

Research Paper

Chersa Lo

On December 15, 2005, the media-sharing website YouTube, was officially launched to the public with approximately 2 million views per day (Hosch). Its creators Steve Chen, Chad Hurley, and Jawed Karim wanted to create a website where people would be able to share their home videos. Steven Chen, Chad Hurley, and Jawed Karm were ex-employees at the e-commerce company PayPal (Hosch). The site promoted free viewership to all videos posted and free publication on their website. Originally, YouTube was created as a dating website where people would post what they wanted in their partner but luckily their focus was placed on sharing content. YouTube became very popular due to its success in focusing on creating an environment where creators could easily post whatever they wanted. Eventually, due to its immense growth in traffic and limited success in containing its growing costs, YouTube was sold to Alphabet, named Google Inc. at the time, in stock for \$1.65 Billion (Hosch).

YouTube has evolved into a website where creators can join the YouTube Partner Program, gaining access to resources and features that allow them to gain revenue from ads served on their videos. To be eligible for the program one must follow the channel monetization policies, have no community guideline strikes, have 2-step verification, live in an eligible region, have advance feature access, and have an AdSense account connected to their Google account (Google). For creators to be eligible to apply for the program they need to have a certain number of subscribers and valid public watch hour s(Google). While the process to get into the program has a relatively low threshold, the capability of making a living on the site has been deemed to be a mixture of luck and skill with most of the revenue and views coming from the top 1% of

channels. The main payment system of YouTube is through contracts or ad revenue. As reported in the Oxford Economics report, The State of The Creator Economy Assessing the Economic, Societal, and Cultural Impact of YouTube in the US in 2022, YouTube's creative ecosystem has supported more than 390,000 full time equivalent jobs in the us (Galloway and Gambarin). Another form of payment that a creator can receive is through sponsorships through other companies, which for a segment of the video if they mention or read a script they will be rewarded. The likelihood that a person who starts a YouTube channel and uploads regularly will become successful is very low. This means that there are both values of competition and teamwork to grow in subscribing communities and maximize profits. The other functions like subscribers, retention rate, likes, and notifications are just to increase viewership through reminders or to be more prominent in the recommendation algorithm.

While YouTube has become extremely successful in drawing in viewership, it faces many issues with copyright infringements and free use affecting its creators. Copyright infringement and free use are both integral in promoting creativity, self-expression, and learning. In this research paper, I aim to find the key factors contributing to copyright infringement on YouTube and the legal actions and enforcement measures taken to prevent copyright infringement. Copyright and free use laws are crucial in maintaining ownership over idea expressions and allowing creative freedom but are slowly being left behind by developing technology.

Videos posted on YouTube are copyrightable material, but many videos within YouTube contain copyrighted material. YouTube is a Non-dedicated Support Industry as it facilitates broadcasting, communication, and distribution or sales of works (51 Sinha). When a person publishes a video, it is the expression of their own idea that falls under copyright law which

protects “original works of authorship fixed in any tangible medium of expression,” (74 Packard). When they post their video, they have five exclusive rights of reproduction, adaptation, publication, performance, and display which if trespassed will count as copyright infringement in most cases. A very common case of copyright infringement that occurs on YouTube is when a creator publishes a video with copyrighted music playing in the background. For example, in the *Lenz v. Universal Music Corp.* case in 2016, Stephanie Lenz posted a 29-second video of her son dancing to the song, *Let's Go Crazy*, by Prince which was flagged by the Universal Music Corp. and taken down by YouTube. Universal Music Corp. has been enforcing their copyrights by having their assistant, Sean Johnson, monitor YouTube for any videos that “embodied a Prince composition” by making “significant use of ... the composition, specifically if the song was recognizable, was in a significant portion of the video or was the focus of the video,” (497 Grimmelmann). Johnson would review the videos that he found to videos that had very little of the song or were in environments where though the song was playing it would barely be heard. After Johnson had reviewed the video posted by Lenz, he concluded that Prince’s song “was very much the focus of the video”, as the whole video’s premise was about Lenz’s son enjoying the song. Johnson then submitted a takedown notification to YouTube which included a “good faith belief” statement saying that the “activity is not authorized by the copyright owner, its agent, or the law,” not referencing fair use. At this time YouTube did not have a system to assist in fair use which led to Lenz’s video getting taken down immediately. Fair use is a defense against copyright infringement that specifies four key factors for the court to consider. The first is the purpose and character of the use, the nature of the work, the portion that was taken from the copyrighted work, and the effect on the potential market for the copyrighted work. The court found that the video that Lenz had posted was protected by fair use and the video got put back up

again. Fair use protected Lenz in using Prince's song in her short video from Universal Music Corp. which was trying to limit who would be able to hear the song for free. If Universal Music Corp. was able to take down that video, it would remove the home video aspect of YouTube as it would be impossible to capture candid moments if there was any music present. While it is important that an artist who expresses their ideas should protect their product, it limits the expression of creativity for the people who experience their work.

Trends can have a powerful impact on the types of content that are being published, but those trends can develop into copyright infringement. On YouTube, there is a popular form of reactionary content where creators watch a video and make comments. An early case that deals with reactionary content and fair use on YouTube is *Matt Hosseinzadeh V. Ethan Klein and Hila Klein*. Ethan and Hila Klein are a married couple under the name h3h3Productions on YouTube and they were reacting to the skit "Bold Guy and Parkour Girl" by Matt Hosseinzadeh. In February 2016, the couple recorded themselves watching several clips of the video while pausing and giving commentary on what they thought was happening (Fox). Most of the commentary given by h3h3Productions was negative and watched a large portion of the copyrighted video. Hosseinzadeh sued with the issue being that the reaction video showed a large portion of his video. The court had decided after using the fair use four-step analysis, that the reactionary video by h3h3Productions was "fair in the matter of law" (*Matt Hosseinzadeh v. Ethan Klein and Hila Klein*). The case highlights that the reactionary video was "quintessential criticism and comment", and the use of the clips was "reasonable to accomplish the transformative purpose of critical commentary" though copying a majority of the video (*Matt Hosseinzadeh v. Ethan Klein and Hila Klein*). The final factor for the defendants winning the case was that the reactionary video "does not serve as a market substitute" because they transformed the video from a kit into

clips that they commented on and made fun of. This case is key to how people navigate their reaction videos on YouTube now and it is the reason why it is important to pause and comment sufficiently as to apply under fair use. While the case ended up going the way with h3h3Productions, there are many other reactionary videos that do not provide this requirement of “quintessential criticism and comment” when watching the entirety of someone else’s video which I will explain later.

In 2015, there was a lot of social media buzz about how YouTube was not adhering to fair use, like in the *Lenz V. Universal Music Corp* case, videos were getting taken down and channels were getting copyright strikes (Aufderheide). To combat this from happening again, YouTube had selected videos that were fair-use and kept them from getting their videos taken down while also backing them for any legal costs. For any videos that were going through review, there would be a hold of revenues from the video until the resolved, which created a small penalty for copyright holders who overclaimed (Aufderheide). This shift in YouTube focusing on fair use in their website helped create an environment that allowed its users to be more creatively expressive. This allows for more conversation, education, and expression from the community with less worry about being sued.

Recently, there have been accounts of abuse of the system on YouTube that show what percent of copyrighted content has been used in another video. In YouTube Studio, a YouTube channel management feature, there is a tab called “Copyright” that allows the channel creator to find videos that contain clips from their original video. The program is called Content ID, and it manages possible copyrighted content and allows for the owner to make copyright claims. This closely follows DMCA laws which enforce a notice and takedown system showing copyright holders videos where their content is showing up. The idea behind the system is well made in it

helps channels find copied content that is illegally infringing on their copyright so that the owner can make the proper revenue. When multiple channels post a video copying another video, it can significantly reduce the views from the original, reducing the original revenue and exposure. The issue arises when a channel gets a false copyright claim for a piece of music that they had included or a video they might have shown and then disputes it. A large shortcoming of Content ID is that it requires no proof of copyright ownership. When a video gets copyright claimed, like when excessive claimers get a penalty, the video gets demonetized until proven not copyrighted, or the channel gets a copyright strike, and with a total of three the channel gets deleted. While the tool is useful when used properly, YouTube is required to remain impartial for DMCA takedowns as it would require YouTube to interpret the law.

While YouTube can reverse the strikes if false information is provided, there is not an option to report copyright abuse when appealing a claim. I believe this is a shortcoming of both YouTube and the Law. YouTube should develop better reporting options to punish repeat false copyright offenders by allowing them a certain threshold of reports and reversed copyright claims before deleting their accounts. I believe that this would be an appropriate solution as it would add weight to submitting a false claim. A possible objective of this solution would be that it would disincentivize people from submitting copyright claims. If a creator has little knowledge of fair use, it could backfire on them and then they are banned while their content is being stolen. In response, I believe that this would promote education in law, especially if content creation is the main source of revenue for the creator, it would do well to know how to navigate. While YouTube became popular because of its ease of use, both copyright and false copyright infringement are running rampant on its site which calls for more focus on the rights of its creators.

The law is also not prepared for situations like false copyright claims because they are so unique. These are unique in the sense that there are so many cases of false infringement that they cannot all be caught, and when these false infringement cases are caught, it takes a long time to be resolved. I think that developing a more standard testing method for fair use would be helpful in the long term as the drawbacks from spending hours on a video to having it get a copyright strike are immense. By giving a standard testing method, for example a certain proportion of the video must be taken from a copyrightable source before a copyright claim can be made. It would allow YouTube to implement a better copyright system and remove copyright claims where their content is 1% of the video. A potential argument for this proposal would be that it would reduce creativity in short-form content as the proportions would be much larger. In response, the proportion is only a maximum proportion of content that can be shown in other videos and can still be reviewed for fair use. The purpose is to disincentivize copyright manipulation in media-sharing websites.

In conclusion, YouTube contains many challenges relating to copyright and fair use. Content trends, false copyright infringement, and technological development all play key roles in complications with copyright infringement on YouTube. While YouTube has implemented systems like Content ID to address copyright concerns, issues such as false copyright claims persist. Expanding reporting options and standardized fair use could provide clearer guidelines that could better the environment for creators. It is essential for both media sharing and legal systems to adapt to the changing environment of intellectual property, and in finding a balance we can continue to make diverse and creative expressions.

Research paper citations.
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