



A JOURNALIST'S GUIDE TO WORKING WITH SOCIAL SOURCES

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FIRSTDRAFT

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DO I HAVE TO GET PERMISSION BEFORE I CAN USE EYEWITNESS MEDIA?

This is not the place for a deep dive into the legalities of using eyewitness media in different jurisdictions, that will be the subject of our next guide. The two important points to remember are:

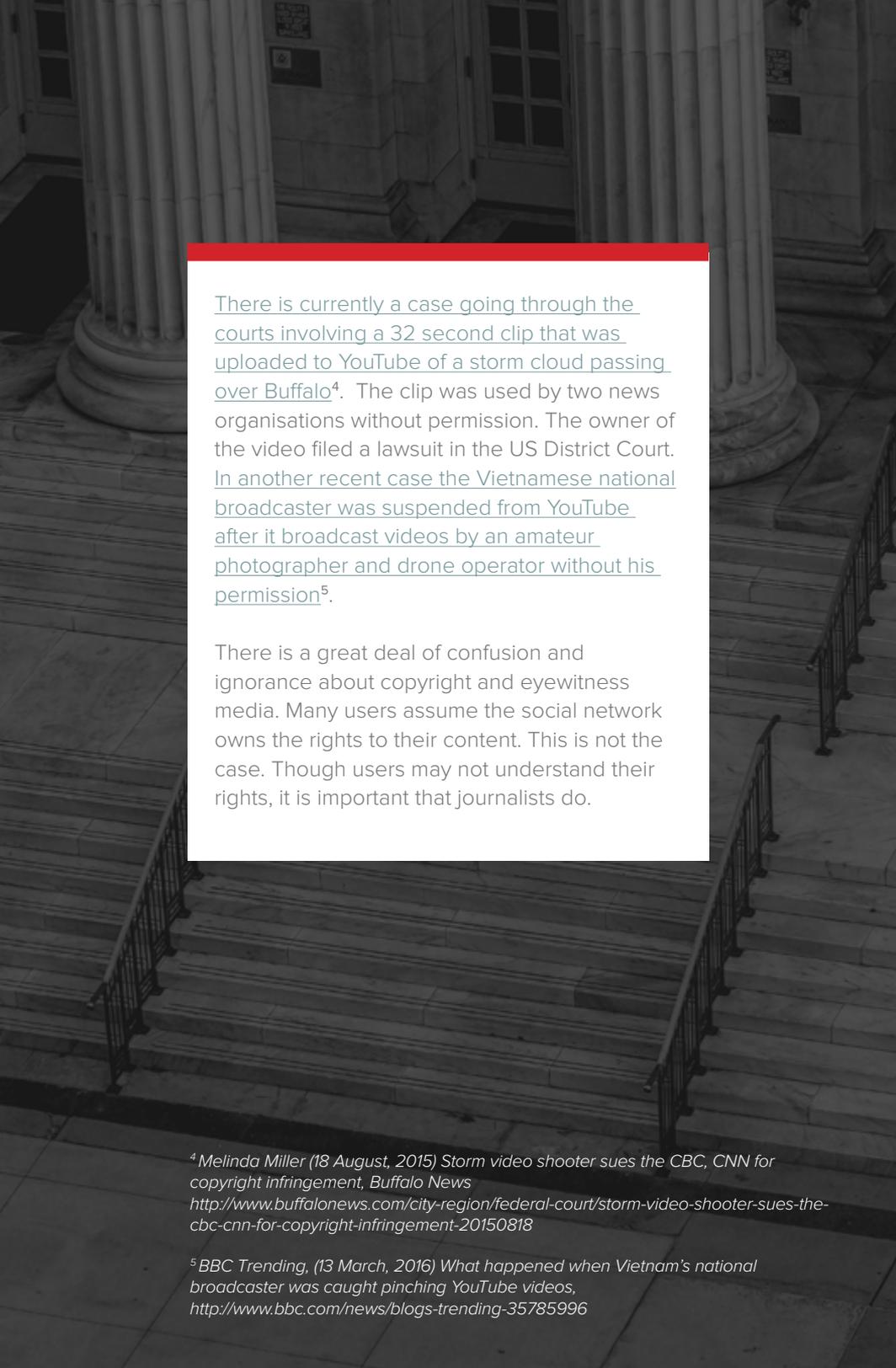
- 1** There is no legal issue with using text, i.e. status updates.
- 2** The copyright is held by the person who created the image or video, not the person who uploaded the content.

The copyright issue is also relevant when you want to use a photo of someone who is the subject of a news story. If it is a wedding or school photo, the professional photographer who took that photograph holds the copyright. Therefore, if you want to take a photo or video from a platform, either by capturing a screenshot, displaying a video in the player owned by your news organisation, or ingesting it into your own broadcasting systems, you must seek permission from the owner of the copyright.

If you want to embed a photo or video from a social network, you can embed it directly on your site by pasting the embed code provided by the social network. By doing this you are technically not taking the content off its platform, and you therefore do not need to gain permission from the person who created the content. However, there are ethical implications that need to be considered, which will be discussed below.

For breaking news stories where there is genuine public interest in the footage being seen more widely, it is possible a judge would rule favourably in a case of eyewitness media being used without permission. Many people cite fair dealing or fair use laws as protection. While there are similarities between these laws in different countries, there are also real differences in the way news organisations apply them and judges rule on them. Photos and videos are also treated differently. For example, in the UK, videos can be used under a fair use defence, while photos cannot. If you want to use eyewitness media without permission, we would advise talking to a lawyer first.

It is also worth considering reasonable limits in terms of the size of the clip. Running a short clip might be deemed acceptable, while running a much longer segment might not. The long term implications of using the material, for example in archives or other longer pieces of news output like an end of year documentary, are also relevant. While a judge might look favourably on a news organisation using footage in the days immediately after a news event when it was impossible to gain permission, this is harder to justify as time passes.



There is currently a case going through the courts involving a 32 second clip that was uploaded to YouTube of a storm cloud passing over Buffalo⁴. The clip was used by two news organisations without permission. The owner of the video filed a lawsuit in the US District Court. In another recent case the Vietnamese national broadcaster was suspended from YouTube after it broadcast videos by an amateur photographer and drone operator without his permission⁵.

There is a great deal of confusion and ignorance about copyright and eyewitness media. Many users assume the social network owns the rights to their content. This is not the case. Though users may not understand their rights, it is important that journalists do.

⁴ Melinda Miller (18 August, 2015) Storm video shooter sues the CBC, CNN for copyright infringement, Buffalo News
<http://www.buffalonews.com/city-region/federal-court/storm-video-shooter-sues-the-cbc-cnn-for-copyright-infringement-20150818>

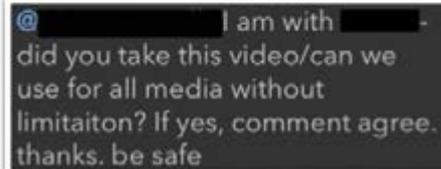
⁵ BBC Trending, (13 March, 2016) What happened when Vietnam's national broadcaster was caught pinching YouTube videos,
<http://www.bbc.com/news/blogs-trending-35785996>

Increasingly, permission to use a piece of eyewitness media is sought out and granted via a social network.

Some requests have become more complicated because of the concerns of newsroom lawyers. Below are some of the more detailed requests.



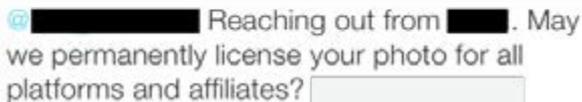
@ [redacted] Hi I'm with [redacted]. Can [redacted] + all domestic + int'l affiliates use these photos in perpetuity on all platforms and online?



@ [redacted] I am with [redacted] - did you take this video/can we use for all media without limitaiton? If yes, comment agree. thanks. be safe



@ [redacted] Hi Bruce- I work with [redacted], can we permanently use your picture(s) (video) on all our platforms & affiliates?



@ [redacted] Reaching out from [redacted]. May we permanently license your photo for all platforms and affiliates?

Figure 3:
Screenshots
from Twitter
showing
different
producers
contacting
eyewitnesses
seeking
permission.

Research with audiences has confirmed how confusing they find this type of language, with people admitting that they don't understand terms such as exclusivity, syndication, license and perpetuity. It is important that users are able to provide informed consent, and that journalists doing this type of outreach ensure that eyewitnesses understand everything that will happen with their content. This might include distributing content to other news organisations, whether or not the original newsroom received a fee. Many users have no idea that if they give permission to the BBC in London, for example, their content could appear on ABC Australia due to a reciprocal arrangement.

Journalists should also explain that footage will be placed in an archive for potential use at a later date. This level of permission request should not happen via Twitter, but via an email or other form of private communication. It is important to capture this secondary level of permission as there is a growing tendency for eyewitnesses to give permission to a number of news organisations, then be approached by a licensing company who offers to pay them a fee. Part of the agreement for this is that they delete any previous public messages giving permission for use.

KEY POINTS

Copyright is owned by the person who captured the footage, not the person who uploaded it.

Audiences are often confused by their own rights, as well as by the terminology used by news organisations, so it is important to ensure uploaders understand what different words mean when seeking permission.

Where possible, use email so you have more room to explain terms and to ensure that you have a copy of the permission that cannot be deleted by the user.