

**ASSOCIATION
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PRESSES**



Social Media Reproduction

Best Practices for Academic Books

A supplement to the [AUPresses Permissions FAQ](#)

Prepared by the 2021-22 Intellectual Property & Copyright Committee

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Introduction

Fair use cannot be universally applied to textual Tweets and Facebook posts, or to graphics, images, memes, or other visual content that may appear on a social media platform. There are cases where it can be used but all such uses must be evaluated on a case-by-case basis. To help publishers set guidelines for such evaluation, this Intellectual Property & Copyright (IP & C) Committee guide evaluates the four Fair Use factors in relationship to social media before suggesting best practices for social media reproduction. This section looks to the Terms and Conditions of Twitter, Facebook, and Instagram (current at time of writing) as the basis for best practices for evaluating social media material. It is our hope that this guide will be useful for authors and publishers.

As a disclaimer, please note that there is always some risk inherent in reprinting third-party materials, and the application of fair use to social media is an indefinite and evolving area of case law. While it contains some best practices, this guide does not offer legal advice. If a matter is ambiguous, users of this guide might check with legal counsel for an opinion.

Social media in relationship to fair use doctrine

Because social media posts tend to be brief or, in the case of an image, singular, it may seem that posts can fall within the parameters of fair use. While it is possible for social media to qualify for reproduction under fair use, it is rare because of its unique self-contained nature.

Fair use doctrine includes four factors:¹

Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes: While many academic texts are published for nonprofit educational purposes, they are also sold as a good. This indicates that social media content used in nonprofit titles may be fair use, but that a content creator could claim that said use is in fact commercial. A case for fair use may be further weakened when combined with the third factor, amount and substantiality, and the high likelihood that an excerpt from social media might encompass a self-contained post.

Nature of the copyrighted work: This factor seeks to analyze the degree to which the work relates to the copyright holder's creative expression. If an author analyzes the words of a Tweet or a joke encapsulated in a meme to state a fact, rather than drawing a conclusion, the content may be fair use. Note that creative interpretation may lead a social media post to be used in the text in a way that might risk defamation, privacy, or reputational concerns. This could inadvertently happen with outdated or misattributed posts, content, figures, or posts used with intent not intended. The more interpretative the work is, the less likely its reproduction is to be fair use.

¹ Library of Congress, "More Information on Fair Use," accessed Dec. 12, 2021. <https://www.copyright.gov/fair-use/more-info.html>

Amount and substantiality of the portion used in relation to the copyrighted work as a whole:

Like art, poetry, or lyrics, social media content typically is self-contained. One post, no matter how many words it includes, encompasses the whole work—and a Tweet is considered an individually copyrighted expression even within a broader Twitter thread. This indicates that this factor is not useful for building a fair use case for social media.

Effect of the use upon the potential market for or value of the copyrighted work: Because social media content is usually posted publicly for broad internet audiences, there is little to no potential market or financial value behind most social media content. This indicates that this factor supports fair use of social media if there is no impact on the value of the content. However, content that is behind a pay wall, in a private Facebook group, or on a protected Instagram feed may not qualify for fair use under this factor, as the market may be lost by publicly sharing the work and, as social media content increasingly becomes monetized for copyright holders, the value might decline when content is reprinted in a book.

The above factors most directly apply to transformative or creative social media posts. Tweets or text posts that state facts likely can fall within fair use. Tweets that fall under copyright protection must display “content...original to its author, meaning the expression cannot be copied from someone else, and it must possess at least a minimal amount of creativity.”² Tweets or Facebook posts from public figures (such as politicians and celebrities, often indicated with a blue check on Twitter) or public entities (for example, an account representing a company or an organization) can be analyzed and the text reproduced, much as a statement from these figures in traditional media can be analyzed. However, Tweets from public figures should not be used as standalone epigraphs without permission. It is more difficult to identify public figures on platforms that do not verify accounts. In these cases a publisher will need to conduct a risk analysis to determine whether these accounts qualify as “public.”

Suggested guidelines when using social media content in your publication or project

Based on the case-by-case nature of permissions requests, the IP&C Committee broadly recommends that prior to using social media content, a publisher should:

- Obtain permission from the non-public owners of personal and private accounts before replicating them in-text. Any content posted in a locked or private group, or in any private and direct communication (Facebook Messenger, Instagram Direct Messages, etc.) requires reprint permission, much as interviews require an interview consent form. Fortunately, it is possible to reach out to most social media accounts and request permission directly.
 - Please note that non-response or failure to respond is not proof of permission granted. Reaching out creates a paper trail and shows good faith efforts to obtain permission, but if the proposed use is unlikely to be fair use—for example, for cover use or in an epigraph—reaching out will not substitute for permission granted.

² “Can a tweet be protected by copyright? If so, who owns the copyright?” Copyright Alliance.org, accessed Dec. 12, 2021. https://copyrightalliance.org/ca_faq_post/tweet-protected-copyright/

- Disembed content from the platform when possible. The exact text, icons, and logos of a given platform are typically owned by the platform. For example, Twitter states that “nothing in the Terms gives [the end user] a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, other distinctive brand features, and other proprietary rights.” Images as common as the retweet icon on Twitter or the “Like” button on Facebook may be considered a distinctive brand feature.
 - Twitter and other platforms may provide templates that can be downloaded to produce the look of a Tweet without infringing on Copyright. [Please see Twitter ToC](#) under “Tweets, Tweets, Tweets,” but note that the terms of use requires that the user: “always use real Tweets and [not] alter or modify them in any way (not even with spell check).”

The following table gives a handy reference for determining when to seek permission to transcribe a Tweet.

Scenario	Example
Statements of fact (no permission needed)	On October 12, 2021, the Association of University Presses (@aupresses) Tweeted, “Our core values are fully in line with the commitments of the #SDGPublishersCompact.”
Not verified, but public (no permission needed)	According to University of South Carolina Press in an October 16, 2021 post on Twitter, “South Carolina food is the best southern food” (@USCPress)
Blue-check verified (no permission needed)	Responding to recent trends in the planning and organization of cultural events, novelist Colson Whitehead Tweeted, “Events coordinators! It’s great that you’re making an effort to find Black moderators. But you know these great & gifted moderators can also work with...non-Black guests, too, right?” (@colsonwhitehead, November 2, 2021)
Blue-check verified private message (permission need)	If private correspondence is flagged for use, the poster must approve it as the content falls outside of the public sphere.
Private individual (permission needed)	In a post on Twitter on January 29, 2021, Elisabeth Maselli declared that “the Queensboro Bridge is the best place to run and also crowded even in non-pandemic times. With usage up a bike lane makes so much sense,” in response to a post from Representative Maloney about changes to the bridge (@e_maselli)

Images posted or created on social media often fall outside of fair use, as they may incorporate elements such as filters, stickers, or text owned by the platform hosting the image—and even if they are posted with no filter, are copyright to the original photographer, illustrator, or content creator. To include an image posted online, it is most safe for the end user to supply the image directly, instead of relying on a screengrab, and for the author to transcribe text captioning the post separately.

Instagram is right now one of the most common spaces for image sharing, so the IP & C Committee took a detailed look at the company's terms of use. As of December 2021, the decorative elements of an emoji, icon, filter, etc may be reprinted from Instagram, so the copyright holder's permission is sufficient to include an Instagram asset. As follows:

"Only those planning to use Instagram's assets in any broadcast, radio, out-of-home advertising or print larger than 8.5 x 11 inches (A4 size) need to request permission. Requests must be in English and include a mock of how you're planning to use the Instagram logo."³

However, publishers should "be sure to visit the Brand Elements section for detailed guidelines and to download approved assets" to ensure that the author use of the elements is in line with Instagram's specifications.

Such terms vary across platforms. If brand assets or similar content cannot be disembedded from the file, research the platform and find out what steps you will need to take to clear permission to reproduce a screengrab, recreate a Tweet, or otherwise use their brand elements in your book.

A meme, which usually combines material from many sources that cannot be readily considered for fair use or derivative use, is a developing space in copyright law. Some early legal analysis has been published (included here under "Resources") and does argue that memes are remixed/transformed and used in fair use when applied to a commercial board game. The same argument could be made for a nonprofit academic press. However, the article concludes by noting that this isn't settled in copyright law. Pending a judge's determination, using shared and reshared memes in a book is likely fair use but should be evaluated on a case-by-case basis.

Official statements from major platforms regarding fair use, ownership, and copyright

Facebook: "Remember, only original works are eligible for copyright protection. To be original enough for copyright protection, a work needs to be created by the author themselves, and must have some minimal amount of creativity."⁴

Twitter: "You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your incorporated audio, photos and videos are considered part of the Content)

Nothing in the Terms gives you a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, other distinctive brand features, and other proprietary rights. All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors."⁵

3 "Brand Overview," Instagram, accessed Dec. 12, 2021. <https://en.instagram-brand.com/support>

4 "What is Copyright and What Does it Protect?," accessed Dec. 12, 2021. <https://www.facebook.com/help/116772962146447>

5 "Twitter Terms of Service," Twitter, accessed Dec. 12, 2021. <https://twitter.com/en/tos>

Instagram: "Terms of Use are an agreement between you and Facebook, Inc. We do not claim ownership of your content, but you grant us a license to use it. If you use content covered by intellectual property rights that we have and make available in our Service (for example, images, designs, videos or sounds we provide that you add to content you create or share) we retain all rights to our content (but not yours)."⁶

Resources

Meta (Facebook, Instagram, Whatsapp)

- Apply to reproduce Instagram content here: <https://en.instagram-brand.com/>
- Instagram Brand resources: <https://en.instagram-brand.com/assets/screenshots>
- Meta's list of trademarks and trademark logos, including Instagram and Whatsapp: <https://en.facebookbrand.com/trademarks/>
- Facebook Trademark FAQs: <https://www.facebook.com/help/507663689427413/>

Twitter

- Twitter's Fair Use Policy: <https://help.twitter.com/en/rules-and-policies/fair-use-policy>
- Twitter's Brand Resources and Guidelines for use: https://about.twitter.com/en_us/company/brand-resources.html
- Twitter ToS (general): <https://twitter.com/en/tos>
- Copyright Alliance on Tweets: https://copyrightalliance.org/ca_faq_post/tweet-protected-copyright/

Studies of Fair Use in Social Media

Analysis of memes and fair use:

- Mark Marciszewski, "The Problem of Modern Monetization of Memes: How Copyright Law Can Give Protection to Meme Creators," June 17, 2020. <https://digitalcommons.pace.edu/pipself/vol9/iss1/3/>
- Max Offsay, "Critical Corner – "What Do You Meme?": A Fair Use Analysis", August 2, 2019. <https://journals.library.columbia.edu/index.php/lawandarts/announcement/view/91>

6 Terms of Use," Instagram, Dec. 12, 2021 <https://help.instagram.com/478745558852511>