're not responsible

Matchmaker.com immune when user posted false profile for Star Trek actress – stalking
Carafano v. Metroplash.com, Inc., 339 F.3d 1119 (9th Cir. 2003)

Sect. 230 broad protection – from false information, negligence, sexually explicit content, discrimination
BUT NOT COPYRIGHT

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. 47 USC§ 230(c)

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Ever-so-slight caution:
Roommates case

- ▶ **Internet roommate locator service**
Required users to use pull-down menus:
age, gender, sexual orientation, children
- ▶ **No immunity as co-producer of content** search system based on illegal criteria
- ▶ **Yes immunity** for free text "Additional Comments" - even gross discrimination
- ▶ **DON'T ASK FOR ILLEGAL INFORMATION**
Fair Housing Council of San Fernando Valley v. Roommates.com,
521 F.3d 1127 (9th Cir. 2008)

What about users that infringe copyright?

IMPORTANT!!

e.g. user posts someone else's article ...



SAFE HARBOR

- ▶ Must register agent with Copyright Office
- ▶ Must inform users of policy, agent contact info
- ▶ May then follow take-down procedures
- ▶ No direct financial benefit

www.noaa.gov/postcards/postcard3_w200th.jpg

17 USC § 512

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Look up your Institution

Directory of Service Provider Agents for Notification of Claims of Infringement

The following service providers have filed designations of agents for notification of claims of infringement pursuant to Section 512(c) of the Copyright Act. The Copyright Office's current directory of agents consists of this list, with links to copies, in PDF format, of the designations filed on behalf of service providers. You must have the Adobe Acrobat Reader installed on your computer to view and print the forms. The Adobe Acrobat Reader is available for free from [Adobe Systems Incorporated](http://www.adobe.com).

Go to **A B C D E F G H I J K L M N O P Q R S T U V W X Y Z Numerical Symbols**
Service Provider Agents List

vll27.com

vll8.com

vll9.com

vll10country.com

vll11mat.com

vll12.com

vll13.com

vll14.com

vll15.com

vll16.com

Is your library or parent organization registered?

<http://www.copyright.gov/onlinesp/>

Example: MIT Museum Copyright Agent on file with Copyright Office

Amended Notice of Designation of Agent to Receive Notification of Claims of Infringement

- The full legal name and address of the service provider is:
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, Massachusetts 02139
- The service provider is doing business under the following names:
Lincoln Laboratories
MIT Lincoln Laboratory
MIT Lincoln Association
MIT Lincoln
MIT Lincoln
MIT Lincoln Management Service
MIT Lincoln Talk
- The name of the agent designated to receive notification of claims of infringement:
Timothy J. McGowan, Manager, IT Security Support, Information Services & Technology
- The full address of the agent designated to receive notification of claims of infringement:
Massachusetts Institute of Technology
77 Massachusetts Avenue
Room 3400-000
Cambridge, Massachusetts 02139
- The designated agent's telephone number, facsimile number, and electronic mail address:
Telephone No: 617-253-4848
Facsimile No: 617-253-4848

www.copyright.gov/onlinesp/agents/m/mit.pdf

Remember to amend if your designated copyright designee changes

Example: MIT Copyright Policy

Copyright at MIT

MIT's Policy on Intellectual Property (IP) Rights

MIT's policy on intellectual property (IP) rights is designed to encourage the creation and dissemination of new knowledge, while also protecting the rights of individual faculty and staff. This policy applies to all MIT faculty and staff, and is intended to be consistent with the MIT Charter and the MIT Statute.

MIT's Policy on Patents

MIT's policy on patents is designed to encourage the creation and dissemination of new knowledge, while also protecting the rights of individual faculty and staff. This policy applies to all MIT faculty and staff, and is intended to be consistent with the MIT Charter and the MIT Statute.

MIT's Policy on Trademarks

MIT's policy on trademarks is designed to encourage the creation and dissemination of new knowledge, while also protecting the rights of individual faculty and staff. This policy applies to all MIT faculty and staff, and is intended to be consistent with the MIT Charter and the MIT Statute.

MIT's Policy on Copyright

MIT's policy on copyright is designed to encourage the creation and dissemination of new knowledge, while also protecting the rights of individual faculty and staff. This policy applies to all MIT faculty and staff, and is intended to be consistent with the MIT Charter and the MIT Statute.

<http://web.mit.edu/copyright/dmca-notices.html>

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ONE PAGE FORM: FILL IT OUT. SEND IT IN.

DMCA: Digital Millennium Copyright Act

www.copyright.gov/onlinesp

Source: *Registration of Agents Service Notification of Takedown*

Register Copyright Agent with Copyright Office

(The image shows a form with fields for Name of Agent, Address, and other registration details.)

Sample Takedown Notices

Chilling Effects

DMCA Safe Harbor

(The image shows a screenshot of a Chilling Effects website page with a DMCA Safe Harbor notice.)

For more information, see the [Frequently Asked Questions about DMCA Safe Harbor](http://www.chillingeffects.org/dmca512).

Elements of notification

Written communication to designated agent

- Physical or e-signature of copyright holder
- Identify work(s) sufficiently for removal
- Contact info for complaining party
- Good-faith belief that use is unauthorized
- Penalty of perjury



17 USC § 512(c)(3)

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What about Fair Use?

- ▶ Lenz v. Universal Music Corp.



Takedown notice sender must consider Fair use

Lenz v. *Universal Music Corp.*, 572 F. Supp. 2d 1150 (N.D. Cal. 2008); updates at <http://dockets.justia.com/docket/california/candce/5:2007cv03783/196424> Video at www.youtube.com/watch?v=N1K1JHFWIhQ

Best Practice: Follow takedown procedures for *any content*

- ▶ Register once. Update if agent changes.
- ▶ Use established procedure, even if *not user generated*.
- ▶ Consider friendly notice and crowd-sourcing:

"Do you have information about a collection item? Please let us know! And let us know if you believe that you hold rights to an item on our website."

... link to DMCA agent info

CAUTION: Takedown policy can mitigate risk and demonstrate good faith. Not a substitute for seeking permissions.

Special Issues with Children



Federal law requires parental consent for children under 13 for online comments **at commercial websites**

Children's Online Privacy Protection Act (COPPA)

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Children's Online Privacy Protection Act (COPPA)

Commercial services

- ▶ Notice to parents about information practices
- ▶ Verifiable parental consent before collecting
- ▶ Parents must have access to child's info
- ▶ Confidentiality, security and integrity of child's personal info

... link to privacy policy on any page where info is collected



Federal Trade Commission (FTC)
www.ftc.gov/bcp/online/edcams/kidzprivacy

Verifiable Parental Consent



FTC rules

- ▶ Parent signs and emails/faxes in
- ▶ Credit card
- ▶ Use toll-free number
- ▶ Public key technology

www.ftc.gov/privacy/coppafags.shtml

Children Without Consent

Noncommercial sites may **choose** to comply with COPPA.

Competing Principle: don't restrict user participation based on age

FTC
Okay to use ratings, drop down choices
but
No free text, no messaging

<http://opl.bibliocommons.com>

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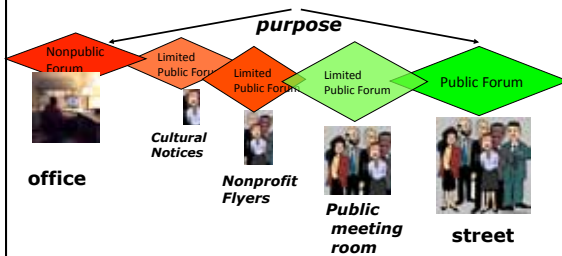
California State Library

Children are not eligible to use services that require submission of personal information and we require that minors (under the age of 18) do not submit any personal information to us. This includes submitting personal information to the State as part of a user profile or personalization profile. If you are a minor, you can **use** these services **only** if used **together with your parents** or guardians. If you are a minor you should seek guidance from your parents. If the state decides to begin collecting personal information from children, it will notify parents that it is being requested, disclose the reasons for collecting it, and disclose our intended use for it. The state will seek parental consent before collecting any personally identifiable information. If it does collect it, parents may request information on the type of data being collected, view their child's information and, if they choose, prohibit the state from making further use of their child's information. The state will not provide personal information about children to third parties.

Social Media Policies .. and Free Speech

- ▶ Define purpose of the space
 - Teen reading club
 - Children's poetry group
- ▶ Ask for civility (but don't enforce)
- ▶ Remove OFF TOPIC
 - Cialis
 - Personal attacks that are off topic
- ▶ Bury offensive posts

Limited Public Forum Analysis



The broader the space's purpose, the harder it is to take down content.

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Social Media Policy Elements



- Degree of employee access
- Account management
- Acceptable Use for employees (time, purpose)
- Expectations/Consequences of violations
- Agency content
- Legal issues
- Security
- Users

http://www.brookings.edu/papers/2011/01_social_media_policy.aspx

California – Policy Issues



Management
productivity, bandwidth, reputation, security

IT
authorized users
control file exchange, links

Users
no confidential info
speaker authorization
no masquerading
no work passwords

http://www.cio.ca.gov/Government/IT_Policy/pdf/SIMM_66B.pdf

Summary

Terms of Service: Flickr, Facebook, Twitter
Creating content
Protecting Library from User Content
Special Issues with Children
Social Media Policies

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From the Infopeople Archive



http://www.infopeople.org/training/webcasts/webcast_data/441/index.html



Thanks for listening!

• Mary Minow, J.D., A.M.L.S.
LibraryLaw.com

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