



## **REGRAM, REPOST, RETWEET, IT'S ALL FAIR USE, RIGHT? – Intellectual Property rights on social media.**

Having a thriving social media presence is crucial to most companies. And sharing photos and content on social media platforms is one way to fully engage with consumers. But one of the most overlooked aspects of the sharing culture of social media is its direct intersection with the exclusive nature of intellectual property rights.

Many people mistakenly believe that if something is posted on the Internet, they must be able to use it! Nothing can be further from the truth. Although social media platforms encourage sharing, the Internet does not suspend the application of intellectual property laws. For example, each image posted on Instagram is copyrighted, regardless of whether a copyright registration is secured. The owner of that copyright has the exclusive right to display (post) and exploit the work.

Sharing and reposting third party content is commonplace on Instagram. But reposting or “regramming” a posted image (even if you use the Regram App) with attribution is not a substitute for permission.

Absent permission, the only way to avoid liability for using the content of an Instagram user’s post is if the post is considered “fair use” under the U.S. copyright laws. The “fair use” defense is reserved for uses of copyrighted works used in connection with criticism, comment, news reporting, teaching, research, and/or parody. Fair use is also applied to works that are “transformative” or so changed or amended such that a new work is created.

The fair use defense is very fact specific and somewhat difficult to apply. And companies that hope to hinge their defense on fair use may find themselves with an uphill battle. The Instagram Terms of Use will not protect you from a claim of infringement, either. Rather, the Terms of Use specifically prohibit the posting of infringing content.

In reality, most owners of copyrighted works on Instagram are happy to have their work shared, but many are not. Further, most of companies will not likely complain about individuals posting content, as it leads to greater exposure. But if you are a company that is looking to use third party content from social media for commercial gain, the best bet is to ask permission.