

Copyright Compliance in a Social Media World

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Gretchen Klebasko: Managing Director, Intellectual Property, Legg Mason



Agenda

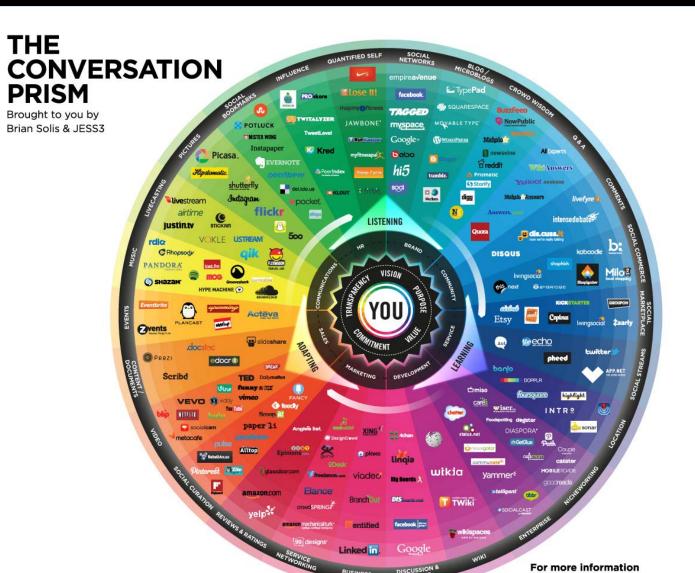
- Introductions
- What is new in social media?
- Laws and regulations
- Remedies
- Recent press
- Scenarios
- Practical Advice for In-House Lawyers



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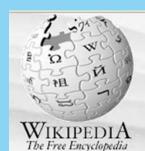


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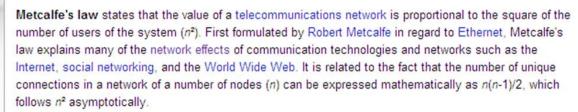
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Metcalfe's law

From Wikipedia, the free encyclopedia

(Redirected from Metcalfe's Law)



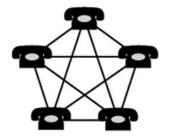
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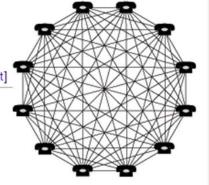
The law has often been illustrated using the example of fax machines: a single fax machine is useless, but the value of every fax machine increases with the total number of fax machines in the network, because the total number of people with whom each user may send and receive documents increases.

In fact, Metcalfe's law measures the *potential* number of contacts, i.e. the technological side of a network. However the social utility of a network depends upon the number of nodes *in contact*. For instance, if Chinese and Non-Chinese users don't understand each other, the utility of a network of users that speak the other language is at zero, and the law has to be calculated for the two networks separately.



2 Dougcornelius my talk my preferences my watchlist my contributions





The n² Growth

A graph that has a number of edges, q, can only have edges

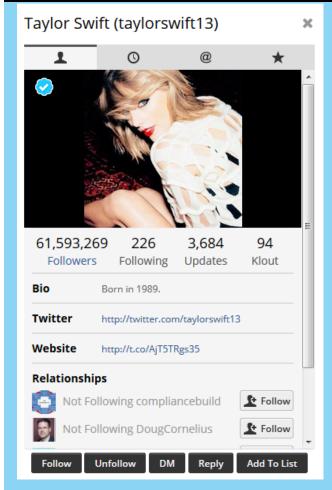
$$0 \le q \le \binom{n}{2}$$

Where n is the number of vertexes in the graph. By definition,

$$\binom{n}{2} = \frac{n(n-1)}{2}$$



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This is the new publishing platform

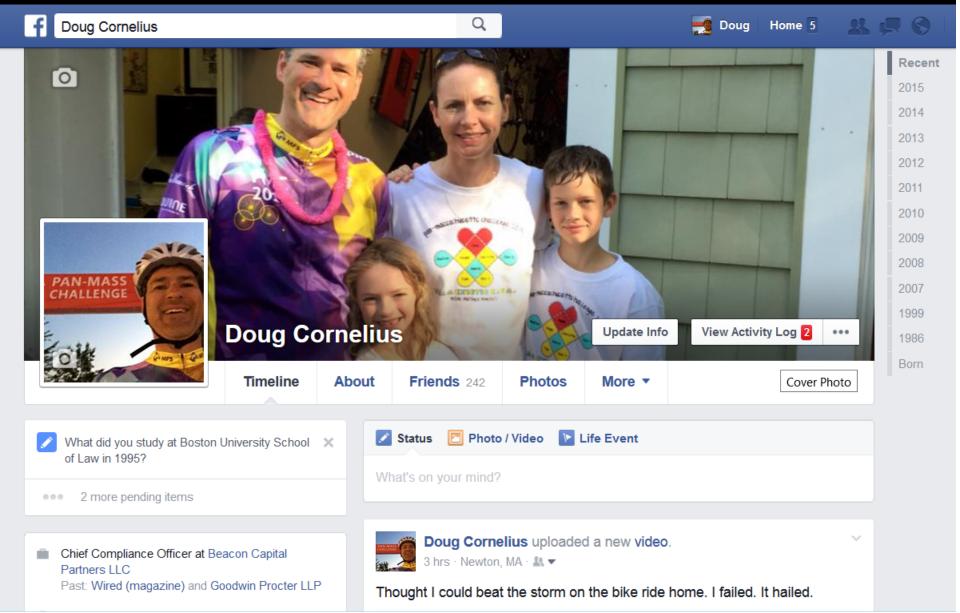


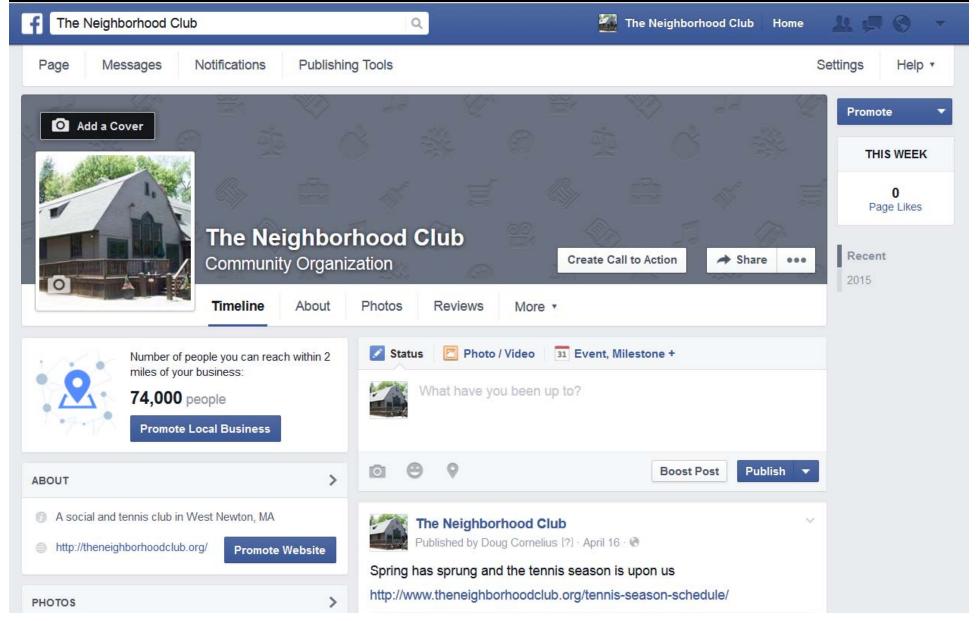
Social Media Compliance Challenges

- Workflow
- Recordkeeping
- Legal review
- Mobility
- Changing features on platforms



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Doug Cornelius

@DougCornelius

TWEETS 10.1K

following 1.670

FOLLOWERS 3,926

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Trends - Change

Voting Rights Act

Obama to call for Voting Rights Act restoration on law's anniversary 2.939 Tweets about this trend

#RuinAThriller

41.5K Tweets about this trend

#Deadpool

Two Deadpool Trailers? Both Are Awesome 82.9K Tweets about this trend

#auslaw

544 Tweets about this trend

Wildest Dreams

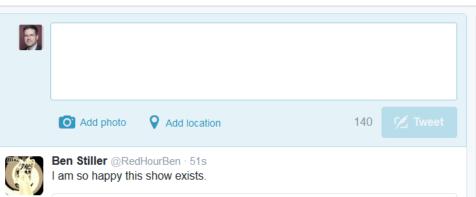
Taylor Swift's Next Single Is 'Wildest Dreams'

45.5K Tweets about this trend

#mnsolo

130 Tweets about this trend

Brady





£3 1

CC:Stand-Up @ccstandup

You don't need to wait a single second. Watch next week's episode of #TheMeltdown NOW: on.cc.com/1K2DcU2

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One Greenway @One Greenway - Jun 1

2

Discover city living at #OneGreenway: onegreenwayboston.com

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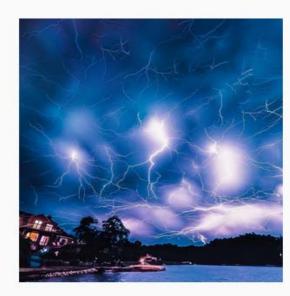


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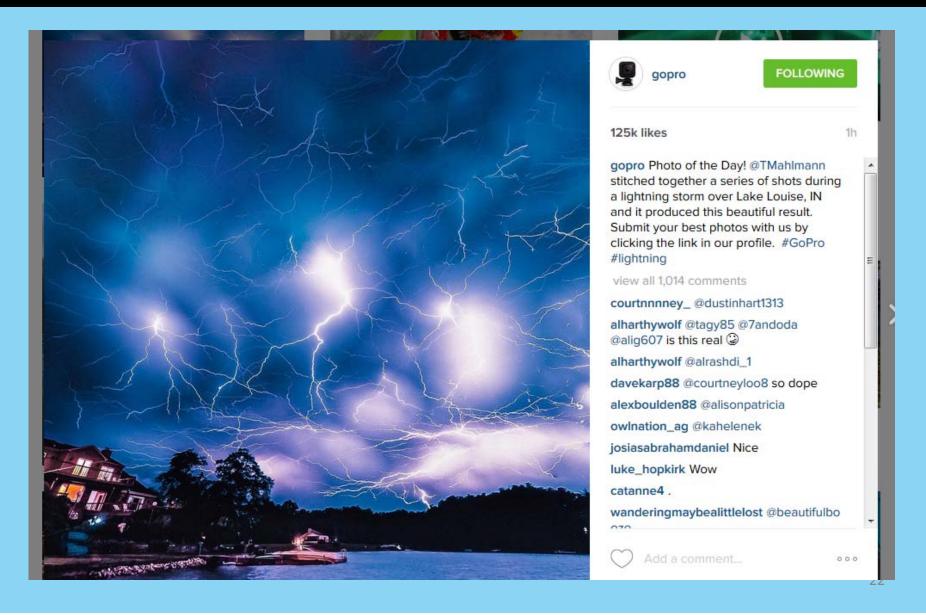
453 following

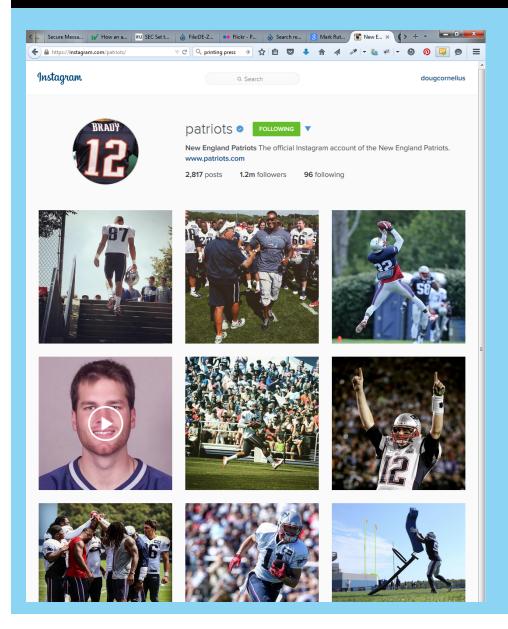


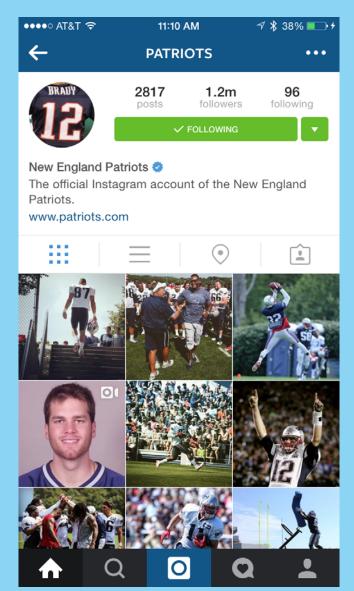




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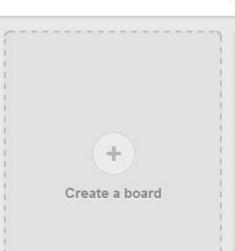
Doug Cornelius

dougcornelius.com

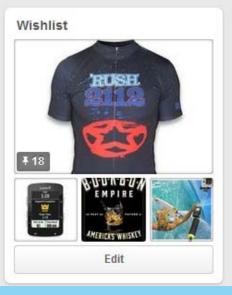
Chief Compliance Officer for a real estate private equity company, trying to stay in touch and up to date with the world. GeekDad. BikeGeek.

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Kate Mara Was in a Children's Singing Group by The Tonight Show Starring Jimmy Fallon

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Backstage Magic Trick: Penn and Teller

by The Tonight Show Starring Jimmy Fallon 621 views





Laws and Regulations





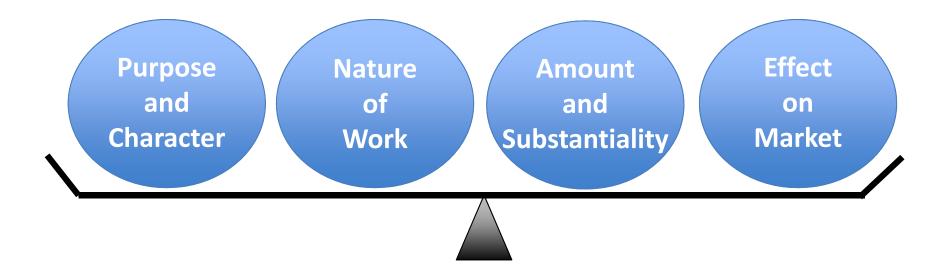


Digital Millennium Copyright Act (DMCA)

- How does this apply to social media?
- Social media websites qualify as OSPs under the DMCA!
- Two "tools" available for enforcement:
 - Subpoena to disclose identity of infringers
 - DMCA Takedown Notice



US Copyright Act – Measuring Fair Use





Rarely Spoken but often Present....

- Public perception Are you good or bad?
 - Due to their subjective nature, Fair Use decisions often contradict one another and are often impacted by factors such as a judge or jury's personal sense of right or wrong
 - While the Supreme Court has indicated that offensiveness is not a fair use factor, a morally offended judge or jury may feel differently
- US Copyright Office has a searchable index of case law related to fair use
 - http://copyright.gov/fair-use/







International Digital Copyright Laws

- Digital Economy Act 2010 United Kingdom
- E-Commerce Directive 2000/31 European Union
- Loi sur le Droit d'Auteur et les Droits Voisins dans la Société de l'Information – France
- Bill C-60, C-61 Canada (proposed only)

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Remedies



- In order to qualify for safe harbor, an OSP must:
 - Designate an agent for receiving takedown notices
 - Respond timely to takedown notices (and notify the alleged infringer)
 - Terminate a repeat offenders' ability to use the service

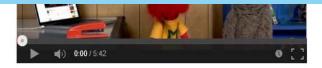


Takedown Notice:

- In writing
- Sent to designated agent
- Must include:
 - Contact information of copyright owner
 - Identification of work infringed
 - Signature of copyright owner
 - Statement of good faith belief of infringement
 - Statement that information in notice is accurate



- Manage your content on YouTube
- ► Copyright support and troubleshooting
- ▶ Learn more about copyright



Manage your content on YouTube

If you would like to submit a noulication or alleged copyright infringement, get information on what to do if you believe your video has been removed in error, or get information on how to dispute a Content ID match, the resources below will help educate you about our easy-to-use rights management processes.



Submit a copyright infringement notification

Request the removal of an unauthorized use of your creative work.



Submit a counter notification

Request the reinstatement of a video that was incorrectly removed from YouTube for copyright infringement.



Retract a claim of copyright infringement

Cancel, or retract, a removal request that you or your company submitted to YouTube.



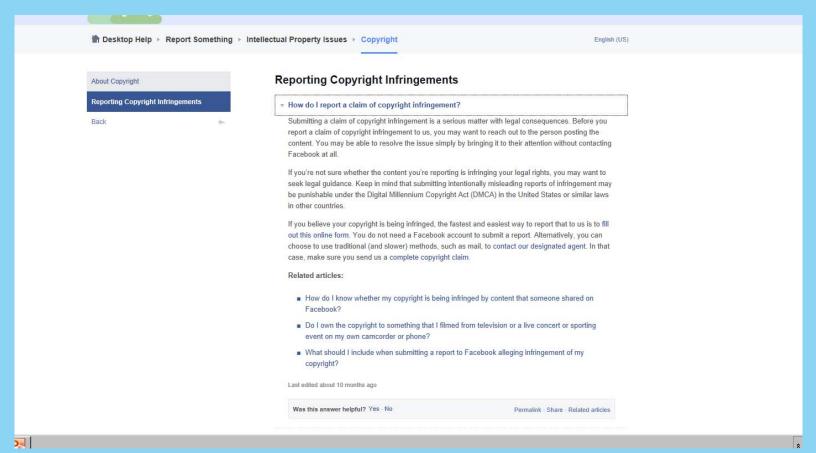
Dispute a Content ID claim

Contest a Content ID claim on your video that you believe is wrong.

Copyright support and troubleshooting

There's a lot to learn about the world of copyright. If you'd like help diagnosing a copyright issue, the resources below are the best place to start. If your question is not answered here, please search our Help Center, where you will find additional information.







- Subpoenas
 - Used to force disclosure of infringer's identity
 - Limited utility (may not use against ISPs over file sharing)
 - Takedown notice usually faster, more effective



Cease and Desist Letters

- "Soft" or "Hard"
- Check to make sure there is no relationship!
- Do you really care?
 - Does the posting give you free press?
 - Does the social media site or channel get a lot of traffic?
 - Are you being harmed?
 - Can you even locate the infringer?
- Consider a business-to-business phone call first



Cease and Desist Letters

- Is there a chance your letter might end up in a blog about copyright bullying?
- Is the issue the copyrighted material, or what the third party says or does with it?
 - Are you angry because the third party is using the material to comment on your organization in a negative way?



Was it Worth it?



Bros Icing Bros - A Case for Copyright Bullying by Overreacting Smirnoff Lawyers







Alternative Methods of Enforcement

- Can you leverage tools that are provided by social media sites?
 - YouTube ContentID
 - Qualified owners provide YouTube with material (music, videos)
 - YouTube loads the material into a database
 - When a third party tries to upload content to YouTube, the content is "scrubbed" against the database
 - Owners decide: mute, block, monetize, track



Lawsuits

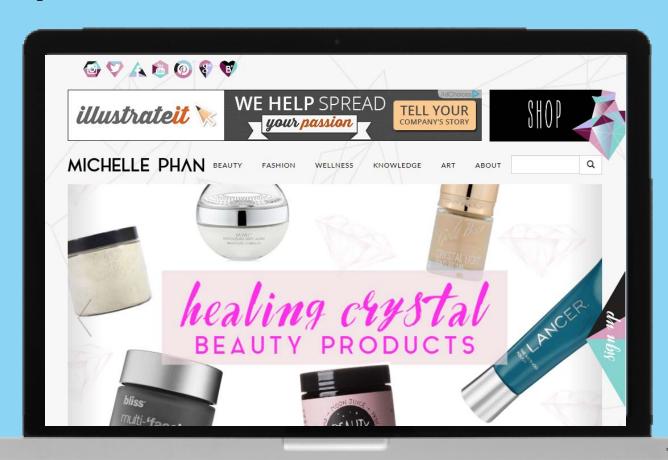
- Recommend as last resort
- Generally unsuccessful against OSPs
 - Telecinco v. YouTube, Madrid Court of Appeal, January 14, 2014
 - Requires control or position of actual knowledge with respect to user-generated content to exclude from safe harbor
 - Notice of takedown insufficient
 - Viacom International Inc. v. YouTube, Inc., New York, 2007-2013

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Beauty vs. the Beat





The Revolution Brought to You by Prince

Appeals judges hear about Prince's takedown of "Dancing Baby" YouTube vid

Years after Stephanie Lenz uploaded a video to YouTube, precedent will be set.

Stephanie Lenz uploaded a 30 sec video of her baby dancing to "Let's Go Crazy" on YouTube



Can Social Media be "Transformative"?

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NORTH JERSEY MEDIA GROUP INC.,

Plaintiff,

- against -

JEANINE PIRRO and FOX NEWS NETWORK, LLC,

Defendants.

Ramos, D.J.:

AMENDED OPINION AND ORDER

13 Civ. 7153 (ER)

Plaintiff North Jersey Media Group Inc. ("Plaintiff" or "NJMG") brings this action against Jeanine Pirro and Fox News Network, LLC ("Fox News") (collectively, "Defendants") under the Copyright Act, 17 U.S.C. § 101, alleging that Defendants infringed on Plaintiff's copyright in its now iconic photograph of three firefighters raising the American flag at the ruins of the World Trade Center site on September 11, 2001 (the "Work"). Fox News posted a photograph that juxtaposed the Work with the classic World War II photograph of four U.S.

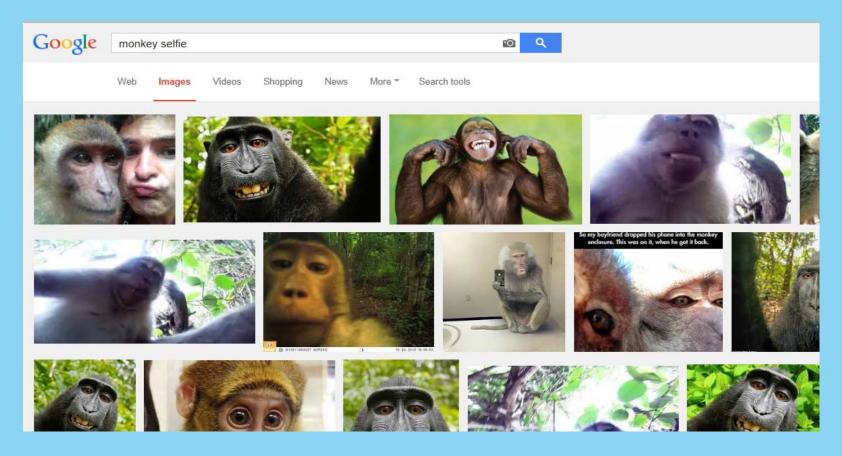
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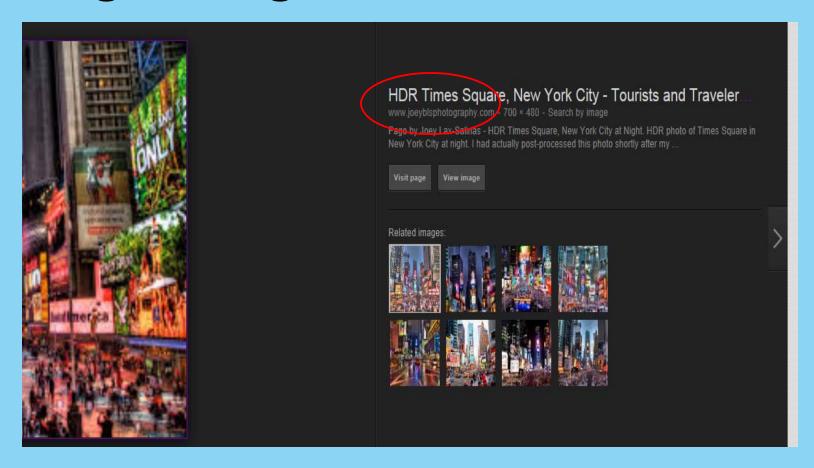


Scenarios

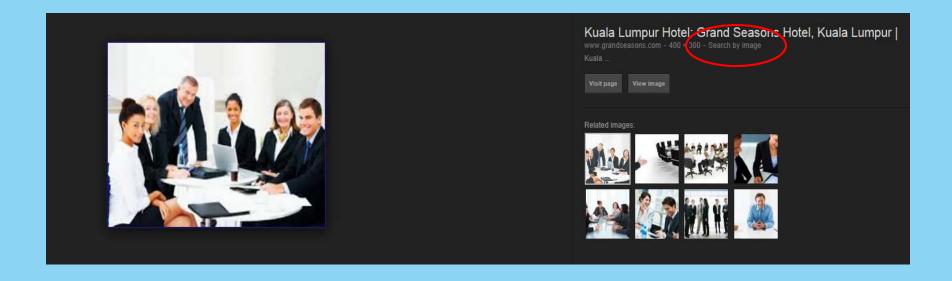














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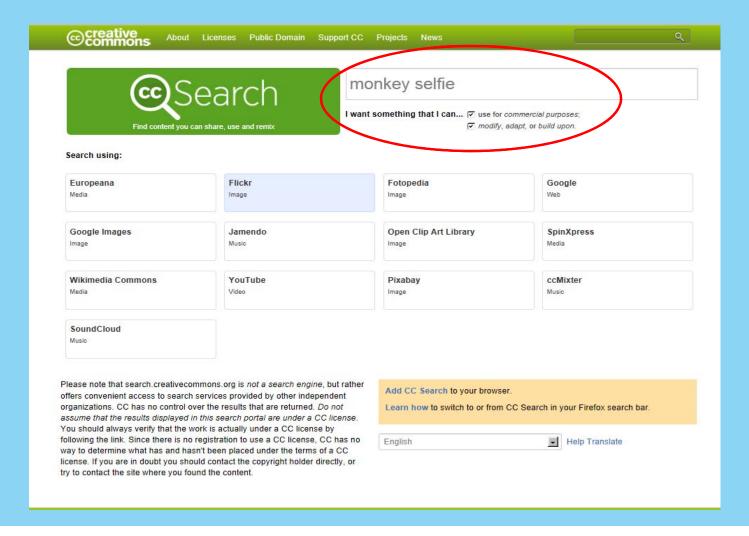


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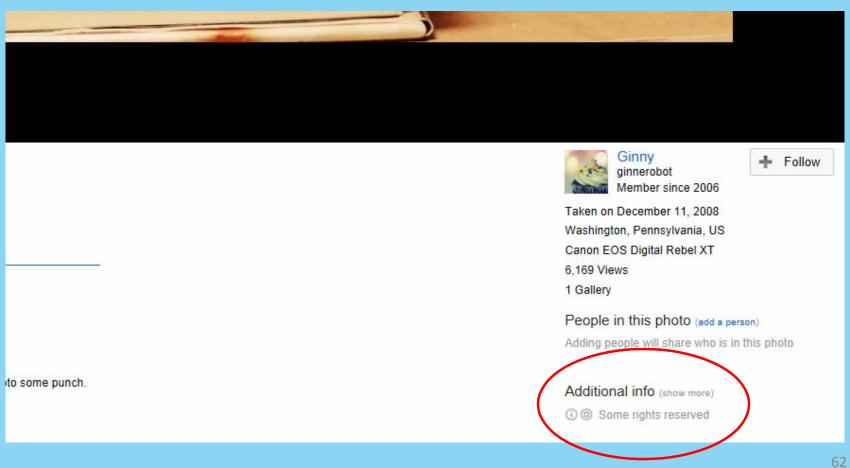


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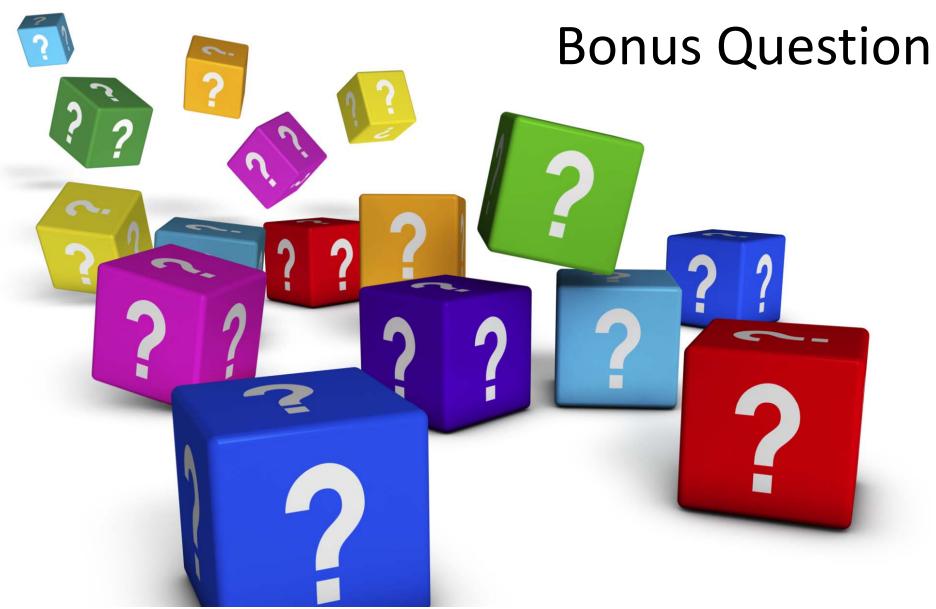




YouTube









Practical Advice for In-House Lawyers



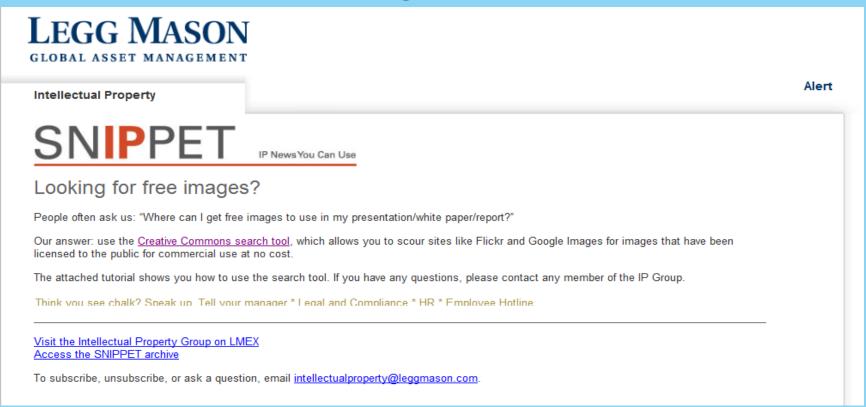
- Same rules apply as for print materials!
- Educate, Educate, Educate
 - Internal clients/employees
 - What tools can they use?
 - Teach them to self-help
 - Tell them how to get help, if needed
- Yourself
 - Learn the tools, sites, apps
 - Know what your clients are using!



- Policies
 - Make sure they address social media and the internet, if necessary
 - Incorporate copyright into other corporate policies
 - Electronic Communications Policy
 - Code of Conduct

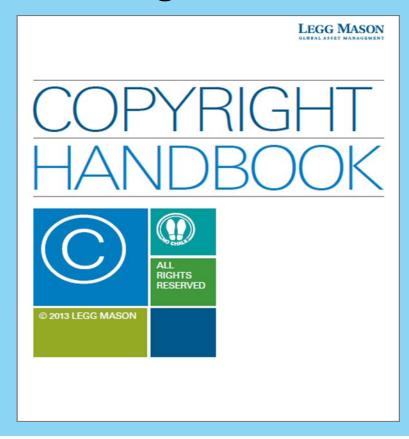


Reinforce the message





Reinforce the message



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