



Intellectual Property on Social Media Platforms - From a Company's Perspective

Summary

| | |
|---|----|
| I. Introduction | 3 |
| II. What is social media?..... | 4 |
| III. Social media and IP for SMEs | 5 |
| IV. Relevant IP rights..... | 6 |
| 1. Copyright..... | 6 |
| 2. Trade marks | 9 |
| 3. Designs | 12 |
| 4. Trade secrets..... | 15 |
| V. Social media platform policies | 18 |
| VI. Enforcement measures | 22 |
| VII. Conclusions..... | 25 |

I. Introduction

Nowadays, social media platforms are an essential instrument for many small and medium-sized enterprises (SMEs). They are an alternative to traditional advertising and have the advantage of gaining more visibility, launching more targeted advertisements, getting closer to consumers, and interacting with them. Moreover, companies/brands can produce entertaining, easy-to-grasp content, such as memes, video clips, pictures or short texts.

In addition to this, it is increasingly usual for companies to resort to influencers to advertise their products on social media platforms. Within this realm, different Intellectual Property (IP) rights can come into play, mostly trade marks and copyright, but also designs or trade secrets.

This fact sheet will give an overview of the different IP rights involved on social media platforms. We will also provide various tips to protect the most usual IP rights in this online environment, prevent infringement and be familiar with the available enforcement mechanisms and tools that social media platforms have implemented.

In this context, it is of utmost importance to create an effective strategy when it comes to IP protection on social media, as well as to be aware of the IP policy included in the terms of service of social media platforms.

II. What is social media?

Social media can be defined as “websites and applications that focus on communication, community-based input, users’ interactions, content sharing and collaboration. It is an internet-based form of communication that allows users to share information and create online content.”¹

Therefore, on social media platforms users can create and share content, interact with other users, view the content created by others and use the features and functionalities of those platforms.

There are different categories of social media platforms:

- Microblogging: Twitter
- Social networks: LinkedIn, Facebook, Instagram, TikTok
- Multimedia: YouTube, Twitch
- Community-based networks: consist of in-depth discussion, much like a blog forum e.g., Reddit
- Review board networks: the focus is on review, usually of a product or service.

¹ <https://nysstlc.syr.edu/wp-content/uploads/2014/10/Social-Media-Implications-for-Intellectual-Property-Law.pdf>

III. Social media and IP for SMEs

The purpose of social media is sharing content, mainly user-generated content, which means that social media involves a large variety of IP rights. From a business perspective, social media nowadays is one of the most effective marketing tools to promote one's products or services, and more specifically to reach targeted groups of consumers and track customer concerns; a mechanism that can be very attractive for SMEs.

However, from an IP point of view, it is important to be aware of good practices when it comes to using online content, how to protect it and how to avoid IP infringement.

As a starting point, it is important to notice that online content is not always free to use just because it is on the internet. For this reason, it is important to be aware of the consequences of online sharing in order to adopt proper actions to protect your content, avoid infringement of third parties' material and enforce your rights in case of infringement.

When you create an account on a social media platform, you are requested to accept the terms and conditions. Usually, the terms and conditions include a clause stating that, as a user, you commit to abstain from using third-party material without authorisation, meaning that the content you post on social media cannot violate someone else's IP rights. Additionally, you also commit to abstain from selling counterfeit products.

The platform reserves the right to remove the allegedly infringing material and to take actions against the infringing user.

Moreover, users could potentially face infringement claims directly from the IP rights holders that see their rights threatened. Apart from the typical legal actions, social media platforms are developing tools that allow right holders and users to report possible infringements of protected IP rights, allowing those platforms to take action faster.

All of this goes to show that IP is everywhere on social media, and that it is important to know how to identify it when using social media in a business context – to make sure online business activities do not give rise to infringement claims.

What kind of IP rights are likely to be found on social media platforms?

- Copyright
- Trade marks
- Designs
- Trade secrets

Let's have a closer look at them.

IV. Relevant IP rights

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1. Copyright

Copyright protects original creative works such as literary and artistic works and usually vests in the author.

For copyright protection to arise, the work must fulfil two main requirements²: it should exist in some physical or tangible form (meaning that ideas as such are not protected by copyright), and it must be original, in the sense that it must be a creation of the author and an expression of their free creative choices.

Therefore, copyright does not protect:

- Ideas and concepts
- Names or titles (these are in principle too short for copyright protection although there are exceptions – but may be eligible for trade mark protection)
- Inventions (these can be protected by patents or utility models if the relevant conditions are fulfilled)

Which content can be protected by copyright? Generally speaking, artistic, literary or scientific works will fall within the scope of copyright protection, such as:

- Literary works, such as books, excerpts, newspaper articles, blog articles
- Audio works: musical compositions, songs, sound recordings
- Visual or audio-visual works, like videos, pictures, photographs or paintings

Copyright allows authors to benefit from their creations, granting them with two types of rights:

- Economic rights: allow the rights owner to derive financial reward from the use of their works by others (exclusive rights). They enable right holders to control the use of their works and to be remunerated for their use, including the right of reproduction, distribution or communication to the public. Economic rights can be transferred (e.g., to the employer) or licensed, therefore the author is not always the one exercising them.
- Moral rights: allow authors to claim authorship and prevent deformation of their work and protect the non-economic interest of authors. Those are in principle non-transferrable.

Copyright is a territorial right. Therefore, national law is applicable. However, the basis is set at an international level in the [Berne Convention for the Protection of Literary and Artistic Works](#), which grants copyright protection in all countries that signed the convention (most countries in the world, including all EU countries). In other words, it has to be assumed that a work created in one of the Berne countries is copyrighted in your country too – and conversely, that a work

² For more information about copyright in Europe, check out our fact sheet on "[Copyright Essentials](#)"

you create in an EU country will benefit from almost worldwide copyright protection thanks to the Berne Convention.

In all countries that have signed the Berne Convention, copyright protection arises automatically without the need to file for registration or pay any fees. The duration lasts for the life of the author plus 70 years after their death.

Within the realm of social media, which examples can we find of copyrighted works?

- A text written for an Instagram post or for Twitter. Although an Instagram post can be as deep or as shallow as the author wants, this text is still protected by copyright. Take into account that, however, very short texts may not always be eligible for copyright protection, unless they involve a high degree of creativity/ originality.
- Photographs or pictures
- Videos or clips to promote one's products
- Music

In essence, this means that many contents created and/or found on social media are in fact copyrighted. Consequences go both ways:

- As the creator of images, videos, posts published on your social media account, you benefit from copyright protection and can prevent others from exercising the economic rights mentioned above (reproducing your work, distributing it, communicating it to the public...). Any allowed reposts should respect your moral rights (e.g., attribution).
- As a user of the social media platform, you have to remember that posting third party contents without permission may amount to copyright infringement. Therefore you should refrain from including third party images or tunes in your posts if you have not clearly been granted permission (from the author/owner directly, or via a permissive licence such as [Creative Commons](#)) or if you are not sure that the contents are in the public domain (meaning that copyright expired or was explicitly waived by the author). Short extracts of songs can in principle be used (using social media functionalities, e.g., adding music to a story on Instagram) as long as credit is given.

Let us take the example of an SME posting a picture, a text or video advertising its products or services.

If the SME decides to create social media posts from scratch and provided this content fulfils the requirements to be protectable under copyright, then it will be automatically protected, which means that, as the copyright holder, the company will be able to prevent others from using it without consent. For example, someone else copying the post, editing it and re-using it with minor adaptations for their own purposes would in that sense be liable for copyright infringement.

However, by posting it on social media, the company will by default allow the content to be taken up by the community according to the terms and conditions applicable on the platform (often via Sharing or Repost functionalities, meaning that the content will be shared unchanged and credit will be given) – this is after all the purpose of social media.

Finally, take into account that, when accepting the Terms of Service of social media platforms:

- The copyright holder usually grants a licence to the platform over its copyrighted content (this is the case with most platforms)
- In some specific platforms the rights go further and extend to a licence granted to the other users, allowing them to adapt/remix your work (e.g., TikTok). Hence it is important to check the policies, as explained in the section on [Social media platform policies](#).

Copyright infringement on social media

The main idea here is to understand that content being available online on social media, (even for free, i.e., in cases where the platform is open for users and no payment or subscription is required to use it), does not mean that it is free to use. Indeed, the safest way to prevent a possible copyright infringement claim on social media is to post content only generated by you.

However, if you want to use content generated by another user in your post, it is possible to do so but taking into consideration some aspects:

- First, you should ask the copyright holder for permission, and if the authorisation to use the content is obtained, credit should be given to the author.
- In some cases, asking explicitly for authorisation is not necessary if a broad licence (e.g., Creative Commons or similar) is granted to the public by the right holder, if the works are in the public domain, or if it was otherwise made clear that re-uses are permitted. Always check the conditions of the licence (or the scope of the authorisation) to make sure that they apply to your own situation and to the uses you wish to make of the work. There are many databases of photos/videos/audio files that are free of rights or licensed under permissive terms.
- If you do not have the proper authorisation, you should not post content as if it was yours, since you are likely to be infringing someone else's copyright. As mentioned above, reposts using built-in functionalities (e.g., retweets on Twitter, share on Instagram) are the exception (since the work is reposted without changes and credit is given) as they are the cornerstone of social media.

As an example, the Twitch platform was flooded by a wave of copyright infringement claims because some of its users were playing music in the background of their videos. Twitch streamers received copyright infringement notices from Twitch for using music in clips posted on their channels over the past years. The streamers were obliged to delete their videos if they did not want to see their channel blocked. Now the platform has put into place a specific section with music free of rights for streamers to use.

Internet users are solely responsible for IP infringement. Social media platforms can be pursued as responsible only if they were aware of the illegal content posted by a user, if they did not immediately remove the illegal content that was reported, or if they did not implement all means possible to prevent more content already identified as illegal from being posted.

Conversely, it is the responsibility of each right holder to remain vigilant and make use of reporting tools and takedown requests whenever they see online content infringing their copyright. Some platforms have set up automatised ways of filtering infringing content (e.g., Content ID on YouTube, which allows the automatic take down of content suspected of infringing copyright) but these automatic tools may not always detect everything.

Finally, and to wrap up the topic of copyright infringement, bear in mind that some copyright exceptions may apply, allowing users and creators certain uses to ensure freedom of expression. These exceptions are not fully harmonised at European level, but as an example, parody or pastiche can be mentioned. Therefore, taking these exceptions into account, it is in certain cases possible to make a parodic use of copyrighted content without facing infringement charges. It is however recommended to consult an IP lawyer if you intend to rely heavily on copyright exceptions in the course of your online business – on the one hand, to ensure that these exceptions do apply to your own situation, and on the other hand to assess the potential risks you may still be facing (for example, YouTube's algorithms are not always able to distinguish cases where third party content is used lawfully, which can result in strikes or in the take down of content regardless of exceptions).

To sum up, when it comes to copyright on social media:

- It is important to identify which works can be re-used (under which conditions) as part of your social media activity and which ones cannot.
- It is important to keep in mind the rights that you retain as creator of online content, knowing that you can rely on the built-in functionalities usually offered by the platforms (e.g., share button) to allow others to disseminate your posts without risk.
- It is your responsibility to flag/report infringing content to the relevant platforms.

2. Trade marks

Trade marks play an important role in distinguishing the goods and services of one company from those of its competitors³. The vast majority of companies advertise their products or services on social media, as they are thus able to reach more potential consumers. However, before launching a product/service into the market, it is important to protect its name or logo by registering it as a trade mark.

Trade marks grant their owners an exclusive right, which means that the owner can indeed use their trade mark in the course of trade, but more importantly, they offer the possibility to exclude third parties from using the trade mark without prior authorisation. An unauthorised use of a registered trade mark may constitute trade mark infringement, allowing the trade mark owner to take legal actions to stop or prevent the infringement.

Trade marks, like all other IP rights, are territorial rights. This means that protection will be granted only in the country or countries in which registration is applied for.

To this end, before posting in social media, a business strategy should be established in advance in order to decide where the mark should be registered to be protected. Trade mark protection is possible at three different levels:

- National route: if protection is sought in one or two countries, the trade mark application should be filed before the national IP office of the country in which registration is sought.
- European route: if protection is sought for the whole territory of the European Union, it is recommended to apply for a European Union Trade Mark (EUTM) before the European Union Intellectual Property Office (EUIPO). One single registration procedure grants trade mark protection in all EU Member States.
- International route (Madrid System): if registration is sought at an international level (outside the European Union), the Madrid System is a convenient and cost-effective way of registering a trade mark in multiple countries at once.

Take into account that, at European level, protection lasts for ten years (starting from the date of the trade mark application), and can be renewed indefinitely for successive periods of ten years.

Before filing a trade mark application, it is important to check the availability of the trade mark in one of the existing databases available ([ESearch plus](#), [TM View](#)). By doing this, the chances of applying for a trade mark that already exists or for a similar one will be lower, and consequently, the probability of receiving an opposition from the owner of the earlier trade mark will be reduced.

³ For more information, check out our fact sheet on "[Trade Marks: the Face of Your Business](#)".

Applied to social media, a trade mark has more chances to expand to other territories in the digital environment. Therefore, if the trade mark is not registered, there is an exponentially greater risk of a third party or a competitor using or registering the existing trade mark in a territory where it was not previously registered, before you have a chance of doing so.

Trade mark infringement on social media

Businesses use social media as a means of promoting their brands online. As stated above, protection of the sign or logo is essential before advertising and commercialising the goods and services.

Social media platforms tackle the topic of trade marks in their Intellectual Property Policies and in the Terms of Service. They define what trade marks protect and do not protect, as well as how to avoid third-party trade mark infringement when posting content.

Most social media platforms have implemented reporting and monitoring tools that allow companies to identify and report IP misuses in order to take down content and spot infringers. In this sense, companies can inform the social media platform of their trade mark being infringed or if counterfeit products are being sold.

Once the request to take down content is sent, the platform will verify the case in order to remove the infringing content as fast as possible. They will also identify and remove bad actors and disable the accounts of persistent infringers.

Influencers and trade marks on social media

Companies have usually been relying on celebrities to advertise their trade marks, and consequently, their goods or services. However, with the advent of social media, a more common practice has emerged, which consists in resorting to influencers to advertise products or services. Think, for example, of the impact that an influencer like Chiara Ferragni can have promoting clothing brands, cosmetics or recommending hotels or restaurants.

In these cases, there is usually a contract or some kind of commercial agreement between the trade mark and the influencer. It is rather common for companies and influencers to sign a partnership agreement wherein a brand owner provides incentives to the influencer to create and post content for them. If the content makes reference to a trade mark, the influencer must obtain specific permission to use the brand's name, but most importantly, the influencer must inform of having obtained an economic revenue from this activity.

In Europe, the obligations of influencers are not fully harmonised, so rules vary from country to country. The OECD's ["Good Practice Guide on Online Advertising"](#) provides some guidance on influencer marketing, but there is still no regulation in this respect. The Digital Markets Act and

the Digital Services Act are still waiting for approval from the Council of the European Union, and they will introduce new obligations for content creators as well as for influencers to ensure that their content is not misleading or illegal (in terms of counterfeit products).

At European level, [Directive 2000/31/EC on Electronic Commerce](#) as well as [Directive \(EU\) 2018/1808 “Audiovisual Media Services”](#)⁴ impose a transparency obligation for influencers in Europe, to mention in their posts whether there is a partnership agreement in place with the brand promoted and the name of the company or brand that they are promoting.

For instance, when a company has paid or gifted an influencer to promote their products or services, the influencer will then create content that will be later shared with their followers promoting those items. The influencer should be transparent as regards the circumstances that originated the post, in the sense that their followers should be informed of the fact that the products/services being advertised were a gift from the brand or that they were paid for promoting them in the realm of a commercial agreement.

Failure in doing so may constitute a violation of advertising rules, as hiding the commercial interest behind the promotional advertisement can be misleading for the followers. For this reason, when promoting a product or a service from another brand, the post should include some reference, e.g., *#advertisement*, *#gifted*, *#sponsored*, *#partnership*.

Moreover, influencers should carefully examine the product that will be promoted to check whether or not it is original. This is relevant because they can be held liable for false or misleading advertising. Therefore, influencers should ensure that the products they show on their accounts are authentic, and that they do not promote counterfeit products, since they play an important role in the counterfeit market. If it is proven that an influencer was fully aware that the product being promoted infringed a trade mark, the influencer and the contracting company are likely to be found liable of trade mark infringement, either jointly or individually. The judge will take into account the extent to which the product advertised by the influencer could cause confusion in the public mind.

To sum up, when it comes to trade marks on social media:

- Always register your trade mark in the countries where you plan to do business before you start actively using it online – social media can expand your reach very quickly, which can result in third parties seeing and registering “your” mark before you have the time to do so.
- Always refrain from using third-party trade marks (including in the form of hashtags) to sell your own goods and services or attract followers to your page.
- Always refrain from selling counterfeit products via your online account. Selling counterfeits via social media is just as illegal as selling them in the “real” world.
- If you are involved in collaborations or sponsored activities, always follow the related advertising and transparency rules.

⁴ <https://www.europe-consommateurs.eu/en/shopping-internet/influencers.html>



3. Designs

Designs protect the appearance a product completely or partially, resulting from the features of, in particular, the lines, contours, colours, shape, texture and or materials of the product itself and/or its ornamentation⁵.

There are three requirements for design registration:

- Novelty: the design is new if it has not been disclosed to the public previously.
- Individual character: the overall impression of the design differs from known earlier designs.
- Non-functionality: features of the design that are dictated solely by a technical function do not receive protection.

Just like trade marks, designs are territorial rights. Therefore, it is important for companies to adopt a clear strategy as regards the markets they want to target and develop so as to perform the registrations accordingly.

To this end, before posting on social media, a business strategy should be established in advance, in order to decide where the design should be registered to be protected. Design protection is possible at three different levels:

- National route: if protection is sought in one or two countries, the design application should be filed before the national IP office of the country in which registration is sought.
- European route: if protection is sought for the whole territory of the European Union, it is recommended to apply for a Registered Community Design (RCD) before the European Union Intellectual Property Office (EUIPO). One single registration procedure grants protection in all EU Member States. It is also possible to rely on the protection granted through the Unregistered Community Design (UCD), which is valid for 3 years, but can be more difficult to enforce.
- International route (the Hague System): if registration is sought at an international level (outside the European Union), the Hague System is a convenient and cost-effective way of registering a design in multiple countries at once.

Take into account that, at European level, protection lasts for five years (starting from the date of the design application), and can be renewed for successive periods of five years, for a maximum of 25 years. Before filing a design application, it is important to check the novelty of the design in one of the existing databases available ([DesignView](#)).⁶

Designs grant their owners an exclusive right, which means that the owner can prevent third parties from using/incorporating it into a product without prior authorisation. An unauthorised

⁵ For more information, check out our guide "[Your Guide to IP in Europe](#)".

⁶ For more information, check out our fact sheet on "[Design Searching](#)".

use of a design may constitute an infringement, allowing the owner to take legal actions to stop or prevent the infringement.

Applied to social media, a design has more chances to expand to other territories in the digital environment. Therefore, if the design is not registered, there is an exponentially greater risk of a third party or a competitor copying and using a design in a territory where it was not previously registered – hence the importance of filing for protection in all necessary jurisdictions before publicising the design on social media.

Designs are very common in the fashion industry, as they can protect the structure and aspect of clothing, footwear, handbags and accessories. Moreover, in the field of architecture or interior design, we can find multiple examples of furniture or lamps that are protected by designs. As a consequence, companies will show their creations on social media, thus exposing their designs to possible copies if not protected.

More than the risk of copying (if the design was not duly protected beforehand), social media activity can in some cases put at risk the very protectability of the design. As mentioned above, a design must be new in order to be registered – this means that it must not already have been marketed by third parties, but it also means that it should not have been disclosed to the public before filing for protection (with a grace period of one year). A common mistake made by companies is to disclose the design (for example, a new sneaker design, or a new lamp) on social media to advertise their product and hope to boost sales – only to realise months later that this disclosure ruined the novelty of the design application, hence its protectability. For example, Puma filed for a Registered Community Design in 2016, and later saw this design [invalidated](#) as it was demonstrated that the design was in fact disclosed on Rihanna's social media in 2014 – the singer had posed in Instagram pictures wearing Puma's new sneakers and the post had gone viral, thus chipping away the design's novelty. It is therefore very important to file for design protection before putting the product on the market or promoting it (even indirectly) on social media.

Infringement of designs on social media

As mentioned before, businesses use social media as a means to promote their designs online. From the moment the design is disclosed to the public, the possibility of third parties or competitors copying the design increases.

The owner of a registered design has the exclusive right to prevent third parties from using an identical design or a design that makes the same overall impression on the informed user. As a consequence, the imitation or reproduction of a design on social media can lead to design infringement, allowing the right holder to take legal action.

As they do for trade marks, social media platforms tackle the topic of design in their Intellectual Property Policies and in their Terms of Service. They define what designs can and cannot protect, as well as how to avoid infringement of third-party rights when posting content. Platforms have also set up specific reporting and monitoring tools, allowing for example the submission of takedown request in case a right holder notices infringing content.

As an example, Facebook and Instagram have almost standardised processes to address IP infringements. They have tools that allow companies to identify and report IP misuses in order to take down content. In this sense, companies can inform the social media platform if their design is being infringed or if infringing products are being sold.

Twitter, for instance, will suspend an account when *“there is a clear intent to mislead other through unauthorised use of design”*. Additionally, this platform has procedures to handle the sale of counterfeit products by submitting the appropriate online takedown forms, including the right holder’s information, the rights invoked, and links to the infringed tweets. Right holders do not need to have a Twitter account to submit a takedown request.

Generally speaking, when filing an online takedown request, the right holder should include information about the design involved, the country of registration, as well as provide a copy of the registration certificate or a link to the relevant country’s official design database. The platform will verify the request and can remove the infringing content immediately. They will also identify and remove bad actors and disable the accounts of persistent infringers. In case of unregistered designs, the social media site can determine whether or not there has been a policy violation.

To sum up, when it comes to designs on social media:

- Always protect your design before disclosing it online – to preserve its novelty and avoid third-party copying before you could protect it.
- Refrain from using/reproducing/copying third-party designs or selling counterfeit goods as you may become liable for design infringement.



4. Trade secrets

Trade secrets⁷ can be defined as the information that is kept confidential in order to preserve competitive gains or any confidential business information that provides an enterprise with an economic benefit that translates into a competitive advantage, which directly derives from the fact that the secret is unknown to the competitors due to the efforts of its owner to keep it secret.

In this sense, trade secrets are very valuable to many companies to protect assets that may not be patentable or otherwise protectable but have great commercial value, and therefore need to be safeguarded, e.g., R&D information; business methods; recipes, manufacturing methods etc.

In order for information to be classified as trade secret, it must meet the following requirements:

- It must be kept secret, meaning that it must not be generally known or easily accessible through proper means.
- It must have commercial value, meaning that the confidential information must give the company a competitive edge.
- It must have been subject to reasonable measures aimed at keeping it secret.

There is no registration process for trade secrets, the only requirement is to maintain secrecy.

A protection plan is helpful in demonstrating the effort made in maintaining confidentiality. An effective protection plan should include:

- Implementing a comprehensive social media policy, in the sense of creating policies for employees that clearly detail the company's expectations regarding the use of social media.
- Requiring employees to sign confidentiality clauses, non-disclosure agreements (NDAs) or non-compete clauses.
- Implementing procedures to improve the effect of NDAs to make sure that corporate policies are followed.
- Control electronic access to the information and to business social media accounts.
- Provide continuous trainings and capacity building for employees and third parties.

Therefore, any breach or disclosure of a trade secret might result in significant economic loss for the company in question.

⁷ For more information, check out our fact sheet "[Trade Secrets: Managing Confidential Business Information](#)".

Infringement of trade secrets on social media

On social media, such as TikTok, Instagram or Facebook, companies might share content regarding the insights of their companies with different aims, e.g., advertising the company and their products. Actually, it is very common to find videos showing the ins and outs of popular companies, their manufacturing processes or even cooking recipes, as they tend to attract the interest and curiosity of users.

As a consequence, companies might want to share the functioning of their business on social media. However, it is essential to prevent any unintentional disclosures of information that can constitute a breach of information classified as trade secret.

Thus, companies should be very vigilant and aware of the information they are sharing, and to this end, it is crucial to closely monitor the content uploaded to social media before unintentionally sharing information that can be catalogued as a trade secret.

For instance, the recipe for Coca-Cola has been kept secret for decades and constitutes an added value compared to its competitors – it is, therefore, safe to assume that Coca-Cola is very strict when it comes to any social media activity (reel, video) that could jeopardise any aspect of this trade secret.

The breach or disclosure of trade secrets can be performed either intentionally or unconsciously, either by employees of the company or by competitors. When it comes to social media of course, the main danger may come from the inside of the company and breaches may occur unintentionally.

Therefore, before sharing information on social media, it is essential for companies to identify the relevant information that can be classified as trade secret and protect it. Moreover, companies should limit access of trade secrets to specific employees and identify those that have access to this information to ensure secrecy and avoid data loss.

Furthermore, it is advisable to train employees to identify potential trade secrets and to set up prohibitions when it comes to posting work-related information. This can be done in the framework of the protection plan and social media policy mentioned above.

Finally, it is recommended that tools be developed to keep information secret and special procedures be set up for handling such secrets. To this end, technological protection measures or contractual measures are very useful. For instance, NDAs or confidentiality agreements are useful protective mechanisms to show that a specific set of information is considered secret and that it cannot be disclosed.

V. Social media platform policies

From a user perspective – i.e., a company that makes use of social media to advertise or sell its products –, it is important to understand what happens to the content that is created, posted or shared on social media platforms.

Each platform has its own Terms of Service and Intellectual Property Policy, which states the rights and obligations for users, but also for the platform itself.

By accepting the terms and conditions, users agree to follow them when using the platform. Generally speaking, this means that the right holder allows both the platform and other users to exercise some rights as regards the content. On the other hand, the platform establishes obligations for users to respect the IP rights of others and implements mechanisms in case of infringement.

Even though accepting the terms and conditions of a social media platform allows certain uses of the content, this does not override copyright laws. When the right holder signs these contracts, they retain copyright, but what this signing usually represents is that Facebook, Twitter or any other platform is granted a non-exclusive and unlimited licence to use the material. These terms are actually necessary to allow social media to function the way it is supposed to.

However, this does not mean that content on social media is copyright-free. The licence agreement is signed between the user and the social media platform, just as any other licence agreement signed between the right holder and a third party, while retaining rights over the creation.

Therefore, whenever you agree to the terms and conditions of a social media platform, make sure you fully understand what you are agreeing to. With that in mind, let's take a look at the terms of service of Instagram, Twitter, Facebook and TikTok.

The terms and conditions on the main social media platforms are as follows:



Instagram

The [Meta Platform Terms](#) and [Terms of Use](#) establish for the content generated by their users that:

*“You grant us a **non-exclusive, transferable, sublicensable, royalty-free, worldwide license to: host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of any information, data, and other content made available by you or on your behalf** (including by your Service Providers or through your App) in connection with Platform (collectively, “Your Content”) for any business purpose in connection with operating, providing, or improving Platform or any other [Meta Product](#). This license remains in effect even if you stop using Platform. Without limitation, your license to us includes: the right to incorporate Your Content into other parts of [Meta Products](#), the right to attribute the source of Your Content using your name, trade marks, or logos; the right to use Your Content for promotional purposes, and the right to analyze Your Content (including to make sure you’re complying with these Terms and all other applicable terms and policies)“.*

As regards the name of the account, trade marks and logos, Instagram terms state that *“You grant us a non-exclusive, transferable, sublicensable, royalty-free, worldwide license to use your name, trade marks, and logos for distribution, marketing, and promotional purposes, in connection with your use of [Meta Products](#), in all formats and media. This license remains in effect for existing materials and instances even if you stop using Platform”.*



Twitter

Twitter’s [Terms of Service](#) state that:

*“You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to **use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute** such Content in any and all media or distribution methods (now known or later developed). **This license authorizes us to make your Content available to the rest of the world and to let others do the same”.***

Although most tweets are rarely literary masterpieces, they still belong to their author, who owns their copyright. Threads can be turned into blog posts by their creators or even by third parties, and even individual tweets can have significant meaning and money-making potential. Even the few sentences of a tweet are in principle copyrighted material.



According to Facebook's [terms](#):

"You retain ownership of the intellectual property rights (things such as copyright or trade marks) in any such content that you create and share on Facebook and other [Meta Company Products](#) that you use. Nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want.

*However, to provide our services we need you to give us some **legal permissions (known as a „License“)** to use this content. This is solely for the purposes of providing and improving our Products and services as described in Section 1 above.*

*Specifically, when you share, post or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us **a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content** (consistent with your [privacy](#) and [application](#) settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy and share it with others (again, consistent with your settings) such as Meta Products or service providers that support those products and services. This licence will end when your content is deleted from our systems".*

As you can see, these terms are quite similar to the ones used by Twitter. Facebook just went the extra mile to make sure that these licensing terms are easily understandable to the average user.



TikTok's [conditions of use](#) state that:

"The platform will not own the content created by the user, but when the user makes available content on the platform, the user grants a licence to TikTok. The terms of this licence read as follows.

By creating, posting or otherwise making content available on the Platform, you grant TikTok a:

- non-exclusive (which means that you can licence your content to others),*
- royalty-free (which means that we don't pay you for this licence),*
- transferable (which means that we can give the rights you give us to someone else),*
- sub-licensable (which means that we can licence your content to others, e.g., to service providers that help us to provide the Platform or to trusted third parties that have entered into agreements with us to operate, develop and provide the Platform) and*
- worldwide (which means that the licence applies anywhere in the world)*

licence to use your content, including to reproduce (e.g., to copy), adapt or make derivative works (e.g., to translate and/or create captions), perform and communicate your content to the public (e.g., to display it), for the purposes of operating, developing and providing the Platform, subject to your Platform settings.

The licence to your content that you grant to us extends to Affiliates as part of making the Platform available.

You also grant to each user of the Platform a non-exclusive, royalty-free, worldwide licence to access and use your content, including to reproduce (e.g., to copy, share or download), adapt or make derivative works (e.g., to include your content in their content) perform and communicate that content to the public (e.g., to display it) using the features and functions of the Platform for entertainment purposes, subject to your Platform settings".

As you can see, TikTok's terms are different from Twitter and Facebook due to the nature of the platform. Indeed, here, by uploading content on TikTok you will grant a licence not only to TikTok but also to other users and third parties to use, download, modify and even make derivative works of it.

Finally, and given the very nature of the app, you are also granting a licence to TikTok to use your name, image, voice and likeness to identify you as the creator of the content.

VI. Enforcement measures

In light of the possible infringements that companies can face on social media platforms, it is important to note that the protection of the content by IP rights plays a fundamental role. You should take into consideration that someone can potentially end up using your content, and if it is adequately protected, the enforcement measures will be more effective when asserting your rights.

You must be vigilant, keep track of possible violations, and be quick to file complaints.

As mentioned above, social media platforms envisage in their Terms of Service and Intellectual Property Policies the obligation of users to respect third parties' IP rights by avoiding infringement of their copyright or trade marks, as well as the distribution or sale of counterfeit or pirated goods, among others.

For instance, Facebook's Terms of Service establish that content will be blocked or removed if it "infringes or violates someone else's rights, including their IP rights (such as by infringing another's copyright or trade mark, or distributing or selling counterfeit or pirated goods), unless an exception or limitation applies under applicable law".

Due to the increase of IP infringement cases on social media platforms and the consequent complaints, most platforms have developed useful content report tools for users to inform the platform of IP infringements taking place in posts or ads, allowing right holders to file complaints and take down requests.

As regards copyright, trade mark or design infringement, social media platforms usually provide forms that can be filled in by right holders in order to submit their claims on copyright, trade mark or design infringements.

In this regard, the following information must be provided if the complaint refers to IP infringement:

- Personal contact details
- A description of the copyrighted work, trade mark or design that has been allegedly infringed
- A description of the infringing content
- URL to locate the allegedly infringing content

Social media platforms like Facebook or Instagram have developed a "[Brand Rights Protection](#)" tool that allows companies to identify and report IP misuses in order to take down content. By using the tool, companies can inform the social media platform that their trade mark, design or copyright is being infringed or that counterfeit products are being sold. Moreover, it allows rights holders to search for content that infringes their IP, send take-down requests, use reports to track the status of take down requests and add images to automatically detect infringing content. Plus, the tool not only detects infringements on posts, but also ads, profiles or accounts and buy-and-sell groups.

Once the request to take down content is sent, the platform will verify the case in order to remove the infringing content as fast as possible. They will also identify and remove bad actors and disable the accounts of persistent infringers.

With regard to copyrighted content like videos or audios, a specific tool has been developed by Facebook and Instagram called "[Rights Manager](#)", which detects video or audio content that matches already existing one. Other platforms use similar tools, such as YouTube's Content ID software mentioned above.

Nevertheless, take into account that these reporting and detection mechanisms are somehow limited, in the sense that social media platforms will not perform an in-depth analysis of the infringement and that automatised tools are not always suited to the legal complexities surrounding IP infringement (e.g., applicability of copyright exceptions).

Therefore, apart from the mechanisms that have been put in place by social media platforms, the usual enforcement measures⁸ applicable when facing an IPR infringement are as follows:

- Initial enforcement measures consist in sending a **cease-and-desist letter** to the infringer, stating the allegations of infringement and demanding that this infringement stops by removing the content of the platform. Sometimes the platform will inform you of the infringement and may block or remove the content, and sometimes impose additional penalties.
- **Notice and take down** to the social media platform. The platform can block and remove the infringing content.
- **Civil enforcement actions:** in case cease-and-desist letters are not effective, it is possible to start court litigation. The typical civil actions that can be adopted are provisional measures through which the Court issues injunctions to stop the infringing activity, as well as compensation for damages to remedy the damages suffered by the right holder, and post-trial enforcement proceedings to put the decision issued by the Court into effect.
- **Criminal enforcement actions:** criminal sanctions for IP infringements that concern counterfeiting and piracy.
- **Alternative Dispute Resolution (ADR) mechanisms⁹:** ADR mechanisms include several procedures like mediation or arbitration, which allow parties to resolve their disputes out of court in a private forum, assisted by a neutral intermediary. ADR procedures are usually used whenever the dispute arises in the context of a contract. In any case, ADR procedures can be an advantage to reach an agreement between the parties involved, instead of resorting directly to judicial actions.

⁸ For more information, check out our fact sheet on "[IP Enforcement](#)".

⁹ For more information, check out our fact sheet on "[Alternative Dispute Resolution \(ADR\)](#)".

In addition to this, the EUIPO provides the [Enforcement Database \(EDB\)](#), which contains information regarding registered trade marks or designs in the fight against counterfeiting. Right holders can access and register their products and related IPR in the database. This way, national police and customs authorities can check the information and details of the products and thus be more efficient in identifying possible infringing goods. The EDB may therefore be a step in the enforcement chain to spot counterfeiting goods online and help national authorities to seize them if those goods enter the EU customs.

VII. Conclusions

On the one hand, when sharing content on social media to advertise or commercialise your company's products or services, you must be aware and understand what you are consenting to when signing up to a social media platform, and make sure you understand your rights and the licences you are granting to those platforms, as well as the rights you waive to the platform. Thus, you should carefully read the Terms of Service!

On the other hand, you should take into account the possibility of facing IP infringement on social media platforms. As right holder, it is your responsibility to take steps against possible infringements. In particular:

- Always include a copyright notice to inform others that your content (text, video or photograph) is protected by copyright.
- Make use of the IP protection registries and tools created by each platform – create an account and register your rights or product information in the system if required.
- For copyrighted content, be proactive and flag/report unauthorised reproductions of your work to the relevant platform.
- For trade marks and designs, be vigilant and monitor the activity of your competitors or other third parties in order to spot misuse of your trade mark or design, or counterfeit goods.
- For trade secrets, implement appropriate policies, restrict access to the trade secrets to authorised staff only, and ensure that it is kept secret under technical protection measures; monitor employee activity on social media to avoid exposing information inadvertently.

Conversely, it is important to know how to avoid infringing third parties' rights when creating content for your posts. Accordingly, before posting content on social media:

- Make sure that the content is original, i.e., it has been created by you.
- Are you using content protected by copyright? In this case, make sure that you are authorised to use the content included in your post and always give credit to the author. It is always advisable to ask for permission from the right holder (a licence), seek already licensed contents (e.g., Creative Commons) or use free-of-rights content (public domain works).
- Is there any exception applicable, e.g., quotation, criticism, review, caricature, parody or pastiche?

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

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The heart of our service portfolio to keep you updated



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Luxembourg: Publications Office of the European Union, 2023

Print: ISBN 978-92-9469-541-3 DOI 10.2826/56147 EA-03-22-277-EN-C
PDF: ISBN 978-92-9469-540-6 DOI 10.2826/128798 EA-03-22-277-EN-N