



It is said that a picture is worth a thousand words. A representation of oneself taken by another is always a compliment. Those pictures that we take of our participation in events, and of others within, are treasured reminders of lives well lived. Yet, what happens to our images when a representation of oneself is posted on a website online, one you did not expect or perhaps want known publicly? Further, what rights do you have to post an image of another, to distribute it on a social website album with your other friends?

Along with the question of rights management on who owns the use rights to a digital representation (the contents of the document)¹, the consequences of exposure of your persona on the social web, one's self, raise concerns about the extent to which such websites shatter our perceptions of privacy, and can ultimately lead to unwanted consequences. After all, we participate openly, and share our pictures, videos, notes and calendars in the community boards such as classmates.com or facebook.com friend lists that bind us. These social tools allow us to stay close at a distance, and to share more plentifully when we do interact personally. Yet, as we ogle along to our friend updates on the news feed², we fail to perceive how the terms of use (TOU) of such sites have forced us to surrender our rights to our own creations³.

Below, I look at the various ways in which acceptance of general TOU, in this case the Classmates.com site as the example, impact our control of the contributions we liberally make to the web sphere, and discuss some means by which site managers are giving us better tools to self-manage the protections to avoid exploitation of our creations, with particular focus on images.

¹ Refer to The Digital Millennium Copyright Act of 1998 at <http://www.copyright.gov/legislation/dmca.pdf>

² "Facebook's news-feed patent could mean lawsuits" at <http://www.cnn.com/2010/TECH/02/26/facebook.patent/>

³ Derived from SUBMITTING OR POSTING CONTENT section of the terms: "When you participate in the Classmates community you are granting Classmates certain rights... By submitting Content you grant us a royalty-free, worldwide, non-terminable, non-exclusive license to use... works based upon, and promote such Content ... for editorial, commercial, promotional and all other purposes including, without limitation"

1. Can Classmates.com take a photo of myself I've posted and include it in an advertisement for Facebook, identifying me as an unnamed "Satisfied User?" How about as a named "Satisfied User?" How about as "Barak Obama, Satisfied User?"

Whether an individual has a paid subscription or not, anyone who uses the classmates.com web site has agreed to TOU which transfer ownership of any images which have been uploaded into their repository⁴. The TOU spell out clearly that use of the site implies that one accepts the transfer of ownership of copyright use to Classmates, and that you have cleared the rights of others represented⁵.

2. Can Classmates.com take a photo of myself I've posted and sell it to Philip Morris, to be photoshopped into ads as the new face of the Marlboro Man?

My interpretation of the Classmates TOU is that one has surrendered the rights to control the use of the content of uploads, without limitation, and without having a responsibility to disclose their use of your images—refer to footnote 3, above.

Classmates includes this disclaimer, but whether it is likely to be in the habit of using user images without permission is unlikely⁶. The recurrence of some images in most of my experiences when I've been served classmates.com advertisement on the web have always given me the impression that they base their advertisements on stock (controlled and cataloged) model photography sources.

3. Can Classmates.com do any of the above to a photo of my wife I've posted? How about a photo of a friend? How about the photo of someone I don't know, taken in a public place?

Classmates can make use of any image uploaded to their domain, if they so choose to. Although it would prospectively impact their reputation negatively, they would have a legal defense to do so, given a user's acceptance of the site TOU.

For those situations in which an individual may object to a representation being made public on their web site, the TOU does clearly provide a process to correct unauthorized representation issues⁷. Although it could seem at first peculiarly cumbersome, it is a process well designed to ensure that a real person who is impacted by the disclosure of their image or representation online will go through the validation criteria set out by Classmates to re-claim rights and have the image removed, if so necessary.

⁴ Derived from CLASSMATES PROPERTY RIGHTS and AVAILABILITY OF SERVICES: "The Website (and all of the material that it contains) is owned by Classmates Online, Inc."

⁵ Derived from SUBMITTING OR POSTING CONTENT: "you are ultimately responsible for all Content that you provide and you warrant and represent that..."

⁶ Refer to Classmates Privacy Policy at <http://www.classmates.com/cm/privacy>

⁷ Derived from COPYRIGHT INFRINGEMENT POLICY section of TOU: "If you believe that your work has been copied and has been posted to this Website in a way that constitutes copyright infringement, you may provide Classmates with notice"

4. Using Guitar Hero I've developed my previously latent musical ability to such an extent that I've composed and recorded a smash hit certain to make billions for Sony, to whom I sold it. Before I sold it, I proudly shared a recording with my nearest friends on Classmates.com. Can Classmates.com sell it too? What if I had proudly shared it with unrestricted access? And what happens if Sony sues Classmates.com about it?

Classmates could profit from the sale of the song, or portions thereof. As I've noted previously, the TOU specifically transfers to Classmates rights to use, without limitation, any content uploaded to their site, including the right to profit from the transfer or use of that content. But, Classmates wouldn't stand to gain much from liberally exploiting their users creative works.

The web is a social medium where relationships rely heavily on trust and openness. The misappropriation and profiteering from material without attribution or compensation on the web is frowned upon by the digital citizenry, and Classmates could very quickly lose traffic through loss of reputation. Thus, because Classmates is driven to find means to promote contributions as a way to increase page hits, they have an enormous incentive to provide their users a toolkit to manage their media contributions, even absent a government mandate to do so.

The only way I can anticipate Classmates would stand to gain from using any material for profit is if they put in place a mechanism by which the registered owner of the work can be notified of pending use; and, more so, if they are offered an interest in the profits generated by the content. One retailer online that has successfully found means to partner with owners of digital media is Amazon.com. Through their self-publishing tools and their Associates program, the company negotiates the rights to distribute media uploaded to the site while extending a share of revenues. Owners have reports available to them on demand by which they can review the performance to date of the media they've contributed, providing an open relationship between partners.

The notable difference between Classmates and Amazon is that uploads to the retailer's site are intended for distribution and sale, and all parties are aware of that purpose from the outset. It shouldn't be difficult however for Classmates to emulate that information-sharing model to support a strategic initiative to openly profit from the use of the media subscribers of the service have shared on the site. Key to the success and penetration of such a program would certainly need to include a clear policy about the extent to which Classmates would put to use select images. A program along these lines that is well defined would add value to both the enterprise and the site user, creator, and rights owner because the open selection process of images leads to a degree of prestige that in turn incentivizes users to post higher quality content.

Today's users of the increasingly social web need to stay on alert⁸ when it comes to monitoring the use of their content; and, to beware of sites whose content rights management policies and tools do not support the privacy concerns of the site user. Social content sharing services like Twitter, Bit.Ly, Facebook, Google's Buzz and Blogger, Delicious, and many arising web2.0 sites are doing their part to react quickly to their user's privacy concerns, lest their reputations be tarnished by word of a systems breach or, worse, the misuse of their functionality to cause widespread malicious damage to the content shared in the domain. But, much work remains to properly encrypt images to prevent malicious download and misappropriation. Anyone who has access to an image on a web page these days, in most cases, can simply avail themselves of a copy through a simple right-click of the mouse.

Social web site managers, while still finding avenues to profit from the traffic and content contributions of their user folksonomies, have managed to give people some veneer of rights protection by allowing site users to place controls on who gets access to posted content such as images. On facebook.com, a user can designate his associates as part of a rights group, and then grant that group of people access to the controlled image. You have still transferred rights of the image to the site owner; but, at least you have somewhat restricted the image from finding its way to the public domain and being misused.

These controls notwithstanding, the prevalence of online albums that are owned by the sites takes us down a dangerous path; and, the lack of awareness on the part of most site users about the surrender of their rights when using these websites, should give us pause. We give up the right to control the media, and would have to go through painstaking process, including the potential costly involvement of a legal process, to have to recover control of copyright. Furthermore, the content uploaded can be sold or transferred if the company sells its assets, liquidates through bankruptcy or is bought out. Your images are certainly capable of leaking beyond the albums you had intended to contain them in, like an oil spill gone bad!

Facebook and Classmates wouldn't gain, and may even lose, from using images uploaded to their sites to profit from advertising or direct sale to another agent, though; so, we shouldn't fear that suddenly we are more likely to find our representation on an advertisement online in the near future. Yet, there is a great monetary incentive to selling rights to the sites' image catalogs. It wouldn't be too difficult for Facebook or Classmates to be compiling sets of friend groups with content key word associations that they could profit from by selling to product marketing agencies.

⁸ "Social Network Users Reportedly Concerned About Privacy, but Behavior Says Otherwise" at http://www.readwriteweb.com/archives/social_network_users_concerned_about_privacy.php

If this is indeed taking place today—the active sale of our images, we should be rather concerned⁹ as the technologies for pattern matching in images and face recognition improve, for it won't be long before we find our inboxes inundated with offers from marketers that scraped our images and tied them to our opinions and web browsing history to profile us so they can send us offers. Even more threatening and disturbing to our sense of privacy is that, having details of our likeness, it would be possible for marketers to set up a pervasive advertising campaign for products we're likely to be interested in. These advertisements could pop up on electronic boards as we walk by, on a digital advertising screen in a bathroom stall, etc. Somewhere in that context a camera noticed our approach and contrasted our likeness to their directory of advertising 'target' customers. We could imagine more perverse scenarios as we realize the potential consequences of a breach of any of the growing number of image repositories being maintained for gain today on the web.

We should become active in pressing our politicians, then, to enact laws that preserve the rights to our likeness, our images, and would clearly limit the use of media originally intended upon creation for personal (not commercial) consumption, if we want to avoid that kind of future. To not do so would mean that we could find ourselves worrying about setting up filters and controls for areas we physically transit to prevent ourselves being inundated by commercial noise in our environment the way that junk mail inundates our mailboxes. Think of the magnification of our personal effort to defend ourselves and our identity in that future based on the amount of time we already commit concerned with privacy in today's rather primitive digital web domain. Without some protection, that oil leak is going to tarnish us instead, and we might as well just decide its better to stay home altogether!

⁹ "Private or Personal in Social Media?" at <http://webworkerdaily.com/2010/01/11/private-or-personal-in-social-media/>