

*Internet Curation in Copyright's Shadow:
Pinterest, Storify, and a Proposal for "Copyright Exempt" 501(c)(3) Entities*

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New types of social networks have recently emerged that have facilitated the growth of a different kind of user-generated content: curation. The user finds various content from the Internet and then organizes or “curates” the content in a social network platform in a way that better serves the user’s purpose. For example, on Pinterest, users can “pin” content from the web onto their virtual “pinboards” that have topical categories of the users’ choice. The content typically involves a photograph (in reduced size) from the original web page that is then displayed on the user’s pinboard. Clicking on the photograph displays the actual photograph (or a copy of it), but displayed on the Pinterest website, with attribution and a link to the original website. In this way, the user is able to organize content from the web *visually* by the user’s own categories, such as favorite recipes, yoga instruction, furniture to buy, or places to travel.

Likewise, Storify is a social network that enables its users to create “social stories” drawn from content on Twitter, Facebook, the photo-sharing site Flickr, YouTube, and the Internet in general. A Storify user can search all of these networks for a particular term or topic, and then easily “drag and drop” the content—a tweet, a Facebook status update, a photo on Flickr or the Internet, or a YouTube video—to a new page on Storify to create a story akin to a blog post. For example, a user might write a story about whether the proposed “Buffett rule” to tax the wealthy is a good idea. The user can create a story by writing a headline, adding a photo of Warren Buffett drawn from Google image search, and creating a virtual debate drawn from various Tweets of others on the topic. Like Pinterest, the embedded content on Storify provides attribution and a link back to the original Internet source.

Pinterest and Storify have generated acclaim and a mass of users to their networks. Indeed, Pinterest reached 10 million users faster than any other site in history and now boasts 20 million users in the second year of its existence. Storify has not drawn as big a following, but its network still attracts 1.2 million users, with 14 million views of their stories in March 2012. As a sure sign of their importance, the Obama White House is a user of both networks—perhaps hoping to reach potential voters.

Of course, in the background of both networks lurks copyright law, waiting to rear its proverbial head. The kind of content curation Pinterest and Storify facilitate may constitute copyright infringement, although at least an arguable defense based on fair use or the DMCA safe harbors exists. Thus far, no copyright owner has sued either Internet service. Yet one lawsuit filed against either site could put in jeopardy this emerging practice of content curation—quashing it generally.

In prior scholarship, I have identified the importance of focusing on these nascent stages of a new speech technology and the informal practices with respect to copyrighted works they foster. *Warming Up to User-Generated Content*, 2008 U. ILL. L. REV. 1459. There, I proposed a 5-part test to guide policymakers in evaluating whether an informal copyright practice with respect to user-generated content—conducted within a gray area of law—should be considered a legitimate practice.

In this paper, I apply this 5-part test to content curation on Pinterest and Storify to evaluate how it might fare—perhaps favorably—under the test. In addition, I suggest a way for Congress to address, more generally, the recurring problem created by new speech technologies running into a gray area of copyright law. The proposal is for Congress to enact a copyright exemption for qualifying 501(c)(3) non-profit entities.

(1) These entities will be “copyright exempt” for a limited purpose to develop and deploy new kinds of Internet speech technologies (see subsection 2 below) free for the public’s use. These entities will be considered “charitable” in their pursuit of the “advancement of education or science” under 501(c)(3). IRC § 501(c)(3).

(2) The copyright exemption is limited to Internet speech technologies that (i) are offered to the public for free, (ii) enable the user to add some creative expression to her use of copyrighted materials—such as in its selection, arrangement, or coordination of content, and (iii) require attribution of the author or Internet source of the copyrighted materials used. The exemption would apply only to copyrighted materials that have already been posted for free viewing on the Internet with the copyright owners’ consent. Thus, if Pinterest or Storify were non-profit entities instead of for-profit corporations, their technologies enabling Internet curation would qualify for this exemption as to all copyrighted material freely viewable on the Internet by the copyright holders’ consent. By contrast, unauthorized file-sharing would be ineligible for this exemption because it does not involve any user created expression or authorized copies of the music files. Likewise, if Google Book Search were a non-profit entity, it still would fail to qualify for the exemption because the copyrighted works involved in the Google database had not been offered for free viewing on the Internet by the copyright owners.

(3) The copyright exemption could be further limited to “United States works,” works whose country of origin under the Berne Convention is the United States. This limitation would preempt any challenge by another country to the exemption under TRIPS Agreement Article 13 (“three step test”). (4) Finally, the copyright exemption could be designed to last indefinitely or, instead, for a shorter period. The idea would be to permit at least a certain period of years—an “incubation” period—in order to allow the technology to develop and to allow for better evaluation of its value to society.