



TECH TECH DEBATE

# The Copyright Law Behind a \$600M Startup and Millennials' Favorite Form of Expression

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Courtesy of Giphy

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## A copyright cloud.

Even if you haven't heard of Giphy, which **raised** another \$72 million last week, you've definitely encountered it. It's the go-to **site** for those looping animated clips called GIFs that surfaces everything from dancing cats to touchdown celebrations to President Barack Obama **waving a** lightsaber.

Today, GIFs are a staple of social media and workplace chatrooms, and they explain why Giphy is set to be a media powerhouse. But there's also a copyright cloud hanging over GIF culture as many popular GIFs are drawn from outfits like **Disney** ( ▲) **DIS 0.28%** and the National Football League, which don't exactly have permissive reputations when it comes to intellectual property.

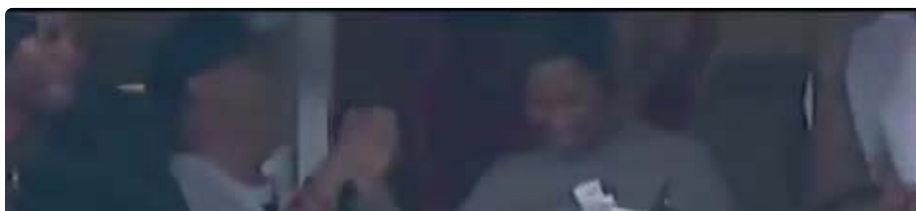
The good news for GIF-loving millennials is that many of the clips may be protected from copyright claims by "fair use" law. But this has yet to be tested in court—something that could soon change as Giphy, which has no revenue but is worth \$600 million, and other GIF companies look for ways to make money.

## From Mix Tapes to LeBron Loops

Young people have always borrowed bits of popular culture—such as the slang and fashion of celebrities—and made them their own. So it's no surprise a new generation raised in a digital world are using GIFs to express who they are and how they feel.

This was on display during an epic World Series game recently when Fox Sports ( ▲) **FOX 0.92%** showed Cleveland's home town hero, LeBron James, cheering his team's game-tying home run. In a matter of minutes, James' celebration went from a TV highlight to a social media GIF to a new cultural meme.

For example, here's what someone posted on Twitter minutes after the LeBron clip first appeared:



As the venture capitalist Jeremy Liew observed last week, these sorts of GIFs (the one above is technically a [Vine](#)) are the modern equivalent of kids taping magazine photos to their lockers or selecting songs for mix tapes. In his essay “[Giphy Eats the World](#),” Liew also argues that one difference today is that our sources for pop culture samples are nearly infinite.

“GIFs enable users to avail themselves of the entire catalog of popular culture to help express themselves. Art, TV, movies, memes, all become part of the alphabet, enabling richer, funnier, more contextual, more personalized communication than ever before,” writes Liew, whose firm, Lightspeed Ventures, was an early investor in Giphy.

It’s not just a generation of millennials who are reaping the GIF bonanzas. Digital media companies like BuzzFeed have built their platforms to make GIFs a core part of their identity, while [dating apps](#) and even tech giants such as [Apple](#) ( ▼) **AAPL -0.16%** are adding GIFs to their messaging functions.

GIFs are now so pervasive that it’s hard to imagine millennial culture without them. To put it in the parlance of a BuzzFeed-style article, the idea of GIFs going away make people be like:



via [GIPHY](#)

Yet one can imagine a future where GIFs are *not* so freely available. After all, companies like Disney and Fox (the source of the two GIFs above) have been quick to strip their content from sites like YouTube ( ▼) **GOOG -0.66%** or Twitter ( ▲) **TWTR 4.08%** —even [for cases](#) in which clips appeared to be fair use. Will content companies soon try to extend their copyright clamps to sites like Giphy too?

“If there’s one thing we don’t joke around about, it’s a good cat GIF. We take content creators’ and owners’ hard work very seriously. Our primary goal is to be as collaborative and responsible as possible with everyone we work with,” Giphy’s Director of Marketing, Simon Gibson, tells *Fortune* in response to questions about how the company navigates copyright land mines.

Gibson adds that major artists, studios, sports leagues, and even the National Archives have come to trust Giphy as a steward of their content. He did not, however, elaborate as to what specific copyright arrangements the company has developed with the entertainment companies, which Giphy describes as partners. Meanwhile, a person connected with the major studios, who was not authorized to speak for attribution, suggests it is because of these partnerships that the studios are not filing a barrage of copyright claims.

All appears well in other words for those who delight in GIFs based on TV and movies. But this situation could change once Giphy or other GIF-powered companies, including [Imgur](#), begin to make money.

Studios and sports leagues could decide to file lawsuits against GIF-based businesses, much like the ones they aimed at other new technology platforms like YouTube and Napster. Or they could just use copyright notices to start stripping GIFs from individuals’ websites or social media accounts. This has [already occurred](#) in the case of major sports events like the World Cup and the Olympics.

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Meanwhile, the law over when studios could go after GIFs is far from clear. According to Ali Sternburg, a copyright expert with the Computer and Communications Industry Association, there has yet to be any case law to explain how fair use—which requires courts to weigh [four factors](#)—applies to GIFs.

Sternburg, whose organization represents tech companies, notes that recent copyright cases—including a [high-profile one](#) about a 7-second TV clip used in a Broadway show—support the argument that a GIF is fair use. The fair use case is also strong because GIFs can be considered “transformative” under copyright law, and don’t appear to undermine the market for the original work. No one, for instance, is going to watch a *Star Wars* GIF instead of the original movie.

But that doesn’t mean some copyright owners won’t target GIFs all the same. It’s also possible individual celebrities like LeBron James could invoke so-called “[right of publicity](#)” laws, which can allow people to

control how their image is used in public, to limit the use of GIFs. As a result, we might see more messages like this one, which can found (where else?) on Giphy:



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via GIPHY

For now, though, millennials' favorite form of expression appears to be flourishing—even if the fair use case for GIFs is not firmly resolved.

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