Copyright Policy in Art Related Websites

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1. Introduction

The world of the Web has changed as a number of new software applications make it easy to accomplish sophisticated tasks with little technical know-how. People who previously accessed the Web solely for shopping or research purposes now sign on for the experience of creating and sharing information. They are crafting both content and connections with other users in a new Web that links people to people, as well as to information (Kroski, 2007). Web 2.0 is the "second generation of the world wide web", in which collaboration and user produced content are the keys to successful online platforms and social media (O'Reilly, 2005). Its advent has enabled a host of new services and possibilities on the Internet. Among many new possibilities, users can easily upload online content that can be accessed, viewed and downloaded by other users. This has resulted in a vast growth of User-Generated Content (UGC) (George & Scerri, 2007). These technologies have revolutionized media by enabling individuals to reach a global audience and facilitate communication on an unprecedented scale (Sawyer, 2009).

Web 2.0 introduced a technological change that affected –among others– the field of art. Many artists and photographers are generous with their work, making it freely available through reputable websites. Creation and dissemination of artworks have undergone significant change due to rise of Web 2.0 applications. Within this context online artist communities emerged giving the opportunity to both amateurs and professionals to create their own portfolio. In an environment where technology meets creativity, the absence of physical barriers makes the artworks widely accessible to others, and interaction between artists easier. As far as moderation is concerned, each registered user has both rights and responsibilities according to the websites' particular policy.

User-generated content (UGC) exists in a large variety of forms (such as photographs, videos, podcasts, articles and blogs) allowing artists to express their creativity and register their comments on anything imaginable (George & Scerri, 2007). However, the increasing growth of these communities makes the matter of artists' rights a matter of great importance. Sharing, participation and collaborative production have

led to a shift in the mindset of some artists who choose to waive some of the exclusive rights granted to them automatically by Copyright Law. In addition, the shift from one-to-many to many-to-many dissemination modes means that the amateur's creation is no longer private. The production of User Generated Content provoked difficulties as far as applying copyright is concerned, due to the problems with licensing on such a scale where moral rights infringements can occur with a few clicks of the mouse (Fang, 2011).
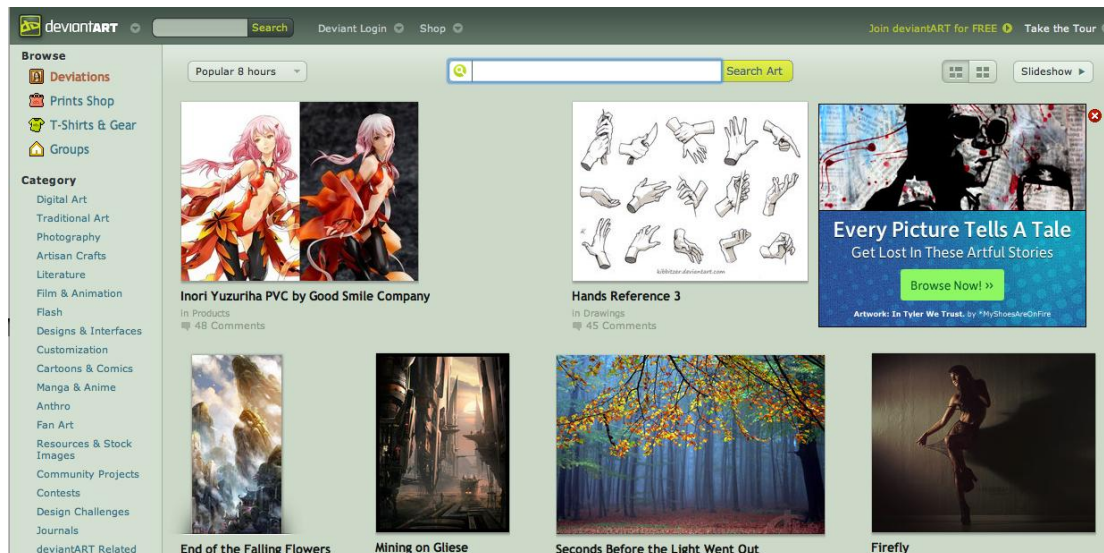
The aim of this paper is to examine the terms of use and policy of art related websites like deviantart.com, flickr.com, photobucket.com in order to note the extent to which user's work is protected. Copyright infringement is a serious problem and despite the fact that these websites have restrictions in submissions, they do not seem able to provide adequate protection. In addition, we are interested in alternative; more liberal terms of license that have arisen, such as Creative Commons license that seems to become popular among the new generation of artists. Finally, the paper attempts to discuss possible solutions for the way forward.

2. Art related online communities

2.1. DeviantArt

The DeviantArt network is one of the largest online communities showcasing various forms of user-generated artwork. It was first launched on August 7, 2000 by Scott Jarkoff, Matthew Stephens and Angelo Sotira, amongst others. Today it has over 22 million registered artists and 224 million pieces of art (Freitas, 2009). All deviants on DeviantArt are referred by their chosen username, which is preceded by a user symbol. Moreover, another designation used to characterize a member is a devious type. A devious type is chosen by the member and changed in his profile (member, photographer, senior member, etc). The information that is always shown is the nickname, devious type, since when someone becomes a deviant, s/he posts art and online or offline status.

Since its first launch in 2000, the DA community developed a structure that is similar to the existing art market. DA is a highly interactive and dynamic community where each member has a website to exhibit artwork through the "gallery" feature. Members can explore each other's pages and leave comments on the artwork. Each artist can add other artists' works to his own profile under the feature "favorites", and build a network by adding other members to the watchers list (Buter et al., 2011). It combines several facilities to provide not only an art related website but also a community of artists and friends (Freitas, 2009). In addition, it provides an art-portfolio, the support to several types of artists and art, several means of communication within them, shopping features and allows anyone to see the website as any registered user would. All artworks are organized according to a comprehensive category structure that is established by the website. Main categories available are Digital Art, Traditional Art, Photography, Artisan Crafts, Literature, Film & Animation, Flash, Designs & Interfaces, Customization, Cartoons & Comics, Manga & Anime, Anthro, Fan Art, Resources & Stock Images, Community Projects, Contests, Design Challenges, Journals.

Picture 1: DA homepage

DA deviates from the norm, as its context, the line that separates the amateur and the professional, is irrelevant (Salah, 2010). In order to become a DA member one does not need to have a background or education in arts. Every user has a personal webpage containing user profile information, the Gallery containing the user's art, the Favorites, Journal, list of friends, recent work, recent watchers, users' comments, and the user decides on the profile elements visibility or what will become available to others (Buter et al., 2011). Deviations are photos, images, text or video files that the user uploads to show his/her art to others. Prints refer to deviations that are for sale (Freitas, 2009). The art found on DA is diverse, like paintings, graffiti, body painting, make up, tattoos, photography, flash animations, films, skins for applications, wallpapers, typography, tutorials on several topics.

DA works like a blog-software, presenting each member with an individual website (Salah, 2010). The users can take on more than one identity or even have more than one profile, and display their works belonging to different genres through different user names. It is a mean of art worldwide divulgation, as well as a platform of socialization that joins people interested in art. Artists provide art and pay for subscriptions and in return have a common place for a diversity of artists to share their art. Searching in DA does not require registration. This can create problems as far as copyright is concerned; on the other hand, people are able to know better the site and choose if they would like to engage on the community.

2.2. Flickr

Flickr is an image hosting and video hosting website, web services suite, and online community that was acquired by Yahoo! in 2005. The website was created and launched by Ludicorp in February 2004 with the original intent of an online gaming tool (Graham, 2006). The idea soon changed because of the gravitation towards Web 2.0 and the website became a user collaboration based "photo and video sharing community" (Namestnik, 2011). Flickr has helped converge digital photography further into the "new media generation" with its evolution onto the internet aided by globalization to harness the power of the audience to develop a photo sharing website

and promote photography (Burgess, 2009, p. 122). Digital photography, combined with a global network, means that users have the ability to interact potentially with anyone and everyone around the world who has access to the internet.
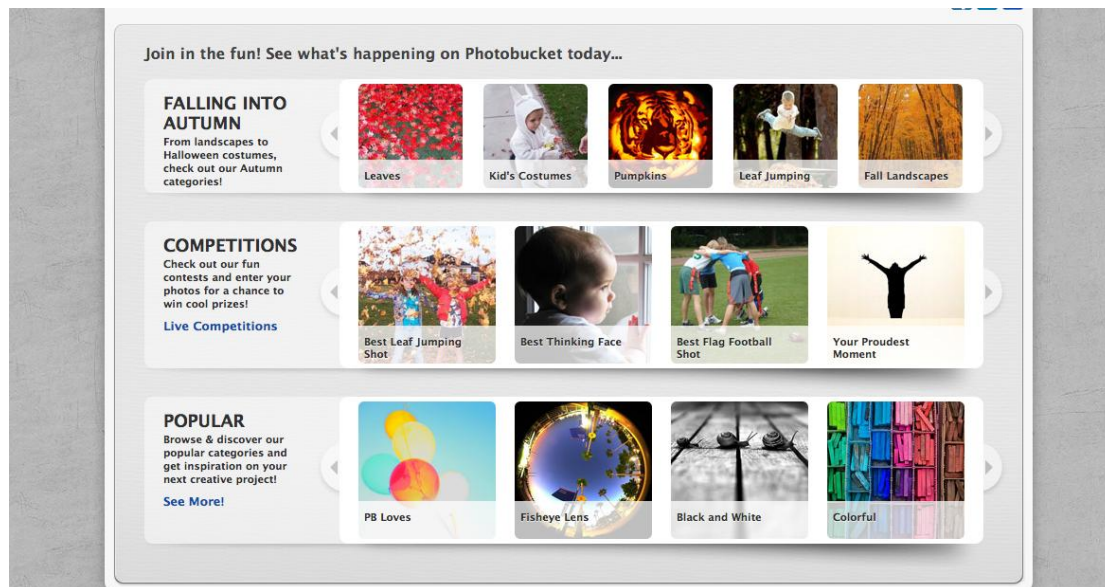

Picture 2: Flickr homepage

Flickr allows users to upload their personal photos to be stored online, but unlike other online photo tools, it makes these photos publicly viewable and easily discoverable by default. This design decision, along with the emphasis on tagging, has allowed the site to expand quite rapidly (Marlow et al., 2006). In addition to being a popular website for users to share and embed personal photographs, the service is widely used by bloggers to host images that they embed in blogs and social media. Yahoo reported in June 2011 that Flickr had a total of 51 million registered members. Photos and videos can be accessed on Flickr without the need to register an account but an account must be created in order to upload content onto the website. Registering an account also allows users to create a profile page containing photos and videos that the user has uploaded (Seneviratne et al., 2009). The central functionality of Flickr is to allow users to upload photos (by email, through the Web, from a mobile phone) and push them out.

Flickr is an interactive visual media website that relies heavily on participation from users to upload, share, and communicate both internally and externally within the website (Namestnik, 2011). Navigation in it is by browsing, jumping from photo to photo, from photo to photographer, to contacts, to favorites, to groups and so forth. Users can set up groups, which consist of a pool of photos, a discussion area and member listing. It should also be noted that it has elements of a Social Networking site, through profiling, partly direct self-profiling but also derived from the display of online activity such as through the photos displayed, favorites and group memberships.

2.3. Photobucket

Photobucket is an image hosting, video hosting, slideshow creation and photo sharing

website. It was founded in 2003 and it was acquired by Fox Interactive Media in 2007. Photobucket is usually used for personal photographic albums, remote storage of avatars displayed on internet forums and storage of videos. Photobucket's image hosting is often used for eBay, MySpace and Facebook accounts or other blogs, and message boards. The heart of Photobucket's service is digital image storage (Kang, Bederson, Suh, 2007). Photobucket supports FTP uploads, but it is mentioned on the website that the user must be a Pro account holder. Users can also display their photos on other Web sites by including a direct link, which refers back to the original images stored on Photobucket's servers.

Picture 3: Photobucket homepage

Users may keep their albums private, allow password-protected guest access, or open them to the public. Whether one has a basic or a pro account, he can choose to make the account public or private. Anyone can view pictures posted in a public account, which is the default setting on all user accounts. If one has a public account and labels a photo with a tag, anyone searching Photobucket for that tag can see that image. It also offers free users unlimited total photo storage for non-commercial use. Free users may also upload up to 500 videos, each limited to 500MB and 10 minutes. Premium accounts also have unlimited storage, except in cases Photobucket deems abusive.

A Photobucket user is able to search billions of images and videos, posted by other users, upload and store images and videos for free, link one's images and videos on blogs, social networking sites, etc, and send links to individual images, videos or entire albums over instant messenger, email, or the Web (Seneviratne & Hernandez, 2010). Users can add labels to photos called tags and help categorize photos, which comes in handy when searching for pictures of a specific person or event. The photo tagging function makes Photobucket except for a photo storage site also a social networking site. Photo tags make it easy for users to connect with one another through simple searches.

3. Copyright aspects

3.1. Fair use

The production of User Generated Content might include use of preexisting work. Within this context applying copyright becomes complicated. According to Gervais (2009, pp. 857-860) a proper taxonomy of UGC is of great importance at this point:

1. User-Authored Content: It refers to content created from scratch by the user. In this case no implications come up.
2. User-Derived Content: It is considered one of the most complicated ones because of the normative analysis of the underlying right. However, if the derivation and possibly also the reproduction of the preexisting content is a fair use, then the matter is of less importance.
3. User-Copied Content: It is quite simple. Copying constitutes infringement, and when the user merely copies preexisting content, it is illegal.
4. Peer-to-Peer as UGC: While unauthorized peer-to-peer (P2P) file sharing is generally illegal.

In order to better understand this, it is important to clarify what the term "fair use" refers to. Fair use allows the use of otherwise protected material in criticism, comment, parody, news reporting, and similar uses in the public interest (Burk & Cohen, 2001). This arrangement preserves proprietary rights in creative works while accommodating the public interest in open dialogue, deliberation, and the advance of knowledge. Copyright laws give copyright owners the right to prohibit others from copying a work or creating a derivative work. Fair use can be understood as an exception to this rule, as in certain cases a user can legally copy a work or make a derivative work, even if the copyright owner objects (Felten, 2003).

Fair Use is an ambivalent matter as it gives people the right to use copyrighted materials in their own work as long as it meets two criteria: (a) The work is "highly transformative." In other words, the artist, teacher, student, etc modifies the content significantly from the original work; (b) the reproduction of the work does a greater social good than it would otherwise harm the original creator (McCallum, 2012). An example that could be used is the reproduction of a work for educational reasons, though even in that case it is not always legal. The law says that judges should make case-by-case decisions based on four factors: the nature of the use; the nature of the original work; the portion of the original work used; the effect of the use on the market. The law does not say exactly how these factors should be evaluated or even how the factors should be weighted against one another (Felten, 2003).

3.2. Creative Commons License

The trend towards more liberal licensing of digital content is witnessed most clearly in the popularity of Creative Commons (CC) Licenses. Creative Commons is a non-profit organization that has been striving to provide simple, uniform, and understandable licenses that content creators can use to issue their content under (Cheliotis et al., 2007). These licenses provide a solution to the problem of copyright on the Web, while ensuring that the culture of reusing existing works to foster creativity is not hindered. There are many online tools in photo sharing sites that generate CC license information associated with their content in machine-readable form. This information is generally included in the metadata of the content.

CC licenses provide a standard way for artists to declare their works "some rights reserved" (instead of "all rights"). If the source one is quoting has a CC license or public domain dedication, he/she may have extra rights to use the content. Content creators can decide what rights they want to give to their audience. The choices are listed below as they appear on Creative Commons' website:

- **Attribution (CC BY)**: all uses of the original work are permitted as long as they credit the creator for the original creation. This is the most accommodating of licenses offered.
- **Attribution-NoDerivs (CC BY-ND)**: redistribution, commercial and non-commercial, is allowed as long as it is passed along unchanged and in whole, with credit to the creator.
- **Attribution-NonCommercial-ShareAlike (CC BY-NC-SA)**: lets others remix, tweak, and build upon the original work non-commercially, as long as they credit the creator and license their new creations under the identical terms.
- **Attribution-ShareAlike (CC BY-SA)**: same as the first one, with the additional constraint that any derivative works will also have to be licensed under the same license.
- **Attribution-NonCommercial (CC BY-NC)**: same as BY-NC-SA, but although their new works must also acknowledge the creator and be non-commercial, they don't have to license their derivative works on the same terms.
- **Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)**: This license is the most restrictive of our six main licenses, only allowing others to download original works and share them with others as long as they credit the creator. The users can't change them in any way or use them commercially.

Creative Commons licenses are a collection of open licenses that define the spectrum of possible licensing between full copyright – *all rights reserved* – and the public domain – *no rights reserved* (Botterbusch & Parker, 2008). Generally, the spirit of CC is to offer options rather than dictate a specific licensing approach. This 'design feature' of CC adds to the value of studying the use of the licenses, as very large numbers of people appear to make licensing decisions across a well-defined spectrum of options (Cheliotis et al., 2007).

4. Websites' Copyright Policy

4.1. Deviant Art

The DA staff and the users do behavior regulation and moderation, following the website policies. The user is free to block a maximum of 100 users of seeing their page for any reason. If for some reason a user needs to block more than 100 users should contact the help desk. The user cannot delete DA accounts but only his data. The user can also hide unwanted comments from his profile page and repo any user or art that he thinks violates the community established rules and policies. Some important points of its copyright policy are (deviantART):

> 1.   When a submission infringes upon the copyrights of another artist, creative person or company, it will be immediately deleted. This is a legal requirement, fulfilled immediately, without an advanced warning or an opportunity to 'fix it'. Any copyright owner following the procedures in this

Copyright Policy can require deviantART to remove his/her copyrighted content.

2. Repeatedly posted infringing content leads to account suspension and serious offenders will have their account banned and deactivated. If one is found deliberately misrepresenting the copyrighted work of another as your own your account will be immediately banned and deactivated.

3. 'Fair Use' is the notion that some public and private uses of copyrighted works should not require the permission of a copyright owner. These circumstances are very limited, complex to analyze under the law and require the help of expert advice from a lawyer. We recommend you talk to your own lawyer if you want to know more about fair use as it applies to the work you are doing. If it turns out that it is not fair use, you may be liable for very serious money damages.

4. deviantART does not claim ownership rights in users' Content. For the sole purpose of enabling dA to make one's content available through the Service, he grants to deviantART a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content.

Relatively to work protection users have the option to CC-license their works.

Picture 4: deviantART CC License choice

An indicative example of CC License use is the case of user "SpiritShadowx" who clarifies below cc licensing as far as his work is concerned:
I thought since people keep downloading my comics I would clear up what the license means.
Comedy is free, open source and available for everyone. You cannot truly limit anything in this world, and that is something I do not wish to do. If you download these comics for personal or non-profit use such as showing to friends, sticking on a website, and much more like that, then you are free to do so without a lawsuit. You
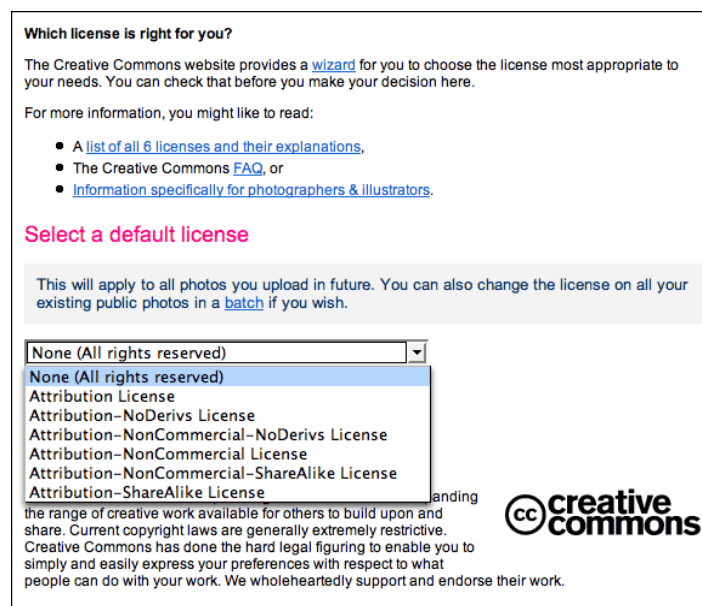
can take the jokes off and make your own comics. You can use the same drawing style, heck as long as you made it, it's not mine to limit.
What you cannot do
The only two things I will limit (and take lawful action if deemed necessary) is re-branding my own work as yours (removing the watermark and replacing it with yours, making small alternations, etc) or selling my work for commercial purposes. All of these are considered theft, and I will not stand for that kind of action. That's it.

4.2. Flickr

Most images on Flickr are not copyright-free and are published with all right reserved. However, a considerable number of images have been offered under a Creative Commons license. Flickr does not claim to have the copyright of the images users contribute to the system, but only a license to publish and use them to promote the platform (Seneviratne et al., 2009). The latter means that Flickr can choose users' photos to publish on the homepage, which also promotes the individual author's popularity (Marlow et al., 2006). Each user keeps the rights to their work and may decide, for each picture, the type of license they wish to publish the image with. As default, they are published under copyright, but the users may choose to contribute images under a Creative Commons license by selecting the options in the interface. Some people share works under a relatively free license.

Which license is right for you?

The Creative Commons website provides a wizard for you to choose the license most appropriate to your needs. You can check that before you make your decision here.

For more information, you might like to read:

- A list of all 6 licenses and their explanations,
- The Creative Commons FAQ, or
- Information specifically for photographers & illustrators.

Select a default license

This will apply to all photos you upload in future. You can also change the license on all your existing public photos in a batch if you wish.

None (All rights reserved) ▼
- None (All rights reserved)
- Attribution License
- Attribution–NoDerivs License
- Attribution–NonCommercial–NoDerivs License
- Attribution–NonCommercial License
- Attribution–NonCommercial–ShareAlike License
- Attribution–ShareAlike License

the range of creative work available for others to build upon and share. Current copyright laws are generally extremely restrictive. Creative Commons has done the hard legal figuring to enable you to simply and easily express your preferences with respect to what people can do with your work. We wholeheartedly support and endorse their work.

creative commons (cc)

Picture 5: Flickr's CC License choice

Flickr's copyright and intellectual property policy as described on the website:

> 1.   Yahoo! respects the intellectual property of authors and creators and asks users to do the same. Yahoo! may in accordance with its Terms of Service and in appropriate circumstances and at its discretion, disable and/or terminate without notice the accounts of users who may be infringing the intellectual property rights of others.

2.   Yahoo! has no obligation to monitor User Content. Yahoo! may reject, recategorise or delete any User Content that is available via the Yahoo! Services that violates the Terms or is otherwise objectionable. You must evaluate, and bear all risks associated with, the use of any User Content, including any reliance on the accuracy, completeness, or usefulness of any User Content.

3.   User retains copyright and any other rights that already hold in submitted User Content, or make available through, the Yahoo! Services. When Content is made available on publicly accessible areas (described below) of the Yahoo! Services, user gives to Yahoo! the following license(s):

For photos, graphics, audio or video submitted on publicly accessible areas of the Yahoo! Services, user gives to Yahoo! the worldwide, royalty-free and non-exclusive license to use, distribute, reproduce, adapt, publish, translate, create derivative works from, publicly perform and publicly display the User Content on the Yahoo! Services:

> a. for the purposes for which that User Content was submitted; and
>
> b. for the purpose of promoting the Yahoo! property to which the User Content was submitted or the Yahoo! Services anywhere on the Yahoo! network or in connection with any distribution or syndication arrangement with other organisations or individuals or their sites.

This license exists only for as long as the User Content is included on the Yahoo! Services and will end at the time of its removal from the Yahoo! Services.

4.3. Photobucket

Photobucket.com is another website that allows its users to upload photos and even videos through a variety of methods. The website is primarily used for hosting photos, and has the functionality to reuse images in the website and build scrapbooks, slideshows and even remix images from other users through a very easy to use interface (Seneviratne & Hernandez, 2010). The terms of use of the website allows Photobucket and other users to reuse such content under a limited license, Digital Millenium Copyright Act (DMCA) (Burk & Cohen, 2001), but does not specify whether it allows CC licenses.

Photobucket's Privacy Policy:

- Public Postings. Photographs and videos submitted for use on public areas on Photobucket are considered public information and may be copied or further distributed by others in accordance with the Terms of Use. Any personal or PII for display in public areas, may be seen by other people who visit the Site. If geotags are included in your postings, those will be viewable, too, but we offer you the ability to disable this information in the Account Settings of your account. Alternatively, if the option exists, you might want to disable the location settings on your camera or phone.
- Photobucket terminates the accounts of Members who repeatedly infringe the rights of others in the community or commit illegal acts or violate these Terms. If user does any of these things, they may deny, restrict or suspend access to all or any part of the Site or Photobucket Services or terminate the Membership at any time, without warning for any or no reason,

with or without prior notice or explanation, and without liability - and even take legal action if needed.

- Photobucket respects the intellectual property rights of others and expects its users to do the same. In accordance with the Digital Millennium Copyright Act ("DMCA"), the text of which may be found on the U.S. Copyright Office website at http://www.copyright.gov/legislation/dmca.pdf, Photobucket will respond expeditiously to notices of alleged infringement that are reported to Photobucket's Designated Copyright Agent, identified in the sample notice below.
- User retains all rights to any submitted Content, post or display on or while using Photobucket. This means that user owns ALL the Content he/she posts. If Content is made public, the user grants PB – as well as other users - a worldwide, non-exclusive, royalty-free license to copy, distribute, publicly perform (e.g., stream it), publicly display (e.g., post it elsewhere), reproduce and create derivative works from it (meaning things based on it), anywhere, whether in print or any kind of electronic version that exists now or later developed, for any purpose, including a commercial purpose.

The last paragraph is quite confusing for users, as it does not make things clear. It should be noted that it has been drawing criticism from a growing number of artists over its practices regarding copyrighted material (Bailey, 2008). There has even been a petition (Petition Online) by artists in order to limit the problem. The two elements at issue are the image printing service and the second one the takedown system because it is considered nearly impossible to locate and request take down of all of the works infringed. The importance of this letter stands in the fact that it does not only depict the problems, but also suggests solutions.

5. Conclusions

It seems that the aforementioned content websites do not offer users flexible control over content. Backup functionality is rarely included; terms of service seem absolvent, and deletion policies inconsistent. While the websites emphasize that users retain their own copyright, they do not consider users' content beyond their servers. Online service providers do not give clear answers as to how to share users' public content. In addition, most websites renounce any responsibility to service reliability and claim the right to terminate accounts and content at their will (Organisciak, Reed, Hibbert, 2010).

DeviantArt is an online artist community and this is its main difference. As far as copyright is concerned the website has CC licensing built into their User Interface. Furthermore, it has a mechanism to share works of art within the website, and give automatic attribution to the original source licenses for all her photos (Freitas, 2009). The statement "some rights reserved" will appear under each photo with a link to a page explaining what those rights are.

Flickr was one of the early adopters of CC licenses. When photos are uploaded to the site, the default restriction given is "all rights reserved". However, as mentioned above, users are given the option to choose from one of the six available CC licenses. Once a user selects one of the CC the information exposed by Flickr seems to assume that all the photos uploaded are owned by the uploader. If the user wishes to let other

people reuse the photos, one can display an appropriate CC license that grants the rights to him/her. However, if one used a CC licensed photo from somebody else in an image that one is uploading to Flickr, there is no in-built support to display the proper attribution to the original owner of the component photo (Seneviratne & Hernandez, 2010).

Photobucket.com is primarily used for hosting photos, and has the functionality to reuse images in the website and build scrapbooks, slideshows and even remix images from other users through a very easy to use interface (Kang, Bederson, Suh, 2007). The terms of use of the website allows Photobucket and other users to reuse such content under a limited license. Unlike Flickr, it does not specify whether it allows CC licenses (Seneviratne & Hernandez, 2010), and as mentioned above problems have occurred because of the unclear copyright protection policy.

This is a problem that affects art creation in a negative way while artworks may appear without the permission of the creator. In addition, the competition to the artist's authentic work is not fair and usually the output product is subordinate and may lead to damage of the artist's reputation. Furthermore, except for artist's reputation similar practices also damage the website's reputation. These are some of the reasons why further actions are necessary.

Users must be extremely careful before they decide to upload any personal work and read carefully the copyright policy. They should always try adding their own watermark and making sure to note that the work is copyrighted. Moreover, technologically apt users can subvert the priorities of the service and build their own tools to fill in the gaps (Bailey, 2008). The remixer should be the one to make sure that the proper attribution is given every time one uses other's work. On the other hand, as artists suggest, websites should arrange all accounts to be private by default, provide the technical affordances to make it easier for people to automatically give the proper attribution when remixing images (Petition Online), as well as apply new methods to prevent reposting of infringing works.

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