

Facebook flap over fine print has good online reasons

The uproar created last month by Facebook, when it changed but then quickly reversed its position about ownership of posted user content, offered valuable insight into the realities of online activity and the importance of terms of use agreements.

Facebook, which began as nothing more than a college directory, now has 175 million users, sharing not only faces but personal facts, new-baby clips, wild party videos and anything else that can be recorded.

Members must agree to terms of use before participating. Initially, this agreement provided that Facebook had a license to use and reproduce user-posted material. But last month, Facebook changed the terms to provide that, if a user closed their account, the license would nonetheless continue—meaning, in effect, that Facebook could use the content forever without further consent.

Overnight, Facebook was besieged by a lynch mob of bloggers and users attacking the new policy as an affront to privacy and an attempt to wrest control of users' personal property. Facebook quickly reversed its policy and returned to the original terms.

Putting aside the hysteria, the event has offered some worthwhile lessons about how personal rights are viewed, and how legal rights are created, in the online world.

Legal Bytes



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First, as the original Facebook agreement acknowledged, U.S. copyright laws still apply in cyberspace. Most tangible content, whether text, graphics, music or otherwise, is protected by the creator of the work from unauthorized reproduction unless specific permission is granted. Hence, Facebook was well counseled to ensure in the terms of use agreement that the user, in exchange for being allowed to use the service, granted Facebook a license to use the content for its own purposes.

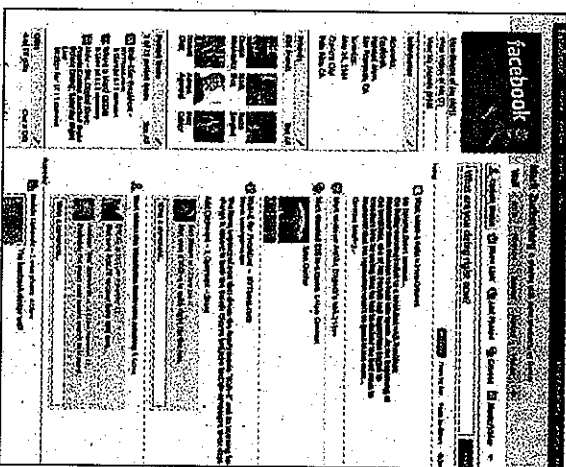
Any business operating a website needs to keep in mind that even though online content can be reproduced with a few keystrokes, the protections afforded under copyright law still apply. Unauthorized downloading or transmittal of content can give rise to exposure for infringement and other copyright claims.

Likewise, the importance of terms of use and privacy policies is paramount. Most courts will enforce an online agreement presented to a user so long as the user adequately manifests consent to the terms.

This holds true for any business that conducts activity on the web. It is an absolute necessity that websites in which goods or services are sold, or information provided, require users to agree to terms of use before proceeding, and that the website place the user on notice of the company's policy and protective measures with regard to the use and treatment of personal or private information.

In Facebook's case, it was the sudden and drastic change in this policy, not just the fact of requiring that users accept an agreement that enraged its user base.

But by far the most perplexing question in this debate is not whether Facebook got



Facebook responded to criticism of its user license by changing it back.

it right or wrong in its policy decisions, or how they managed to spin their flip flop to users. Rather, it is how the online posting of personal information is still viewed as an activity in which the poster retains authority over use of that information.

Here's where some inherent contradictions lie. Users know that the function, if not sole purpose, of Facebook, MySpace and the like is to provide a global format for millions of users, all anonymous, to share personal, often private, information about themselves. The information isn't exchanged face to face but in an environment where, nanoseconds after it is posted, it can be forwarded, reproduced, stored, manipulated and disclosed anywhere in the world.

Some commentators legitimately wonder how anyone who freely posts information about themselves on this platform could cling to the notion that they are maintaining significant control, or any control, over how the information is used. Even if Facebook did another about-face and agreed to never use posted member content for any purpose ever, this would by no means prevent all unauthorized use from taking place, nor would it prevent Facebook's advertisers and sponsors from plomping on to this mother lode of valuable demographic data for their own agenda. It simply can't be done.

Moreover, while most website privacy policies provide assurances about security measures that the host employs to prevent unauthorized access and use of data, it's no secret that the best cyber-saboteurs will forever hold the upper hand against the best anti-invasion technology.

That's why most privacy policies never provide absolute guarantees of safety, but only state that the host uses commercially reasonable steps to afford protection. It's no different than the bank, which provides a vault for safekeeping but would never guarantee the room is 100 percent impregnable.

Businesses that operate in an online world, selling goods or services over the Internet, need to constantly reassess whether they embrace these policies by ensuring that adequate language appears in terms of use agreements and privacy policies to avoid legal exposure, and by using utmost caution in exchanging information.

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