Pinterest's Secondary Liability: The DMCA Implications of Holding Pinterest Responsible and What Pinterest Can Do to Avoid Liability

Monica Yun

Follow this and additional works at: https://repository.uchastings.edu/hastings_comm_ent_law_journal

Part of the Communications Law Commons, Entertainment, Arts, and Sports Law Commons, and the Intellectual Property Law Commons

Recommended Citation

Available at: https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol36/iss2/9

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Communications and Entertainment Law Journal by an authorized editor of UC Hastings Scholarship Repository.
Pinterest’s Secondary Liability: The DMCA Implications of Holding Pinterest Responsible and What Pinterest Can Do to Avoid Liability

by MONICA YUN

I. Introduction

In an era of socializing, shopping, wedding planning, and fantasy-leaguing online, modern consumers often prefer the free exchange of ideas and goods on the Internet to more traditional, non-technological methods. Unfortunately, when balancing the interests of the consuming public and various intellectual property rightsholders, how freely this virtual exchange should take place is often at issue. Although, in the past, internet users could only view sites created by website designers, users can now easily upload—or link to—and share information with others through social media interactions.

Platforms, such as Facebook, Google+, Tumblr, Flickr, and YouTube, all encourage their users to create and contribute to the collective cyberspace discourse. This idea of a “sharing economy”—where commercial motivations are less of a consideration and people focus more on encouraging open collaboration, contribution, and
conversation—has exploded recently thanks to the ease of communication in the age of technology. In a study conducted by Latitude and Sharable Magazine, results show that almost 80% of Millennial participants feel more comfortable trusting strangers offline or in the "real world" because of the anonymous online interactions on websites such as Craigslist and other peer-to-peer web platforms. Physical items that are often shared are cars, bikes, spare rooms, clothes, and food. For digital media, the same study showed that approximately two-thirds of participants used works licensed under Creative Commons. However, many social media users are unaware of the copyright implications of their internet activity, which is problematic for copyright holders who want to control the dissemination of their works.

Technologies that promote user-generated or user-shared content oftentimes emerge and evolve faster than the law can police. In the face of such change, copyright owners are forced to defend their own works of authorship with few avenues for recourse. To protect the rights of intellectual property owners, popular social media websites like Pinterest.com ("Pinterest") may need to turn to creative solutions in order to foster a more harmonious online experience for consumers and producers alike.

Website users are generally instructed about intellectual property protections when they "sign" the Terms of Service agreements upon

---

4. THE NEW SHARING ECONOMY, supra note 2.
5. Id.
6. Id. (citing CREATIVE COMMONS, http://creativecommons.org (last visited Mar. 2, 2013)).
creating a social media account. When an artist or photographer creates an original work and fixes that work in a manner perceivable to others, such as on a canvas or photograph, that work is already protected by common law copyright. Any user who posts a self-taken profile picture on Facebook or self-filmed video on YouTube has rights to control that work. The Copyright Act of 1976 ("Copyright Act") grants copyright owners the exclusive right to, among others, reproduce, create derivative works, and publicly display their works of authorship. Unfortunately, with works that are uploaded online, a simple right click of the mouse and few keystrokes allow subsequent users to digitally infringe upon a copyright owner's exclusive rights in a matter of seconds.

But should the law recognize and enforce the rights to an artistically complex painting that required years of training in the same manner as a TwitPic of a Twitter user's Thanksgiving dinner? Should the purpose for which the copyrighted work was illegitimately reposted online, whether for commercial or personal use, be a prominent consideration? Additionally, can it be argued that reposting or linking images onto websites like Pinterest creates a derivative work protected by fair use? Ultimately, who should bear the administrative burden of enforcing copyright laws: the users, the copyright holders, or the social media platforms?

11. See id.
14. "Twitpic" is a "photo-sharing utility of the microblog site Twitter." Daxton R. Stewart, Can I Use This Photo I Found on Facebook? Applying Copyright Law and Fair Use Analysis to Photographs on Social Networking Sites Republished for News Reporting Purposes, 10 J. TELECOMM. & HIGH TECH. L. 93, 95 (2012) (discussing how user-posted photographs on social media websites are not automatically in the public domain).
16. 17 U.S.C. § 107 (2012); see infra Part III.D.
This note explores Pinterest's possible liabilities for copyright infringement and what it can possibly do to shield itself from prosecution. Part II will address the basics of Pinterest and how it relates to other social media and online service providers ("OSPs"). Part III will delve into the legal background of the Copyright Act of 1976, the Digital Millennium Copyright Act of 1998, secondary liability, the fair use defense, and legislation that has already been proposed to address this issue. Part IV will analyze Pinterest's indirect liability and how it may use the fair use defense. And finally, Part V will propose that Pinterest implement a filtering technology in order to avoid liability.

II. What Is Pinterest?

Traditional pinboards are "board[s] covered with cork and fixed to a wall so that messages and pictures can be pinned on to [them] for display." People can use pinboards to help with organization, scheduling, and research. For example, women can clip pictures out of bridal magazines and physically pin them onto their pinboards for their personal use in planning weddings. Digitally applying that concept, Pinterest is a self-described "virtual pinboard" where users can share, or "pin," images, videos, and text—but mostly images—of virtually anything that they may come across on the Internet or personally upload. Essentially, Pinterest "frames" images to provide links to hosting websites. Framing is a process by which a user can "view the content of other linked sites without leaving the site originally visited by enabling the first website, the framing website, to bring up the content of another website, the framed website, within the borders of its own web page."

The benefit of pinning images from other websites onto a user's pinboard is that it serves as a bookmark to various links on one visually organized platform. The user can then organize the images into collections to compare inspirations for potential future purchases. Generally, users have to install a "pin it" button onto

---

20. Id.
their internet browsers to bookmark images onto Pinterest.\textsuperscript{22} However, certain retail websites, such as Etsy and Anthropologie, see the business benefit of users bookmarking their web pages or products, and embed a “pin it” button directly on their websites to make it more conducive to pinning.\textsuperscript{23} Additionally, as of November 2012, businesses can have business accounts on Pinterest to promote their brand.\textsuperscript{24} In these instances, copyright owners actively advertise and promote the reproduction and public display of their images because doing so would ultimately lead to greater traffic onto their websites.\textsuperscript{25} These retailers’ use appears to legitimize Pinterest as a marketing tool and masks other presumably infringing uses.\textsuperscript{26}

Pinterest users can also “re-pin,” which allows users to incorporate previously-pinned images into their own pinboard collections.\textsuperscript{27} Statistically, over 80\% of pins on Pinterest are re-pins.\textsuperscript{28} Since re-pinning generally means that users participate internally and may not venture to the linked websites, this could cut against Pinterest’s business purpose of allowing individual users and retailers to promote goods online. However, because statistics show that Pinterest generates more “referral traffic” than Google+, LinkedIn, and YouTube combined, and because a fifth of Pinterest users have purchased an item after seeing it on Pinterest,\textsuperscript{29} Pinterest still functions as a potent marketing platform.

Pinterest is commonly used for inspiration when decorating a home, planning a wedding, making crafts, looking for recipes, or

\textsuperscript{23.} Todd Wasserman, Pinterest Pins Are on 9\% of the Top Online Retail Sites, MASHABLE (Feb. 24, 2012), http://mashable.com/2012/02/24/pinterest-pins-9-percent-retail/.
\textsuperscript{26.} See id.
\textsuperscript{27.} Wendy Chamberlain, How to Repin an Image on Pinterest, WENDY MOORE (June 6, 2012), http://wendymoore.net/2012/06/how-to-repin-an-image-on-pinterest/.
shopping for clothes. Unsurprisingly, because of those uses, statistics from 2012 show that women make up 72% of Pinterest users and 97% of Pinterest’s Facebook page likes are by women. The website was created in 2008, but did not become popular, or start “trending,” until 2011. As of 2012, Pinterest was the third most visited social media website (only behind Facebook and Twitter) and the fifteenth most visited website in the country. In a Pew Research Center study from August 7 to September 16, 2013, roughly one-third of all female internet users were on Pinterest. This study found that Pinterest usage grew from 15% of all internet users in 2012 to 21% in 2013. In 2013, Pinterest again was the third most used social media website, but this time behind Facebook and LinkedIn.

Because of Pinterest’s meteoric rise in popularity in just a few years—especially considering the numerous blogs and news reports in 2012 about the possible copyright implications of pinning—the phenomenon that is the compulsion to pin is certainly a curious one. As of February 2013, Pinterest had close to fifty million unique


32. Leslie Horn, Pinterest Users Are 97 Percent Female, PC MAGAZINE (Feb. 13, 2012, 12:21 PM), available at http://www.pcmag.com/article2/0,2817,2400187,00.asp; see also Fiona Menzies, Women Are from Pinterest, Men Are from Google+, iMEDIA CONNECTION (Sept. 19, 2012), http://www.imediaconnection.com/content/32712.asp.


37. Id.

monthly users around the world. By January 2014, Pinterest had seventy million users worldwide. Through pinning, does a user implicitly claim to own the image? Or, because of the very nature of Pinterest, are users aware that a pin is not a claim to ownership or personal attribution?

III. Legal Background

A. The Copyright Act of 1976

The Copyright Act governs what types of works are protected, what requirements those works must meet for protection, and what protections are afforded to rightsholders. Generally, the kinds of images, videos, and text posted on Pinterest—such as pins, comments, or descriptions—meet the originality and fixation requirements to be afforded copyright protection. That does not necessarily mean, however, that the user who pinned the image, video, or text owns the copyright. If the user did not create the work he or she pinned, then the copyright could belong to someone else or no one at all if it were in the public domain. Therefore, what an average user pins or re-pins from the Internet could be an intentional or unintentional copyright infringement. This scenario demonstrates the tension between a user and a creator in copyright protection.

B. The Digital Millennium Copyright Act of 1998

Although Pinterest is an invested participant in an otherwise two-player dispute between consumers and producers, Section 512 of the Copyright Act—also known as the Digital Millennium Copyright Act of 1998 ("DMCA")—limits copyright liability for such services. The

42. See 17 U.S.C. § 102(a).
43. "Public domain" is defined broadly as "the status of an invention, creative work, commercial symbol, or any other creation that is not protected by any form of intellectual property," STEPHEN FISHMAN, COPYRIGHT AND THE PUBLIC DOMAIN § 1.01 (Law Press Journal, 11th ed. 2008) (quoting MCCARTHY, 1 TRADEMARKS AND UNFAIR COMPETITION, § 1:30 (2007)).
44. See id.
DMCA grants service providers a safe harbor from liability for potential infringing activity of its users.\textsuperscript{46} Practically, with the given system, it would be nearly impossible for Pinterest to monitor and vet all fifty million unique monthly users and their user-uploaded or user-created content.\textsuperscript{47} Without such legislation, any website that enables user comments—let alone websites like Pinterest that depend on its users for almost all substance—would be liable for any and all infringing content posted.\textsuperscript{48} In its “Copyright” section of its “About” tab, Pinterest provides a summary of the DMCA, although not many Pinterest users are likely to study it to determine whether they are infringing on someone else’s intellectual property rights.\textsuperscript{49}

Specifically, Section 512(c)(1) protects OSPs from liability for infringing content “resid[ing] on a system or network controlled or operated [at the direction of its users]” if the provider: (A) does not have any actual knowledge of infringing activity, is not aware of the circumstances of infringing activity, or upon obtaining knowledge expeditiously removes the material; (B) does not receive a financial benefit from the infringing activity where the service provider “has the right and ability to control such activity”; and (C) acts expeditiously upon a notification of claimed infringement.\textsuperscript{50} OSPs like Pinterest must have a designated agent to handle notices of claimed infringement and an established take-down procedure upon determination of infringement.\textsuperscript{51} Otherwise, without an administrable system in place to promptly remove infringing content, Section 512 will not apply and Pinterest could be held liable for its users’ infringing conduct.\textsuperscript{52}

\begin{itemize}
  \item \textsuperscript{46} \textit{Id.} § 512(k)(1)(A) (defining “service provider” as “an entity offering the transmission, routing, or providing of connections for digital online communications . . . of material of the user’s choosing, without modifications to the content of the material as sent or received”).
  \item \textsuperscript{47} Swisher, \textit{supra} note 39.
  \item \textsuperscript{48} Elizabeth Townsend Gard & Bri Whetstone, \textit{Copyright and Social Media: A Preliminary Case Study of Pinterest}, 31 Miss. C. L. REV. 249, 277–78 (2012).
  \item \textsuperscript{50} 17 U.S.C. § 512(c)(1).
  \item \textsuperscript{51} \textit{Id.} § 512(c)(2).
  \item \textsuperscript{52} \textit{See id.}
\end{itemize}
C. Secondary Liability

If Pinterest users are directly infringing on the rights of copyright owners by pinning protected images without permission, then Pinterest may also be liable for its users' infringement through secondary liability. It is important to note that the underlying use must be infringing in order for secondary liability to be considered.53

Secondary liability can be divided into three categories of indirect infringement: vicarious liability, contributory liability, and intentional inducement liability.54 Although the Copyright Act does not have a provision for secondary liability, the U.S. Supreme Court has recognized that the "absence of such express language... does not preclude the imposition of liability for copyright infringement on certain parties who have not themselves engaged in the infringing activity."55

Pinterest could incur vicarious liability if it had the right and ability to control its users' infringing activity and had a direct financial interest in furthering the infringing activity.56 Pinterest could incur contributory liability as "one who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct" of its users.57 Additionally, under the intentional inducement theory, Pinterest could be liable for its users' infringing activity if it "distributes a device with the clear objective of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement."58

Once courts have established that direct infringement has occurred, OSPs may proffer defenses to secondary liability, such as fair use,59 substantial non-infringing uses,60 and the OSP safe harbor provisions of the DMCA.61 With the introduction of new technology, courts have had to evolve in their analysis of secondary liability.

53. Novartis Pharm. Corp. v. Eon Labs Mfg., Inc., 363 F.3d 1306, 1308 (Fed. Cir. 2004) (stating that when "indirect infringement is at issue, it is well settled that there can be no inducement or contributory infringement absent an underlying direct infringement").
54. Susanna Monseau, Fostering Web 2.0 Innovation: The Role of the Judicial Interpretation of the DMCA Safe Harbor, Secondary Liability and Fair Use, 12 J. MARSHALL REV. INTELL. PROP. L. 70, 92 (2012); see infra Part IV.A.
57. Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1159, 1162 (2d Cir. 1971).
59. See infra Part III.D.
60. Sony Corp., 464 U.S. at 442.
61. See supra Part III.B.
defenses. For example, in 1984, the Supreme Court held that if copying equipment—like Betamax video tape recorders—were “merely . . . capable of substantial non-infringing uses” and could be “used for legitimate, unobjectionable purposes” like time-shifting,\(^6\) then it would not constitute contributory infringement.\(^6\) However, two decades later, the concurring Supreme Court justices in Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd. (“Grokster II”) stated that “[e]ven if the absolute number of non-infringing files copied using the Grokster and StreamCast software\(^6\) is large, it does not follow that the products are therefore put to substantial non-infringing uses and are thus immune from liability.”\(^6\) Therefore, with the constant evolution of technology and the standard for secondary liability, Pinterest’s interests are best served by doing all that they can to stay ahead of the curve, preferably under the umbrella of the DMCA safe harbor.

D. Fair Use Defense

Even in instances where a copyright owner can show that another user appropriated the copyrighted work without permission or attribution, that user may not be liable for infringement if that user makes reasonable fair use of the work. Fair use is a complete defense to copyright infringement if the appropriated work is taken “for purposes such as criticism, comment, news reporting, teaching . . . , scholarship, or research.”\(^6\) The purpose of carving out the fair use doctrine to protect potentially infringing users is to incentivize authors to create more works and to “afford[] considerable ‘latitude for scholarship and comment.’”\(^6\) For example, in *Perfect 10, Inc. v. Amazon.com, Inc.*, the Ninth Circuit found that even though Google’s search engine displayed thumbnails of copyrighted images, Google’s fair use defense defeated the infringement claim because

---

62. Time-shifting is a practice where “an average member of the public uses a [video tape recorder] principally to record a program he cannot view as it is being televised and then watch[es] it . . . at a later time.” *Sony Corp.*, 464 U.S. at 421. In this case, the Supreme Court found time-shifting to be a substantially noninfringing use. *Id.* at 456.
63. *Id.* at 442.
64. Grokster, Ltd. and StreamCast Networks, Inc. “distribute free software products that allow computer users to share electronic files through peer-to-peer networks, so called because users’ computers communicate directly with each other, not through central servers.” *Grokster II*, 545 U.S. at 919–20.
65. *Id.* at 948 (Ginsburg, J., concurring).
the search engine provided a social benefit that required the incorporation of the images.\(^6\)

To determine what kinds of appropriation qualify as fair use, the Copyright Act provides four non-exclusive factors that courts should consider:

(1) the purpose and character of the use, including whether such use is of a commercial nature or for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.\(^6\)

These four factors must be weighed "in light of the purpose of copyright," so that the purpose of copyright is not defeated or frustrated by a rigid application of copyright law.\(^7\) In fact, the legislative history for the fair use statute demonstrates that Congress wanted courts to "be free to adapt the doctrine to particular situations on a case-by-case basis."\(^7\) Since the fair use defense has, for the most part, been applied in cases of direct infringement, whether it applies wholesale to secondary liability is up for debate. However, the relevance to Pinterest is still great because if Pinterest users are not found liable for infringement by virtue of the fair use defense, then Pinterest should not incur secondary liability.

Alternatively, because Pinterest, like Napster, does not currently receive revenue for its services but can later capitalize on its user base, Pinterest and its users do have a commercial interest in how much the users pin.\(^7\) This is especially demonstrated by the fact that as of February 2013, Pinterest was valued at about $2.5 billion.\(^7\) Therefore, would there have to be a different analysis of the fair use doctrine as it applies to secondary liability since Pinterest clearly has a commercial interest?

---

68. Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1165 (9th Cir. 2007).
73. Swisher, supra note 39.
E. Proposed Legislation

In an attempt to curb the rampant and blatant online piracy of intellectual property, the United States House of Representatives and Senate each proposed separate legislation in 2011: the Stop Online Piracy Act ("SOPA") and the Protect Intellectual Property Act ("PIPA"), respectively. SOPA focused on regulating "search engines like Google and Yahoo, payment processors, ad servers, [online service providers], and other online services." PIPA, although focused on domain name providers and ad servers, is different from SOPA in that it did not target internet service providers. Since Pinterest can be considered an internet service provider, PIPA is not as relevant as SOPA in this note's analysis of Pinterest's copyright implications.

Both bills were critically received in December 2011 and January 2012, when many of the prominent technology players—including the founders of Twitter, Google, YouTube, and Wikipedia—wrote an open letter to lawmakers or instituted blackouts of their websites in protest. For apparent reasons, the virtual line in the sand was drawn, with media companies, the Motion Picture Association of America ("MPAA"), the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), and the U.S. Chamber of Commerce supporting the bills, and free speech advocates and the aforementioned technology leaders, among others, going against the bills. Though temporarily tabled by the strong public outcry against the bills, this battle between the entertainment industry and the internet community could have a significant impact on Pinterest if resurrected.

One of the main concerns with SOPA was that it departed from the DMCA's safe harbor for internet service providers. SOPA

78. Id.
79. Copyright and Internet Piracy, supra note 77.
81. Monseau, supra note 54, at 85.
would allow copyright owners to proceed against presumably infringing websites like Pinterest without any "judicial intervention and allow the government to prevent search engines from pointing to such sites." Allowing the government to censor potentially infringing content would render websites like Pinterest, which focus on "user-found" content instead of user-generated content, almost obsolete.

IV. Analysis

Pinterest, like most other social media websites, has two types of users: (1) "safe users" who pin their own images, images from which they have received prior permission or license from the content owner, or images from the public domain; and (2) "infringing users" who pin others' content without permission or attribution. Since copyright is a strict liability statute only for direct infringers, whether the infringing users do so intentionally or unknowingly has no bearing on whether Pinterest will incur indirect liability. Since the emphasis of this note is Pinterest's copyright implications, direct liability will not be considered. As discussed above, Pinterest would only incur

82. Id.

83. Craig C. Carpenter, Copyright Infringement and the Second Generation of Social Media: Why Pinterest Users Should Be Protected from Copyright Infringement by the Fair Use Defense, 16 J. INTERNET L. 1, 10 (2013).

84. Michelle Sherman, Do Not Mistake Internet Sharing for Having a Copyright License, 17(8) CYBERSPACE LAW. 6 (Sept. 2012). Besides fair use, other defenses to direct infringement include:

(1) independent creation not based on the original work; (2) a de minimis part of a copyrighted work was used so there is no infringement at all; (3) the copyright registration was defective; (4) the person making the claim cannot show he is the holder of the copyright; (5) the copyright is defective since the work is not original; (6) it is a derivative work based on the factual aspects of the original work; (7) the work was in the public domain; (8) the claim is barred by the statute of limitations; and (9) the copyright was abandoned.

85. See, e.g., Cartoon Network LP, LLP v. CSC Holdings, Inc., 536 F.3d 121, 130 (2d Cir. 2008) (quoting Religious Tech. Ctr. v. Netcom On-Line Commc’n Serv., Inc., 907 F. Supp. 1361, 1370 (N.D. Cal. 1995)) (stating that in contrast to direct infringers, those who may incur secondary liability “should still [have] some element of volition or causation”); CoStar Grp., Inc. v. LoopNet, Inc., 373 F.3d 544, 551 (4th Cir. 2004) (“Agreeing with the analysis in Netcom, we hold the automatic copying, storage, and transmission of copyrighted materials, when instigated by others, does not render an [OSP] strictly liable for copyright infringement . . . . An ISP, however, can become liable indirectly upon a showing of additional involvement sufficient to establish a contributory or vicarious violation of the Act.”).
secondary liability because the DMCA generally protects OSPs from direct liability.66

Beginning this analysis, the Ninth Circuit issued three relevant decisions: A&M Records, Inc. v. Napster, Inc.,87 Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.,88 and Perfect 10, Inc. v. Amazon.com, Inc.89 In Napster, the Ninth Circuit held Napster, a music file-sharing service, contributorily liable because it had actual and constructive knowledge of direct infringement, it could block infringers' access to its system, and it also failed to remove infringing files.90 The Ninth Circuit also held Napster vicariously liable because it received a financial benefit and possessed the right and ability to block user access to its services.91 That is an ability which Pinterest also reserves.92

Conversely, the Ninth Circuit in Grokster I did not hold Grokster, a music file-sharing service, contributorily or vicariously liable under the traditional definitions because it did not have a central server or system to catalogue the files, thereby lacking ability to supervise users’ infringement.93 Instead, the Supreme Court, on certiorari, held that “one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps to foster infringement, is liable for the resulting acts of infringement by third parties.”94 Under the “intentional inducement” theory, the Court found Grokster indirectly liable for inducement because the “inducement rule, instead, premises liability on purposeful, culpable expression and conduct . . . .”95

89. Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1165 (9th Cir. 2007).
90. Napster, 239 F.3d at 1021-22.
91. Id. at 1023.
92. Section six of Pinterest’s recent Terms of Service, titled “Termination,” states that it “reserve[s] the right to refuse service to anyone.” Terms of Service, PINTEREST, http://about.pinterest.com/terms/ (last visited Mar. 3, 2013). Additionally, Pinterest could very well capitalize on its user base, as Napster was found to have been able to, as evidenced by Pinterest’s $2.5 billion valuation. See Swisher, supra note 39.
93. Grokster I, 380 F.3d at 1165.
95. Id. at 937.
Commentators have referred to Pinterest as "the new Napster," as well as claimed that 99% of pins are infringing and violate Pinterest's Terms of Service. Social media platforms like Facebook and Instagram encourage the posting of user-generated photographs, which is likely a noninfringing use, whereas Pinterest focuses on the posting of user-found images, which is more likely to violate others' copyrights.

Additionally, Pinterest has a business model that "is based almost entirely on using images without permission," similar to Grokster's use of music files. If Pinterest follows suit, and if a court applies the Grokster II analysis to Pinterest, then Pinterest could also lose its safe harbor protections under the DMCA, thereby making it highly likely that Pinterest will be shut down like Napster and Grokster. However, since every type of content and content creator is different, the analysis pertaining to copyright infringement of music may not neatly carry over to copyright infringement of images. What can be extrapolated from the Betamax, Napster, and Grokster cases is that the same argument for copying machines of video tapes does not neatly transfer to digital file-sharing. Even though videotape recorders, digital file-sharing softwares, and digital pinboards are all capable of facilitating dual uses, this fact alone does not preclude or shield Pinterest from secondary liability. Secondary liability

---

97. Carpenter, supra note 83.
98. See Jeff John Roberts, Pinterest: Is It a Facebook or a Grokster?, PAIDCONTENT (Feb. 11, 2012, 1:43 AM), http://paidcontent.org/2012/02/11/419-pinterest-is-it-a-facebook-or-a-grokster/.
99. Id.
100. Id.
102. See supra Part III.C.
103. Dual-use technology is defined as "technologies that are capable of infringing and noninfringing uses." Barak Y. Orbach, Indirect Free Riding on the Wheels of Commerce: Dual-Use Technologies and Copyright Liability, 57 EMORY L.J. 409, 409 (2008).
104. Grokster II, 545 U.S. 913, 949 (2005) (Breyer, J., concurring) (stating that "distributor of a dual-use technology may be liable for the infringing activities of third parties where he or she actively seeks to advance the infringement").
inevitably will encapsulate both legal and illegal uses because it is feasible for any technology to facilitate dual uses.\textsuperscript{105}

In looking to potential copyright infringement of images in \textit{Perfect 10, Inc.}, the Ninth Circuit held that Google was not vicariously liable because it did not possess the necessary technology to properly filter infringing thumbnails of copyrighted images and therefore could not control the infringement.\textsuperscript{106} Moreover, because Google only displayed thumbnails of the copyrighted images and merely framed in-line linked full-size images\textsuperscript{107} that were housed by the linked website, Google itself did not directly infringe the distribution rights of those copyright holders.\textsuperscript{108}

In addition to direct and indirect infringement liability, the Ninth Circuit also looked at the fair use defense.\textsuperscript{109} The Ninth Circuit concluded that the “significantly transformative nature of Google’s search engine, particularly in light of its public benefit, outweighs Google’s superseding and commercial uses of the thumbnails in this case.”\textsuperscript{110} A court’s fair use analysis should be flexible in light of new circumstances, such as periods of rapid technological change.\textsuperscript{111}

The fair use defense provides for an “‘equitable rule of reason’ to serve as a salve to the strict copyright regime.”\textsuperscript{112} It “allows third parties to develop and further enhance earlier copyrighted words without otherwise having to seek permission from the copyright

\begin{flushleft}
105. However, it is important to note that even though a technology may allow dual uses, both users and those who may incur secondary liability are only liable for the uses that are infringing.
106. Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1174 (9th Cir. 2007).
107. “In-line linking” is when the operator, here Google, does not store the images on its own computers, but instead displays the image as a link to the website hosting the image, which is what appears on a user’s computer screen. \textit{Id.} at 1160.
108. \textit{Id.} at 1162.
109. \textit{Id.} at 1163.
110. \textit{Id.} at 1166, 1168. The court reasoned:

Google has put Perfect 10’s thumbnail images (along with millions of other thumbnail images) to a use fundamentally different than the use intended by Perfect 10. In doing so, Google has provided a significant benefit to the public. Weighing this significant transformative use . . . we conclude that Google’s use of Perfect 10’s thumbnails is fair use.

\textit{Id.}
111. \textit{Id.} (citations omitted).
\end{flushleft}
owner." However, in translating fair use to a digital age where secondary liability is not at a dance hall or flea market, the application becomes complicated and somewhat inadequate. Even though fair use applies to protect those like Pinterest that may incur indirect liability, Pinterest may have to look for other defenses as well since courts have applied fair use unpredictably.

Pinterest's meteoric growth in popularity places Pinterest in uncharted territory. In the event that copyright holders sue Pinterest for infringement, courts should apply the fair use defense liberally to protect Pinterest. Here, Pinterest and Google have some similarities. For example, they both provide inline thumbnail links that take users from the OSP to the website that actually hosts the image. Both Pinterest and Google have a commercial interest in making potentially infringing images available to users, and both have infringing and noninfringing uses, but neither Pinterest nor Google currently possesses the technology to filter out infringing images. However, the Seventh Circuit stated:

Even when there are non-infringing uses of an Internet file-sharing service, . . . if the infringing uses are substantial then to avoid liability as a contributory infringer the provider of the service must show that it would have been disproportionately

114. See generally Dreamland Ball Room, Inc. v. Shapiro, Bernstein & Co., 36 F.2d 354 (7th Cir. 1929) (holding that dance hall operators are indirectly liable for the infringing performances in their venues).
115. See generally Fonovisa, Inc. v. Cherry Auction, 76 F.3d 259 (9th Cir. 1996) (holding the auction house contributorily liable for selling infringing sound recordings because the vendor knew about the infringing activity and actively participated in the direct infringement).
117. Id.
118. Id.
119. Rodriguez, supra note 38.
120. See Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1166 (9th Cir. 2007).
121. See id.
122. See id. at 1162; see also Neuburger, supra note 96.
costly for him to eliminate or at least reduce the substantially infringing uses.\textsuperscript{124}

Therefore, both Google and Pinterest should not be required to implement such filtering software if doing so would be disproportionately costly.\textsuperscript{125}

One main difference between the two OSPs is that users have to proactively upload images onto Pinterest whereas Google includes practically all publicly posted online images. But Pinterest will likely follow the same fate as Google as long as Pinterest is considered to constitute transformative use.\textsuperscript{126} Then, as a factual consideration, the issue becomes: how transformative is putting an image on a user-curated pinboard?

V. Proposal

Pinterest may be able to operate, as it already does, with the hopes that the DMCA will shield it from infringement liability, but it does so by ignoring the interests of rightsholders in material featured on its website without attribution or permission. However, once law catches up with technology, Pinterest will no longer be able to rest on the claim that it cannot control its users. With a vision for longevity, as opposed to being a trending fad, Pinterest's interests would be better served by taking affirmative action to protect content owners instead of waiting for times to change.

Currently, there are general methods of protecting online images from misappropriation.\textsuperscript{127} For example, photographers and artists can add watermarks, implement “No Right Click” plug-ins, or register their work through nonprofit copyright licensing websites like Creative Commons.\textsuperscript{128} Also, websites like Digimarc.com have services that allow content owners to embed invisible watermarks in the image that “carries a unique ID and can link to contact information . . . for

\textsuperscript{124} In re Aimster Copyright Litig., 334 F.3d 643, 653 (7th Cir. 2003) (finding that Aimster “failed to make that showing too, by failing to present evidence that the provision of the encryption capability effective against the service provider itself added important value to the service or saved significant cost”).

\textsuperscript{125} See id.

\textsuperscript{126} See Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1166, 1168 (9th Cir. 2007).


\textsuperscript{128} Id.
viewers interested in learning more about you or purchasing your artwork.” Additionally, copyright owners can file a notice of claimed infringement (“NOCI”) with an OSP, like Pinterest, so the OSP can remove such content from its website. However, the issue with all of these solutions is that the burden falls squarely on the copyright owner to police infringements of his or her own work. With such rampant copyright infringement on OSPs like Pinterest, these OSPs are best positioned as “gatekeepers” to uphold the constitutional requirement of promoting the progress of science and useful arts. Although OSPs like Pinterest have only few market incentives to serve as gatekeepers, it is important that they take action to protect copyrighted images before Pinterest becomes the next Napster or Grokster.

Currently, Pinterest implements a “No Pin” button that does not allow visitors to pin images from that website. But again, this tactic puts the burden on rightsholders and is definitely not foolproof. Pinterest users can still circumvent the opt-out meta tag by downloading the image and uploading it themselves. Unfortunately, the act of downloading and uploading an image creates far more problems because subsequent Pinterest users cannot link back to the original content owner; the image appears as if the infringing uploader is the owner of the image. This problem is further exacerbated because so much material on the Internet does not cite back to a proper source. Therefore, in moving forward, by

129. Id.
131. See Neuburger, supra note 96.
132. “Gatekeeping” is when “an actor monitor[s] the quality of information, products, or services.” Peter B. Oh, Gatekeeping, 29 J. CORP. L. 735, 735 (2004).
136. Help Center: Preventing Pins from Websites, PINTEREST (Mar. 6, 2012), https://help.pinterest.com/entries/21101932-what-if-i-don-t-want-images-from-my-site-to-be-pinned (providing opt-out meta tag code that can be added to a content owner’s website to prevent Pinterest users from pinning images from that website onto Pinterest).
138. Id.
139. The problem of improper attribution is often compounded if the pinned image was from another blog or social media platform like Tumblr, where the original source is
balancing the interests of the sharing public and the copyright holders, the sharing public should not be given carte blanche to post infringing content as they please. But more importantly, Pinterest can take cues from OSPs like YouTube and Google to develop a filter to proactively weed out infringing pins.

OSPs are not required to implement technological measures that they do not currently possess or would be unduly burdensome to create. But with technology evolving as quickly as it does, Pinterest will have no excuse for not implementing methods of filtering misappropriated works, as discussed below.

In considering YouTube, the Second Circuit held that courts may apply the willful blindness doctrine to demonstrate that an OSP had knowledge or was aware of specific instances of infringement, thereby eliminating the protection of the DMCA's safe harbor. However, this Second Circuit decision is more favorable to Pinterest than the Ninth Circuit opinions discussed above because the Second Circuit stated that maintaining a "red flag" system as required by the DMCA is not enough to trigger the actual knowledge disqualification from safe harbor protections. Therefore, Pinterest cannot be disqualified from the DMCA merely because it became aware of infringement through a NOCI.

Conversely, a German court in Hamburg held that YouTube must install new software to filter the uploading of misappropriated videos. Even though YouTube currently has a "red flag" system, where YouTube users can "flag" infringing activity, the court in Hamburg held that YouTube must set up "a preemptive system wherein users cannot upload videos when using certain keywords, i.e. an artist's name or song title." Here, Pinterest could set up a similar

---


140. See Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1175 (9th Cir. 2007).
141. Viacom Int'l, Inc. v. YouTube, Inc., 676 F.3d 19, 35 (2d Cir. 2012) ("Viacom II").
142. Viacom Int'l, Inc. v. YouTube, Inc., 718 F. Supp. 2d 514, 520 (S.D.N.Y. 2010) ("Viacom II") aff'd in part, vacated in part, remanded sub nom. Viacom II, 676 F.3d 19 (2d Cir. 2012) ("[I]f the [OSP] becomes aware of a 'red flag' from which infringing activity is apparent, it will lose the limitation of liability if it takes no action.").
143. Viacom II, 676 F.3d at 30.
144. See id.
146. Id.
preemptive filtering system to prevent the uploading of misappropriated copyrighted works.  

YouTube’s parent company, Google, applies a different kind of filter. Instead of filtering misappropriated images, Google filters out pornography. This particular program, called “SafeSearch,” has been criticized for excluding innocent web pages from search results, as well as the targeted pornography. A recent study of SafeSearch from Harvard Law School stated that “accurate internet filtering is an extraordinarily difficult task still well beyond the reach of current algorithms and methods.” This study, however, was conducted about ten years ago, and technology has advanced to a point where such an internet filtering system is now feasible. Like SafeSearch, Pinterest could develop an algorithm or system, such as a type of image-recognition filter software, to prevent the uploading or re-linking of protected images. It may be a higher cost to Pinterest, and it may require engineering that is more advanced than what is currently available, but that should only further motivate Pinterest to develop a system to make its website safer from copyright infringement.

Whether this affirmative step to police for infringing images should be extended to all social media OSPs wholesale is a discussion for another time. Since smaller and less successful start-up OSPs will likely not be able to institute such a policing system, the burden of policing should not fall to all OSPs.

VI. Conclusion

One misappropriated photograph may not seem like a problem, especially when a user’s intention is as innocuous as inspiration for a wedding, but it becomes a significant problem when it is compounded by millions of pins by millions of users. Although traditional
pinboards of magazine cut-outs would not trigger copyright infringement, when an image is disseminated to thousands, if not millions, of people digitally, then that kind of use is no longer private and requires permission or a license. Section 512 of the DMCA may protect Pinterest from secondary liability, as shown by Perfect 10, but Pinterest also has a business incentive to protect its users. By developing a system that can prevent such blatant copyright violations, Pinterest will ultimately protect itself in the long run.
Recent and Notable Articles

Articles

If It Looks Like a Duck ... Traditional Public Forum Status of Open Areas on Public University Campuses
Nathan W. Kellum, CLQ 33

Marbury in Mexico: Judicial Review's Precocious Southern Migration
Matthew C. Mirow, CLQ 35

Morse v. Frederick and the Regulation of Student Cyberspeech
Brannon P. Denning and Molly C. Taylor, CLQ 35

Notes

Has the Mighty Casey Struck Out? Societal Reliance on the Supreme Court's Modern Stare Decisis Analysis
Tom Hardy, CLQ 34

Gang Injunctions Under Heat from Equal Protection: Selective Enforcement as a Way to Defeat Discrimination
Cathy Wang, CLQ 35
Articles
- Roger W. Kirby

Paying for Daniel Webster: Critiquing the Contract Model of Advancement of Legal Fees in Criminal Proceedings
- Regina Robson

Towards a Stakeholder-Shareholder Theory of Corporate Governance: A Comparative Analysis
- Katherine V. Jackson

Comment
An Unstoppable Force: The Offshore World in a Modern Global Economy
- Michael J. Burns & James McConvill

Student Notes
*Webcaster II*: A Case Study of Business to Business Rate Setting by Formal Rulemaking
- Andrew D. Stephenson

Protecting Title in Continental Europe and the United States – Restriction of a Market
- Peter Soskin

Article Submissions
Submissions may be in Microsoft Word format or printed double-spaced, with footnotes at the end of the article. Citations should conform to The Bluebook: A Uniform System of Citation (19th ed. 2010). Please send articles by regular mail (see address below) or by email to hbljsbms@uchastings.edu.

Subscriptions
For subscription information, please contact:

O'Brien Center for Scholarly Publications
University of California, Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102
Email: scholarp@uchastings.edu
Single Issue: $35.00; One-Year Subscription: $45.00
Recent Awards:

Transforming Accountability: A Proposal for Reconsidering How Human Rights Obligations Are Applied to Private Military Security Firms ...................... Lauren Groth

Winner, 2013 American Society of International Law’s Francis Lieber Prize on the Law of Armed Conflict

Out Now: Volume 36, No. 2 — SUMMER 2013

Symposium: Successes, Failures, and Remaining Issues of the Justice System Reform in Japan

Enforcing Online Arbitration Agreements for Cross-Border Consumer Small Claims in China and the United States .................................................. Phillip Johnson

Recent Articles and Commentary:

Redemption Deferred: Military Commissions in the War on Terror and the Charge of Providing Material Support for Terrorism ................................. Major Dana Hollywood

The Nonjusticiability of Palestine: Human Rights Litigation and the (Mis)application of the Political Question Doctrine................................. Gwynne Skinner

Litigating “Palestine” Before International Courts and Tribunals: The Prospects of Success and Perils of Failure ........................................ Victor Kattan

Please send subscription requests to:
HICLR, UC HASTINGS COLLEGE OF THE LAW
200 McAllister Street
San Francisco, CA 94102-4978 USA

Please ☐ enter or ☐ renew my subscription for _____ year(s) for the HASTINGS INTERNATIONAL AND COMPARATIVE LAW REVIEW
Subscriptions are $43.00 per year (US $53.00 foreign). Single issues are $33.00 each (US $38.00 foreign).
Enclosed is a check for US$ ______________, ☐ Please bill me. ☐
Name: ________________________________
Address: ________________________________
City: __________________ State/Province: ________________
ZIP Code: ________________ Country: ________________
RECENT AND FORTHCOMING ARTICLES

RECENT: Vol. 65, No. 1

Juvenile Pariahs
Amy E. Halbrook

Captive Markets
Leah A. Plunkett

The Antitrust Implications of Filing "Sham" Citizen Petitions with the FDA
Matthew Avery, William Newsom, and Brian Hahn

Evaluating Flexibility in International Patent Law
Sarah R. Wasserman Rajec

From Sex for Pleasure to Sex for Parenthood: How the Law Manufactures Mothers
Beth A. Burkstrand-Reid

FORTHCOMING: Vol. 65, No. 3

Throwing Dirt on Doctor Frankenstein's Grave: Access to Experimental Treatments at the End of Life
Michael J. Malinowski

The Forgotten Right to Be Secure
Luke M. Milligan

Empirically-Derived Compelling State Interests in Affirmative Action Jurisprudence
Meera E. Deo

Independent Yet Captured: Compensation Committee Independence After Dodd Frank
Bernice Grant

Language disenfranchisement in Juries: A Call for Constitutional Remediation
Jasmine Gonzales Rose
An Invitation to Subscribe

The Hastings Race and Poverty Law Journal is committed to promoting and inspiring discourse in the legal community regarding issues of race, poverty, social justice, and the law. This Journal is committed to addressing disparities in the legal system. We will create an avenue for compelling dialogue on the subject of the growing marginalization of racial minorities and the economically disadvantaged. It is our hope that the legal theories addressed in this Journal will prove useful in remedying the structural inequalities facing our communities. The Hastings Race and Poverty Law Journal is published twice per year: Fall and Spring.

Subscriptions

☐ $45.00 U.S. per year
☐ $55.00 U.S. per year Foreign (U.S. funds only)
☐ $35.00 single issue U.S.; $40.00 Foreign: Volume ___ Number ___

☐ Check or Money Order enclosed
☐ Bill Me

Name: ____________________________________________________________
Dept./Institution: __________________________________________________
Address: _________________________________________________________
City: __________________________ State ______________________________
ZIP Code: __________________________ Country: ______________________

Hastings Race & Poverty Law Journal
University of California
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102-4978
(415) 581-8953
Fax: (415) 581-8934
e-mail: hrplj@uchastings.edu
w3.uchastings.edu/hrplj/

An Invitation to Your Library

Please recommend Hastings Race and Poverty Law Journal to your librarian. It is important that your librarian knows which materials are useful to you and your colleagues. You may also donate your used copies of Hastings Race & Poverty Law Journal to your library.
RECOGNITION OF THE IMPORTANCE OF THE RELATIONSHIP BETWEEN SCIENCE AND TECHNOLOGY AND THE LAW, AND THE BENEFITS TO BE DERIVED FROM EXPLORING THE DEVELOPMENT OF THIS AREA OF LAW, has prompted the genesis of the Hastings Science & Technology Law Journal. Among the diverse subjects to which the Journal will address itself are the legal issues concerning science, scientific methodology, technology, biotechnology, bioethics, patents, trade secrets, and health.

Our goal is twofold: first, to provide legal practitioners, judges, policy makers, scientists and engineers with intellectually stimulating and scholarly material concerning current issues in the field; and second, to introduce students to the array of unique issues presented in the nexus of law, science and technology.

WE INVITE SUBSCRIPTIONS AND SUBMISSIONS OF ARTICLES, COMMENTARIES, AND PAPERS.

Hastings Science and Technology Law Journal
UC Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102-4978
stlj@uchastings.edu

Subscription price: $45.00 per year (US $55.00 foreign)
Single issue price: $35.00 each (US $40.00 foreign)
Hastings West-Northwest Journal of Environmental Law and Policy's

ANTHOLOGY

THE VERY BEST IN ENVIRONMENTAL LAW SCHOLARSHIP FROM WEST-NORTHWEST
VOLUME I THROUGH VOLUME 13

INCLUDING:

Understanding Transfers: Community Rights and the Privatization of Water, article by Joseph Sax

Natural Community Conservation Planning: A Targeted Approach to Endangered Species Conservation, article by Steve Johnson

The Federal Role in Managing the Nation's Groundwater, article by John D. Leshy

The Shape of Things to Come: A Model Water Transfer Act for California, article by Brian E. Gray

Water Markets and the Cost of Improving Water Quality in the San Francisco Bay/Delta Estuary, article by David Suding, David Zilbermann, and Neal MacDougall

Global Climate Change: Water Supply Risks and Water Management Opportunities, article by Brian E. Gray

Climate Change and the Law of the River- A Southern Nevada Perspective, article by Patricia Mulroy

TO ORDER A COPY OF WEST-NORTHWEST'S "GREATEST HITS"
AT THE SPECIAL, LIMITED-TIME-ONLY PRICE OF $15.00
PLEASE SEND YOUR NAME AND MAILING ADDRESS TO SCHOLARP@UCHASTINGS.EDU
From WNW Volume 13, Number 1:
In the Heat of the Law, It's Not Just Steam: Geothermal Resources and the Impacts on Thermophile Biodiversity
— Donald J. Kochan and Tiffany Grant

From WNW Volume 12, Number 1:
Coast Salish Property Law: An Alternative Paradigm for Environmental Relationships
— Russel Lawrence Barsh

From WNW Volume 11, Number 2:
The Plain "Dam!" Language of Fish & Game Code Section 5937: How California's Clearest Statute Has Been Diverted From Its Legislative Mandate — Robert Firpo

From WNW Volume 11, Number 1:
The Federal Role in Managing the Nation's Groundwater
— John D. Leshy

From WNW Volume 10, Number 2:
Dividing the Waters: The California Experience — Brian E. Gray
A Brief Examination of the History of the Persistent Debate About Limits to Western Growth — Dan Tarlock

Subscription Rates
Two issues per year — US funds only
Annual: $45 Domestic
$55 Foreign

Single issue: $35, U.S.; $40 Foreign
Article copy: $35, U.S.; $40 Foreign
An Invitation to Subscribe

Founded in 1989, Hastings Women's Law Journal is committed to advancing feminist perspectives and promoting scholarship in issues of concern common to all women, while recognizing the unique concerns of communities that traditionally have been denied a voice, such as women of under-represented populations. Published twice per year: Winter and Summer.

Subscriptions:

☐ $45.00 U.S.
☐ $50.00 Foreign (US funds only)
☐ $35.00 Single issue U.S.; $40.00 Foreign: Volume __ Number __

☐ Check or Money Order Enclosed
☐ Bill Me

Name ____________________________________________________________
Dept./Institution _______________________________________________
Street Address ___________________________________________________
City ___________________________ State ________________
ZIP ________________ Country ________________________________

Hastings Women's Law Journal
University of California
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102
Telephone: 415-581-8968
FAX: 415-581-8973
http://w3.uchastings.edu/wlj/
email: hwlj@uchastings.edu

An Invitation to Your Library

Please recommend Hastings Women's Law Journal to your librarian. It is important that your librarian knows which materials are useful to you and your colleagues. And you may donate your used copies of Hastings Women’s Law Journal to your Library.
Forgive Us Our Press Passes
selected works by Daniel Schorr

Prolegomenon by William Safire
and Introductions by Willian Schneider and Geoffrey Cowan

This collection of essays, speeches and ruminations spans 25 years of Daniel’s Schorr’s remarkable half-century career. He is in a unique position — from decades of covering the most influential stories of our lifetime — to provide insight in the evolution of modern American journalism as well as a rare look at himself, the man behind the news story, one of modern journalism’s founding fathers.

Vietnam and Watergate, the Cold War, national and international politics — literally the biggest stories of our times — has been Daniel Schorr’s “beat.” Forgive Us Our Press Passes contains Daniel Schorr’s reflections on the role of media in society, the effects of television on the development of the journalistic craft, privacy and secrecy, the First Amendment, and government suppression of information.

To order, please send this form to:

O’Brien Center for Scholarly Publications
University of California
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102-4978

Name: ____________________________________________

Address: __________________________________________

City ______________________ State _______ ZIP _______

Paperbound, US$14.95 Quantity: _______ Total: ____________

Enclosed is my check in the amount of $ ________________________________
(Must be US funds drawn on a US Bank)

For credit card orders, https://mercury.uchastings.edu/secured/pubs-commerce/cgi-bin/commerce.cgi?listcategories
Visa, MasterCard, American Express and Discover

Edited by Matthew Passmore and Chip Robertson.
Chief Justice Traynor of the California Supreme Court was acclaimed by scholars everywhere as eminently deserving the American Bar Association's gold medal award, which described him as "one of the great judges in United States history." Justice Traynor left a legacy of papers and memorabilia to Hastings College of the Law as a nucleus for new scholarship, and the first public collection of Traynor material opened at Hastings in October 1987.

A great teacher as well as a great jurist, Justice Traynor wrote a number of essays on law and the judicial process. Hastings Law Journal takes pride in presenting this special collection of Traynor writings.

Five hundred numbered hardbound copies of this sampling of Traynor writings are available, as well as softbound copies. To order your copies please mail the following form to:

O'Brien Center for Scholarly Publications
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102-4978
Phone: (415) 581-8950
FAX: (415) 581-8994

Name __________________________________________________________
Address _______________________________________________________

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Zip</th>
</tr>
</thead>
</table>

Number of copies requested:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Numbered hardbound</td>
<td>- -</td>
<td>at $30.00 each</td>
</tr>
<tr>
<td>Softbound</td>
<td>- -</td>
<td>at $18.00 each</td>
</tr>
</tbody>
</table>

Enclosed is my check in the amount of $ _ _ _
Hastings College of the Law:
The First Century
1878 - 1978

by Thomas Garden Barnes

This centennial celebration of Hastings College of the Law, published in 1978 at the 100th anniversary of the college, tracing the development of an extraordinary institution, born in pre-Gold Rush San Francisco,. It is the story of a maverick law school and of the distinctive personalities who have driven its long and colorful history.

Hardcover, US$10.00 including shipping and handling.
To order: https://mercury.uchastings.edu/secured/pubs-commerce/cgi-bin/commerce.cgi?listcategories

For more information:
scholarp@uchastings.edu
Recent Articles from Volume 36, Issue 1:

SAYS WHO?: THE FUTILITY OF AUTHENTICATING ART IN THE COURTHROOM
by Valerie Medelyan

POLITICAL BROADCASTING FAIRNESS IN THE TWENTY-FIRST CENTURY: PUTTING CANDIDATES AND THE PUBLIC ON EQUAL FIRST AMENDMENT FOOTING
by Mark R. Arbuckle, Ph.D.

by Yeojin Kim

REREADING A CANONICAL COPYRIGHT CASE: THE NONEXISTENT RIGHT TO HOARD IN FOX FILM CORP. V. DOYAL
by Shane D. Valenzi

For subscriptions and reprints please contact:
O'Brien Center for Scholarly Publication
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102-4978
Telephone: (415) 581-8952   Fax (415) 581-8993
Single issues: $33.00 (US $38.00 Foreign)
One year subscription: $43.00 (US $53.00 Foreign)
***