

Conference Paper

Legal Implications for Parties Who Display Inappropriate Content Through Social Media Platforms (Copyright Study)

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Abstract.

Copyright is one of the rights included in protected intellectual property rights. One form of creation protected by the expert is the work of photography and cinematography. However, it is known that with the development of existing technology, works in the form of photography and cinematography are often used by other parties/people by showing and/or uploading the work to social media without permission from the creator himself. It is not uncommon for the photography and cinematography created to have economic value. Another problem arises when it turns out that the photography and cinematography created contain immoral elements. Therefore, a more in-depth study is needed regarding the legal implications of uploading photography and cinematography without the author's permission and the limits given by the norms of decency in producing the creation itself. Based on the research results, it is known that the legal responsibility of the party who shows photography and cinematography without the author's permission on social media platforms, namely if the action is to obtain economic/commercial benefits. It is proven that if the creator suffers economic losses, then the perpetrator can be charged compensation. This type of research is normative juridical/normative legal research, which uses secondary data by processing data derived from legal materials, namely primary, secondary, and tertiary legal materials. Study data were collected through documents and qualitative analysis.

Keywords: copyright, intellectual property rights, information and electronic transaction law, photography, cinematography, social media

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1. INTRODUCTION

The problem of intellectual property law (IPR) continues to grow along with the development of science and technology. As science and technology progress, the need to protect intellectual property rights is increasingly felt, encouraging the government to create and update intellectual property laws.[1] Rachmadi Usman in Neni Sri Imaniyati and Panji Adam Agus Putra revealed intellectual property rights, such as rights over works that arise or arise from human mental abilities in technology and knowledge.[2]

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Contemporary rapid technological science has led to many changes in the social order of life. The existence of social media is also currently changing the behavioral order that changes from time to time. Such changes can come in different ways, for example, according to each region's moral culture and standard of living. Because Indonesia has many different regions, there are various races, tribes, and religions where all social changes can occur. Until now, almost all Indonesians use social networks as a daily activity that cannot be separated from their needs.

Because social media has now become a necessity for society, it cannot be separated from the rules that govern it. The law must be able to move with the times to protect everything related to technological developments. One of them concerns social media technology, which is rapidly developing, so there must be rules governing it. Therefore, Article 1, paragraph (3) of the 1945 Constitution clearly states that the Indonesian state is governed by law.[3]

Based on this, everything with legal implications for its activities must undoubtedly be regulated by law, including this IPR. One of the IPRs recognized in Indonesia is Copyright. Article 1 number 1 of Law Number 28 of 2014 concerning Copyright states: "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing the restrictions in accordance with the provisions of the legislation". Special rights or exclusive rights of the creator means no one else can use this right without the creator's permission.[4]

A person who wants to utilize someone else's copyright must first get permission from the creator, especially for economic or commercial purposes. A copyrighted work created by an individual or group of people who created the work should be protected and copyrighted so that the creator of the artwork can live properly. The fundamental idea of the copyright law is to protect the rights of the creator. This legal protection only applicable to creations of a certain form to be heard, seen, or read.[5]

The works protected by Article 40 of Copyright Law No. 28 of 2014 include photographic and cinematographic works. Based on the explanation of Article 40, paragraph (1) letter (k), "photographic work" means any photograph taken with a camera. In contrast, according to the explanation of Article 40, paragraph (1), letter (m), "cinematographic work" means a work in the form of moving images (moving images include documentaries, advertisements, written reports or narrative films, and cartoon films. Films may be produced on celluloid tape, videodisc, optical disc, and/or other media suitable for cinema, big screen, television, or other mass media). Cinematography is one example of audiovisual.[6]

Based on this, it is clear that works in the form of photography and cinematography are part of the works protected by laws and regulations. In other words, all provisions in

the Copyright Law are also attached to photographic and cinematographic works that require other parties to obtain permission to distribute, perform, and/or upload them to social media. Thus, using, distributing, or reproducing all or most of a copyrighted work without the authorization of the creator or copyright owner who has exclusive rights to the work may be considered an infringement..[7]

In order to understand the concept of IPR protection, especially in the field of copyright, it is necessary to know the nature and basic principles of IPR. Understanding the characteristics and principles, the background of the need to protect intellectual property rights (in this case, copyright photography and cinematography) is also recognized. Djumhana introduced the concept of intellectual property protection in the Roman system, creating works using mental abilities in which the creator receives ownership in the form of natural rights. Many scholars support and defend this view.[8]

Similarly, the concept of the legal protection of photographic and cinematographic works is limited by norms included in the decency norms that the creator must not violate in his creation. If this is not heeded, it will undoubtedly impact the legal implications for both photography and cinematography creations and the creators concerned, especially if the photography and cinematography works are shown in the social media area, where control is complicated so that the uploading of photography and cinematography containing violations of decency can still circulate on social media.

Copyright (in the form of photography and cinematography) and social media are two (2) interconnected things, with social media always involving the creation or work of someone who is the fruit of the thoughts and feelings of others. A person who creates a work is also known as a creator. Today a, creative creator can show their work by making it available to the public, exhibiting and showing it, including posting on social media, social media itself, listen. The “Digital 2021” report states: “A recent look at the state of the digital space shows that of Indonesia’s total population of 274.9 million, 170 million know, own and use social media. With this information, it can be concluded that the frequency is around 61.8%”.[9]

Based on the entire series of backgrounds above, it is known that there is an identification of problems or issues to be examined in this study, namely related to how legal liability and/or legal implications can be imposed on parties who show photography and cinematography without the permission of the creator which is distributed or uploaded on social media platforms such as TikTok, Instagram and so on. Apart from that, other issues will also be discussed how the norms of decency limit the results of copyrighted works in the form of photography and cinematography in the scope of copyright because it is understood that now many uploads are seen that come from the results of photography and cinematography creators containing immoral elements,

but are still freely circulating on existing social media, whether uploaded by the creator himself or uploaded by others without the knowledge/permission of the creator. In other words, this research aims to answer these problems, so, in the end, the researcher raised the research title: “Legal Implications for Parties Performing Unauthorized Photography & Cinematography Through Social Media Platforms (Study of Decency Norms in the Scope of Copyright)”.

2. METHODOLOGY

In accordance with the problems and research objectives, this research method uses normative legal research (standard law) and is based on the principles of statutory law. Furthermore, this research is descriptive analytical. The data source used to perform this normative legal research comes from secondary data using legal materials in the form of primary, secondary, and tertiary legal materials. The data collection tools for this research are literature studies/documentation studies and analyzing existing data and laws and regulations. The document study examines a number of documents related to laws and regulations and existing documents.[10]

In the end, this research will be subjected to data analysis. Data analysis is the most essential and crucial step in this research. The information collected and processed will be analyzed and constructed as part of the research process. Indeed, data analysis is to provide a study that can mean adding, criticizing, commenting, supporting, and then making a research result and/or conclusion through the help of theories that have been mastered and the results of their thinking. This research utilized qualitative analysis, which is data analysis that does not use numerical values but describes the results in words that emphasize the quality of the data.[11]

3. RESULTS AND DISCUSSION

3.1. Legal Liability of Parties Performing Photography and Cinematography Without the Authorization of the Creator on Social Media Platforms

The development of technology and information becomes fast when there are many technical inventions by a person or group of people who want to create something that can be utilized/used by everyone. In this case, the role of the government in enforcing copyright, trademark, patent, and industrial design laws against intellectual property rights in Indonesia is vital so that other parties do not make claims or create creations

unlawfully. Intellectual property rights originally consisted of two main concepts, namely patents, and copyrights, which were regulated in law separately.[12]

This legal protection aims to awaken the spirit of creative ideas, especially in engineering. As a developing country, Indonesia must be able to take appropriate steps to anticipate all changes and development trends as well as global trends. Intellectual property rights usually refer to protecting the use of ideas and knowledge with commercial value.[13]

The intellectual property rights discussed here certainly focus on copyright in the form of photographic and cinematographic creations. In general, the protection of copyright owners and/or creators including photographic and cinematographic works, is outlined in Article 9 of Law Number 28 of 2014 concerning copyright, which states:

1. “The Creator or Copyright Holder, as referred to in Article 8, has the economic right to:
 2. publishing the Creation;
 3. Reproduction of the Creation in all its forms;
 4. translation of the Creation
 5. adaptation, arrangement, transformation of the Creation distribution of the Creation or copies thereof;
 6. performance of the Creation;
 7. Announcement of the Creation;
 8. communication of the Creation; and
 9. leasing of the Creation.
1. Any Person exercising economic rights as referred to in paragraph (1) must obtain the permission of the Creator or Copyright Holder.
2. Any Person without the permission of the Creator or the Copyright Holder is prohibited from reproducing and/or commercially using the Creation.”

It can be seen from the provisions of Article 9 paragraph (2) above that every person is required to obtain permission to exercise economic rights over the creator’s work. Also, every person is prohibited from duplicating without the permission of the copyright holder or the creator. This means that if it is associated with the implementation of copyright on social media platforms, such as photography and cinematography, social

media users are prohibited without permission to duplicate (show, re-upload) the work of others before obtaining permission from the creator.

It can be understood that copyright is the exclusive privilege of the creator, which appears automatically after a creation is manifested in accordance with the principle of notification, without being confined by restrictions under the provisions of the law. The rights attached to the creator are both economic rights and moral rights. Economic rights are the rights of creators or copyright holders to benefit financially from their creations. In contrast, the creator's own rights are safeguarded by the concept of moral rights. Because moral rights are inalienable and exist independently of time and space, the Creator enjoys them both while alive and in the afterlife.[14]

Copyright protection arises when the idea has been implemented in concrete form (fixation). Hence this copyright does not require registration to obtain protection. This protection exists automatically the moment the idea is implemented. While copyright registration also exists in some countries, the purpose of registration is as evidence in court in a copyright dispute against a person.[15]

Regarding the legal liability of parties who broadcast photographic and cinematographic works without the permission of their creators on social media platforms, it is inseparable from the legal protection granted by the government through legislation against these works. The kinds of creations protected in the Copyright Act are stated in Article 40 paragraph (1). While copyright protection in the form of photographic and cinematographic works is contained in letter k and letter m of the article.

Previously mentioned photographic works include all photographs taken with a camera, where one of these photographs is a portrait within the meaning of Article 1 number 10 of the Copyright Law. Specifically, the copyright of photographs in the form of portraits is mentioned in Article 12 of the Copyright Law, namely:

1. "Any Person shall be prohibited from Commercially Utilizing, Duplicating, Announcing, Distributing, and/or Communicating the Portrait he/she has made for commercial billboard or advertising without the written consent of the person photographed or his/her heirs.
2. Commercial Use, Reproduction, Announcement, Distribution, and/or Communication of a Portrait, as referred to in paragraph (1), which contains a Portrait of 2 (two) or more persons, shall seek the consent of the person(s) in the Portrait or their heirs."

So that for photographic works in the form of portraits only, the creator must first obtain permission from the human object he photographed, of course for other parties who want to distribute, show, or duplicate, including through social media, must initially

obtain permission from the creator first, especially if it is for economic interests because this is part of the State's protection to those who have created a work.

As Satjipto Raharjo puts it, when expressing his views on legal protection, it is to support human rights when others suffer losses, when these protections are given to the community to fully benefit from all the rights granted by law. The Social Control Planning Doctrine focuses on the place of intellectual property rights in society. Moreover, intellectual property rights are granted for the benefit of society. This doctrine is more of an update of the copyright protection doctrine, which is more related to studying copyright protection on the Internet.[16]

It is also inseparable from the re-upload (re-uploading, duplication) of a photographic work of the creator by social media users without permission, so social control is needed to protect the creator's economic interests. It is understood that the time of legal protection given to the creator or copyright owner of photographic and cinematographic works can be seen from the provisions of Article 59 paragraph (1) of the Copyright Act, which states:

Copyright Protection of Creation:

1. "Photographic works;
2. Portrait;
3. Cinematographic works
4. Video games;
5. Computer programs;
6. Embellishments of written works;
7. Translation, interpretation, adaptation, anthology, database, adaptation, arrangement, modification, and other works of transformation;
8. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
9. Compilation of creations or data, whether in a format that a computer program or other media can read; and
10. Compilation of traditional cultural expressions as long as the compilation is an original work,"

valid for 50 (fifty) years from the first announcement.

As seen in the Article 59 paragraph (1) letters a and c above, the legal protection granted by the State to photographic and films is fifty (50) years from the day of their initial release. The publication here is certainly intended within the scope of social media since the creator uploads (broadcasts) his/her photographic and cinematographic work through social media platforms and/or electronic media. So that as long as the period is still valid, everyone is obliged to obtain permission from the creator to re-upload and/or show the photography and cinematography work on social media if it is for economic purposes.

Still related to the legal liability of perpetrators who broadcast photography and cinematography without the permission of the creator, it can be understood that the copyright owner of the video (cinematography) recorded by irresponsible parties without the knowledge of the copyright owner and then uploaded back can be sued in court. However, prior to the trial, mediation has been conducted but was unsuccessful, so the dispute must be resolved through a trial in court. In court cases, lawyers may defend copyright owners as part of their duties as enforcers of the law.[17]

This can be done because the act of posting and/or showing photographic and cinematographic works belonging to others without permission is included in the unlawful act as stipulated in Article 1365 of the Civil Code, which states: "Every unlawful act which causes damage to another person shall oblige the person who caused the damage through his fault to compensate for the damage". For this reason, if the creator feels harmed by the results of unauthorized posting on social media by the unauthorized party, he can submit compensation to the person concerned. This is one form of legal liability for such unauthorized actions.

This compensation is also parallel with the provisions of Article 1 number 25 of the Copyright Law, which states: "Compensation is the payment of a sum of money charged to the perpetrator of infringement of the economic rights of the Creator, Copyright Holder and/or owner of Related Rights based on a court decision in a civil or criminal case that has permanent legal force for losses suffered by the Creator, Copyright Holder and / or owner of Related Rights". The full description of legal responsibility in the form of compensation is outlined in Article 96 of the Copyright Act, which outlines:

1. "Creators, Copyright holders and/or holders of Related Rights or their heirs who suffer losses of economic rights are entitled to compensation.
2. Indemnification, as referred to in paragraph (1), shall be granted and included simultaneously in the court's ruling on the case of the criminal offense of Copyright and/or Related Rights.

3. Compensation to the Creator, Copyright Holder and/or owner of Related Rights shall be paid 6 (six) months after the court decision is legally binding.”

The presence of new types of works, such as photography and cinematography mentioned above, is in line with the needs of the current internet era, where frequent copyright infringement is not only to piracy or copying but also to the unauthorized distribution of works. The presence of social media whose content is primarily user-generated. Nevertheless, on the other hand, content is often found to result from re-uploading, often called reposting, without the knowledge or consent of the rights holder or the person mentioned in the content.[18]

This is the purpose of the legal protection provided by the Copyright Law. However, not only the Copyright Law protects the rights of creators in the scope of social/electronic media, Law No. 19/2016 on electronic information and transactions has also incorporated such protection explicitly (although not explicitly), which is realized in the form of prohibitions and sanctions (legal liability) for parties who distribute electronic documents (such as photography and cinematography on social media) belonging to others. Article 31 paragraph (1) of the ITE Law states the prohibition for everyone not to change, add, reduce, transmit, damage, eliminate, move, or hide an Electronic Document belonging to another person, of course in this case what is meant by electronic documents is photography and cinematography uploaded on social media / electronic media platforms. If this is violated, then the law allows the creator to file a lawsuit for damages against the party as stipulated in Article 38 paragraph (1) of the Electronic Information and Transactions Law.

Legal liability for parties who display photography and cinematography without the author's permission on social media platforms is not only in the form of responsibility to compensate for civil damages but also in the form of criminal sanctions, imprisonment, and criminal fines. This is accommodated in the provisions of Article 113 paragraph (2) and (3) of the Copyright Law and also Article 48 paragraph (1) of the Information and electronic transaction Law.

3.2. Norms of Morality Limiting Photographic and Cinematographic Works in the Scope of Copyright

The law acts and must be enforced to protect the people's interests. Prosecution can be expected and peaceful, but it can also be for law violations. In this case, the violated law must be followed. This law is implemented by law enforcement. When applying the law, three points must always be considered: namely: justice (*gerechtigheit*), expediency (*zweckmassigkeit*) and legal certainty (*rechtssicherheit*)[19]. One of the essential things

that must be considered in the formation of law is that there are limits to the norms of decency that society should not violate, so the law itself is formed to ensure that society does not violate existing norms of decency.

The copyright category of intellectual property protects the widest range of creative works, from scientific papers to works of literature to computer programs. Copyright reform is crucial because it serves as the cornerstone of the national creative economy, which is a driving force in Indonesia's and other countries' economies. This is especially true given the exponential growth of information and communication technologies in recent years. Since copyright satisfies the elements of protection and development of creative industries, its position in the national economy is likely to be optimized.

The development of information and communication technology is one of the characteristics of copyright law, considering that on the one hand, information and communication technology plays a significant role in the development of copyright law. However, on the other hand, it has also become a tool to commit copyright infringement, the law in this area. Well-proportioned control is needed to optimize positive functions and minimize adverse impacts.[20]

Based on today's growing use of social media that facilitates access to various forms of entertainment and the spread of illegal movie footage to the detriment of filmmakers, intellectual property rights play a significant role in protecting the copyright of filmmakers' works, songs, and advertisements to, for example, avoid plagiarism or illegal recordings.[21]

Modernization and globalization have brought significant developments in various fields, such as economic, social, and cultural. As a developing country, Indonesia has made various efforts to encourage development in various sectors, including information technology (Internet), because the development of the technology sector affects life both directly and indirectly. However, the development of technology and digitality also brings many effects that cover areas that do not recognize national borders because it is global. In life, the Internet is increasingly needed for daily activities such as online shopping, service provision, and information service provision, as well as Internet services and functions containing copyright elements such as musical and photographic works and cinematography. Over time, problems such as piracy, plagiarism, and many other problems arise.[22]

One of the problems that also often arises from the use of technology such as social media is the existence of uploads or content that violates the norms of decency, which is not uncommon for creations in the form of photography and cinematography. So, it is necessary to see the rules of law in Indonesia that regulate the part of the norms of decency against creation in the form of photographic and cinematographic works.

However, to see the extent to which the norm of decency limits photographic and cinematographic works within the scope of copyright can be observed from the provisions of Article 50 of the Copyright Law, which states: "Every person is prohibited from publishing, distributing, or communicating Creation that is contrary to morals, religion, decency, public order, or the defense and security of the state". Here it can be seen that although a person is free to produce works of creation such as photography and cinematography, if it intersects with violations of decency norms, then the work is prohibited from being announced, distributed, uploaded, and/or displayed on social media.

It is understood that according to Article 64 of Law 28 of 2014 states, the Minister, in this case, organizes the conservation and disposal of works/removal of copyright and related rights. The provision of copyright registration is not an obligation to obtain copyright. Copyright is obtained by itself; unregistered creators still get legal protection, although registration is required as original evidence of copyright ownership contained in the Minister of Law and Human Rights Regulation[23]. However, if after registration, it turns out that copyright or creation, in this case, photography and cinematography made, has violated the norms of decency, it can be abolished its registration status and not get protection by law. This is as stipulated in Article 74 paragraph (1) of the Copyright Act, which states:

The legal force of recording Creation and Related Rights products is erased due to:

1. "The request of the person or legal entity whose name is recorded as the Creator, Copyright Holder, or owner of Related Rights;
2. The lapse of time as referred to in Article 58, Article 59, Article 60 paragraph (2) and paragraph (3), and Article 61;
3. A court decision that has obtained permanent legal force regarding the cancellation of the recording of a Creation or Related Rights product; or
4. Violates religious norms, moral norms, public order, national defense, and security, or laws and regulations whose deletion is carried out by the Minister."

It can be seen in the above provisions that one of the reasons for the deletion of recording work is that it violates the norms of decency. This means that the norms of decency play an important role in being considered by the creators of photography and cinematography so that they are not violated. If not, then there are legal implications that will be imposed both on the creation, such as not being registered, expunged, and/or not legally protected, as well as legal implications for the creator.

The norm of decency, when associated with pornography, can be seen in the provisions of Article 1 number 1 of Law 44 of 2008 concerning pornography, which states: “Pornography is images, sketches, illustrations, photographs, writings, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society”. Pornography is included in the category of things that have violated the norms of decency, which are not allowed by existing legal rules.

Therefore, based on these provisions, if the photographic or cinematographic work that violates decency touches the category of pornography, then it is already a violation of the law and falls into the category of crime. If it is proven that the photographic and cinematographic work contains pornographic elements, then according to Article 28 paragraph (1) of the Pornography Law, it is appropriate for the work to be destroyed.

Referring to the use of social media, the norms of decency must also be considered because it can lead to legal implications of imprisonment and fines for perpetrators who distribute (show on electronic media / social media) content, in this case, photography and cinematography, containing violations of decency norms. This is clearly stated in Article 27 paragraph (1) of the Information and Electronic Transaction Law, which states the prohibition, namely: “Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have content that violates decency”.

Electronic files that violate decency include photographic and cinematographic works that contain pornographic elements and/or elements of violation of decency that have been uploaded to social media such as TikTok, Instagram, and so on. So that if proven, there are legal implications for the creators of these photographic and cinematographic works in the form of legal liability as stated in Article 45 paragraph (1), which states: “Every person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency as referred to in Article 27 paragraph (II) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)”.

Based on the above, all works of authorship, including photographic and cinematographic works, cannot be separated from the basic principles contained in the legal principles and norms of existing laws and regulations, which always prioritize the norms of decency. If there is a work that violates the norms of decency, not only can the work in question not be registered, but also the work cannot be legally protected and can even be abolished and/or destroyed. Furthermore, creators of photographic and

cinematographic works that contain violations of the norms of decency in them who have uploaded, distributed, and/or performed in electronic media / social media can be subject to legal implications of imprisonment and fines.

4. CONCLUSIONS AND RECOMMENDATIONS

The legal responsibility of the party who shows photography and cinematography without the author's permission on social media platforms is in the form of compensation to the party. Because these actions are included in unlawful acts as Article 1365 of the Civil Code, thus obliging the perpetrator to compensate the injured party, in this case, the creator of photography and cinematography. This is also in accordance with the provisions of Article 1 number 25 in conjunction with Article 96 of the Copyright Law, which facilitates creators to file a lawsuit against parties who use and/or perform photographic and cinematographic works of their creation for economic purposes. Associated with uploading on social media and/or electronic media such as Instagram, TikTok, and so on, then as long as the performance through the social media platform can harm the creator (as the owner), he can sue for compensation as stipulated in Article 38 paragraph (1) of the Information and Electronic Transaction Law. The legal responsibility can also take the form of imprisonment and fines.

The norms of decency limit photographic and cinematographic works within the scope of copyright as stated in Article 50 of the Copyright Law. So, if you do not protect the creation, including in the form of photography and cinematography, which violates the norms of decency, even though it has been registered, then the right is nullified. Although in general creation is protected by the State, it does not include creations that violate decency. Even if photography and cinematography fall into the category of violating moral norms that lead to pornography, the photography and cinematography must be destroyed.

Based on the above conclusions, it can be found a recommendation formula that can be used to accommodate the interests of the creator, in this case, the creator of Photography and Cinematography, on technological developments such as social media. First: there needs to be an affirmation from the Government; in this case, the DJKI convey and/or socialize to the public (including users of social media platforms) that photography and cinematography are part of copyright that must be protected and may not be shown (posted) through any platform without the authorization of the creator. Second: there needs to be a clear and structured regulation in the Copyright Law and the Information and Electronic Transaction Law that describes the rights and obligations of the creator of photography and cinematography in the scope of

social media/electronic media. Third: there need to be proper legal implications in the description of the norms of legislation, both criminal sanctions for creators who create photography and cinematography that violate the norms of decency, including those who show these creations on social media. Likewise, civil sanctions in the form of compensation for parties who show photography and cinematography on social media platforms without the author's permission, as well as additional sanctions in the form of deletion of uploads accompanied by deletion of the relevant (social media) account.

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