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Memes, strikes due to copyright act in social networks and intellectual property.

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Platforms such as YouTube use filters based on machine learning (ML) that, often, automatically, with a database taken from an audio or video sample, detect the use of third-party audiovisual content and sometimes generate the infamous “strikes” on channels, preventing monetization, blocking video uploads and even canceling the account. The concept of property (notably intellectual) will be discussed herein light of these automation challenges produced by artificial intelligence. There are three fundamentals related to copyright on the western axis (European/American): the classic concept of property; the liberal revolutions; and the digital revolution, addressing plagiarism, brand degeneration, and “memefication”.

The idea of private property merged in the Middle Ages, although, since Rome, the institute of the property was already natural to them. Apparently, it was so natural it was not the object of concern in outlining deep concepts on the subject. The perception of dominium and its inherent have been around since that time, especially when the topic gets limited to corporeal res. There was already a substratum of a legal institute on intangible properties, notably copyright. However, more than legal, respect for the published work has always been on the ethical level. The aphorism is still valid today: when replicating content produced by

others, one shall give due credit to the author of the content.

After the Gutenberg’s press (1455) and the Enlightenment (16th century), the Liberal Revolutions (17th and 18th centuries) changed how the Law understands property. From this last historic event, the bourgeoisie bequeathed a decisive role in this issue of recognition of its property right. This change in the powers’ axis unleashes space for the Copyright Act (1710) in England, which protected publishers against the illegal reproduction of their printed matter. Authors found themselves protected only contemporaneously with the French Revolution, with the first laws - in France, Denmark, the United States - which gave them the right to perform their works and to reproduce their

content with exclusivity. With the consolidation of capitalism, copyright took root, extending protection to works of literature, academia and the arts.

From Gutenberg's press to the internet, a lot needs to be rethought when the agenda is intellectual property. The following stand out: (1.)

plagiarism, the improper reproduction of content created by others; (2.) brand degeneration, a process by which the brand is so associated with the product that the product becomes known by the brand name, as a common and not proper noun; and (3.) “memeification” (neologism, whose prefix “meme” comes from the Greek, “mimema”, which means to imitate), i.e., the act of reproducing content, usually online, associated with humor, on a scale and with difficult identification of the author of the humorous expression.

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Note that plagiarism is as old as history itself. However, in the digital world, there is an unprecedented facilitated reproduction of the contents, by pressing two buttons: “ctrl C, ctrl V”. Although there is specific legislation that protects the author’s right, the application of regulations on this hypothesis of violation becomes quite difficult considering: the volume of content available online; the volume of violations committed around the world; the purpose (not always commercial) of the material’s use by the improper reproduction; and the difficulty of judicial measures. It is worth mentioning, besides being legal, that the reproduction of the content, without mentioning the author, is an ethical violation, one norm that can be called “netiquettes”. And the sanction for its violation, when discovered by the online community, is, for example, to charge the violator with measures to correct the wrongdoing; or bequeathed to a “digital ostracism” – behavior often seen in digital forums.

More curious is the comparison between brand degeneration vs. “memeification” vs. plagiarism. In plagiarism, the violator uses the author’s content for his own benefit, eliminating the actual author. In the brand’s degeneration, the brand gets trivialized, by which it becomes inseparable from the thing/product (it turns the brand into a common noun or verb, e.g.: Google it – search on the internet; J&J’ Cotonete, in Brazil, (Cotton buds, in US) – flexible rod; Unilever’s Maizena – cornstarch). Quibbles, cartoons, and graffiti are not recent phenomena, but “memeification” differs from these expressions, where their manifestation is not entirely unprecedented and does not seek to appropriate authorial content.

By “memeification” processes, there is a reproduction of third-party content in facsimile, associated with text or images, usually based on humor content. This phenomenon has exploded in the digital world. One of the most emblematic cases is, without a doubt, the one in relation to the memes generated from the movie “Downfall! Hitler’s Last Hours”, in which his production company Constantin, at first (2010),

intended to remove from the internet the parodies of Hitler’s iconic scene in the situation room, and then, a few years after, to give in to the process of “memeification” (and exploit the success generated by the meme).

Today, automatic detection filters look at only one aspect of copyright linked to the historical idea of ownership. Law should not deny that the copyright belongs to its author, with all the rights inherent to it. Perhaps the automatic “strikes” and punishments

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perpetuated by platforms like YouTube are connected to an old aspect of the copyrights, which deserves an update. Here it is proposed that this update about copyright must come from the holders of this right. No one is better than the copyright

holder to understand whether a digital movement around an intellectual property can generate profit (or loss). In short, the use of own authorial content by third parties can be seen as an opportunity and not necessarily a threat (SWOT framework); an automatic filter still, it seems, not able to perceive when there is an opportunity to convert a threat into an opportunity. This is brand and profit management, something that legal scholars cannot attend to. Managers, put profit on the balance sheet!



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This article is a result of the authors’ ascertainment and analysis, without compulsorily reflecting CEST’s opinion.