USER-GENERATED PLATFORMS

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I. Introduction

In recent years, users have been taking an ever-increasing role in the production and diffusion of culture and political discourse. When *Time* magazine selected 'You' as the 'Person of the Year' in 2006, it expressed a sentiment shared by many that individual users had acquired a central role in the online environment. The *Web 2.0* brought individuals to the forefront of creative processes, where Internet users generate their own content and share it with communities of their choosing. The availability of Internet access at low cost enables the distribution of creative

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materials to a large audience, thus increasing their potential impact on users. User-Generated-Content (UGC) flourishes: bloggers post news and analysis, independent musicians distribute their recordings on MySpace, and amateur photographers post their photos on Flickr and distribute their homemade videos on YouTube. UGC, which is emerging alongside the industrial production of content, is transforming the mechanisms for producing and sharing cultural goods. The shift from industrial production of content to an environment where some content is produced by users destabilizes some of the fundamental premises of copyright law and poses new challenges for the governance of works in the UGC environment.

Copyright law, which was designed to serve the needs of the culture industry, may play a different role in the UGC environment and may carry different consequences when exercised by the key players in this environment: users-authors and social media platforms. Users-authors, or 'Prosumers', a term coined by Alvin Toffler in 1980 to describe the dual role of a producer-consumer, are generating content and at the same time using content originated by others. UGC is facilitated by social media platforms which enable users to share their content with one another and to collaborate in producing new works. These players have distinct stakes and interests, which are different from those involved in the mass production of content. Users in the UGC environment actively engage in creating cultural flows. In sharp contrast to the consuming audience of the old media, Prosumers have greater capabilities to act upon creative materials, and therefore they have a special interest in appropriating and sharing creative works. At the same time, however, new modes of production enhance the commercial pressures on individual users as these users become an independent unit of production. Conflicting desires to share and control content may come into play. Moreover, unlike the content industry, social media platforms do not engage in mass production and distribution of content. They are not dependent upon exclusive control over creative works. Quite the contrary: social media platforms often seek to promote open access and free exchange of information in order to attract more users to their social networks. Copyright law, which enables the commercialization of creative works, finds itself at the center of these processes.

Self-help practices for governing access to copyrighted materials have emerged from this background. The governance of UGC is multilayered; access to any particular work might be subject to a variety of licensing strategies. Social media platforms are seeking to dissolve barriers on access through their Terms of Use, while users may also apply independent licensing strategies, often facilitated by norm generators such as Creative Commons.

This paper discusses the challenges to the copyright regime posed by the UGC environment and explores the emerging licensing practices for governing access.

After a brief introduction to UGC in Part II, Parts III and IV take a closer look at social media platforms and users and discuss different challenges to the tenets of copyright law. Part III describes the rise of social media platforms as facilitators of UGC. It analyzes the interest of these new intermediaries and argues that their stake in copyright is very different from that of the old media. Part IV offers an analysis of key UGC features: that UGC reflects a wide range of creative activities, from an independent original creation to the appropriation of pre-existing works; that it is non-professional but not simply amateur; that it is generated by individual users but is sometimes the output of collaborative efforts; and that it is non-profit but at the same time might be vulnerable to commercial pressures. In Part V, I argue that the key UGC features discussed in Part IV may have some important implications for governing access to creative works in the UGC environment. Part VI offers some insights on the policy implications of this analysis. The rise of UGC requires us to reconsider the fundamental structure of copyright, which is based on exclusivity and central control, and to move instead towards a legal framework which enables collaboration. It also emphasizes the potential role of social media platforms in facilitating such a framework.

II. What is UGC?

UGC is often associated with the buzzword Web 2.0, which refers to social networks, social media sites, collaborative initiatives, and a variety of works created, remixed, and exchanged by individual users.\(^3\) Even though these terms only became popular in the beginning of the 2000s, the phenomenon was there all along. The interactivity of digital networks, which enables individual users to connect directly with one another, is at least as old as the Internet itself. Indeed, back in the 1990s the technical interface of the online environment was not as colorful and audiovisual as it is today, but the fundamental ingredients which reshuffled the production and distribution of creative works were already there: the means of producing and communicating content to the masses became available at low cost to every user connected to the Net.

Digital networks brought individual users to the forefront of cultural creation. Individuals have always created content: they told stories, they played music in family gatherings, they took pictures and made poetry and sculptures. But the ability to share creative works with a wide range of users, beyond the close circle of friends and family, was rather limited. Physical distribution was costly and required an expensive infrastructure that was owned by publishers, broadcasters, and the printing press. The introduction of digital networks dissolved the monopoly of the

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\(^3\) The use of this term became popular after the O'Reilly Media Web 2.0 conference in 2004. For a historical perspective see Debra Halbert, _Mass Culture and the Culture of the Masses: A Manifesto for User-Generated Rights_, 11 WAND. J. ENT. & TECH. L. 921 (2009).
old intermediaries over the means of distribution to the masses. Using mailing lists, uploading clips to YouTube, or simply posting a comment on a blog, users are now able to reach out to a wide audience at almost no cost. Digital networks further lower the cost of coordinating joint efforts, thus enabling users to join forces in creating new collaborative works. Consequently, individual users and groups of users are playing a much bigger role in generating and distributing new types of content, such as Wikipedia and Linux, which are the output of collaborative large group efforts.

It is difficult to offer a strict definition of UGC. The term covers a wide range of creative activities, from simply expressing a political opinion on one’s blog to posting a book review on Amazon.com. UGC is created by professionals and amateurs; it can be distributed for free or come at a cost. In this paper I focus on the ramifications of the shift from industrial production of content to UGC. Copyright law was designed to provide incentives for creation, and was shaped to facilitate the needs of content producers: mass media and the content industry. This legal regime may carry different consequences in the UGC environment. Therefore, for the purpose of my current inquiry it is sufficient to define UGC in opposite of content which is produced by the mass media and the content industry. This contrasting approach may help to focus our attention on the role of copyright law in the UGC environment.

III. Old and New Intermediaries

A. UGC and the old media

The ascendancy of UGC raises high expectations regarding its potential for democratizing public discourse and making it more participatory. The high hopes invoked by the Internet in its early days were linked to the new opportunities for each and every user to post her self-made content and share it with users around the world without any editorial intervention. Many commentators focused on the new opportunities created by the digital environment for individual participation in politics, cultural creation, and communities of choice. Some saw in online discourse early evidence of the rise of a more authentic voice which could bypass the hegemony of the media over news and culture production. The dominance of commercial

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6 Benkler, see n. 4 above, at 213.
interests in shaping public discourse raised major concerns about the capacity of the mass media to facilitate it. Content produced by profit-maximizing publishers and broadcasters often serves the interests of owners and advertisers. Another concern was the impact of the business models on the quality of content made available to the public: to maximize profits, broadcasters and publishers seek high ratings and therefore tend to select content that targets the lowest common denominator. Critics observed that news publishers simply print the news that sells the most, and broadcasters produce the shows that attract the highest ratings. The content is thus designed to attract the highest profits as opposed to fulfilling an obligation to serve the public interest. Also, as content becomes another means of producing an audience for advertisers, its design reflects not simply a desire to cater to consumer demand but also to shape consumer preference by encouraging sales and creating a buying mood.

Against this background, UGC is seen as offering an alternative to commercial media. The robust distribution network allows individual users to make content available worldwide, thereby creating alternative channels of communication and unmediated exchange among users. The shift from the ‘one-to-many’ model of the old media into the ‘many-to-many’ exchange transforms cultural production. Once users can directly communicate with one another, they are less dependent on traditional intermediaries: mass media, book publishers, and commercial distributors. This in turn may affect the quality of cultural artifacts. When users can freely express themselves without any commercial filtering, expression is likely to reflect a more authentic voice. Disintermediation can level expressive power. New voices are likely to increase diversity in political speech and cultural expression, allowing more users to participate in cultural flows and thereby strengthening the ties between users and their communities.

The view that UGC offers a desirable alternative to mass media presumes that a direct, decentralized, non-commercial exchange of content decreases the biases created by economic interests. Thus, the promise of UGC rests on two premises: first, that it emerges in a distributed, disintermediated environment, outside the hold of commercial mass media; second, that it is nonprofit and could therefore liberate culture and political speech from commercial biases and the distorting impact of markets. I challenge these presumptions in the next section below.

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8 See, eg, Niva Elkin-Koren, It's All About Control: Rethinking Copyright in the New Information Landscape, in The Commodification of Information 79, 103–5 (Niva Elkin-Koren & Neil W. Netanel eds., 2002); Benkler, see n. 4 above, at 215 ("Close examination of the application of networked information economy to the production for the public sphere suggests that the emerging networked public sphere offers significant improvements over one dominated by commercial mass media").
B. Social media platforms: the rise of new intermediaries

What appears to be a disintermediated environment is in fact highly dependent upon commercial and non-commercial online platforms. In a recent US Court of Appeals case, Judge Koziunski described the new online environment as consisting of two major players: individual users and new intermediaries.

The Internet has opened new channels of communication and self-expression. Countless individuals use message boards, date matching sites, interactive social networks, blog hosting services and video sharing websites to make themselves and their ideas visible to the world. While such intermediaries enable the user-driven digital age, they also create new legal problems.

Old types of intermediaries are giving way to new ones: commercial and nonprofit online platforms that are making UGC available. Platforms perform a wide range of functions, from technical enabling to social facilitation. Platforms coordinate and facilitate access to UGC via search engines (for example, Google and Yahoo!), hosting facilities (such as YouTube and Flickr), social networks (including, MySpace and Friendster, Facebook, Orkut, Bebo), and virtual worlds (like Second Life). Social media platforms facilitate exchange and collaboration, enabling users to communicate with friends and colleagues and also to connect with new people and establish online communities.

Online platforms may suffer from some of the ills of the old media. One issue is concentration. UGC platforms have shown a high level of growth and consolidation. Since much of the cost of producing a platform (design, technological innovation) is unrelated to the number of users of the service, the average cost of providing service to each additional user may fall as the number of users increases. But economies of scale reduce the level of competition. Cost of entry is rapidly rising as the Internet continues to grow and as competition becomes more sophisticated. A strong network effect gives advantages to large-scale intermediaries such as Google’s search engine, and to global social networks such as Facebook and Twitter, which attract the most traffic by users on a global scale.

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9 See Fair Housing Council of San Fernando Valley v. Roommates.com LLC, 489 F.3d 921 (9th Cir., 2007) (aff’d en banc 2008 WL 8759293 (9th Cir., April 3, 2008).

10 A user posting on her own blog might have to use a hosting service and an Internet Access Provider, as well as search engines and location tools to enhance the content exposure. But even weblogs might be considered a platform. First, a blog in itself may host UGC (comments by others) and in this sense it might also function as an online platform. Second, even though it is relatively easy to install blogging software on a server to enable blogging, using a blog hosting service like Blogger makes it easier (by removing the technical burden of maintaining a hosting account and a software application).


12 OECD Working Party on The Information Economy (December 2006) (Retrieved October 24, 2007 from <http://www.oecd.org/dataoecd/57/14/38393115.pdf>.) Google’s market share of searches in the United States, for instance, was 63% to 72% at the end of 2008, based on four major ratings services—comScore (CS), Nielsen (NR), Compete (CP), and Hitwise (HW)—using different measurement methodologies. Danny Sullivan, Search Market Share 2008: Google Grew, Yahoo & Microsoft
Competition is further weakened as platforms converge and crosslink to one another, giving users added value by enabling them to make their output in one social media input on partnering social media. Such convergence creates new barriers to entry and makes it even harder for new applications to penetrate the market. Another issue affecting the level of competition among platforms is stickiness, which depends on users’ switching costs. If users are able to transfer valuable assets, such as personal contacts, social graphs, personal histories and original content to another facility, they can more easily switch their social media platform. If these assets cannot be transferred to another platform, users might find themselves locked into a particular platform.

The UGC environment is therefore not entirely diffused. It is facilitated by platforms, often for-profit, which are supporting, hosting, searching, aggregating, filtering, and diffusing UGC. Economies of scale, the rising cost of large scale exposure and the need to operate globally across international borders, all lead to domination by a small number of mega platforms.

The UGC environment is not entirely non-commercial either. Platforms must sustain themselves economically. Commercial platforms seek to maximize profits, but even nonprofit platforms, such as Wikipedia, need a sustainable economic structure. Although platforms do not bear the cost of producing content, which is generated by users, they do bear the cost of maintenance and updates, managing the online community, online marketing, and protection against potential legal liability. These costs, however, are substantially lower than the cost of producing and distributing content by the mass media, and are often covered by philanthropic contributions.

Platforms make use of a wide range of business models that affect information flows and shape the relationships between users and platforms. Advertising is the most common source of income for many social media platforms. Revenues from advertising depend on the ability of social media platforms to attract users. This should sound familiar. Advertising-supported radio and television broadcasters are also generating revenues by attracting viewers and selling their captive audiences to advertisers. New platforms, like old intermediaries, monetize on users’ attention.

One critical difference between old media and social media, however, is that content in the latter is generated by the users themselves. Users generate original content or simply perform editorial functions; they provide eyeballs for advertisers and produce data for marketers. The platform’s economic value arises from a


13 This may include legal exposure due to injurious content posted on the social media platform by users. See, eg., Bauer v. Glazier (N.J. Super. Ct. Law Div. July 21, 2008) available at <http://www.eff.org/files/filenode/wikimedia/bauerorder.pdf> (the court dismissed a lawsuit against Wikimedia, alleging that a Wikipedia entry was defamatory, finding that § 230 of the Communications Decency Act immunizes it from liability).
network of connected users and it generates revenue by maintaining an engaged community of creative participants. In fact, social media are attracting users not simply by offering access to the content created by their peers, but also by producing a social context. There is no value in the platform other than the users who actively engage in it. From the platforms' perspective, the community of users constitutes its main generative asset; the stronger this community becomes, the higher the value for the enterprise. This multilevel relationship—platform-user-social network—calls for different considerations when applying copyright to the UGC environment.

IV. The Many Faces of UGC

Before I discuss the consequences of applying copyright in the UGC environment and identify the ways in which copyright law shapes the behavior of the different players, let us take a closer look at the users generating the content. UGC is often described by reference to several attributes of users: that they are amateurs; that they simply exploit preexisting works; that they are individuals working alone; and that their work product is non-commercial. These features have some implications for key copyright concepts such as creativity and authorship, and may also challenge some of the underlying assumptions of copyright rationale. I will therefore critically examine each of these features in the discussion below.

A. Professional v. amateur

UGC is often described as content created by amateurs. A 2007 report by the OECD on UGC defines it as: 'i) content made publicly available over the Internet, (ii) which reflects a certain amount of creative effort, and (iii) which is created outside of professional routines and practices.'

Yet, content which is created outside professional routines and practices is not necessarily amateur content. UGC may be produced by professionals outside the scope of their employment agreement. A typical example is the thousands of software developers who hold regular jobs in high-tech companies and contribute, after hours, to a whole variety of open source projects. Moreover, some companies encourage their employees to actively engage in UGC communities and to contribute to some collaborative projects. The output of these employees is simply mixed with contributions of other users, and it is neither claimed nor branded by the company.

15 See OECD, see n. 12 above, at 4.
One way to distinguish professional content from amateur content is by the higher quality of the former. But when professional content is distributed by professionals outside the scope of their employment, this distinction may no longer make sense. How are we to distinguish between pictures posted on Flickr, taken by a professional photographer, and those taken by an amateur? The two pictures could be of similar quality, they could be posted for sale or made available for free, and they might be subject to similar terms of use, restricting any commercial use for example, or setting no restrictions whatsoever.

The definition of professionalism may also rest on the existence of professional standards: a professional work is one created by someone whose work and actions must comply with the norms and standards established by her profession. The ability of users to produce and distribute their content online, however, is challenging the boundaries of some professions. A common example is the blurry distinction between traditional journalism and blogging, between news reporting by the media and news reported by participants in online news forums. Bloggers may not be professionals, but one may no longer need to be a professional journalist in order to report the news.16

The distinction between professional and amateur work also relies on a fundamental dichotomy between wage-work and leisure. Work is what people do for a salary and leisure is what they do for fun. Yet, users actually produce things online that we tend to define as leisure activities, such as commenting on pictures or books, chatting and playing in virtual worlds, that turn out to have a value usually associated with the products of ‘work.’17 Reviews of books and movies, for instance, are routinely shared by users as a matter of social practice, but when such reviews are posted online, they become economically valuable for such platforms as Amazon.com, which use them to improve the service they provide their customers.18 The fact that Amazon extracts an economic value from user-generated reviews, however, does not necessarily turn this practice into work, and does not create an employment relationship among the parties.

Thus, the distinction between professional and amateur content is blurring. To a large extent, this dichotomy was based on a monopoly by publishers over the means

16 Shirky, see n. 4 above, at 70–80 (arguing that mass amateurization has changed the nature of some professions, such as publishing: “In the same way you do not have to be a professional driver to drive you no longer have to be a professional publisher to publish.” (ibid. at 66).

17 NIVA ELKHOR EKMAN & ELI M. SALZBERGER, LAW, ECONOMICS AND CYBERSPACE: THE EFFECTS OF CYBERSPACE ON THE ECONOMIC ANALYSIS OF LAW 62–63 (2004) (the atomization of efforts enabled by digital networks can shift activities that were regarded as work into activities that are regarded as leisure and vice versa); TITIANA TERRANOVA, NETWORK CULTURE: POLITICS FOR THE INFORMATION AGE 79 (2004) (offering a broad definition of labor which includes not only digital services, multimedia production but also ‘forms of labor we do not immediately recognize as such: chat, real-life stories, mailing lists, amateur newsletters and so on.’)

of producing and mass distributing content. When everyone can produce high quality content by using such basic means as a cellphone camera, a keyboard, an Internet connection, and can then make it publicly available worldwide, the dichotomy between professional and non-professional content collapses.19

The demise of a professional structure creates a vacuum in terms of governing access to UGC. Amateur content is not produced within an industrial structure and it is not linked to any particular business model.20 It is often created for fun and exchanged for free within a social framework. Rarely is any consideration given to defining the terms of use and designing a licensing strategy. Individual users often lack the fee structure and the organizational infrastructure which are necessary to maintain a licensing system.

B. Exploiters v. creators

UGC has taken many shapes and forms. Creative works generated by users reflect a continuum of users’ originality, ranging from the preparation of an entirely new work, through the preparation of a derivative work, down to the posting of an exact replica in a new context. Some users create new works out of thin air: bloggers who write original postings on the daily news, users who took pictures of the London underground-bombing with their mobile phones, or those who created an original video clip of an orchestrated performance of a fountain made of Mentos and Diet Coke.21

A common form of UGC appropriates cultural products to express a new meaning: adapting movie scenes and fictional characters, parodying brands, or modifying the words or style of popular songs.22 The popularity of adapting pre-existing works grows as digital formats enable users to mix and match—cut and paste text, embed a video clip, use a song as a soundtrack for a homemade video, edit a photo by using Photoshop, or remix digital music. Users’ creativity is often reflected in mashing new vocal tracks with a video clip or combining the rhythm track of one song with the vocal tracks of another. This is often referred to as a shift

19 Halbert, see n. 3 above.
20 For further discussion of commercialization of UGC and different business models see nn. 35–41 below and accompanying text.
22 One example is a large number of video adaptations posted on YouTube, taking a pivotal scene from Downfall, Oliver Hirschbiegel’s movie about Adolf Hitler’s final days in his Berlin bunker and adding new subtitles that change the original meaning of the German dialogue.
to a Remix or Mashup culture. Originality in such cases might be manifested in the transformative use.

Commercial players are also taking advantage of the new online capabilities by copying and redistributing materials produced by users. For instance, online aggregators and screen scrapers may create new value by searching, copying and retrieving users’ travel reviews or political opinions and generating indexes, directories, or useful guides. Authorship in this context may expand from the originator of the work to also cover appropriators and aggregators who create new content or present new meaning by using preexisting materials.

UGC is often portrayed as the output of users who exploit the efforts made by the original creators, the real authors: uploading a protected work to YouTube or copying an original picture to one’s personal blog. Users are accused of free riding the efforts made by others, and are portrayed as ‘largely parasitic on media coverage, with little original reporting.’ The view of UGC as appropriation presumes that it is somewhat inferior to works created by professional artists or artifacts produced by the culture industry. The term itself, ‘user-generated-content,’ implies that the original content is produced by others (the culture industry) and that users (rather than originators, authors or creators) are generating some added-value by using something which was already created by someone else.

No new standards of originality, however, are necessary for accommodating UGC and the new types of creativity it introduces within copyright law. The underlying assumption of copyright law is that the process of creating cultural works is incremental, and that each new work builds upon existing works. Therefore, users, who transform pre-existing materials by adding something original to them, should be viewed as contributing to the productive endeavor promoted by copyright. Transformative uses are encouraged by copyright doctrine, primarily under the fair

26 Movie reviews could be scraped and analyzed in the aggregate to create new value. A web scraper which retrieves and processes users’ online reviews may produce new information, such as recommendation system for books or movies. Platform such as Google, Flickr, and YouTube are accumulating content created by users to create an original output which enables new insights and creates new meaning.
28 I thank Deborah Halbert for this insight.
use doctrine. Moreover, in recent years there has been a growing recognition of the role of non-transformative uses of creative works in promoting copyright goals. Simply using a creative work, even without transforming it, is arguably an integral part of the cultural flow. From this perspective, a non-transformative use of a work, such as posting it online, could be a form of self-expression and political participation. Inevitably this may involve the use of brands, such as Harry Potter and Barbie, pictures and popular music now an integral part of our cultural language. The dominance of popular/commercial culture in our everyday life makes it constitutive of our cultural language. It creates visual symbols and expressive metaphors which are commonly shared, and in some cases their use is necessary for self expression.

Where new forms of creativity so heavily depend on the use of pre-existing materials, user-authors and user-participants need wider access privileges to those pre-existing materials. The copyright framework, which was tailored for the content industry, reflects a dichotomy between authors and users. It emphasizes authors’ rights and seeks to balance control by authors and access by users. The rise of UGC blurs this distinction between authors and users on which copyright balances rests, suggesting that, in this environment, greater weight should be given to access.

C. Individual authors v. collaborative efforts

The creative activities of users may take different shapes and forms. Sometimes users work alone, posting a homemade video on YouTube, sharing their opinions on their blog or microblogging on Twitter. The low cost of coordinating creative efforts in the online environment also enables users to work together in creating new content without any firm organizational structure. As forcefully argued by Benkler, digital networks facilitate a radically decentralized type of production mode: the commons-based peer-production of information. Modular projects that

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29 Copyright law permits subsequent authors to use pre-existing materials without permission under various doctrines, such as the idea/expression dichotomy and fair use doctrine.

30 Elsewhere, I argued that non-transformative use may also be significant from a copyright perspective. The purpose of copyright law as defined by the US Constitution is to "promote the Progress of Science and the useful Arts." Progress is served not merely by incentives to invest in producing new works, but also by securing public access to creative works and allowing the public to extract their value. That is because the promotion of progress requires engagement with existing works to inspire others to engage in further creation, and to establish a common cultural language. See Niva Elkin-Koren, Making Room for Consumers under the DMC-A, 22 BERKELEY TECH. L. J. 1119, 1141 (2007); See also Jessica Litman, Lawful Personal Use, 85 Tex. L. Rev. 1871, 1878 (2007); Julie E. Cohen, The Place of the User in Copyright Law, 74 Fordham L. Rev. 347, 370 (2005).

31 NAOMI KLEIN, NO LOGO 196-97 (2000); Rebecca Tushnet, Copy This Essay: How Fair Use Doctrine Harms Free Speech and How Copying Serves It, 114 Yale L.J. 535, 556 (2004). Halbert describes UGC as a form of behavior which involves "appropriating common cultural symbols and remaking them as personally meaningful conceptions." Halbert, see n. 3 above at 930.

32 Benkler, see n. 4 above, at 99-106.
make use of small independent contributions can rely on the non-monetized participation of individuals. Large-scale collaborations are feasible as long as diverse contributions can be pooled and merged into a single effort. The low cost of communicating and processing information makes such coordination and integration cost-effective in a way that it was not before.

What makes online collaboration special is the architecture, which allows users to benefit from the accumulative effort of all participants. The output is dynamic and collectively shaped through the ongoing contributions of users. Classic examples are programmers contributing to code and fixing security bugs in free software, and users editing entries on Wikipedia. Another example is the collaborative ranking generated by users of Digg. The extraordinary success of colossal collaborative projects such as Linux and Apache demonstrates that a complex system on a large scale can be designed and maintained by a sizeable group of unorganized collaborators in a non-proprietary setting. The development of such powerful software, which is non-rival and non-excludable, without any apparent monetary compensation or any guaranteed return for financial investment, is challenging the incentives paradigm of copyright: the assumption that monetary incentives are necessary to induce informational, technological, and intellectual creation.

It is necessary to distinguish between the act of incorporating pre-existing works into one’s new creation on the one hand, and collaborative production on the other hand. Incorporation or appropriation of creative works into one’s own creative work simply involves sharing. It does not involve an intentional effort to merge one’s effort into a common enterprise; it could be claimed by each of the contributors but, at the same time, by no one in particular. Social production, however, reflects social and economic phenomena where content is developed through collaborative efforts without any claim to exclusive rights in it. Production of information, knowledge, and culture, Berckner argues, no longer requires management by a hierarchy of firms, or the price signals of the market.24

The rise of commons-based production and of creation by individuals rather than industries implies a shift in the balance mandated by the public goods equation. While monetary incentives were a must in the non-virtual world governed by content industries, opportunities for alternative modes of producing content suggest that other considerations should be given more weight, including maximizing the use of nonrivalous informational works.

D. Commercial v. nonprofit

A typical feature of UGC is that it is nonprofit. Indeed, much of the creative activity of users is carried out without any expectation of remuneration. Users may choose to share their content online for a variety of reasons: posting a book review on

24 Ibid.
Amazon or reviewing a movie on Flixster for the purpose of sharing an opinion and seeking connection with peers; commenting on a blog or disputing an op-ed on NYT.com to make a point and express one’s voice. At the same time, however, photographers may post their pictures on Flickr, hoping they will be able to cash in on their online reputation. Users’ motivations may reflect a wide range of human needs and interests: self-expression and creative satisfaction, affiliation and connection with others, building an online reputation and strengthening self-esteem.

Nevertheless, UGC cannot be strictly defined as nonprofit. We have seen that social media platforms are often (but not always) for-profit enterprises. Yet, the economic sustainability of social media platforms depends on the social context and the livelihood of the community of users. A similar duality of the commercial and social nature characterizes participating users. Users often engage in generating content in a social context rather than in a market framework. The activity itself might not aim at producing a work for sale or establishing a business but rather at expressing oneself, creating for one’s own pleasure, or engaging in a conversation. At the same time, UGC does not have to be nonprofit. New business models enable users to monetize their activities and generate revenues from the content they create. Some users offer their works for sale while others profit from advertising, which is UGC’s most common source of funding. Some models provide direct support to UGC by enabling users to incorporate advertisements into their content for a share in the revenues. Platforms sometimes share advertising revenue with users by offering rewards for high ratings or special performance. Advertising services such as Google AdSense automatically deliver targeted ads to blogs and personal homepages, sharing the collected revenues from advertising with the hosting website.

Users are increasingly recruited by marketers to promote products, services or political agendas by viral advertising and peer promotion. Bloggers and users who have been identified as emerging social leaders might be paid by sponsors for

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35 Elkin-Koren, Governing Access, see n. 2 above.
36 When a user uploads a homemade video of herself to YouTube, performing a rap version of a famous song, she is simply performing her offline practices online. When a user uploads a voiceover of a famous movie, she may try to communicate a message, using the available cultural language shared by her and her peers. These users do not buy the work, nor do they sell their added value. They simply interact and communicate with others. The fact that the song and movie might be commodities owned by the culture industry does not turn this conversation into a business transaction (although it may sometimes be considered a copyright infringement).
37 The OECD report identifies several models for monetizing UGC: charging viewers for services (for example, pay-per-item or by a subscription fee), advertising, licensing of content and technology to third parties, and selling goods and services to the community (monetizing the captive audience for online sales). These mechanisms could be adopted by the users themselves, but more often these models are employed by the platform which facilitates access to UGC. See OECD, see n. 12 above, at 21–27.
38 Rever, for instance, enables users to share videos with targeted ads and track them as they spread across the web. See <http://rever.com/about/> (last visited November 2008).
promoting products by posting product reviews, generating high ratings, or offering tips on products and services.  

Finally, commercial players (old media and new social media, ISPs and search engines) are increasingly funding different aspects of UGC. Some old media players are entering the social media scene by posting their own proprietary content on such facilities. Moreover, UGC is sometimes integrated in the presentation of traditional media. CNN iReporter, for instance, incorporates news stories, blogs, and videos uploaded by users. Leading newspapers link to popular blogs, and TV shows are often run as videos posted on YouTube or other video websites.

This mixture of commercial and nonprofit motivations should be viewed in the context of the increasing financial pressure on individual users in the UGC environment as they become independent units of production. When content is produced by individuals in social contexts, it takes advantage of social motivation, and therefore does not require the large investment typically involved in producing and distributing content in an industrial manner. Therefore, unlike mass-produced content, it is less dependent on a firm business model that secures a financial return for each creative investment. Online distribution, however, has become increasingly costly. Users face rising costs for establishing an online reputation and managing their online presence in different social media platforms; these functions may require large investments in search enhancement, website optimizing, and viral promotion. As individual creators move to the forefront of culture production, they must compete with commercial players for online exposure and users’ attention. To some extent, individuals are adopting promotional techniques formerly used only by commercial entities to develop their ‘brands,’ control their identities, and monetize the informational value they add.

The UGC environment should therefore be viewed as a mixture of for-profit and nonprofit activities motivated by social as well as commercial interests. Different types of non-monetary incentives come into play which may sometimes conflict with monetary incentives. The introduction of monetary rewards may sometimes impair social incentives by interfering with the sense of social solidarity and by reducing the motivation to collaborate.

Even though UGC is not produced for profit, it is increasingly shaped by market forces. What makes UGC different,

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40 Matthew Creamer, Optimize Me: A Reporter’s Journey into the World of SEO and SEM, Advertising Age (December 3, 2007), available at <http://adage.com/login.php> (subscription required) (describing the use of social media platforms by a journalist to optimize his online exposure).

41 See for instance users’ outrage following the introduction of the Producer Rewards® Program in the video storage site Metacafe (in 2006). Videos that pass Metacafe’s strict guidelines achieve at least 20,000 worldwide views at a minimal ranking, and may earn $2 per 1,000 views.
however, is the fact that in contrast to industrialized content, it is not produced for the sole purpose of maximizing profits, even though it could be distributed in a commercial setting and may, in fact, generate revenues.

V. The UGC Environment and Copyright Law

Copyright law governs the use of creative works in the UGC environment and defines the scope of exclusive rights and permissible uses of copyrighted materials. This regime, which was tailored to facilitate the business models of the content industry, grants owners a set of exclusive rights over the use of creative works. These rights are shaping the relationships among users and between users and platforms. Does the ascendancy of UGC suggest a different model for the governance of creative works?

A. Exclusivity is no longer a must

Copyright law was originally designed to serve the business models of book publishers and printers; it was later re-tailored to address the needs of other mass media, especially during the second half of the 20th century. The business models of mass media and the content industry rely upon exclusivity. The high investment in production costs (of a novel, a news report, a television series or a movie) is recouped by selling copies at a monopoly price or licensing exclusive broadcast rights. Copyrights enable the owner to legally exclude others from any of the uses covered by copyright’s exclusive rights. The ability to commodify cultural goods enabled the content industry to orchestrate the production of cultural artifacts as if they were any other industrial good: publishers were able to hire employees, cover production costs and allocate their investments between safe and risky titles, knowing that the exclusivity in the right to make copies would give them the chance to recover their investment. Exclusive rights were therefore central to the business model of the content industry.

Is copyright still justifiable in the UGC environment? Neil Netanel argues that copyright is necessary to maintain the economic sustainability of old media. Copyright law, he argues, plays an important role in our system of free expression. It secures funding to the media, thereby sustaining their fiscal independence from government resources, therefore allowing them to fulfill their function as the fourth estate in democratic society. Therefore, he argues, even in the era of social media, copyright law should continue to ‘underwrite a vibrant, financially robust

institutional press. Yet, as UGC displaces the dominance of mass media in ways that could make our cultural and public discourse more participatory and diverse, this argument is losing weight. Newspapers and book publishers are reconsidering their traditional business models, and copyright in its original form may no longer fulfill the same function.

Exclusive control over the uses of creative works no longer plays the same role in the UGC environment. Social media platforms do not engage in mass production and distribution of content in the same way the old media did. Content is both generated and made available by users. The content produced by users constitutes the building blocks of these virtual communities. Consequently, the business models of social media platforms are very different from those typical of the content industry; they are based on social motivation and preservation of a sense of community, loyalty, and social commitment. They do not require exclusivity because what attracts users to the platform is their fellow users and not necessarily some particular content; what keeps users attached to a platform is the robust information flows and the ability to connect their online presence with content and peers across platforms. Social media platforms need to maintain a vibrant community. They must keep Prosumers engaged and encourage them to share content with other users. This may require wide distribution of content and better mechanisms for sharing it. That is the reason why exclusivity created by copyright becomes less significant for the business models of platforms. In fact, it is often in the interest of the platform to secure the rights of users (and the platform itself) to access and use UGC. The inter-dependency between platforms and users, and the fact that they both depend on the sustainability of a community, makes platforms a good candidate for implementing a 'social contract' aimed at establishing the shared norms of the community as a whole.

Gaining exclusivity over content may no longer be the primary interest of users either. Participants in the UGC environment have various stakes and interests. For instance, they may seek credit and affiliation; they may wish to secure a right to transfer their works to a different facility and to avoid commercial abuse of their creative efforts; they may wish to maintain expressive freedom. They seek to secure some level of autonomy and exercise control over their personal data, social connections, and creative choices. As suggested by the preceding discussion, UGC's heavy reliance on transformative uses emphasizes the need to secure use privileges and access rights. Users who are actively engaged in the UGC environment exercise a dual role: they generate original content and at the same time they use content originated by platforms and by other users. In order to take full advantage of the tools provided by the digital environment, Prosumers need more creative freedom and access privileges to use and transform works. That means that users should be able to view, read, and listen to content created by others, but also to use content

45 Ibid., at 134.
actively, change its form or context, and sometimes incorporate it into their own work.

The social aspects of the UGC environment—an environment that depends heavily on engagement by a community of users—suggest that exclusive control over content may not be as essential as in the industrial production model. The sale of copies is no longer the sole way to generate revenues from content. Rather, a variety of business models exist, relying on users’ input, engagement and contribution. Consequently, copyright is expected to play a smaller role in shaping the relationships among users and platforms. Indeed, UGC is often distributed subject to very few use restrictions. Nevertheless, copyrights may still create unnecessary barriers since they apply to most UGC.

B. Exclusivity and access

As pointed out by many scholars, the exercise of copyrights in the UGC environment may become an obstacle to the flourishing of UGC. The copyright mechanism requires prior permission. Consequently, any user who wishes to make use of a pre-existing work must first acquire an appropriate—and often costly—license. The user must determine which license is necessary, identify the different copyright owners, negotiate a license to use the work and pay the license fee. The high cost involved in licensing could create barriers that make it difficult for users to participate in generating content. This is especially so when the costs are higher than the anticipated benefits from the use of the work. In such cases, the transaction costs of licensing could prevent a use that might otherwise be beneficial.

The problem is particularly acute with respect to amateurs. The exclusivity established by copyright, which requires a license for each and every use, presents a problem for amateurs both as potential licensors and as potential licensees. As licensors, they often lack the legal knowledge required for designing a licensing strategy. As licensees, amateur users also face difficulties. On the one hand, Prosumers have a greater capability for actively transforming pre-existing works, which may require more licenses. On the other hand, they often lack the legal training, organizational support, or financial funds necessary for acquiring such licenses. The lack of a fee structure makes it especially difficult to cover the cost involved in acquiring a license. Simply avoiding copyright infringement, therefore, becomes a major challenge for amateur creators, and the risk of liability erects new barriers to creative and collaborative activities in the UGC environment.

At the same time, however, the current law does not leave sufficient room for users to work upon pre-existing materials. Fair use privileges, which do protect

some unlicensed transformative uses, are rather vague and indeterminate, causing a chilling effect even in cases where a use is legitimate. Indeed, in the absence of a proper license, users and social media platforms alike are exposed to the threat of suit. Copyright owners have been exercising their rights against both users and social media platforms using the notice and takedown procedure established under section 512 of the Digital Millennium Copyright Act (DMCA). Rights holders are routinely sending takedown notices and bringing lawsuits against social media platforms, seeking to establish direct and indirect liability for copyright infringement by UGC content. Social media platforms then seek to avoid legal exposure, and in so doing fail to provide sufficient guarantees for users' creative freedom. A typical example is the 30-second homemade video taken by Stephanie Lenz, showing her toddler bouncing to the sound of Prince's song Let's Go Crazy playing in the background. The clip Let's Go Crazy #1, which she posted on YouTube, was removed after Universal Music Group (the copyright holder of Prince's song) sent YouTube a takedown notice pursuant to the DMCA, asserting copyright infringement.

C. Uncoordinated owners

The shift from central management of copyrights by the industry to the use of these legal mechanisms by uncoordinated owners also raises new issues. UGC not only diffuses the power to produce cultural goods, it also diffuses the legal power to govern creative works. Access to content is now governed by dispersed individuals, each of whom is free to determine the terms of use for her content. In the absence of standardization, this regulation by many-to-many may result in an explosion of terms, which in turn may increase transaction costs.

Exclusive rights in UGC held by uncoordinated individual users may increase the price charged for each license to use a work. There is the risk of strategic behavior by every Prosumer who owns a work and has the incentive to overcharge. The co-existence of commercial and non-profit motivations in the UGC environment suggests that the relatively liberal terms of access which have characterized the UGC environment so far should not be taken for granted. As the intrusion of

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49 After YouTube failed to re-post the video, Lenz filed a suit asserting that the use of the music in the background was fair. See Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1155-56 (N.D. Cal. 2008) (in rejecting a motion to dismiss a lawsuit against Universal for misrepresentation under §512(f) of the DMCA, the court held that §512(c) 'requires a copyright owner to consider the fair-use doctrine in formulating a good-faith belief that 'use of the material ... is not authorized by ... the law'.
commercial interests into the UGC environment expands, users may feel increasing pressure to monetize their content. They might also be reluctant to authorize access in cases involving competition or rival commercial interests. This suggests that decisions regarding which uses of the work are privileged should not be left to individuals operating in a many-to-many licensing regime. As copyright disputes grow, we are likely to see more negative consequences.

VI. Some Implications

A. Private ordering remedies

Some of the difficulties listed above could be addressed by private ordering mechanisms: licenses and contractual terms of use. Independent licensing schemes ('norm-generators') allow Prosumers to apply ready-made terms of access to their works. User-authors may opt for a standard license offered by norm-generators such as Creative Commons or the Free Software Foundation (FSF). A user may select a license and attach it to her content, permitting the use of the work subject to the terms which 'come with the content.' The significance of these independent schemes increases as users seek more mobility and freedom to transfer their content from one platform to another.

There are many licensing initiatives that offer standard provisions, each reflecting a different ideological commitment (for example, Free Software Licenses) tailored to a particular industry, certain type of work or business strategy.51 There are basically two licensing strategies among open access licensing schemes: one is strictly standard, and the other is modular. Creative Commons' strategy is modular and allows each author to make her own selection from a set of standard terms. FSF's strategy, by contrast, offers a rather rigid set of provisions. Creative Commons' user-friendly toolkit for licensing copyright simplifies the licensing process by authors. It is also intended to help end-users easily identify works which are authorized for use. The license is accessible in a legally enforceable format but also in a comprehensible language, intended for lay people, and in machine code that can be automatically traced by search tools. This norm-generator could be effective for addressing transaction cost barriers to access, namely the cost of identifying the rights holder and reaching a bargain regarding the use of the work.

I have argued elsewhere, however, that the use of Creative Commons' modular strategy (which I call 'a strategy of choice') does not necessarily promote access.52

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51 The Open Source Initiative, launched in 1998, adopted a more liberal strategy, defining the key elements that must be met for a license to qualify as an open source license. Consequently there are a few dozen different open source licenses estimated to be available today. See The Open Source Initiative at <http://www.opensource.org/licenses/alphabetical>.

The modularity of provisions facilitated by Creative Commons may create such barriers to access as higher transaction costs resulting from the need to figure out the different licenses and resolving conflicting terms among different licenses. Moreover, the choices embedded in the modular licensing scheme emphasize the sovereignty of authors over their creative works, thereby strengthening the proprietary sentiment among users and making traditional copyright more pervasive.

Thus, the use of private ordering by end-users to govern UGC does not necessarily promote access to creative works. In a many-to-many licensing environment, wherein every user can design her own license, licenses might create barriers to access. Authorizing access to creative works should be straightforward. Every restriction on access imposes the extra burden of studying its scope and implications on each and every user. These costs increase as the terms of access provided by different sets of licenses become more diversified. To guarantee access to creative works, terms of access must be standardized. Therefore, licensing strategies which facilitate less choice by authors are the most useful for facilitating access.

Access to UGC could also be shaped by platform. Terms of Use (ToU) posted on social media websites typically define ownership, as well as a license to use the UGC facilitated by the platform. For instance, the ToU of Second Life provides that users are the owners of the content they generate in the virtual world, while users of Club Penguin are required to assign to Disney all rights in any submission created by using copyrighted materials on the Walt Disney Internet Group sites.53

Social media platforms are using UGC to draw attention and increase traffic to their facilities. It is in their interest, therefore, to minimize the control exercised by each user/producer over the content they have produced and facilitate access by the community of users. This is reflected in the ToU of social media platforms. ToU often secure the rights of the platform itself, as well as the rights of other users, to reproduce, modify, and distribute the content. ToU in major social media platforms like MySpace, Facebook, LinkedIn, YouTube, Flickr, and Second Life are relatively standard. They often provide that the user remains the owner of the content that she uploads. By simply posting the content on the social media site, however, the user authorizes the platform to use, modify, publicly perform, publicly display, reproduce, and distribute such content through the site. Such licenses are often worldwide, non-exclusive, fully paid, royalty-free, and permit sublicensing. Some licenses terminate when the user removes the content from the sites, while others, such as LinkedIn and Second Life are perpetual and irrevocable. YouTube’s license terminates after a ‘commercially reasonable time,’ and a recent attempt to amend this (February 2009) was defeated by users’ protest. Some licenses only define the terms of access vis-à-vis the platform, authorizing the platform to freely use any content made available through its services. In other cases, terms of access will

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secure the rights of other users to use UGC without any restrictions. The right of subsequent users to use prior works is particularly important for collaborative enterprises such as Wikipedia.

The interest of platforms and the public interest in securing access to UGC may coincide. This may hold true for securing rights to access UGC vis-à-vis the platform and vis-à-vis other users. Does it follow that a platform can efficiently secure access to UGC and provide a suitable basis for collaboration among users? We might expect some disparity in the interests of platforms and those of users related to the use of content. In some cases, individual users may have greater incentive than a platform to share content freely, on a commercial or non-commercial basis. Users may also seek to share their work on a variety of platforms. As platforms become more powerful, there is a growing concern that they will seek to deprive users of their rights. This concern is increasing as mega platforms demonstrate their ability to offer the infrastructure users need to license third party content. The recent Google Book Settlement provides an example.

It has been argued that the ToU of social media platforms, which are drafted unilaterally by multinational corporations and enforced against uninformed consumers, should be treated by courts as unconscionable. Yet, even though ToU are unilaterally drafted, they are not necessarily unconscionable. In determining the legal status of ToU, we must consider the relationship of platforms and users in their full complexity. Users of social media platforms are not necessarily 'uninformed consumers' and are likely to be more engaged in setting the terms that apply to their online activities. Platforms are often attentive to users’ preferences since they are more dependent on users’ ongoing contributions. Platform–user relationships are multilevel and more complex than vendor–consumer relationships. The platform’s economic value derives from the network of users who create value. In fact, there is no value in the platform other than the users who actively engage in it. To a large extent platforms may find themselves at the mercy of their users, especially if users have collectively decided to play by different rules. Social media platforms must sustain trust with their community of users. They must maintain an engaged community, encourage social motivation, and preserve loyalty and social commitment.

Recent examples suggest that users have been successful in exerting pressure on providers to modify what they believed were unreasonable terms. Terms of service by hosting services such as Yahoo! and MySpace were revised in response to complaints by end-users. Digg, a social aggregator using the editorial functions

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54 See Hetcher, n. 14 above, at 892 (arguing that contracts between mega-sites and users are nullities; consequently, the rights to use the creative content of users are not conveyed under these contracts, and platforms which use it infringe the copyright of users on a massive scale). Some courts have already treated some contracts as unconscionable. See, e.g., *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007).

55 Elkin-Koren, *Governing Access*, see n. 2 above.
performed by its users, reversed its policy of editorial intervention following a community revolt. More recently, in early 2009, Facebook announced that it was updating its terms of service to what was described by users as perpetual ownership in UGC. Following three days of public pressure by users, Facebook decided to abandon the proposed changes, instead inviting its community of users to help draft a Bill of Rights and Responsibilities for its over 175 million users’ social network.

In a personal posting to Facebook users, CEO Mark Zuckerberg explained the background to the decision to change the terms of use:

Our philosophy is that people own their information and control who they share it with. When a person shares information on Facebook, they first need to grant Facebook a license to use that information so that we can show it to the other people they’ve asked us to share it with. Without this license, we couldn’t help people share that information... People want full ownership and control of their information so they can turn off access to it at any time. At the same time, people also want to be able to bring the information others have shared with them—like email addresses, phone numbers, photos and so on—to other services and grant those services access to those people’s information. These two positions are at odds with each other. There is no system today that enables me to share my email address with you and then simultaneously lets me control who you share it with and also lets you control what services you share it with.

The best way to safeguard the rights of users vis-à-vis platforms is to make sure that users are free to leave the platform whenever they choose. The stickiness of platforms that might make it difficult for users to defect and switch to a different platform is related to a whole variety of non-legal aspects of social media, including the quality of services, the scale of the online communities, and some vested interests in particular communities. But loyalty to the social media platform may also arise from the fact that users’ assets—creative works, collaborative works, and social graphs—might not be transferable to other social media. The inability to transfer these users’ assets may create barriers to users’ ability to switch and may weaken their standing vis-à-vis platforms. In order to secure competition among platforms, it is therefore necessary to guarantee that users can always subject content to terms of their choosing.

B. Challenges for copyright in the UGC environment

While private ordering could provide a second-best solution to access barriers posed by copyright, it cannot provide a comprehensive solution to the growing gap between the legal regime that was designed to incentivize creativity and the new changing modes of creativity developed online. In particular, standard licensing could provide a limited remedy for accessing those works which are subject to a license. A legal reform is necessary that would expand the scope of fair use and also provide users with more certainty regarding the limits of permissible uses.

The main challenge posed by the prevalence of UGC arises from the emerging practices of social production. Structurally, the copyright mechanism involves
concentrating the power to authorize use in the hands of a single owner: individual author, employer, exploiting firm, or even partners who share ownership. What was suitable for the content industry, however, does not fit a collaborative environment which requires coordination, cooperation, and mutual accountability. Copyright may allow each contributor to claim rights over a different piece of a collaborative effort, and sometimes to veto the exercise of rights by others. Exercising copyright by users may also limit the ability of platforms to use UGC (e.g., Google links to images, scraping UGC by platforms and making it available to users in different formats) and thus could further restrict access to creative works. The emergence of new forms of collaboration requires a legal design that would enable coordination among different rights holders. Such a legal framework should not leave an arbitrary power of control over use in the hands of individual contributors.

UGC creates opportunities for democracy and for new forms of creativity; we should seek mechanisms to encourage it. In order to take full advantage of the opportunities created by UGC, it is necessary to relax the fundamental structure of copyright which establishes exclusivity and enables individual control, and move towards a legal framework which enables collaboration. Such a framework should be based on a transparent set of standard privileges of access. It should further enable collaborating users to have a voice in determining the exploitation of their contributions.

These goals will not be achieved by amplifying users’ claims over UGC vis-à-vis the platforms. Licensing strategies that strengthen the sovereignty of each user to govern his work as he pleases may not serve these goals either. Promoting UGC can only be achieved by developing mechanisms that will facilitate a social contract. A social contract, and not simply a license, could provide a shared normative basis and create an efficient standard for sharing creative works.

Social media platforms arguably facilitate a new form of collective action. Yet, actions by individual users in the UGC environment are not ‘collective’ in the classic sense: they do not reflect an act of collective governance which generates norms of general applicability. Individuals’ actions are coordinated rather than bounded by a single set of formal rules expressing users’ choices at any given moment. Theirs is not exactly a group action either, since it does not entail the long-term commitment of community affiliation. People may go in and out of social networks and may engage in ad hoc collaboration with others. Yet the content they produce endures. Therefore, governing the rights and duties regarding access to such content is a long-term proposition.

Collective action in this context is not a market transaction. Participating users are not paid for their actions, and they make no purchasing choices. The community dimension of social media platforms expands the strict economic view of this phenomenon. Indeed, for the platform the ToU serve a commercial interest, maximizing the economic value of the online activities; for users, however, the terms of access may have to guarantee more than just economic value. Users’ vested interests are more profound. Content produced in social media platforms may reflect a
user's personality and identity. It may also constitute a joint effort, a community asset, that goes beyond the sum of the different parcels of ownership of each contributor. The relationship of each user to such content may reflect a sense of belonging and a long-term commitment to a community of peers. Issues related to sovereignty, autonomy, and liberty may come into play. Therefore, ToU posted by social media sites cannot be seen as reflecting the choices made by each individual user of that platform regarding the governance of access to her creative materials. The nature of such coordination and self-management is yet to be explored.