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THE CASE OF THE MISSING FAIR USE: A MULTILINGUAL HISTORY AND ANALYSIS OF TWITTER'S POLICY DOCUMENTATION

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Click through to the policy page of Twitter and the navigation sidebar will offer you two separate categories: general policies and advertiser policies. The default opens to general. Here are links to everything from the Twitter Rules to the username squatting policy to the child sexual exploitation policy to fair use. Fair use, that is, if you're accessing the page from an English-language setting. If you access it in Japanese, Spanish, or Polish—in fact, any language except English, the fair use policy never even appears in your sidebar menu. However, if, for whatever reason, you are determined to see what the policy looks like in Arabic, you can force the system to display the page by opening the fair use policy in English and then switching your language setting to Arabic. When you do, it shows you the English-language document with a short line in Arabic appended to the top: Sorry, this article is not available in your language. At the same time, Twitter's parody policy—and in US law parody is not only a matter for freedom of speech doctrine, but is famed as a fair use exception category—appears across 10 of the available languages of Twitter's policy documentation, roughly 1/3. The copyright policy exists in 8 languages, or 1/4. What's going on here?

This paper traces the history of Twitter's policy documentation, across languages and time. Drawing on STS scholarship, legal studies, and the growing field of corporate language policy and planning, I examine the language hierarchies—and the social and political assumptions they carry—embedded in Twitter's policy documentation.

I focus particularly on Twitter's fair use and parody policies and their various iterations. Many of the languages Twitter offers include only minimal documentation—thus, for example, in Suomi, Swedish, and Vietnamese only the Twitter Rules document exists. The fair use document, however, is missing even from those languages that have extensive, otherwise comprehensive coverage, such as French, German, and Spanish. Nor is it available in the similarly comprehensive Japanese documentation, even though some Japanese-language Twitter users have actively created their own convention—*#twremix*—to addresses issues that overlap with fair use. Nor is the fair use document available in Hebrew, Korean, or Polish, though the legal systems of Israel, South Korea, Suggested Citation (APA): Johnson, A. (2016, October 5-8). *The Case of the Missing Fair Use: A Multilingual History and Analysis of Twitter's Policy Documentation*. Paper presented at AoIR 2016: The 17th Annual Conference of the Association of Internet Researchers. Berlin, Germany: AoIR. Retrieved from <http://spir.aoir.org>.

and Poland all employ fair use doctrines. For comparison, among English-language countries, the US legal system is the only one that employs a fair use doctrine. (There are, however, many other English-language countries that use fair dealing concepts; fair dealing is mentioned briefly in the fair use policy, but otherwise not covered in Twitter's policy documentation.)

It would be easy to dismiss this as simply born of Twitter's US origins: The site's English-language documentation reflects US law. It is a subtle contribution to a long argument about whether fair use is an affirmative right or a legal defense. But the plight of fair use documentation contrasts sharply with that of the parody policy. The parody policy—which protects not only parody, but also newsfeed, commentary, and fan accounts—appears a direct descendent of US fair use case law. And the parody policy exists in English, French, Italian, German, Spanish, Japanese, Portuguese, Korean, Turkish, and Arabic.

So why does fair use languish linguistically? Or, what makes the parody policy so special? This paper takes up both questions, arguing that fair use is intentionally eliminated from documentation translation due to the alignment with (US) government that such translation would de facto suggest. Despite Twitter's bold 'country withheld content policy'—a policy which pairs jurisdiction-specific censorship with continued availability outside that jurisdiction, and introduced a nonjurisdictional worldwide setting—translating fair use asserts governance one step too far.

The parody policy, however, as a descendent of both fair use doctrine and conversations the founders of Twitter had before Twitter even existed, flourishes. Parody holds a special significance for policymakers at Twitter. A number of Twitter's early policymakers themselves acquired parody accounts, which they enthusiastically embraced. In 2013, Twitter's S-1 filing for public trading status offered parody—as a form of social commentary—as a key part of Twitter's "value proposition to users" (98). Further, unlike fair use, parody has a murkier legal existence marked by repeated failed attempts to define it. It is thus available as a space for leadership and platform-guided governance in a way that fair use is not.

Stepping back, what, then, do the processes of translating—or not translating—policy documentation reveal about the boundaries between law and platform policy and how they may be changing over time? And, too, what does this suggest about opportunities for legalistic innovation through deliberate crafting of platform policy?

This paper draws on a multilingual archive of Twitter's documentation and accounts of formative exchanges that predate Twitter; interviews with Twitter employees in San Francisco, Tokyo, and Dubai; participant observation at Twitter offices; and a historical corpus of media articles in English, Japanese, and Arabic that offer local contextualization of the changes in Twitter's documentation.

The paper shows that 1) Twitter's iconic product and its policies are translated (developed, updated) at different times. 2) Platform policies are not equal in their policyness. And 3) Platform policies select bodies of law and align platforms to these bodies of law, in varying degree and depending on specific legitimation practices.

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