

## Pinterest's Popularity Soars, But (P)Interesting Copyright Questions Abound

March 5, 2012 by [Joshua Jarvis](#)

# Pinterest's

## COPYRIGHT CONCERNS

In a world where Facebook isn't a social network but The Social Network, it's difficult for a new social networking site to gain traction. Since there's already someone out there doing it bigger, the alternative has to be better -- at least in some respect. Enter [Pinterest](#), the latest social networking site on the block. If you haven't heard of it, you will soon. And chances are you'll be hearing "Pinterest" and "copyright" frequently mentioned in the same breath.

### What Is Pinterest?

From the horse's mouth, Pinterest is a "virtual pinboard" that "lets you organize and share all the beautiful things you find on the web." At its core, it's a relatively basic social photo-sharing website. It's sort of like virtual scrap-booking: first, you add the ["Pin It" applet](#) for your browser. Then, when you see a photo or picture you like (a "pin") anywhere on the web, you click the "Pin It" button in your browser and add the desired pin to your virtual pinboard. You can create virtual pinboards by topics or object of interest, such as ["cats and dogs,"](#) ["wedding ideas,"](#) ["products I love,"](#) or ["yummy desserts."](#) Other Pinterest users can "follow" you and see your pinboards, and vice-versa.

As of December 2011, Pinterest [entered the top 10 social networks](#) in terms of [Hitwise](#) data, with 11 million visits per week. Now [it's number 4,](#) and [drives more referral traffic to retailers than LinkedIn, YouTube, and Google+.](#) In terms of traffic among all websites, Pinterest [is currently number 16 in the U.S.](#) Pinterest is *popular,* [especially among "moderately educated women under the age of 35."](#) The site's users are predominantly female, and [97% of the site's Facebook "likes" are made by women.](#) Pinterest's popularity among women is creating [significant ripples](#) in the world of social marketing.

### What's the Copyright Issue?

Simply put, Pinterest's sole function is to provide a network of virtual pinboards and a means for its users to "pin" photos to them. Unlike Facebook, YouTube, and Twitter (which together make up [about 84% of the social network visitor share](#)), Pinterest isn't about user-generated content. Beyond the ability for users to comment on their pins, Pinterest is about one thing -- *aggregation* of third-party content. When a Pinterest user euphemistically "pins" a "pin" on a "pinboard," she's really "copying" a "full-size photograph" to "Pinterest's servers." Needless to say, the bright spotlight of copyright law is harshly shining on Pinterest: even a cursory stroll through Pinterest's

various user pinboards reveals that the vast majority of pins are copyrighted works, not in the public domain, and not licensed under [Creative Commons](#) or a similar free-to-distribute regime.

Most social networking site operators -- most site operators, period -- happily rely on the “safe harbor” afforded them by the [Digital Millennium Copyright Act \(DMCA\)](#). Under the DMCA, “online service providers” are shielded from liability based on the infringing behavior of their users so long as they:

1. Don't have actual knowledge of the infringement, are not aware of facts or circumstances from which infringing activity is apparent, and act expeditiously to remove or disable infringing content;
2. Don't make money directly attributable to the infringing activity;
3. Have a designated agent to deal with copyright complaints; and
4. Have a complying copyright policy and properly communicate the policy to users.

So, the DMCA requires that website operators implement certain procedures, keep at arm's length from the infringing activities of their users, and act quickly to remedy infringement. How does Pinterest fare?

## Pinterest's Difficult Position

At first glance, Pinterest appears to have its procedural ducks in a row. It has a [designated copyright agent](#), displays the [DMCA notice and take-down procedure](#), and has a [clear copyright policy](#). But one lawyer points out some [critical issues](#), including the following two problems. First, [Pinterest's implementation of the DMCA take-down procedure](#) contains the following curious language:

Upon receipt of the Notice as described below, Pinterest will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged material from the Site.

Of course, the DMCA requires that an online service provider remove or disable access to infringing content upon receipt of a proper DMCA notice. Online service providers don't have the “discretion” to evaluate “appropriate” actions. Second, Pinterest's Terms of Use don't include a repeat infringer policy -- a cornerstone of the DMCA safe harbor. While Pinterest might be following proper DMCA protocol in practice, the facts that its published DMCA and copyright policies fall short of the statutory requirements raises caution flags.

But even assuming Pinterest remedies these issues and implements (or already implements in practice) rock-solid DMCA procedures, significant issues remain. Let's assume that Pinterest acts expeditiously to remove or disable infringing “pins” upon receipt of a take-down notice. At the same time, one could argue that Pinterest actively promotes culling third-party websites for content, and Pinterest users do just that. On one hand, Pinterest says most of the right things -- its [Terms of Use](#) require users to acknowledge ownership and/or the rights to use all uploaded content, and

that uploading of such content does not infringe any intellectual property rights of third parties. Failure to comply with the Terms of Use can result in account cancellation. Pinterest's ["Pin Etiquette" guide](#) also encourages attribution.

On the other hand, looking through Pinterest's pinboard community reveals two things: first, the majority of the user-copied content appears to consist of protected works, and second, while pins link back to source pages, rarely do Pinterest users bother to provide attribution to the copyright owner, which suggests that they surely haven't sought and obtained permission to copy the works. One wonders whether it would be a tough sell for Pinterest, on the stand in a copyright infringement proceeding, to claim that it wasn't "aware of facts or circumstances from which infringing activity [was] apparent."

One piece of the infringement puzzle currently in Pinterest's favor is that it's not making money from the widespread unauthorized copying -- at least, not yet. Pinterest is currently funded by "entrepreneurs and venture capitalists," but "might also try adding advertisements," and in any event "making money" is "a long term goal." [<http://pinterest.com/about/help/>] One suspects that, once there is a clear nexus between user infringement and advertising revenue, it will become more difficult for Pinterest to walk the safe harbor line.

## What's Next?

Anticipating that copyright matters are about to become its biggest concern, Pinterest has taken additional steps to preclude copyright infringement. Pinterest has developed a ["nopin" meta tag](#), which site owners can use to disable the Pin It applet on their websites, thus preventing Pinterest users from easily pinning photos from that site to their pinboards. Flickr, the popular Yahoo!-owned photography website, [implemented the "nopin" tag](#) on February 24, 2012, allowing individual Flickr users to choose whether their photos can be "pinned." This is surely a step in the right direction, but is hardly a fix: while some of the most obvious photo sources -- especially those that make their money licensing the right to use those photos -- are likely to implement the nopin option site-wide or otherwise make it available to users, the onus is on copyright owners to implement, or even be aware of, this tool. More importantly, the vast majority of photographs on the Internet are likely to remain available for the picking.

So what *is* next for Pinterest? Is its sudden popularity merely the flashpoint for copyright woes that will sink the site (and send its generous entrepreneurs and venture capitalists scrambling) as quickly as it appeared? Can it find a way to allow its users to retain the freedom to pin and simultaneously appease copyright owners? Or does Pinterest represent something else entirely -- a new breed of social networking heralding an era of "relaxed" copyright protection? As with so many of the cutting-edge legal issues discussed on our blog, time will tell.