Reading the Fine Print:
How Institutional Terms of Service Restrict Collaborative Newswork

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Abstract:

Historically, media institutions owned the raw materials of journalistic labor. Within today's news ecosystem, however, intellectual property claims are increasingly murky. Pressured by market forces to curate the audience's work, professional news practitioners routinely meld user-generated text, photographs, audio and video into emergent genres of multimedia, bearing more multifaceted layers of copyright than ever before. Legally, terms of service agreements govern the digital artifacts produced from such pro-am collaboration. While these jargon-loaded, verbose statements act to fortify the legal protections of journalistic institutions, the agreements can also result in the restructuring of copyright protections from citizen journalists. This paper explores the specific terms of service provisions forwarded by America's elite broadcast and print media outlets. The results illustrate that hegemonic news institutions are appearing to subsume intellectual property rights acquired through the process of collaborative news production. In profiling this emergent interplay between professional and amateur journalists, the research will also forward best practices that may ameliorate such intellectual property battles, thereby vivifying the spirit of audience engagement as an essential part of modern newswork in the digital age.

The entry of commons-based, participatory culture (Jenkins, 2006; Benkler, 2006) – particularly the influx of audience engagement into the process of news production – has upended long-standing routines and roles of journalistic practitioners within American news organizations (Gillmor, 2004; Robinson, 2011). As part of this open structure of modern newsgathering, citizen journalists voluntarily contribute content directly to news outlets (Gillmor, 2004; Muthukumaraswamy, 2010). Controlling and monetizing these fruits of citizen journalist labor, therefore, advantages the news outlet both structurally and economically (Kperogi, 2011; Usher, 2011; Brabham, 2012). This tension is borne out as collaborative newswork, in which professional journalists directly engage with the expertise of their audience through formalized, mainstream engagement channels, or platforms.[1]

Stress exists, then, between the democratic nature of audience engagement in newswork and the tendency toward stringent institutional control of such user-generated content (Langlois, 2013). Amidst disruptive innovation in the news industry that is shifting established norms of professional practice, legacy media organizations are increasingly clinging to the boundaries of the profession (Lewis, 2012). In particular, news organizations appear to be using pieces of technical architecture as boundary objects – "texts or organizing conventions that are used for coordination and alignment between members who work in the same sphere but hold divergent goals and exist in different social worlds" (Powell, 2012, p. 703; Star & Griesemer, 1989) – to separate the works of professional journalists from their citizen counterparts (Lewis, 2012; Ananny, 2013).

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[1] Here, the term "platform" is intended non-technically, following Langlois's definition: "a device that props a speaker up and makes her or him audible and visible to others" (2013, p. 94).

This pilot study will fill a gap in the literature by focusing upon one boundary object in the sphere of collaborative newswork: institutional terms of service (or terms of use, hereafter abbreviated ToS). The provisions of ToS govern how news organizations incorporate audience submissions into their journalistic products. While ToS act to legally fortify the position of journalistic institutions, the agreements also restructure the creation rights of citizen journalists, thereby diminishing the quintessence of collaborative newswork.

Using grounded theory, this research will critically analyze audience-engagement ToS as posted on the websites of America's top media outlets (broadcast and print). In profiling this interplay between professional and amateur journalists, this research will also forward practices that may ameliorate coming intellectual property battles, thereby vivifying the spirit of audience engagement in the cultural production of modern newswork.

Collaborative newswork and the shifting journalistic landscape

Historically, news organizations did not regard the audience as an active contributor or collaborator in newswork (Ananny, 2013). News outlets once perceived their own role primarily as that of lecturer, rather than as conversation starter – forming a detached and distant relationship with the public (Gillmor, 2004; Ananny, 2013). However, the entry of audience engagement has redefined the power that news organizations (as well as individual journalists) once possessed, with greater control now resting with average citizens (Gillmor, 2004; Bruns, 2005; Robinson, 2011).

Citizen journalism's rise to prominence within the daily practice of newswork has been a rapid one. Scholars assent that grassroots media truly emerged in the aftermath of 2004's South Asian tsunami; for the wide spectrum of media used to express eyewitness accounts were posted directly online by amateur newsgatherers (Allan, 2009; Williams, Wardle & Wahl-Jorgensen, 2011). Dan Gillmor, a leader of the early citizen journalism movement, advocates that such citizen interaction continues to spark "deeper conversations with my sources and my readers, who are telling me things I don't know" (Gillmor, 2004, p. 113).

Given recent newsroom downsizing, news organizations are increasingly turning toward citizens to fill gaps in content. These part-time, amateur reporters contribute through mainstream channels primarily because citizen journalism lacks a viable market model to support itself (Quinn & Quinn-Allan, 2008). News organizations accept citizen media products for which they would typically pay trained and educated reporters (Kperogi, 2010; Usher, 2011; Deuze, 2009; Fish & Srinivasan, 2011; Brabham, 2012; Langlois, 2013). Several scholars posit that corporate news organizations merely capitalize upon this free labor provided by informed participants (Cammaerts, 2008; Bruns, 2008; Jones, 2009; Muthukumaraswamy, 2010; Usher, 2011). Although this labor market is seemingly invisible, the citizen contributions provide tangible revenues to the corporation (Kperogi, 2010; Usher, 2011). From the managerial vantage point, collaborative newswork and its free labor fulfill a duo of institutional imperatives: local news production and profit (Lowrey, 2009, 2011; Vujnovic, 2011).

And with the rise of participatory culture, journalists have also lost their absolute autonomy as cultural producers of the news (Deuze, 2005; Gillmor, 2004; Bruns, 2008;

Robinson, 2011). A study of the BBC's approach to user-generated content uncovered that news organizations often first turn to citizen journalists in cases of breaking news – a role reversal for traditional newsworkers, who must now curate content back in the newsroom. Within minutes of the 7/7 London bombings in 2005, *The Guardian* had received more than 50 images by e-mail – all contributed by citizen journalists (Williams et al., 2011; Allan, 2009). In a shifting of professional roles, newsroom employees culled through the images received rather than rushing out to capture the action. Mainstream outlets are now beginning to deploy citizen reporters in non-breaking news events – fostering recurrent professional-amateur collaborations (Allan, 2009). In the daily practice of newsgathering, mainstream newsworkers must routinely meld user-generated images, music and video into emergent genres of multimedia, bearing more multifaceted layers of copyright and ownership rights than ever before (Aufderheide, Jaszi, Boyles & Bieze, 2012).

Despite heightened levels of audience engagement, research has illustrated that many news organization leaders believe that citizen journalists have not been socialized into the ethos of objective newsgathering shared among professional practitioners (Lewis, Kaufhold & Lasorsa, 2010; Muthukumaraswamy, 2010; Heinonen, 2011). Numerous editors express trepidation, in fact, with devolving fact-gathering to untrained eyes and ears (Lewis et al, 2010; Muthukumaraswamy, 2010). Many newsroom leaders see their primary role as protector and guardian of the news publication, and fear citizen journalism dilutes the institutional brand (Singer, 2009). As a result, news organizations often place strict controls upon user-generated content received as part of collaborative newswork, using terms of service agreements as boundary objects.

Terms of service as boundary objects

Boundary objects act as "a bridge or connection between the groups [in this case, journalists and citizen journalists] and can be used by individuals within either group for their own purposes while maintaining their identity as objects" (Shanahan, 2011, p. 906). Because disparate meanings may be assigned to the same item, boundary objects possess "interpretative flexibility" amongst groups (Shanahan, 2011, p. 907). In this light, both news communities of practice – professional journalists and citizen journalists – use institutional terms of service as a boundary object to demarcate spheres of professional conduct.

The portions of ToS relating to user-generated content – much like news organization policies for commenting on industry websites (Robinson, 2010) – place parameters or "codified norms" on user-generated, digital news artifacts produced as part of collaborative newswork (Powell, 2012, p. 703; Langlois, 2013). Assenting to the ToS occurs simply by visiting the news organization's Web site, and submitting content (Ekstrand, 2002). Given the legalese in which most ToS are written, it is likely that few citizen contributors peruse through the fine print, however.

On their face, ToS appear to provide the content creator fewer protections than industry-standard "work for hire" agreements forged with freelance journalists, in which stringers receive payment in exchange for licensing rights to their content (Franklin, Anderson & Lidsky, 2011). Unlike the work product amassed by professional journalists that is owned by news institutions, some scholars express skepticism in the legal strength of so-called "adhesion contracts" – like ToS – to transfer copyright and ownership rights

from citizen ventures to news organizations. Nevertheless, if citizen journalists find objectionable content within the ToS, few amateur reporters can amass the financial war chest necessary to fight a legacy news outlet with in-house legal counsel (Ekstrand, 2002; Rappaport & Leith, 2007). Consequently, the specific provisions of ToS that connect to user-generated content have yet to be fully tested in American judicial system.

Terms of service in collaborative newswork

In order to better articulate the role of ToS as a boundary object in journalistic practice, one must delve into the often verbose, jargon-loaded agreements extended to users. Given the concentration of modern media ownership in the United States, ToS of smaller newspapers and broadcast outlets mirror the standards promulgated by their corporate parents. And as communications scholar Timothy E. Cook contends, "both the process of newsmaking and the content of the news are so similar across organizations that we can begin to talk of the news media as a single institution" (Cook, 1998, p. 76). So examining aggregated ToS forwarded by elite, legacy media can illustrate how the broader news media ecosystem as a whole engages copyright and ownership rights of user-generated content.

This research encompasses a close, critical reading of ToS agreements (in particular, those provisions pertaining to user-generated content) posted on the websites of America's 10 largest print and broadcast news outlets, as defined by circulation and viewing audience. ToS for each news organization were downloaded and reviewed in April 2012 and in April 2013, noting any prominent changes in the documents that

occurred. Using grounded theory (Strauss & Corbin, 1990; Creswell, 2007), categories of

the ToS attributes were constructed. During this process of open coding with the

documents, the following ten categories emerged:

- Non-Exclusivity: Does the news organization possess sole rights to the user-generated content?
- Perpetuity: Does the news organization have ongoing rights to the user-generated content?
- Licensing: Can the news organization sell the user-generated content to a third party?
- Editing: Can the news organization change or alter the user-generated content?
- Re-publish/re-air: Can the news organization reprint/re-broadcast the user-generated content?
- Derivative Works: Does the news organization possess the right to create new works based upon the user-generated content?
- Future Platforms: Does the news organization have rights to incorporate the user-generated content in future media platforms that may not yet exist?
- Royalty-Free: Does the news organization owe royalties to citizen journalists for the user-generated content?
- Irrevocable: Can the news organization still possess the user-generated content if the citizen journalist deletes it?
- Moral rights: Does the citizen journalist retain any rights of authorship or attribution in the user-generated content?

Of the media outlets surveyed, the average length of the entire ToS agreement

was 4,406 words, with sections pertaining to user-generated content averaging 1,105

words. Eight agreements were written using legal language; two ToS explicated the

provisions in plain English. Despite their length and complexity, only one media outlet

operationally defined in the ToS what separates user-generated content from the

traditional, raw materials of journalistic work product obtained through the natural course

of citizen sourcing.

Taken together, mainstream broadcast organizations appear to forward more intensive, ironclad ToS agreements with audience members than do newspapers. In total, the broadcast ToS examined were more than twice as long (1,589 words) than newspaper ToS (626 words). Broadcast outlets draw particular attention toward so-called "moral rights" provisions in the ToS, which center upon explicitly attributing the work of citizen journalists by name and/or keeping the user submission in its original form. By agreeing to the ToS, audience members largely waive their right to control how the content is used after submission or to force the news institution to recognize the identity of citizen contributors publicly.

All news organizations state that they can modify and edit the user's submission into new formats, including using the material for commercial purposes. Several outlets indicate in the ToS they can claim revenues from user-generated content resold for marketing and promotion. And the content can also be used in non-news platforms, including theatrical releases. These rights, among others, are irrevocable in the eyes of most elite media organizations, with an exception; one broadcast outlet permits citizen journalists to delete user submissions from its site. All other outlets claim to own user-generated content in perpetuity, even if the user removes the material from the site.

ToS also proscribe how citizens can use mainstream material in their content creations. One broadcaster, for instance, asks users to email its legal department before linking to site content. All media outlets surveyed strongly admonished site visitors, however, that the trustworthiness and credibility of citizen contributions stands independent from the broader news organization's reputation.

All user agreements also demarcate how copyright applies to content produced by citizen journalists. Two news organizations directly claim interests in the copyright materials submitted by the audience; in fact, the phrase "right to exploit" user-generated content appears in the ToS of five media outlets. Connected to the "right to exploit," nearly all news organizations examined concurred that citizen journalists cannot receive any compensation for their labor. In addition, most news organizations assert sublicensable rights, in which the media outlet could sell the citizen content to a third party or use the content for advertising/promotion purposes. One news organization enables its citizen journalists to receive partial compensation – but only in limited capacities. If the news outlet licenses and sells a piece of stand alone, user-generated content that it does not use to a third-party – such as an image archival service, a wire service or another network – it will pay the user a percentage of licensing fees received.

Vivifying audience engagement

The provisions of ToS, when taken together, appear to act as a boundary object in collaborative newswork, delineating clear professional roles between citizen and professional newsworkers. All agreements examined establish formal mechanisms by which citizens may forward their content submissions into the field of production. But, at the same time, the ToS grant professional journalists sole rights to edit and to reshape the content into news accounts. ToS, then, also appear to function as boundary objects for ethical precepts of the profession, establishing that the veracity of user-generated content should be evaluated separately from news products constructed by trained journalists.

At the same time, ToS appear mired in atavistic notions of journalistic practice. Only one ToS agreement clearly articulated the term "user-generated content." As hacking moves to the journalistic mainstream (Usher & Lewis, 2011) and as more news organizations are opening their Application Programming Interfaces (APIs) for experimentation (Aitamurto & Lewis, 2013; Ananny, 2013), the parameters of user-generated content expand far beyond mere submission of eyewitness photos or videos.

ToS also, in some cases, appear to stand as oppositional to the foundations of copyright, which seeks the promotion of cultural expression enabling communities to create content unabated by corporate control (Aufderheide, Jaszi, Boyles & Bieze, 2012). So how can news organizations best array ToS to foster, not inhibit, audience engagement? Some scholars have pondered new constructs for copyright that would empower citizen collaborators (Lessig, 2006; Gant, 2007; Bruns, 2008). Bruns, for example, has posited the prospect of decoupling ownership from authorship, thereby separating the domains of finance from that of cultural production (Bruns, 2008). Yet such transformations of copyright would require a dynamic and dramatic paradigm shift in other fields of cultural production beyond journalistic practice. In the absence of complete overhaul, news organizations can better articulate ToS provisions by rewriting the agreements in jargon-free language that is accessible to the general public. (Two news organizations in this study's sample had, in fact, reworked the provisions into clear and concise language).

Additionally, actors within media institutions – journalists – can, perhaps, act as better stewards of user-generated content. Amateur reporters must essentially feel that their contributions are both valued and welcomed in order for collaborative newswork to

be sustained (Gant, 2007; Robinson, 2011). Journalists, then, can better attribute information forwarded by informed participants, bestowing credit where credit is due. The BBC's evolutionary approach to user-generated content submissions may be particularly instructive in this regard. In 2001, academic inquiry at the BBC revealed that the news division viewed "UGC as little more than raw material which they turn into the news; grist to the journalistic mill" (Williams et al., 2001, p. 163). A decade later, in the aftermath of its reporting on the Arab Spring uprising, a report released by the BBC unveiled the centrality of citizen submissions; nearly three-quarters (74%) of the network's coverage was fueled by user-generated content (BBC Trust, 2012; Dowell, 2012). In efforts to recognize the labors of citizen journalists, as well as forward transparency about content sources, the BBC has recently implemented an easy-to-read ToS policy of identifying the authorship behind "very strong user-generated content inspired by a BBC call to action" (BBC, 2013). By openly acknowledging when citizen works have been edited into new, emergent news products, ToS become less of a boundary object between journalistic producers and more a force to propel collaborative newswork forward.

To expand this pilot study, future research to delve further into ToS as boundary objects could be augmented by in-depth interviews with journalistic practitioners, as well as citizen journalists. Such conversations can contextualize if ToS are perceived as boundary objects by those engaged in the process of collaborative newswork. These findings could be complemented by expanding the sample of ToS agreements examined, to reflect other journalistic actors in the larger media ecosystem.

As the role of audience engagement accelerates within the sphere of news

production, professional journalists are increasingly collaborating with citizen

counterparts. Establishing ToS that reflect the open nature of newsgathering, while

acknowledging the content's economic role in newswork, can further facilitate

collaborative newswork. Revisiting these agreements with the mindset of collaboration

rather than that of boundary-making can work toward addressing the tension between the

democratic nature of participatory media and the hegemonic forces of institutional

control.

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