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## Of YouTube and Copyright

### Introduction

As the internet becomes an increasingly prevalent force in our lives, entertainment transfers increasingly over the internet and manifests in a variety of media. YouTube is one of the most popular sites on the internet; it harbors everything from “We Are Number One” parodies and reaction videos to videos discussing advanced quantum mechanics and videos providing a unique perspective on classic literature. As the internet grows, YouTube’s reservoirs of content expand and fill to a greater extent than before. “YouTube has over a billion users — almost one-third of all people on the Internet — and every day people watch hundreds of millions of hours on YouTube and generate billions of views.”(YouTube Press). With all this content being uploaded each minute, it becomes increasingly hard to determine what content is legal to post and what content is not.

Copyrighted content easily drips in with the rest of content on YouTube. This constant stream of unauthorized content flowing in with the rest of YouTube videos has caused many artists and entertainers to lose unknown quantities of purchases and decreases their total overall revenue (potentially have people illegally make money from their work). However, it is not as black and white as it seems; due to all of the new types of videos coming out (such as remixes, reaction videos, reviews, and others) it can be difficult to verify what does and doesn’t violate

Copyright laws. There are blurred lines everywhere because of all the ways people take prior content and integrate it into their own and this is rife the conflict regarding who owns what and who is allowed to get revenue from these videos. This problem will only become harder to control as time goes on and more people gain access to the internet more questionable content is uploaded each day that may need to be evaluated. All of this potential for problems makes a question become apparent- what will be done about it?

## The Law

Copyright law relevant to YouTube comes into play from the Digital Millennium Copyright Act. Of this Act, which deals with how Copyright will interact on the internet along with rules regarding what is and isn't infringement, one of the most relevant parts to it are the Safe Harbor Provision and Fair Use. The Safe Harbor Provision allows hosting sites to not be responsible for the actions of its individual users so long as it takes down unauthorized Copyrighted content when requested.

“It allowed copyright owners the assurance of a quick removal of their improperly displayed work from the Internet while allowing online service providers to have a safe harbor from being liable for the individual acts of users. For the online service providers to have this safe harbor, they must expeditiously remove any infringing materials once the copyright owner brings it to their attention, or face secondary liability for their inaction.” (Taylor).

The Safe Harbor Provision allows websites like YouTube to be able to exist without having to have each video inspected before it is publically available. While this may allow some

questionable content to be able to remain online, it also makes a large portion of online services legally possible; it is difficult for things like video-sharing websites to flourish when all of the thousands of hours of content that get uploaded daily need to be inspected before they can be released. It is important to note that Safe Harbors must follow the rules or else it will face legal action.

Fair Use comes into play when interpreting what is and isn't a violation of Copyright law; something is protected by Fair Use when it is transformative in some way (meaning that it developed in such a way that it is now distinct from its source material due to content added to it). Things are a lot more open to interpretation than they were before and advances in the 21st century allows more people to manipulate content faster than ever before. There is a lot of new content that is derived from the old. Due to Fair Use, there is some room for discussion regarding what is and isn't Copyright violation.

## **Music and Copyright**

Due to the potential for discrepancy between situations with what is and isn't Copyright infringement, there are occasionally issues between what the source says is infringement and what the poster says is infringement. "The Web is swarming with appropriations of copyrighted media remixed into innumerable new works and this reality challenges the scope of copyright law and the function of fair use." (Collins). This blur in the legal system has caused changes to Copyright practice. The presence of YouTube has dramatically affected how content creators have to distribute their music and commercialize their creations.

Remix videos are a common source of controversy regarding their own legality. As derived content is legal according to Copyright law, there are many who say that remixes are undeniably transformative and add a different flavor to things than would naturally be found in the original content. “The mediascape is rich with such works – remixes and cover versions of songs fill playlists whilst comic books characters come to life on the big screen.” (Collins). Most people have generally accepted remixes as a valid type of music and

The conflict comes from the fact that it is now rather easy to edit a video and post it on YouTube; people are able to take prior content and quickly change it into other forms or integrate it into new content. “Digital technology has greatly eased the process of remixing copyrighted works as well as providing global platforms for distribution.” (Collins). There are many examples of this, as it is now pretty simple to open up a video editing program, change what you want to change, and close it. This lets people be able to do almost anything they can imagine to a video or a concept. An example of this was the “Harlem Shake” dance craze meme. “The video began with a 19-s clip of Filthy Frank and three friends, all dressed in skin tight spandex body suits and doing a silly dance in their dorm room; essentially a combination of pelvic thrusts and flailing arms—all to Baauer’s Harlem Shake. “ (Soha and McDowell). The video became viral and spawned tens of thousands of replica versions, each detailing a different unusual situation once the song reached its notable ‘base drop’ moment.

As billions of total views circulated across the internet due to the presence of the internet sensation, people were crediting Filthy Frank, the creator of the meme, as the inspiration of the craze. Harry Bauer Rodrigues (Baauer), the song’s creator, was rarely mention during the

media's discussion of the "Harlem Shake" despite Filthy Frank being initially inspired by the song to make the video. While Baauer was not particularly pleased that he got

However, it is important to note that Baauer, who made the song in its current form, included sampling from other artists and was therefore unable to monetize it without violating Copyright in his own right; the cycle of remixing can go on multiple levels. This actually places the original "Harlem Shake" song as questionable and potentially infringing on Copyright law. Baauer's label, Mad Decent Records, was actually sued for the sampling, though the lawsuit was dropped after the sample issues were cleared up.

## Copyright Tracking

So with all the potential problems with Copyright infringement, how is it dealt with? Well, YouTube has developed a system to help keep track of Copyright infringement. There is a strike system involved that allows viewers to flag violating Copyright. This system permits certain quantities of strikes against Copyright in order to remove channels that intentionally violate Copyright. "We all make mistakes. When you get a copyright strike, it acts as a warning. However, copyright strikes may affect your ability to monetize. In addition, if your live stream or archived live stream is removed for copyright, your access to live streaming will be restricted for 90 days." (YouTube Help). If the video was improperly flagged or the YouTuber wants to fight against the infringement claim, there are methods of doing so.

Additionally, there is another system YouTube has in place called Content ID. A Content ID claim is less available to the general public and is theoretically only given access to companies that own Copyrighted materials. A claim with this is distinctly different than an

infringement strike; this gives the companies the ability to immediately start affecting a video by either blocking it. It works by companies giving YouTube clips and recording of their own content and letting the Content ID system (which is a program) check over current YouTube videos in search of unauthorized content. “Content ID will match a user's reference content against every upload to YouTube. Therefore, applicants must have the exclusive rights to the material that is evaluated.” (YouTube Help). This system was, at one point, very flawed and while it has received tweaks and tune ups, when it messes up (or somebody is able to trick their way into the system using a fake company), things can get bad for the YouTubers.

## Using the Community

Ideally, the current system of letting users flag videos would allow anybody to be able to recognize violated Copyright and act on it to remove the problem at hand. YouTube has been using this system of community run regulation for a long time. While the Content ID system is still in effect, YouTube really relies on its users to help locate problematic content (including Copyright and other things that violate their community guidelines). This has been a long-running system and is very useful, but is not without its share of problems. While the vast majority of users only flag particularly questionable and controversial content, there are those who are a bit too trigger happy and accidentally cause problems for YouTubers (or perhaps pranksters looking to cause some problems).

YouTube has recently talked about its new YouTube Heroes initiative, which rewards people who flag videos (along with other things) with points that can lead to perks, like the ability to mass flag videos. “Unlock super tools like mass flag videos...”(YouTube Help

Channel) This has not been well received by the community (the ratio of likes to dislikes is around 30 to one as of April 10th, 2017) . While there are other tools, people seem to mostly dislike the concept of rewarding video flagging with the ability to flag more videos in a system that some view as abusable. The current system in place allows people to be able to flag whichever videos they want and potentially defend their claims through their interpretation of community guidelines. People are concerned that taking the current system for flagging videos (which some view as problematic) and making it easier to use on a greater scale makes it easy for trolls (internet pranksters) to have easy access to the ability to cause mayhem. The mass video flagging is a few levels in (which is a deterrent towards trolls), but people willing to put a bit of effort in will still be capable of causing all sorts of issues easier than before.

## Copyright Claims and YouTubers

When unauthorized content is posted to YouTube, it should be taken down. However, due to the grey areas that occur in Copyright Law, things aren't that simple. There are Let's Players, Reviewers, Remixers, Commentators, Machinimators (people who use gameplay in video games as a platform to tell stories), and others that use Copyrighted content to some extent in their videos. There are a lot of YouTubers that involve content that was derived from other things; a lot of people try to look for ways that they can take down what they view as infringement in some way or another. This makes it difficult for some of these YouTubers to be able to stay afloat and keep everybody appeased.

However, there are problems associated with Copyright claims on YouTube videos. When a video is claimed, the YouTuber's revenue from the video is suspended. This makes it so

they no longer get the money they could have made from their content (this is to prevent YouTube from violating Safe Harbor Provisions). If both parties (the creator and the claimant) decide to monetize the video during this time, money will still be generated.

“Monetization during Content ID disputes is enabled when both the video creator and the Content ID claimant want to monetize the video...If you choose to dispute a Content ID claim after 5 days of the original claim, we will start holding the revenue on the date the dispute is made.

Throughout the dispute process, we'll hold the revenue separately and, once the dispute is resolved, we'll pay it out to the appropriate party.” (YouTube Help)

This works out well when there actually is Copyrighted content in their videos that they need to remove or get permission to use. It makes it so the infringing account doesn't make money off of the content they don't own. Once the dispute is settled, they can either authorize monetization or take back the money they are owed. There are times where it doesn't work as nicely as this.

On occasion, fake or halfhearted claimants make attempts to make Copyright disputes in an attempt to either cause a YouTuber trouble or to threaten them into submitting to demands. Oftentimes, the threat is that of a lawsuit. The YouTube channel h3h3Productions has recently encountered a scenario like this and are getting sued for Copyright infringement by Matt Hosseinzadeh (also known as 'Bold Guy'). “I think the heart and soul of this is, like, that he doesn't like that we made fun of him and so he's suing us.”(h3h3Productions). While this seems like a surefire way that h3h3Productions will be able to use Fair Use to be able to win the case, Fair Use is a legal defense and a court hearing will still need to occur, complete with a judge and



a jury. However, before the lawsuit was filed, Bold Guy and his lawyer sent them a settlement offer or get sued. “He already wrote up the lawsuit and he says ‘Remove it, never talk about me again (or this situation), and pay me 4,000 dollars’. It’s like ‘either do this in the next 24 hours or I’ll sue you’. ”(h3h3Productions). This implies that Bold Guy was using the threat of a lawsuit that he would probably lose (but would be very costly) to manipulate h3h3Productions into giving him money. “4,000 or 100,000... and that’s assuming you don’t lose because if you do, it’ll cost you everything”(h3h3Productions).

This is not the only instance of this in YouTube history. The system in place allows people to be able to use lawsuits and Copyright strikes as battering rams against people who don’t want to go and pay expensive lawsuits. Copyright strikes can impose penalties on channels inflicted with them that have lingering effects until they expire, are removed, or a counter infringement notification goes through.

“After we process your counter notification by forwarding it to the claimant, the claimant has 10 business days to provide us with evidence that they have initiated a court action to keep the content down. This time period is a requirement of copyright law, so please be patient.”(YouTube Help).

In the situation that the time period goes through, the claim is removed- otherwise the problem will be settled in court. Making this process simpler isn’t a very easy option to make happen; a variety of the requirements in this are mandated by Copyright law and failure to fully conform to it will result in lawsuits towards YouTube. Dealing with Copyright claims is an expensive and irritating, yet necessary, procedure.

## Conclusion

Without doubt, YouTube's relationship with Copyright is complicated to say the least. The grey area inbetween what is infringement and what isn't has caused YouTube to have to develop complex systems in place to prevent breaking its Safe Harbor status, but allow the content on the website to remain so long as it isn't infringing. To make things more complex to deal with, there are people on both sides of the Copyright side pushing for different results. Some people want YouTube to enforce content to a greater extent and there are people who want it to be deregulated.

There are artists and creators that don't think that YouTube is doing enough to remove Copyright and is making it harder for them to make a living. "Rosenthal says it's tough to play Internet detective for all the artists on his label, especially when every time one illegal link gets taken down another one pops up." (Sydell). Problematically, YouTubers themselves are advocating on either side, with a fair amount having been previously affected by faulty or abusable systems. "...but the main point is, this system shouldn't be so easy to abuse and so easily manipulated and it shouldn't be impossible to resolve a false flag." (Cr1TiKaL). Difficulties in removing strikes due to the time requirements of them to expire tend to cause YouTubers a great deal of stress and give people looking to cause chaos an efficient means to do so.

There are a lot of legal requirements YouTube has to fulfill, but the current verdict seems to be that Copyright needs to be clarified in some way to make this easier to regulate- this blur is allowing abuse to happen and is making it hard to determine what is and isn't Copyright infringement without going to court. Simplification of the infringement process will need to

occur in some way because Copyright claims will only increase in number as the internet grows.

Until a time comes that revisions are made to make things clearer (and hopefully quicker),

YouTube will have to continue along similar lines.

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