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**A "PINTEREST" QUESTION: IS PINTEREST HERE TO STAY?
A STUDY ON HOW IP CAN HELP PINTEREST LEAD A
REVOLUTION**

by Stephanie Chau*

I. INTRODUCTION

[1] Bulletin boards and pushpins are archaic. Yet, each day represents a new paradigm for the technologically savvy. Innovators pair old concepts with new functionalities and technology, often achieving groundbreaking results. Digital counterparts for Post-It notes emerged for computers and other wireless devices.¹ Other examples abound.² Thus, it is no surprise that pins and boards also have new meaning in the digital age. Credit is due to the founders of Pinterest, a nascent social networking site with a devoted following, for modernizing the pin.³ As a newer social networking site, Pinterest has experienced unparalleled growth after its

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¹ See Keith Dsouza, *11 Free and Useful Sticky Notes (Sticky Pad) Software for Your Desktop*, TECHIE BUZZ (May 20, 2008), <http://techie-buzz.com/software/11-useful-and-free-sticky-notes-sticky-pad-software-for-your-desktop.html>.

² See Leander Kahney, *Apple Lets Cat Out of the Bag*, WIRED (June 29, 2004), <http://www.wired.com/gadgets/mac/news/2004/06/64024> (discussing the anticipated release of the Mac OS X 10.4 version, and highlighting that “the system will summon a range of accessory apps -- including weather, world clocks, a calendar and sticky notes -- and dismiss them with a single keyboard button”).

³ See *Team*, PINTEREST, <http://pinterest.com/about/team> (last visited Oct. 5, 2012).

inception only a few years ago.⁴ Like all social networking sites, Pinterest thrives in the presence of societal materialism, narcissism, and consumerism. Its subsequent exponential growth is the byproduct of a high-functioning network effect.⁵ However, Pinterest has yet to monetize⁶ and currently operates in a contentious area of the law. As a result, Pinterest appears to be on the cusp of requiring internal analysis of intellectual property law and its own business model.⁷ The case study of Pinterest illustrates the growing pains of a budding start-up company operating, and perhaps profiting, where Internet copyright law lags. It is particularly apposite that Pinterest recently hired Michael Yang, Google's former deputy general counsel, as head of its legal department.⁸ This

⁴ See Reb Carlson, *Why Pinterest Is Like No Other Social Network*, 360I BLOG (Dec. 5, 2011), <http://blog.360i.com/social-marketing/pinterest-brands> (“[U]nique visitors increased from 418,000 in May [2011] to 3.3 million in October [2011], meaning traffic increased for this site sevenfold in five months alone.”); see also *Careers*, PINTEREST, <http://pinterest.com/about/careers/> (“Pinterest is one of the fastest growing social services in the world.”) (last visited Sept. 12, 2012).

⁵ See Carlson, *supra* note 4 (“Beyond its impressive growth over a year, Pinterest has also emerged as a very new type of platform when it comes to the way people engage with content in its community.”).

⁶ See Owen Thomas, *Uh Oh! Amazon Researchers Say Pinterest Doesn't Generate A Lot Of Sales*, BUS. INSIDER (Aug. 28, 2012), <http://www.businessinsider.com/zappos-labs-pinterest-monetize-2012-8> (indicating that this lack of monetization “is a big problem for Pinterest, because the whole idea of the site is that it's supposed to be better at monetizing social activity than Twitter or Facebook.”); see also Carlson, *supra* note 4 (“There is no paid advertising or media (yet), so all engagement has been purely organic.”).

⁷ See *Copyright & Trademark*, PINTEREST, <http://pinterest.com/about/copyright/> (last visited Sept. 29, 2012).

⁸ Nicholas Carlson, *Pinterest Just Hired a Big Name Lawyer From Google to Deal With One of Its Biggest Threats*, BUS. INSIDER (June 8, 2012), <http://www.businessinsider.com/pinterest-just-hired-a-big-name-lawyer-from-google-to-deal-with-one-of-its-biggest-threats-2012-6?op=1>. Yang's prior experience at Google includes dealing with several high profile controversies. *Id.* In particular, Yang handled issues with Google Chrome's terms of service in 2008 and Buzz in 2010, and further

Article argues that Pinterest’s continued ascent and perhaps even its continued existence hinges on Michael Yang, who must judiciously contour Pinterest’s intellectual property strategy.⁹ Pinterest should not only address impending trademark and copyright infringement issues, but also secure additional intellectual property protections and diversify its business.

[2] This Article explores the possible legal issues Yang will face in his new capacity. Part II introduces the concept behind Pinterest, Part III comments on the legal hazards currently looming given Pinterest’s business strategy, and Part IV offers insight on how Pinterest can leverage its intellectual property rights.

II. WHAT IS PINTEREST AND WHY DO WE HAVE IT?

[3] Successful Internet companies bring greater public access to previously limited resources, including libraries, archives, government records, goods, and knowledge.¹⁰ Google-branded services permeate the web, yet freshman companies also compete for a share in the market.¹¹

acted as Google’s spokesperson, defending a new privacy policy in Washington, D.C. in 2012. *Id.*

⁹ See Matt McGee, *Pinterest Hires Away A Google Attorney To Start Its Own Legal Department*, MARKETING LAND (June 8, 2012 7:04 P.M.), <http://marketingland.com/pinterest-hires-away-google-attorney-13702>; Carlson, *supra* note 4 (“Pinterest faces a serious legal challenge in its future: a huge portion of the content hosted on the site is copyrighted content, posted without the consent or even knowlege [sic] of the copyright owners.”).

¹⁰ SIVA VAIDHYANATHAN, *THE GOOGLIZATION OF EVERYTHING (AND WHY WE SHOULD WORRY)* 2 (2011) (“Google puts previously unimaginable sources at our fingertips - huge libraries, archives, warehouses of government records, troves of goods, the coming and goings of whole swaths of humanity.”).

¹¹ *Id.*

Pinterest is one such company in the social networking arena. Pinterest is valued at an estimated \$7.7 billion,¹² joining the ranks of competitors such as Facebook at \$104 billion,¹³ Twitter at \$8 billion,¹⁴ LinkedIn at \$10 billion,¹⁵ and Instagram at \$1 billion.¹⁶ Led by Facebook, social networking accounted for 16.6 percent of all time spent online in the United States in 2011 and will likely become the top online activity in 2012.¹⁷ Pinterest's traffic is steadily increasing—positioning the site as the third most popular media platform in the United States.¹⁸ Its appeal to college-educated females between the ages of twenty-five and forty-four offers advertisers a demographic, which not only logs an average of eighty-nine minutes a month—far exceeding that of Twitter's

¹² Debra Borchardt, *Pinterest is a \$7.7 Billion Company*, FORBES (Apr. 16, 2012), <http://www.forbes.com/sites/thestreet/2012/04/16/pinterest-is-a-7-7-billion-company/>.

¹³ See Bruce Watson, *Facebook IPO Valuation Sets Record: Is It Really Worth \$104 Billion?*, DAILY FIN. (May 17, 2012), <http://www.dailyfinance.com/2012/05/17/facebooks-ipo-valuation-sets-record-is-it-really-worth-104-bi/>. Underwriters set a price that valued Facebook at \$104 billion, but that valuation has come under fire since Facebook's Initial Public Offering on May 17, 2012. Lee Spears & Sarah Frier, *Facebook Told Regulators IPO Range Was Near Fair Value*, BLOOMBERG (June 15, 2012), <http://www.bloomberg.com/news/2012-06-15/facebook-told-regulators-ipo-range-was-near-fair-value.html>.

¹⁴ Borchardt, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Facebook-Led Social Media Market is Redefining Communication in the Digital and Physical Worlds*, COMSCORE DATA MINE (Feb. 20, 2012), <http://www.comscoredatamine.com/2012/02/facebook-led-social-media-market-is-redefining-communication-in-the-digital-and-physical-worlds/>.

¹⁸ Todd Wasserman, *Pinterest is Now the No. 3 Social Network in the U.S.*, MASHABLE.COM (Apr. 6, 2012), <http://mashable.com/2012/04/06/pinterest-number-3-social-network/>.

demographic—but is also ready and willing to spend.¹⁹ In fact, ComScore's "State of the U.S. Internet" report found that Pinterest users spend more money, buy more items, and conduct more transactions than any other demographic in the social network market.²⁰

[4] Launched in March 2010, “Pinterest is a virtual pin board;” it is a pin board-style photo-sharing social website that allows users to create and manage theme-based image collections of events, interests, and hobbies.²¹ Users cannot only browse their friends’ pin boards for inspiration, but also those of complete strangers.²² Users can upload images known as ‘pins,’ save favorites, make comments, and ‘share’ or ‘like’ photos.²³ Pinterest encourages users to “plan their weddings, decorate their homes, and share their favorite recipes.”²⁴ For that reason, it comes as no surprise that Pinterest is a female-centric site.²⁵ As of 2012, eighty-three percent of its United States users were women.²⁶ Nevertheless, just as Facebook moved beyond its college student niche, Pinterest may soon find a new, more balanced group of users once it fine-tunes its strategic approach.

¹⁹ Borchardt, *supra* note 12.

²⁰ Salvatore Rodriguez, *Pinterest grew more than 4,000% in one year, report says*, LOS ANGELES TIMES (June 15, 2012), <http://www.latimes.com/business/technology/la-fi-tt-pinterest-4000-percent-20120615,0,756408.story>.

²¹ *What is Pinterest?*, PINTEREST, <http://pinterest.com/about/> (last visited July 8, 2012).

²² *Getting Started*, PINTEREST, <http://pinterest.com/about/help/> (last visited July 8, 2012).

²³ *Pinning 101*, PINTEREST, <http://pinterest.com/about/help> (last visited Oct. 5, 2012).

²⁴ *Id.*

²⁵ Umika Pidaparthi, *Pinterest not manly enough for you? Try these sites, bro*, CNN.COM (June 22, 2012), <http://www.cnn.com/2012/06/22/tech/web/manly-alternatives-pinterest/index.html>.

²⁶ *Id.*

[5] Social networking sites flourish in the face of a narcissistic society. The self-admiration movement gained traction in the 1970s, followed by an explosion in the 1980s and 1990s²⁷ when unbridled self-indulgence and self-expression grew into “a more extraverted, shallow, and materialistic form of narcissism.”²⁸ Trends toward self-presentation evolved with cultural norms and new technology, propagated by narcissistic behavior amidst the masses, the presence of Internet social networking sites, and celebrity culture.²⁹ Scholars attribute the epidemic to indulgent parenting, excessive praise, obsession with rampant celebrity narcissism, and the pursuit of fame.³⁰ Although narcissists and social networking groups are not coextensive, the two are not mutually exclusive. Social networking sites revel in these narcissistic tendencies and parlay the user’s desire for validation and admiration into an entire platform. A vicious cycle ensues whereby these sites reinforce narcissistic behavior by rewarding the user with more connections or comments, and as those narcissists connect with other narcissists, the behavior mushrooms *quid pro quo*.³¹

[6] The United States is also founded on the principles of materialism and consumerism, the natural descendants of free market capitalism, which encourage individuals to endeavor to increase one's wealth.³² As a

²⁷ See Daniel Altman, *United States of Narcissism*, THE DAILY BEAST (July 17, 2011), <http://www.thedailybeast.com/newsweek/2011/07/17/narcissism-is-on-the-rise-in-america.html>.

²⁸ JEAN TWENGE, THE NARCISSISM EPIDEMIC: LIVING IN THE AGE OF ENTITLEMENT 4, 67-68 (2009).

²⁹ See *id.* at 38.

³⁰ See generally *id.* at 73-108.

³¹ See *id.* at 111.

³² Cf. Brooke Overby, *Contract, in the Age of Sustainable Consumption*, 27 J. CORP. L. 603, 626-27 (2002).

result, Americans have an appetite for purchasing goods that they desire but do not need.³³ Retailers, particularly in the luxury goods market, and social media companies are eager to exploit this consumer extravagance, a lavishness that might otherwise be characterized as an Achilles' heel. Much like on any other social networking service, brands already have a presence on Pinterest because consumers post and share photos of the product, the logo, or other marketing manifestations. However, controlling consumer sentiment can be a challenge as cease-and-desist letters are virtually ineffective and can cast negative light on the company.³⁴ On the other hand, given that retailers are a welcome presence on Pinterest, Pinterest has a distinct competitive advantage over Facebook and Twitter.³⁵

III. MUSINGS ON THE PINTEREST BUSINESS MODEL

[7] Pinterest's success depends largely on what scholars call "the network effect." The network effect is the phenomenon by which the utility of a good or service increases as the number of consumers multiplies, and as a result, the monetary value of participation on a network grows exponentially as well.³⁶ At one end of the network continuum are actual networks, which are communication systems, such as telephones and fax machines, "whose entire value lies in facilitating

³³ See ALEX WOOLF, CONSUMERISM 10 (2004).

³⁴ See DAVID KIRKPATRICK, THE FACEBOOK EFFECT: THE INSIDE STORY OF THE COMPANY THAT IS CONNECTING THE WORLD 263-64 (2010).

³⁵ See Borchardt, *supra* note 12.

³⁶ See Mark Lemley & David McGowan, *Legal Implications of Network Economic Effects*, 86 CALIF. L. REV. 479, 483, 594-98 (1998) (distinguishing network effects from general positive externalities (e.g., where education confers social benefits all those in the classroom), economies of scale (where the effect is on the supply rather than the demand side), path dependence (the tendency of history to influence present decision-making), models of collective behavior, and otherwise exclusionary behavior).

interactions” between the customer and the product owners.³⁷ Pinterest is an actual network and if it can overcome diseconomies of scale and manage tipping,³⁸ its network will become a tremendous asset. Given the immense growth of Pinterest’s network, Pinterest is now at a crossroads. There are two areas where its business model is deficient and in need of attention by Pinterest’s top executives and general counsel: monetization strategy and copyright issues. Two additional contentious areas, trademark³⁹ and privacy⁴⁰ issues, are beyond the scope of this article.

³⁷ See *id.* at 488, 491–94 (noting that lesser forms of network effects include virtual networks (which provide value that increases with the number of additional users of identical and/or interoperable goods) and positive feedback effects (where value increases even where the goods are not themselves connections to a network and do not interoperate with like goods)).

³⁸ *Id.* at 496 (defining “[t]ipping” . . . [as] the tendency of one system to pull away from its rivals in popularity once it has gained an initial edge.”).

³⁹ Given that Pinterest has a registered trademark, the mark has protection under the Lanham Act. On August 31, 2012, Pinterest filed a complaint against a Chinese trademark applicant Qian Jin for trademark infringement; Jin filed applications in March 2012 for the use of “‘Pinterest’ and ‘Pinterests’ for hotel and food services and for advertising and marketing.” Victoria Slind-Flor, *Google, Louboutin, Pinterest, Cengage: Intellectual Property*, BUSINESSWEEK.COM (Sept. 6, 2012), <http://www.businessweek.com/news/2012-09-06/google-louboutin-pinterest-cengage-intellectual-property>. In addition to trademark infringement, Pinterest alleges cybersquatting, trademark dilution and cybersquatting, that is, “bad-faith registration and use of numerous domain names containing, or confusingly similar to, Pinterest’s famous and federally registered PINTEREST trademark.” Dara Kerr, *Pinterest Gives Legal Punch to ‘Serial Cybersquatter,’* CNET (Sept. 5, 2012, 7:26 PM), http://news.cnet.com/8301-1023_3-57507046-93/pinterest-gives-legal-punch-to-serial-cybersquatter/. In addition to protecting its mark, Pinterest must not facilitate the infringement of other marks. Pinterest’s trademark policy pointedly states that “[a]ccounts with usernames, Pin Board names, or any other content that misleads others or violates another’s trademark may be updated, transferred, or permanently suspended.” *Copyright & Trademark, supra* note 7. Although Pinterest acknowledges potential for infringement, dilution, or false advertising, its policy leaves users with little guidance on what might lead to violation of one’s trademark. One report “estimates that brand squatting on Pinterest affects 90 percent of top brands,” such as FedEx, Coca Cola, McDonald’s and Dell PC. Lauren Rae Orsini, *Pinterest’s New Problem: Brand Squatters*

A. Pinterest Has No Monetization Strategy

[8] Initially, Pinterest must solidify a monetization strategy before it can grow. Although Pinterest's monetization potential is promising, the company has no formalized strategy as of yet.⁴¹ On its website, Pinterest flatly asserts "making money isn't our top priority right now."⁴² Pinterest is currently "focused on growing Pinterest and making it more valuable."⁴³ While these objectives are laudable, Pinterest already has an extensive following.⁴⁴ Dependence on outside investment from entrepreneurs and venture capitalists is not sustainable in the long term and Pinterest must cultivate ways to bring in revenue.

Are Screwing Over Big Companies, BUS. INSIDER (Mar. 16, 2012), http://articles.businessinsider.com/2012-03-16/tech/31199459_1_pinterest-users-brands-board-names. Whereas Twitter and Facebook have already addressed "trademark infringement and impersonation [of] brands and celebrities," Pinterest has yet "to regulate who has the rights to a username." *Id.* Pinterest may also be liable for indirect or contributory infringement.

⁴⁰ Although internet companies may claim to give users substantial control over how their actions and preferences are collected and used, the reality is that users are at the mercy of these companies, and user choices mean very little; given the amount of surveillance and tracking companies engage in, the privacy policies and infrastructure stack the odds against an unsuspecting or even educated user. *See, e.g.*, VAIDHYANATHAN, *supra* note 10, at 84 (examining Google's privacy policy, or lack thereof).

⁴¹ Sarah E. Needleman & Pui-Wing Tam, *Pinterest's Rite of Passage—Huge Traffic, No Revenue*, WALL ST. J. (Feb. 16, 2012), <http://online.wsj.com/article/SB10001424052970204792404577225124053638952.html>.

⁴² *Pinning 101*, PINTEREST, <http://pinterest.com/about/help/> (last visited Sept. 30, 2012).

⁴³ *Id.*

⁴⁴ Jeremy Cabalona, *Interest in Pinterest Reaches a Fever Pitch [INFOGRAPHIC]*, MASHABLE (Apr. 29, 2012), <http://mashable.com/2012/04/29/pinterest-interest/>.

[9] Pinterest's swift ascent as a major social networking site suggests that Pinterest is unique and has greater potential than even beyond the likes of Facebook and Twitter. A plethora of theories might explain Pinterest's success. Conceivably, Pinterest's business model is more adaptable to growth, Pinterest is on a quicker path to monetization than its predecessors, and Pinterest's entry into the market perfectly coincided with consumer interests. Such rapid growth allows or possibly even demands Pinterest to monetize sooner. Regardless, Pinterest will require resources to stay in vogue and remain competitive with social networking sites that have already monetized their businesses.⁴⁵

[10] As consumer attention shifts away from television, radio, magazines, and newspapers, \$200 billion in advertising revenues will shift online.⁴⁶ Pinterest figures to fight for these advertising revenues with the allure of its primary demographic and its pool of user data. To illustrate, women spend more time social networking than men worldwide.⁴⁷ Pinterest users spend more time on the site per visit (16 minutes) than on Facebook (12 minutes),⁴⁸ and Pinterest users spend more money than others.⁴⁹ Accordingly, Pinterest must carefully construct a strategy to

⁴⁵ See Bill Gurley, *How to Monetize a Social Network: MySpace and Facebook Should Follow TenCent*, ABOVE THE CROWD.COM (Mar. 9, 2009), <http://abovethecrowd.com/2009/03/09/how-to-monetize-a-social-network-myspace-and-facebook-should-follow-tencent/>.

⁴⁶ KIRKPATRICK, *supra* note 34, at 272.

⁴⁷ *Women Spend More Time Social Networking than Men Worldwide*, COMSCORE DATA MINE (Dec. 22, 2011), <http://www.comscoredatamine.com/2011/12/women-spend-more-time-social-networking-than-men-worldwide/>.

⁴⁸ See *12 Things You Need to Know About Pinterest for Business*, WEBRANX.COM (Sept. 4, 2012), <http://webranx.com/12-things-you-need-to-know-about-pinterest-for-business/>.

⁴⁹ Kristin Piombino, *Pinterest users spend more money than Facebook, Twitter users*, RAGAN (Sept. 13, 2012),

leverage its time with this captive audience. In recognition of Pinterest's reach, retailer Bergdorf Goodman, online crafts marketplace known as Etsy, and others have already incorporated Pinterest into their marketing strategies.⁵⁰

[11] Google monetizes its services using behavioral advertising, thereby analyzing user profiles to present users with advertisements tailored to the words they search.⁵¹ On Facebook, users volunteer vast amounts of personal data and generate data through their own behavior that in turn, is used to track and tailor advertisements.⁵² Harvesting data on users' interests and online activities is tantamount to "an Internet genome project," which is invaluable to advertisers.⁵³ However, Google and Facebook serve different purposes and as a result, there exists a demarcation in their approaches to online advertising: Google operates under the theory that human behavior can be reduced to an algorithmic equation whereas Facebook relies on social play and the power of sharing.⁵⁴ Pinterest treats the approaches as symbiotic rather than mutually exclusive.

[12] Like Google and Facebook, Pinterest has access to vast amounts of

http://www.ragan.com/Main/Articles/Pinterest_users_spend_more_money_than_Facebook_Twi_45513.aspx.

⁵⁰ Needleman & Tam, *supra* note 41.

⁵¹ Michelle Singletary, *New Privacy Police Lets Google Watch You – Everywhere*, WASH. POST (Mar. 3, 2012), available at http://www.washingtonpost.com/new-privacy-policy-lets-google-watch-you--everywhere/2012/02/27/gIQAdyscpR_story.html.

⁵² KIRKPATRICK, *supra* note 34, at 266.

⁵³ *Id.* at 267.

⁵⁴ Peter Pham, *Pinners and Losers*, THE MOTLEY FOOL (July 11, 2012), <http://beta.fool.com/peterpham8/2012/07/11/pinners-and-losers/6835/>.

consumer information.⁵⁵ However, Pinterest focuses less on offering a breadth of services because the entire premise of Pinterest is to share images that reflect a user's specific interests. Thus, activity on the site arguably reflects user and purchaser preferences far better than either Google or Facebook, which are used to accomplish diverse objectives. This detail, coupled with the fact that retailers can advertise on Pinterest with minimal consumer disgruntlement, positions Pinterest well into the retailer strategies.

[13] In addition to advertisements, affiliate links can drive monetization. Affiliate links are a form of affiliate marketing, which rewards affiliates for the quantity of web traffic attributed to its marketing efforts.⁵⁶ Although many observe that Pinterest is the perfect forum for an affiliate marketer given Pinterest's high conversion rates,⁵⁷ the stigma of affiliate links makes this option less than ideal. Recently, Pinterest quietly monetized its pinners with affiliate links through a partnership with Skimlinks⁵⁸ whereby Pinterest received a percentage of the revenue every

⁵⁵ Scott Brave, *Pinterest, We've Got a Business Model for You*, GIGAOM (Mar. 24, 2012), <http://gigaom.com/2012/03/24/pinterest-weve-got-a-business-model-for-you/>.

⁵⁶ Jennifer Heidt White, *Safe Haven No More: How Online Affiliate Marketing Programs Can Minimize New State Sales Tax Liability*, 5 SHIDLER J. L. COM. & TECH. 21, 1 (2009) (describing affiliate market models).

⁵⁷ Conversion rate measures the number of users who made retail purchases after clicking on Pinterest's link. Although Pinterest's traffic does not convert as well (1.02%) as Google search traffic (1.62%) or Facebook (1.13%), its potential is huge. Nicholas Carlson, *This Stat Reveals the Incredible Potential of Pinterest – and Why Amazon, Google, or Facebook Should Buy It*, BUS. INSIDER (July 11, 2012), <http://www.businessinsider.com/this-stat-reveals-the-incredible-potential-of-pinterest--and-why-amazon-google-or-facebook-should-buy-it-2012-7>.

⁵⁸ Laurie Segall, *Pinterest Quietly Profits Off Its Users Links*, CNN MONEY (Feb. 10, 2012), http://money.cnn.com/2012/02/10/technology/pinterest_affiliate_links/index.htm.

time a pinner clicked to make a purchase from an e-commerce site.⁵⁹ The response from the public was not favorable and Pinterest came under heavy fire for engaging in a covert scheme, which led to the decision to quickly end the relationship.⁶⁰

[14] Alternatively, Pinterest executives could decide to forgo innovation⁶¹ in a monetization strategy completely and instead sell the business to the highest buyer. To achieve the best valuation, Pinterest should focus on network growth and improved functionality. The fruits of Pinterest's focused efforts would then translate to a competitive advantage for the purchasing company. In doing so, Pinterest could avoid the copyright issue, although that course of action might appear cowardly. Pursuant to this hypothetical, corporate executives and lawyers in the industry ought to take notice and engage in their own monetization and copyright analyses of Pinterest.

[15] Pinterest is currently not making money and thus the first priority is to implement a sound strategy that will enable the company to grow. Not only will operating at a profit enable Pinterest to further develop the site and new functionalities, but Pinterest may be able to fend off competitors as well. Although advertisements may displease users, albeit with perhaps less severity than on other sites, affiliate marketing, if not

⁵⁹ Samantha Murphy, *Pinterest Partner: Yes, They're Making Money from Pins*, MASHABLE (Feb. 8, 2012), <http://mashable.com/2012/02/08/pinterest-affiliated-links/>.

⁶⁰ Matt McGee, *Pinterest Drops Skimlinks, Might Try Ads; Says Copyright Issues Not a Significant Issue Yet*, MARKETING LAND (Feb. 16, 2012), <http://marketingland.com/pinterest-skimlinks-might-try-ads-copyright-issues-not-significant-6213>.

⁶¹ Theodore Levitt, *Innovative Imitation*, HARV. BUS. REV., at 63 (Sept. 1966), available at <http://hbr.org/1966/09/innovative-imitation/ar/1?conversationId=3535176> (noting that innovation furnishes "(1) newness in the sense that something has never been done before, and (2) newness in that it has not been done before by the industry or by the company now doing it").

disclosed, intimates secrecy. Pinterest may also elect to charge users for each click or sell memberships to exclusive material. Indeed, Pinterest executives have the opportunity to formulate an innovative monetization strategy. Although abstract business strategies are generally not patentable,⁶² Pinterest can develop processes, systems, and methodologies to analyze and synthesize the data it collects, which can be protected as patentable subject matter or as a trade secret. Part IV will discuss a few additional monetization strategies.

B. Pinterest Leaves Users (and Itself) Exposed to Copyright Liability

1. User Liability

[16] Images are most likely copyrightable subject matter under 17 U.S.C. § 102(a)(5) as pictorial, graphic, or sculptural works.⁶³ In order for a plaintiff to establish ownership of a valid copyright, he or she must show an original work of authorship fixed in a tangible medium of expression.⁶⁴

[17] First, the standard of originality is quite low, and courts interpret the statute to require only a minimal degree of creativity original to the author.⁶⁵ Copyright also protects photographs, which enjoy thin

⁶² *See, e.g.*, *Bilski v. Kappos*, 130 S. Ct. 3218, 3228, 3231 (2010) (holding that a method for hedging risk in the commodities market was not patentable subject matter; still, a patent-eligible process may include some methods of doing business).

⁶³ 17 U.S.C. § 102(a)(5) (2006).

⁶⁴ 17 U.S.C. § 102(a) (2006). Although relevant, the statute does not require formalities today. *See id.*

⁶⁵ *See Feist Publ'n, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345-48 (1991) (holding that a directory that contains absolutely no protectable written expression, only facts, meets the constitutional minimum for copyright protection if it features an original selection or arrangement).

protection.⁶⁶ Pursuant to this low threshold, a court will likely consider many of the images sufficiently original to the author, who may or may not be the pinner. The second prong demands fixation, which requires that the matter be “sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated.”⁶⁷ Given that the image must already exist in digital form for the Pinterest user to upload, pin, or repin the image, it seems unlikely that the fixation hurdle will be significant. Moreover, Pinterest pins remain on boards indefinitely unless removed by the user or if the link is broken.

[18] When Pinterest users upload an image or pin an existing image, there is a definite probability that they do not own the copyright to that image. Suffice it to say that, under the current business model, even absent mens rea, Pinterest users are arguably engaging in a form of copyright infringement for which they might be liable for violating the copyright holder’s reproduction, derivative work, and distribution rights, or perhaps even public display rights.⁶⁸ Whereas most of the content on Facebook and Twitter is user-generated, a substantial portion of Pinterest content comes from external links.

[19] Many copyright holders may not realize that they own a copyright and may have no intention of enforcing their rights. Nevertheless, Pinterest must address the concerns of users who do not want to face liability for using the site. Moreover, business leaders should be

⁶⁶ See, e.g., *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 55 (1884) (holding that a photograph by Sarony deserved copyright protection given that Sarony arranged the subject matter, lighting and composition).

⁶⁷ 17 U.S.C. § 101 (2006).

⁶⁸ Cf. Michelle Sherman, *To Pin or Not To Pin: How Businesses Can Use Pinterest and Reduce Their Legal Risks of Copyright Infringement*, 17 CYBERSPACE L. 3, 5 (Apr. 2012) (noting that Pinterest user instructions “do not say anything about paying a royalty to the original creator or getting their permission in advance to use their image on Pinterest”).

proactive, not reactive and it would behoove Pinterest to think accordingly. Pinterest ought to preemptively plan for a potential copyright infringement claim.

[20] Recently, Pinterest took active steps to alleviate scrutiny on the copyright front. For example, Pinterest began marshalling attribution and direct links to sources, such as Flickr in May 2012.⁶⁹ Although these enhancements may allay copyright holders from pursuing litigation, this does not weaken the infringement argument. Although attribution is not currently part of copyright law, perhaps courts should consider attribution in its fair use analysis. With attribution, copyright holders get free publicity and they arguably have no incentive to bring copyright infringement suits. However, attribution may not suffice as fair use given that it does not protect the earning potential of the image.

[21] Pinterest also provides advice for website owners who do not want their website content pinned. Websites can insert a small piece of code to the head of any page on their site so when a user tries to pin from the site, a customizable error message will appear.⁷⁰ Nevertheless, Pinterest users can maneuver around this code in a multitude of ways. Even absent technical savvy, users can save the images to their own library, by screen capturing the image for instance, or use a non-Pinterest website as an unsuspecting intermediary between the original site and Pinterest.

⁶⁹ *More Attribution and Inline Play*, PINTEREST (June 20, 2012), <http://blog.pinterest.com/post/31433290094/more-attribution-and-inline-play> (“In May, we announced that content from some of the Web’s biggest creative communities—Flickr, YouTube, Behance, and Vimeo—will be clearly, consistently and automatically credited when pinned to Pinterest. Today, we’re thrilled to announce that photos from 500px, handcrafted and vintage items from Etsy, videos from Kickstarter, presentations from SlideShare, and sounds from SoundCloud will all show the same attribution.”).

⁷⁰ Aaron, Comment to *Instant Answers*, PINTEREST (Mar. 6, 2012, 9:41 AM), <https://support.pinterest.com/entries/21101932-what-if-i-don-t-want-images-from-my-site-to-be-pinned>.

Website owners who use this code represent a population who does in fact care about copyright liability. Pinterest should therefore be attuned to their concerns as they can wreak havoc on Pinterest users by bringing infringement claims or by raising negative publicity for Pinterest.

[22] The fair use defense might be applicable, but courts often apply the defense on a case-by-case basis, evaluating “(1) the purpose and character of the use . . . (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) effect of the use upon the potential market for or value of the copyrighted work.”⁷¹ Pinterest boards may qualify under fair use because they are likely transformative: the collections of images combined with captions serve a different purpose than the original, even where they contain entire images.⁷² Factors weighing against Pinterest’s fair use include: the high quality of the images, varying levels of commercial use (e.g., corporate pages compared with bloggers), and potential cannibalization of the market for the copyrighted images.⁷³

[23] However, courts’ current fair use analyses are blind to the copyright holder’s involvement as well as attribution by the infringer, as mentioned earlier. Notably, numerous sites, including profit-driven news sites and retailers, encourage visitors to pin their copyrighted images via a

⁷¹ 17 U.S.C. § 107 (2006).

⁷² *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1169 (9th Cir. 2007) (holding that Google’s use of thumbnails was transformative fair use because it improved access to information on the Internet versus artistic expression); *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 615 (2d Cir. 2006) (holding that even though the images were reproduced in their entirety, the images were displayed in a reduced size and scattered among many other images and text so as to ensure the reader’s identification of the posters as historical artifacts; notwithstanding the creative nature of the posters, publishers’ use of the posters in biographical book was transformative).

⁷³ 17 U.S.C. § 107 (2006); *see, e.g., Harper & Row, Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 560-68 (1985).

“Pin It” button, which invites readers to pin the site’s work onto Pinterest.⁷⁴ Where the website recommends that a visitor share the image on Pinterest, and assuming the website is in fact the copyright holder, the visitor is persuasively reasonable in believing the copyright owner will not sue for copyright infringement over use of that image. Applying public policy considerations, a new fair use element might be appropriate where if a copyright owner provides the “Pin It” button, either himself or through his agents, he should be barred from subsequently bringing an infringement suit for use of that image.

[24] Analysis of the foregoing (the “Pin It” button or any comparable form of encouragement by the copyright holder) also bears on the other four elements. Like attribution, the “Pin It” button does not protect the earning potential of the image, but it may boost the earning potential of the underlying product itself. Instead of cannibalizing the market, the infringement may effectively improve sales of the product. For instance, a pinned photograph of an article of clothing might help a retailer-copyright holder garner sales of that article, whereas an image of décor or food might have no impact on marketability to the copyright holder. Use of the image on Pinterest can therefore affect two separate markets: the market for the image and the market for the product. Current fair use analysis only considers the market for the image. Although potentially too speculative, perhaps courts could also consider the effect on the market for the product. However, any consideration of the market for the product may undermine Pinterest’s “no self-promotion” policy as well as detract attention from the predominant purpose of copyright law, which is to encourage the creation of original works. In the alternative, if an image pinned through the “Pin It” button is not fair use, arguably the courts should find that a copyright holder who puts a “Pin It” button on his website grants the pinner either a limited form of consent or a

⁷⁴ See generally *Goodies*, PINTEREST, <http://pinterest.com/about/goodies/> (last visited Sept. 28, 2012) (explaining the “Pin It” button).

nonexclusive license, which need not be in writing.⁷⁵ By finding consent or a license, a court could circumvent an upset of the law on copyright infringement and fair use, at least with respect to the “Pin It” Button.

[25] Countervailing public policy might also support a Pinterest user’s First Amendment argument.⁷⁶ Although Pinterest users may elect to draw upon their freedom of speech guarantees as a policy matter, the First Amendment will not likely be a persuasive argument under case law. After *Eldred v. Ashcroft*⁷⁷ and *Harper & Row, Publishers, Inc. v. Nation Enterprises*,⁷⁸ the traditional contours are constitutional because proper limits, such as the fair use doctrine and idea-expression dichotomy, are already in place.

[26] Finally, as always, the relevant statute of limitations is an important consideration. Copyright holders will have a claim until the statute of limitations lapses. That period will depend on the facts of an individual case. Perhaps there is an argument for shortening the statute of limitations with respect to claiming copyright infringement on social networking sites. Public policies of judicial efficiency and certainty favor

⁷⁵ *Asset Mktg. Sys., Inc. v. Gagnon*, 542 F.3d 748, 754 (9th Cir. 2008); *cf.* 17 U.S.C. § 204 (2006) (requiring an exclusive license to be in writing).

⁷⁶ *Cf.* U.S. CONST. amend. I (describing the freedom of speech guarantees granted by the First Amendment).

⁷⁷ *Eldred v. Ashcroft*, 537 U.S. 186, 221 (2003) (stating that “[t]o the extent such assertions raise First Amendment concerns, copyright’s built-in free speech safeguards are generally adequate to address them”).

⁷⁸ *Harper & Row, Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 560, 595 (1985) (holding that “First Amendment protections [are] already embodied in the Copyright Act’s distinction between copyrightable expression and uncopyrightable facts and ideas, and the latitude for scholarship and comment traditionally afforded by fair use,” while refusing to expand the doctrine of fair use to create what amounts to a public figure exception to copyright).

such a change, and given the pervasiveness of Pinterest-type file sharing, the court dockets could bottleneck pursuant to a Pinterest user losing. It is within the province of the legislature to consider such changes, but in the meantime, Pinterest users are not immune to allegations of copyright infringement. Whether a court will rule in their favor remains to be seen.

[27] Many commentators posit that Pinterest's hiring of Michael Yang as head of its legal department signals just how critical resolving the copyright question is to the company's longevity.⁷⁹ In the wake of Yang's hire, Pinterest will likely discuss the ramifications of its current business model to the user and the company itself, perhaps resulting in the modification of its cornerstone image-sharing business.

2. Pinterest Liability

[28] In addition to claims against its users for direct infringement, copyright holders may also assert a secondary liability claim against Pinterest. Contributory liability applies to "one who, with knowledge of the infringing activity, induces or causes or materially contributes" to another's infringement.⁸⁰ In *Sony Corporation of America v. Universal City Studios, Inc.*, the Court held a product "need merely be capable of substantial noninfringing uses" to avoid contributory liability.⁸¹ Given that Pinterest is capable of substantial noninfringing uses, showing that Pinterest had knowledge is not a foregone conclusion. For example, Pinterest users may legally own the content they are uploading, or may have permission from the owner to use the content.

[29] A new inducement doctrine may be more helpful. In *MGM*

⁷⁹ See Carlson, *supra* note 4.

⁸⁰ *Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc.*, 443 F.2d 1159, 1162 (2d Cir. 1971).

⁸¹ *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 442 (1984).

Studios Inc. v. Grokster, Ltd., the Court held that “one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.”⁸² Given that Pinterest does not ask users to consider permissions before each pin, its business model is distinguishable from that of Facebook. Moreover, Facebook encourages sharing personal experiences and photos whereas Pinterest encourages sharing content created by others. Just as Grokster distributed free software that allowed users to share electronic files through peer-to-peer networks, Pinterest provides an interface for users to freely share images.⁸³ Although there are provisions protecting the online service provider (“OSP”),⁸⁴ Pinterest must tread carefully to avoid crossing the inducement threshold.

[30] The Digital Millennium Copyright Act (“DMCA”) broadened copyright owners’ rights beyond the *Sony* holding.⁸⁵ Title II of the DMCA contains the Online Service Provider Safe Harbor provisions.⁸⁶ These provisions insulate OSPs from liability for transmitting, routing, storing, caching, or linking to unauthorized content if the OSP meets

⁸² *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.*, 545 U.S. 913, 919 (2005).

⁸³ *Id.* at 913; see Jonathon Bailey, *The Great Pinterest Divide: To Opt Out or Not*, PLAGIARISM TODAY (Feb. 23, 2012), <http://www.plagiarismtoday.com/2012/02/23/the-great-pinterest-divide-to-opt-out-or-not> (likening the file sharing in *Grokster* to the image sharing on Pinterest and noting that “since Pinterest is actively encouraging pinning of images found on ‘any’ website and their business model relies on widespread infringement, it could be liable” under the *Grokster* test as an inducer of copyright infringement).

⁸⁴ See generally 17 U.S.C. § 512 (2006).

⁸⁵ See generally *id.* § 1201 (2006); *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

⁸⁶ 17 U.S.C. § 512 (2006).

specific conditions.⁸⁷ It must also meet the following threshold conditions: (1) adopting, implementing, and informing subscribers of policy for providing for termination of users who are repeat copyright infringers; (2) adopting standard technical measures used by copyright owners to identify and protect copyrighted works; and (3) designating an agent to receive notification of claimed infringement from copyright owners and register that agent with the Copyright Office.⁸⁸

[31] Pinterest explicitly addresses the DMCA on its website and describes how Pinterest complies with these provisions.⁸⁹ With a prominent Copyright and Trademark Section, Pinterest seeks not only to educate users, but also attempts to protect itself in recognition of the potential for copyright infringement. So long as Pinterest meets the DMCA requirements, Pinterest is only vulnerable to consumer and industry backlash. Conversely, Pinterest's policy leaves users largely unprotected.

IV. SHAPING PINTEREST'S FUTURE

A. If Copyright Holders Win a Case Against a Pinterest User or Pinterest

[32] If Pinterest or its users prevail against a copyright holder in a lawsuit, Pinterest will likely continue business as usual, but copyright law as we know it may forever change. This is especially true if a court decides to hold no infringement or otherwise if pins fall within fair use. Such a decision may significantly weaken copyright law, but given the pervasiveness of pinning and file sharing on the Internet, the law may in fact head in that direction. For this Article, however, only the alternative

⁸⁷ *Id.* § 512(c)(2).

⁸⁸ *Id.* § 512(i)(1)(A)-(B), (c)(2).

⁸⁹ *Copyright & Trademark, supra* note 7.

is considered.

[33] If a Pinterest user loses a case against a copyright holder, the floodgates will open for other copyright holders to pursue similar claims. Disgruntled copyright holders will feel betrayed by the company. Users may eschew the system. It will take a complete restructuring of the core business for Pinterest to recover. Timing compounds the pressure on Yang. If a court rules before Pinterest can monetize, Pinterest may lose the opportunity to capitalize on the network it so famously achieved in the last two years.

[34] One incremental change that Pinterest could implement is to start asking the user to consider permissions before each pin. Facebook employs such a method and users can still pin at their own peril.⁹⁰ A warning would put users on notice and hopefully deter copyright infringement, but alone it will not be enough to save Pinterest or its users if a court does indeed rule that pinning constitutes infringement. A more drastic measure includes asking the source for permissions to pin or repin. However, this solution would likely be overly burdensome and curb use on the site. Another resolution would be to contract with certain sites to enable Pinterest users to pin from their sites wholly, not just for one pin. However, website owners might ask for remuneration in exchange for allowing their content on the sites. This solution also comes with certain caveats. For example, limiting the available sites undermines the purpose of Pinterest. The ability to share essentially everything is paramount to Pinterest's appeal. Moreover, Pinterest executives would need to modify its policy against self-promotion.

⁹⁰ See *Privacy Settings*, FACEBOOK, [http://www.facebook.com/about/privacy/\(providing a privacy setting that requires the content owner's permission when other users attempt to tag them or their content\)](http://www.facebook.com/about/privacy/(providing a privacy setting that requires the content owner's permission when other users attempt to tag them or their content)) (last visited Oct. 1, 2012); see also *Statement of Rights and Responsibilities*, FACEBOOK, <https://www.facebook.com/legal/terms> (requiring users to agree not to "post content or take any action on Facebook that infringes or violates someone else's rights," permitting Facebook to remove any infringing content without notice, and providing a mechanism whereby users can report intellectual property infringement) (last visited Oct. 1, 2012).

[35] There are also endless ways in which Pinterest could completely revamp or reinvent the business. For instance, Pinterest could become a consumer research company. Pinterest could collect, synthesize and sell data on the newest trends to companies without cluttering its websites with the types of advertisements and affiliate links that consumers disdain. Given that Pinterest already has vast amounts of data at its disposal, all Pinterest would need to do is modify the user agreement. Educating users would be crucial to this strategy and users will only be less hesitant if they know Pinterest is not farming out individual information. This approach exploits the “Internet genome project” as referenced earlier in the Article. Still, entering the arena of consumer research presents challenges for Pinterest. Pinterest would be subject to privacy concerns and public backlash if Pinterest sells data exceeding the threshold granularity that consumers are reasonably willing to provide.

[36] If Pinterest loses against a copyright holder for secondary liability it should take the same recourse as it would in the case where a user loses. The impact of such a ruling to Pinterest again intensifies if Pinterest does not monetize quickly enough. If Pinterest remains indebted to venture capitalists and a court rules for Pinterest to pay a judgment, Pinterest will be in danger of losing those backers and the company will have an even bleaker balance sheet. Additionally, if Pinterest has an interest in going public, regardless of its future business strategy, it is true that underwriters, the financial community, and the public will expect Pinterest to possess substantial tangible assets as well as intangible assets, such as intellectual property and goodwill. However, these individuals will find a highly leveraged company in or anticipating litigation even less attractive.

[37] If Pinterest loses a case for violating the DMCA, Pinterest can cure the situation more easily. Put simply, Pinterest would need to adhere to its policies set forth in its Trademark & Copyright Section.⁹¹ If a court finds Pinterest in violation of the DMCA and nothing else, although a strategic

⁹¹ *Copyright & Trademark, supra* note 7.

change might bolster success in the future, Pinterest should maintain current operations and begin to pursue other markets and consumer bases as suggested in remainder of this Article.

B. Brand Management

[38] Pinterest has a registered service mark.⁹² Therefore, Pinterest should manage its brand. Pinterest's brand strategy should include comprehensive analysis of its graphics, marketing efforts, and consumer satisfaction index. Using its official badge and Bello Script font logo developed in 2011, Pinterest could market and sell logo products, thereby gaining additional protection under trademark, trade dress, and design patent law.⁹³ As evidenced by Pinterest's office, Pinterest already produces a fair amount of swag.⁹⁴ Branding the office space can help corral support and interest in the product, but there is also a market for branded products. Pursuant to this strategy, Pinterest should consider additional trademarks for related words such as "Pinterested" and "Pinteresting." Although branded products should probably be a secondary source of income, Pinterest should at least consider the production costs and benefits.

[39] With proper brand management, Pinterest could seamlessly enter new markets, including e-commerce. For instance, Pinterest can develop a Pinterest store and sell special edition items for its top pinners. Although Pinterest discourages self-promotion, Pinterest itself can promote by building partnerships and its brand. In exchange for Pinterest's endorsement, companies or users can compensate Pinterest. In contrast to affiliate links and advertising, Pinterest's endorsement would be direct and

⁹² PINTEREST, Registration No. 4,145,087.

⁹³ See 15 U.S.C. § 1051 (2006); see also *id.* § 1125; 35 U.S.C. § 171 (2006).

⁹⁴ The Daily Muse, *Check Out Pinterest's Palo Alto Office, Where Employees Get Weekly Happy Hours, Hackathons, and Fan Swag*, BUS. INSIDER (June 5, 2012), <http://www.businessinsider.com/pinterest-office-tour-2012-6?op=1>.

effectively a seal of approval. However, as a technology company, Pinterest would need to develop the requisite credibility and competency. There would also be an inherent risk of pinners manipulating the pins to become a top pinner.

[40] Once Pinterest enters into e-commerce, the natural progression is to invade mobile commerce. During the three-month period ending in April 2012, almost nineteen million Americans, or 17.4% of American⁹⁵ smartphone owners, used their smartphone to purchase consumer goods. Of these, almost one in three purchasers used their device to buy clothing or accessories, 23.5% purchased tickets, 22.3% bought electronics or household appliances, 21.2% purchased meals, and 20.2% bought daily deals or discount coupons.⁹⁶ On August 14, 2012, Pinterest rolled out new applications for Android smartphones and the iPad in addition to updating its year-old iPhone application with improved functionality.⁹⁷ Indeed, Pinterest should continue to stay abreast of mobile commerce trends as it provides yet another medium to reach users. Correspondingly, Pinterest should promptly file patents and claim patent protection or other applicable intellectual property protection for any new inventions or improvements.

C. International Growth

[41] Finally, although the United States still represents enormous

⁹⁵ *Smartphone Shoppers: Top 10 On Device Purchase Categories*, COMSCORE DATA MINE (June 4, 2012), <http://www.comscoredatamine.com/2012/06/smartphone-shoppers-top-10-on-device-purchase-categories>.

⁹⁶ *Id.*

⁹⁷ *Introducing Pinterest for Android, iPad and iPhone*, PINTEREST (Aug. 14, 2012), <http://blog.pinterest.com/post/29392054155/introducing-pinterest-for-android-ipad-and-iphone>.

potential for Pinterest,⁹⁸ Pinterest will reach a saturation point domestically at some point. Therefore, Pinterest should continue its growth across the globe. Between May 2011 and January 2012, Germany drew 67,000 individual visitors, an increase of over 2956 percent.⁹⁹ Spain came in a close second with 62,000 individuals, for an increase of 1,348 percent.¹⁰⁰ The United Kingdom had the largest market with 245,000 unique visitors in January 2012.¹⁰¹ In addition to English, Pinterest has Spanish and Portuguese language sites.¹⁰² On August 24, 2012, Pinterest rolled out its German and Dutch sites.¹⁰³ Aptly, Pinterest seems attuned to consumer needs. The integration of these two new languages is consistent with the consumer trends in European usage reported earlier in the year.¹⁰⁴ With some tweaks for cultural differences, Internet companies often find additional success in international markets¹⁰⁵ and many of the same growth strategies domestically can translate to gains in an international

⁹⁸ Pinterest announced open registration on August 8, 2012. As a result, new users do not need to rely on their Facebook or Twitter connections to send them an invite; they need only provide an email address to register. *Open Registration!*, PINTEREST (Aug. 8, 2012), <http://blog.pinterest.com/post/29389668300/open-registration>.

⁹⁹ *Is Pinterest the Next Big Social Network in Europe?*, COMSCORE DATA MINE (Feb. 22, 2012), <http://www.comscoredatamine.com/2012/02/is-pinterest-the-next-big-social-network-in-europe/>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Pinterest ya está disponible en más idiomas*, PINTEREST (June 28, 2012), <http://blog.pinterest.com/post/29389582593/pinterest-ya-esta-disponible-en-mas-idiomas>.

¹⁰³ *Pinterest in German and Dutch!*, PINTEREST (Aug. 24, 2012), <http://blog.pinterest.com/post/30114400670/pinterest-in-german-and-dutch>.

¹⁰⁴ *See Is Pinterest the Next Big Social Network in Europe?*, *supra* note 99.

¹⁰⁵ *Cf.* Emily Lambert, *When a Faux Pas Can Really Cost You*, FORBES (Aug. 12, 2004), http://www.forbes.com/2004/08/12/cz_el_0812globalmanners.html.

arena.

V. CONCLUSION

[42] Pinterest capitalizes on societal narcissism, materialism, and consumerism, but its strategy has not paid dividends yet. Pinterest must act quickly to monetize its growing network, not only to become self-reliant and fund R&D for future growth, but also to preempt future lawsuits that could spell the end for Pinterest. Although Pinterest faces potential trademark and privacy concerns, its greatest challenge is in the area of copyright. Executives and lawyers across the industry ought to consider Pinterest a “game changer” in this respect. The courts have not yet ruled on whether the type of file sharing Pinterest users engage in will incur liability. If the courts find no liability, a new paradigm in copyright liability will emerge and Pinterest will be there to lead the charge. However, if copyright holders are successful in showing either direct infringement by Pinterest users or secondary liability by Pinterest, recovery will be extremely costly, not to mention difficult from a public relations perspective. Not only will Pinterest need to revamp its business model, but its debt will only rise. Regardless, Pinterest should profit from the assets it does have, namely its brand and its network. Pinterest should obtain intellectual property protection for these assets to help penetrate other markets, such as commerce and research, both domestically and internationally.

[43] With bated breath, the world waits. Will the copyright landscape change? Will Pinterest reinvent the pin again? Will Pinterest become a stalwart by resolving the copyright question or will it fade into obscurity like so many other Internet start-ups? We already know Pinterest is no ordinary start-up. Indeed, Pinterest experienced unprecedented growth yet its impact on society remains to be seen. While Ben Silbermann is Pinterest’s Chief Executive Officer and will determine the company’s

strategic direction,¹⁰⁶ it will be Yang who advises Pinterest as the company struggles to overcome its legal woes. Batter's up, Yang, and the clock is ticking.

¹⁰⁶ Heather Kelly, *Pinterest releases new iPad and Android apps*, CNNTECH (Aug. 15, 2012), <http://www.cnn.com/2012/08/15/tech/mobile/pinterest-mobile-apps-android-ipad/index.html> (quoting Silbermann who said "'our goal is to actually get you offline, to get you to go out'").