

Navigating Legal Challenges in Content Creation (U.S. Focus)

Introduction

Content creation has evolved into a professionalized industry, bringing not only opportunities but also complex legal challenges. In the United States, **online content creators** (YouTubers, TikTokers, streamers, influencers, etc.) must navigate a web of laws and regulations in areas like advertising disclosures, copyright, and platform policies. This report, aimed at undergraduates (especially aspiring paralegals), breaks down key legal issues unique to content creation. We'll explore influencer marketing laws (e.g. Federal Trade Commission rules on endorsements), music licensing and copyright pitfalls, and the legal implications of monetizing content on platforms like YouTube, TikTok, and Patreon. Each section highlights recent case law, regulations, and debates in plain language, framed from a creator's perspective. Understanding these issues is crucial for content creators to stay compliant and protect their livelihoods.

Influencer Marketing and FTC Endorsement Guidelines

Influencer marketing—promoting brands or products via social media content—comes with legal obligations under advertising law. The **Federal Trade Commission (FTC)** polices deceptive advertising pursuant to Section 5 of the FTC Act (15 U.S.C. § 45), which broadly prohibits “unfair or deceptive acts or practices.” In practice, this means if a creator is paid or incentivized to endorse a product, they must **disclose that material connection clearly** so as not to mislead consumers ¹. The FTC has issued detailed **Endorsement Guides** (16 C.F.R. Part 255, most recently revised in 2023) outlining how influencers and brands should behave. While these Guides are not binding law, they reflect principles that FTC and courts use to evaluate fairness ² ³. Key points include:

- **Clear and Conspicuous Disclosure:** Influencers must clearly disclose any “**material connections**” (payments, free goods, affiliate commissions, employment relationships, etc.) with the brands they promote ¹. A simple label like “#ad” or “Sponsored by [Brand]” near the beginning of a post or caption is recommended so that an average viewer easily notices it ⁴ ⁵. The disclosure should not be buried in a long list of hashtags or hidden where a viewer might miss it. For example, in some recent cases, influencers did use “#AD,” but because it was buried at the end of a long caption or combined with another hashtag, plaintiffs argued the disclosure was not sufficiently clear or conspicuous ⁶.
- **Honest Opinions and No Misrepresentation:** The Guides also say any endorsement must reflect the influencer's honest experience and **truthful statements** about the product ¹. Both the influencer and the sponsor company can be held liable if false claims are made. For instance, an influencer should not claim a health supplement cured an illness if that's not true or substantiated. If the influencer says they use the product, that should be genuine use. Posts that are actually ads should not be passed off as independent consumer opinions.

- **When to Disclose:** A disclosure is required any time a **significant portion of the audience would not reasonably know** that a post is sponsored ⁷ . If it's obvious in context (say a well-known celebrity in a clear advertisement format), an extra disclosure might not be necessary, but the safest course is to disclose whenever in doubt. Receiving anything of value (money, free trips, gifts above a nominal value, discount codes, etc.) triggers the need to disclose. Even tagging a brand or using a branded hashtag (e.g. "#gifted" or "thanks [Brand]") may be insufficient if it doesn't explicitly signal a paid partnership ⁸ . The FTC suggests using unambiguous language like "Sponsored by ," **"Paid partnership with ,"** or at least "Ad:" at the start of a post ⁹ .

FTC Enforcement: The FTC actively monitors social media advertising practices. In late 2021, for example, the FTC sent warning letters to over 700 companies and brands, putting them on notice that future violations (such as failing to mandate influencer disclosures) could result in hefty fines (up to around **\$50,000 per violation**) ¹⁰ ¹¹ . These "Notice of Penalty Offense" letters signaled that both advertisers and influencers could face penalties if they continue deceptive endorsement practices after being warned. While as of 2025 the FTC has only occasionally brought enforcement actions directly against influencers, it has gone after companies that orchestrate misleading influencer campaigns. Notably, in 2020 the FTC settled with a tea company (Teami) for failing to require influencers (including celebrities) to adequately disclose their paid posts, resulting in fines and mandated compliance measures ¹⁰ . The **FTC can also pursue individual influencers** in egregious cases – endorsers who make false claims or knowingly participate in deception can be held liable for fraud or misrepresentation. The Endorsement Guides themselves don't create a private lawsuit right for consumers ² , but violating them can be treated as evidence of a deceptive practice under the FTC Act and analogous state laws.

Emerging Lawsuits: Recently, consumers have taken matters into their own hands by filing class-action lawsuits against brands (and sometimes influencers) for undisclosed sponsorships. These lawsuits often invoke state consumer protection statutes (like California's Unfair Competition Law or Illinois' Consumer Fraud Act), arguing that failing to disclose paid endorsements is inherently misleading and illegal. For example, in April 2025 a class action was filed against fashion retailer **Revolve Group, Inc.**, alleging the company conspired with influencers to hide sponsorship disclosures, tricking consumers into believing endorsements were organic ¹² . The complaint claims that Revolve's influencers would openly disclose partnerships with other brands, but not with Revolve – suggesting an effort to "disguise the advertising" at Revolve's direction ¹³ . Plaintiffs even argued this allowed Revolve to charge higher prices than competitors by creating a false aura of authentic hype ¹⁴ . Similarly, at least half a dozen companies in industries like apparel, jewelry, supplements, and energy drinks were hit with nationwide class actions in 2024-2025 for influencers' inadequate disclosures ¹⁵ . These suits seek refunds or damages on behalf of consumers, claiming they paid a "price premium" due to being misled ¹⁶ . While it remains to be seen if such class actions will succeed (they face hurdles in proving consumers actually relied on the lack of "#ad" to make purchases ¹⁷), their filing alone underscores how much visibility influencer marketing law has gained. Creators should be aware that **both government regulators and private plaintiffs are watching** this space closely.

FTC Guidelines Updates: In June 2023, the FTC revised its Endorsement Guides for the first time in 14 years to address modern social media practices ¹⁸ ³ . The update included clearer definitions (expanding "endorsement" to cover things like social media tags and affiliate links) and examples relevant to today's platforms. It emphasizes that disclosure needs to be unavoidable (for instance, in a short video, an on-screen label should be easy to read and last long enough to notice; simply putting the disclosure in the video description may not be enough). The FTC also noted that tags like "#ambassador" or "#partner" alone

might be unclear to consumers ⁸ . Additionally, new guidance was given on emerging issues, such as **fake reviews and testimonials**. (In fact, separate from the Guides, in 2023 the FTC proposed a rule outright banning *fake* online reviews and imposing penalties for buying or selling phony reviews ¹⁹ —a related issue for creators who might be tempted to boost their image with fake followers or reviews, which is illegal). Creators should stay updated on these guidelines and periodically review the FTC’s “*Disclosures 101 for Social Media Influencers*” brochure ²⁰ for practical tips on compliance.

Beyond the FTC – Other Agencies: Importantly, other regulators can get involved depending on what you’re promoting. A famous example is when celebrity influencer **Kim Kardashian** was charged by the Securities and Exchange Commission (SEC) for promoting a cryptocurrency token on Instagram without disclosing she was paid \$250,000 for it ²¹ . In 2022, Kardashian settled the case by paying \$1.26 million in penalties ²² . The SEC has rules that anyone touting stocks or crypto-assets must not only disclose they were paid, but also **how much** they were paid and by whom ²³ . This case was a wakeup call that even influencers have to obey securities laws when shilling financial products. Similarly, endorsing a health or medical product can draw in the Food and Drug Administration (FDA) or FTC if false health claims are made. And in one 2021 case, a model-turned-influencer was sued for **trademark infringement** after she promoted a beauty product whose name was confusingly similar to another company’s trademark ²⁴ . (In that case, *Rodan & Fields* had an influencer, Molly Sims, promote a “Brow Defining Boost” product, which allegedly infringed the “Brow Boost” trademark of a competitor; the court refused to dismiss the claims, meaning the influencer herself had to deal with the trademark suit alongside the brand ²⁴ .) The lesson is that content creators must do basic due diligence — if a brand asks you to promote something, you should ensure the promotion doesn’t involve unlawful claims or IP infringement.

Practical Tips for Creators: As a content creator doing brand deals, you should implement a simple compliance routine:

- **Always disclose** sponsored content prominently (when in doubt, spell it out – e.g. say “Thank you to [Brand] for sponsoring this video” at the start of a YouTube video, or use Instagram’s built-in “Paid Partnership” label and an obvious hashtag like #ad in the first three lines of a caption).
- **Understand endorsement rules:** The FTC Guides and FAQs (like “FTC’s Endorsement Guides: What People Are Asking” ²⁵ ²⁶) are written in relatively plain language – they clarify scenarios like endorsing products on live streams, affiliate link disclosures, etc. Staying educated will protect you.
- **Contracts with brands:** Many influencer contracts now include clauses requiring the influencer to follow all disclosure laws and allowing the brand to approve sponsored posts for legal compliance. Influencers should take these clauses seriously. Likewise, reputable brands should never ask you to hide your sponsorship – if they do, that’s a red flag. Brands may even insert “morals clauses” or termination provisions to cut ties if an influencer fails to abide by regulations ²⁷ . As an influencer, you might seek an indemnification clause so that if you do follow the brand’s directions and still get in legal trouble (e.g. the brand gave you faulty talking points), the brand will cover your losses.
- **Keep documentation:** Document your relationships with sponsors and what disclosures you made, in case you need to prove your compliance. The FTC has gone after companies for not properly monitoring their influencers, so many brands will screenshot or archive your sponsored posts as proof – you should do the same for your records.
- **Be truthful:** Do not say things you don’t believe about a product, and do not make claims that aren’t backed by evidence provided by the advertiser (especially for things like health products). If a product has risks (e.g. a financial investment), an influencer should be careful to include appropriate disclaimers as required by law or industry norms.

By following these practices, content creators can greatly minimize legal risks in influencer marketing. The trend is clear: transparency is not only an ethical choice but a legal mandate in the social media economy.

Copyright and Music Licensing Challenges for Creators

Almost every content creator at some point grapples with **copyright law**, especially when using music, video clips, or images they didn't create. U.S. copyright law grants creators of original works (like songs, movies, artwork) exclusive rights to reproduce, distribute, publicly perform, or create derivatives of their work. When you incorporate someone else's music into your YouTube video or play it during a Twitch stream, you are engaging in a **copyright-relevant act** (a public performance and creation of a derivative audiovisual work) that typically **requires permission** from the copyright owners. Failing to get permission can lead to **copyright infringement** claims, which carry serious consequences (from videos being taken down, to demonetization, to potential lawsuits or statutory damages in court).

For online creators, the most common way this plays out is via the **Digital Millennium Copyright Act (DMCA)** takedown system. All major platforms (YouTube, Twitch, TikTok, etc.) have to comply with the DMCA's "safe harbor" rules (17 U.S.C. § 512) to avoid being held liable for their users' infringements. The DMCA safe harbor framework means that when a copyright owner sends a valid **takedown notice** complaining that a user's content infringes their work, the platform must **expeditiously remove or disable access to that content**. In other words, if you upload a video with unlicensed music, the copyright holder can send YouTube a DMCA notice and YouTube will take your video down to protect itself from liability ²⁸. Creators do have a right to **counter-notice** if they believe the takedown is mistaken or their use was lawful (for instance, if you believe your use was *fair use*, which we'll discuss shortly). However, filing a counter-notification should be done carefully – it requires giving your personal info and consenting to jurisdiction of a federal court, and if the copyright owner maintains their claim (by suing within 10 business days), you could be headed to litigation. For most small creators, that risk (and cost) isn't feasible, so the practical reality is that **takedown = your content is gone**, unless you work it out amicably with the rights-holder.

Music on Streams and Videos: A high-profile example of this tension came in 2020 on **Twitch**, the live-streaming platform. For years, Twitch streamers (gamers, etc.) played popular music in the background of their streams without proper licenses. The music industry eventually cracked down, and in mid-2020 Twitch was hit with **thousands of DMCA takedown notices** almost all at once ²⁹. Twitch, in order to comply with the law, had to delete masses of archived clips and videos (sometimes entire libraries of a streamer's past content) that contained infringing music ²⁹. Many creators were caught off guard and furious – some received multiple DMCA "strikes" and were at risk of being banned under Twitch's repeat infringer policy ³⁰ ³¹. In response, Twitch scrambled to appease both the music industry and its users. By late 2021, Twitch reached an arrangement with major music publishers (via the NMPA) to implement a slightly more flexible system: instead of immediate bans, Twitch would issue warnings for first-time or **"incidental" use** of music, and they provided a library of licensed music for streamers ³² ³³. However, Twitch made it clear this was *not* a green light to freely use any song – streamers are still expected to only include music they have rights to (either by using royalty-free tracks, getting permission, or using Twitch's licensed music tools) ³⁴. The bottom line: **it's never okay to include copyrighted music in your content unless you've secured the necessary rights** ³⁴.

On **YouTube**, which deals with user-uploaded videos rather than live streams, the approach to copyright is slightly different. YouTube has invested in a robust system called **Content ID** that automatically detects copyrighted audio or video in uploads. Major music labels and movie studios have their content

“fingerprinted” in the system. When you upload a video, if it matches someone’s copyrighted music, the **rightsholder can choose how to respond**. They often have preset rules: for instance, the music owner might allow your video to remain up but **claim the ad revenue for themselves** (monetize it) or they might block the video entirely in certain countries or worldwide ³⁵. As a creator, you’ll receive a Content ID notice if this happens. It’s not a formal DMCA legal notice, but it’s a heads-up that your video has third-party content. Depending on the policy, you might lose monetization on that video (the money going to the song’s owner) or the video might get muted or taken down. You do have the option to dispute Content ID claims if you believe your use is fair or you actually have a license, but if the rightsholder insists, it can escalate to a DMCA takedown. YouTube’s system thus provides a middle ground: many music owners prefer to **let the video stay up and earn ad revenue** from it, which benefits them and is less punitive to creators than a straight takedown ³⁶. Nonetheless, not all rightsholders allow this; some artists/labels choose to block any unauthorized use.

Fair Use Considerations: U.S. copyright law’s big exception is **fair use** (17 U.S.C. § 107), which allows limited use of copyrighted material without permission for purposes like commentary, criticism, news reporting, education, or parody. Many content creators rely on fair use, for example: a Twitch streamer reacting to movie scenes, a YouTuber reviewing a song with short clips, or a TikTok creator using a snippet of a movie for a meme. Fair use is determined case-by-case using four factors (purpose of use, nature of the work, amount used, and effect on the market for the original). If you are adding substantial commentary or transforming the original content in an unpredictable way, your use might be fair use. **However, fair use is notoriously gray and fact-specific**. As a creator, you might believe your video is fair use, but that won’t stop a takedown – you’d have to be prepared to defend that argument, possibly in court. For instance, one famous case *Lenz v. Universal Music Corp.* involved a mother who posted a 29-second home video of her toddler dancing to Prince’s song “Let’s Go Crazy” ³⁷. Universal sent a DMCA takedown; Lenz claimed fair use. After years of litigation, the court ultimately said **copyright owners should consider fair use before issuing takedowns** ³⁸, implicitly recognizing that her use was likely fair. This was a “win” for users on principle, but in practice it didn’t stop companies from over-zealously issuing notices – it simply gave users an argument that a takedown was improper. The reality is that unless you have the resources to fight in court, you may not get to fully vindicate your fair use position. A more recent fair use showdown reached the U.S. Supreme Court in *Andy Warhol Foundation v. Goldsmith* (2023), which, though about a renowned artist’s use of a photograph, has implications for creators: the Court ruled that Warhol’s unauthorized derivative image (a silkscreen based on a photographer’s portrait of Prince) was **not fair use** when licensed in a way that usurped the original photo’s licensing market ³⁹ ⁴⁰. The Court emphasized that even a transformative work can infringe if it substitutes for the original’s purpose in the marketplace ³⁹. The takeaway for content creators is to be cautious – just adding your own spin or edits might not protect you if what you took was core to someone else’s work and your use affects their market. Fair use is still very much alive (especially for commentary/criticism, parody, etc.), but it’s not a guaranteed shield.

Licensing Music (and Other Media): The safest route for using music in content is to obtain a **license**. This can be complicated because music involves two copyrights (the composition and the sound recording), but practically creators often use services that simplify it: e.g., subscription services like Epidemic Sound or Artlist offer libraries of music you can use in videos legally; YouTube has a free Audio Library for creators; and some record labels themselves have programs allowing influencers to use certain tracks if conditions are met. On TikTok, by design, users have access to a vast catalog of popular music – TikTok secured deals with music rights holders so that **user-generated videos can include clips of songs** without individual users needing separate licenses (usually limited to short segments, which is part of the appeal of TikTok’s model). Instagram similarly has a “music sticker” feature for stories/reels that covers usage of many songs.

By contrast, Twitch's lack of broad music licenses for streamers is why streamers either avoid music or stick to rights-cleared playlists. As a creator, if you want to include a particular hit song in a YouTube video (say as background in a vlog), you would need a **sync license** from the publisher and a master use license from the record label – something usually too expensive and time-consuming to obtain for independent creators. That's why most rely on Content ID's monetization (letting the label take the ad revenue) or use alternative music. Some creators also collaborate with independent musicians to get permission to feature their music (a win-win for exposure).

Other Copyright Issues: Beyond music, content creators should be mindful of using **film/TV clips, artwork, or images**. Using a short movie clip in a reaction video is common fair use *if* you critique or comment on it, but compiling clips without commentary (even if for entertainment) is likely infringement. Using a photo you found on Google Images without permission can lead to a demand letter from the photographer or agency (there have been many cases of bloggers or YouTubers being asked to pay for using a single photo in a thumbnail or video). Some creators license stock photos or use Creative Commons-licensed images to avoid this. Another nuanced area is **embedding content** (for example, showing someone's Instagram photo in your YouTube video or embedding a tweet in your blog). Courts have been split on whether embedding is a direct copyright infringement or not – the so-called “server test” debate ⁴¹. Without diving too deep: some courts say embedding (which just links to content hosted elsewhere) isn't “displaying” the work under copyright law; others disagree. Until that's resolved, creators should assume that if you're incorporating others' content in any visible way, there could be risk. When in doubt, ask permission or use content that's clearly in the public domain or free to use.

Protecting Your Own Content: Copyright is a two-way street. Creators themselves are copyright owners of the original videos, art, photos, or music they produce. If someone steals your content (reuploads your video without permission, or uses large portions of it in their own work), you have the right to enforce your copyright. Big platforms offer tools like YouTube's **Copyright Match** (which can alert you if copies of your videos are uploaded by others) ⁴². You can file DMCA takedowns against infringers, just as companies do. One new development here is the **Copyright Claims Board (CCB)**, created by the CASE Act of 2020 and launched in mid-2022 ⁴³ ⁴⁴. The CCB is a small-claims tribunal for copyright disputes (under \$30,000) that creators can use as a plaintiff to avoid the expense of federal court. Participation is voluntary (the defendant can opt out), but it's potentially useful if, say, a small creator wants to claim damages from another who blatantly plagiarized their video or music. There is concern that the CCB could also be misused against creators (e.g. “copyright trolls” targeting YouTubers for unintentional background uses), but there are provisions to dismiss abusive claims. In any case, paralegals working with creators should know the CCB exists as a tool for enforcement.

Practical Tips for Creators (Copyright): To summarize how content creators can handle copyright and music issues:

- Use **rights-cleared content** whenever possible (music from libraries or public domain, your own recordings, or properly licensed works).
- If using copyrighted material under fair use, use *only what you need* and add genuine commentary or transformation. The more your use “adds new expression or meaning” and doesn't harm the original's market, the stronger your fair use claim.
- Take advantage of platform tools: YouTube's Content ID can allow revenue sharing; TikTok's licensed music library is there for a reason – using it keeps you safe on that platform.

- If you get a DMCA notice, *immediately remove the flagged material from any other channels* to avoid repeat strikes. You may consider a counter-notice if you truly believe it's fair use and are prepared to defend it, but consult legal advice in that event.
- Maintain an archive of your own original content and perhaps register your best works with the U.S. Copyright Office (registration is required to sue for infringement, and it's fairly low cost). This way, if someone rips off your content, you're in a stronger position to enforce your rights.
- Stay informed: copyright law is actively evolving in the courts (e.g., the Supreme Court's decisions in 2023 mentioned above). Also, watch for platform policy updates – e.g., YouTube often updates its **creator copyright education** materials and may implement new tools (recently, YouTube rolled out a feature to let creators replace or mute claimed music in the video editor to resolve claims easily).

By respecting others' copyrights and vigilantly protecting their own, content creators can avoid most legal pitfalls in this area and focus on creating original work.

Monetization Platforms and Content Moderation Legalities

Modern content creators often rely on monetization features provided by big platforms – YouTube's Partner Program (ad revenue share), TikTok's Creator Fund, Twitch subscriptions, Patreon membership payments, and so on – to earn income. With monetization comes another layer of legal considerations, including **platform terms of service, community guidelines, advertising policies, privacy laws, and even labor regulations**. Here we break down some of the key legal issues a creator faces as they turn their content into a business.



Illustration of the impact of new regulations on children's content: A "sad" YouTube logo surrounded by toys, symbolizing how kid-focused channels saw reduced monetization after YouTube's COPPA settlement ⁴⁵ ⁴⁶.

Platform Rules and Moderation: When creators monetize on a platform like YouTube, they are contractually agreeing to that platform's **Terms of Service and policies**. These agreements give the platform broad rights to control content and monetization. For example, YouTube's terms reserve the right

to remove videos or disable ad revenue for any content that violates its Community Guidelines (which cover things like hate speech, graphic violence, harassment, etc.), or even for content that is *borderline* (not outright against the rules but not advertiser-friendly). From a legal standpoint, platforms have a lot of discretion – and creators have limited recourse if they feel they’ve been treated unfairly. Creators sometimes allege censorship or bias in how moderation is applied, but U.S. courts have consistently held that social media platforms are **private entities** not bound by the First Amendment ⁴⁷ ⁴⁸ . A notable case was *PragerU v. YouTube*, where a conservative content channel sued YouTube for allegedly restricting its videos due to political bias. The courts ruled against PragerU, affirming that YouTube is not a “state actor” and can choose how to curate content on its service ⁴⁹ ⁴⁸ . Similarly, attempts to sue platforms under theories like breach of contract or unfair dealing usually fail because the terms of service explicitly give platforms the right to remove or demonetize content at their discretion ⁵⁰ . In *Divino v. Google* (a 2021 case by LGBTQ+ creators claiming YouTube unfairly demonetized their content), the court found that YouTube’s broad terms and the Communications Decency Act protected its moderation decisions, and it dismissed the case ⁵¹ ⁵² .

From the perspective of a creator, this means **monetization is a privilege, not a guaranteed right**. Platforms can and do “**demonetize**” videos that advertisers might find problematic (e.g., discussing sensitive political issues, even in a news context, might trigger limited or no ads). They can also suspend or ban accounts that repeatedly violate policies. Legally, thanks to **Section 230 of the Communications Decency Act (47 U.S.C. § 230)**, platforms are largely immune from liability for removing or restricting content in good faith. Section 230(c)(2) explicitly protects platforms from lawsuits over voluntary good-faith actions to moderate content they find objectionable, which covers demonetizing or banning users (this is separate from 230(c)(1) which protects them from liability for user-posted content, but together they give platforms wide latitude). There is ongoing debate and political pressure around Section 230 – some argue it should be reformed to require more viewpoint neutrality, others defend it as-is to allow platforms to fight hate speech and misinformation. As of 2025, no major changes have been enacted, though laws in Texas and Florida attempted to restrict platforms from banning users based on political viewpoints. (Those state laws are tied up in court challenges on constitutional grounds and have not taken effect.) The upshot: currently, creators operate under **platform supremacy** – you must play by their rules to earn money on their systems, and if you feel mistreated, legal remedies are very limited.

FTC and Advertising on Platforms: Even when monetizing, creators must remember that general advertising laws still apply. We covered FTC endorsement guides for sponsorships, but note that if you run your own ads or promotions, you must avoid deceptive practices. For instance, if a YouTuber runs a contest or giveaway to boost engagement, they need to follow truth-in-promotion laws (have clear rules, avoid illegal lotteries, honor their prize commitments, etc.). If a creator’s content is primarily directed to children, additional advertising regulations come into play (there are FCC/FTC rules about advertising to children on TV that, while not directly binding on YouTube creators, inform guidelines such as not having undisclosed ads in kids’ content).

A *major* legal development for monetized creators was **YouTube’s COPPA compliance change**. In **2019**, **YouTube and Google paid a \$170 million fine** in a settlement with the FTC and state of New York for allegedly violating the **Children’s Online Privacy Protection Act (COPPA)** ⁴⁵ . YouTube had been collecting behavioral data and showing personalized ads on videos *viewed by children* without parental consent, which COPPA forbids. As part of the settlement, starting January 2020 YouTube required creators to designate whether their content is “made for kids,” and YouTube **stopped serving personalized ads on kid-directed videos** ⁵³ . This had a huge impact on many family and children’s content creators, because **personalized**

ads typically generate far more revenue than generic context-based ads. Creators like the kids' music channel *Bounce Patrol* reported that these changes could slash their YouTube ad revenue by **90%** ⁴⁶ . Additionally, certain features like comments and end screens were disabled on kids' content. And importantly, if a creator mislabels a video (fails to mark a kid-oriented video as "made for kids" to try to keep higher ads), **they themselves could be liable under COPPA**, facing potential fines from the FTC ⁴⁶ . The FTC has released guidance to help determine what counts as child-directed (factors include the subject matter, visuals, child actors, and intended audience) ⁵⁴ . For creators, the lesson is that **compliance with privacy laws** is now part of the job – you must understand COPPA if you make content that might attract kids, and you must follow platform requirements on labeling content. This event also highlights how changes in law (privacy law in this case) can rapidly alter a creator's monetization strategy. Some creators pivoted to family-friendly but not explicitly child-focused content; others diversified to merchandise or other revenue streams to compensate.

Monetization Outside of Ads: Many creators use platforms like **Patreon, OnlyFans, or Twitch's subscriber feature** to earn money directly from fans. Legal issues here include **payment processing and adult content regulations**. For example, OnlyFans (which many adult content creators use) faced pressure from payment processors to ban explicit content in 2021 due to banking regulations related to adult content and trafficking laws. (OnlyFans announced a ban, then reversed it after public backlash, but the incident underscored how **financial and legal compliance concerns** can threaten creators' income overnight.) Patreon likewise has policies restricting certain content (hate speech, extreme adult content, etc.) which, if violated, could lead to removal from the platform. Creators relying on fan subscriptions should be aware of tax implications too – earnings are taxable income, and platforms will often issue 1099-K forms above certain thresholds. Paralegal students may find it useful to know that some larger creators have even started **LLCs or corporations** to manage their earnings, both for liability protection and tax advantages. In some cases, creators hire business managers or accountants, indicating how a successful channel can turn into a full-fledged small business.

Labor and Employment Law: A burgeoning area of legal discussion is whether content creation labor should be subject to traditional employment protections. Generally, independent creators are **self-employed** entrepreneurs. They don't have an "employer" (even if they rely on YouTube or another platform, courts have so far not considered platforms as employers of creators – the relationship is more akin to an independent contractor using a service). However, certain developments hint at more labor-like protections creeping in. A striking example is the rise of **child influencer labor laws** at the state level. In 2023, **Illinois passed a first-of-its-kind law to protect minors featured in monetized online content** ⁵⁵ ⁵⁶ . Under this law (effective July 1, 2024), if a child under 16 appears in a significant portion of a parent or guardian's monetized videos (at least 30% of the content over a 30-day period) and the content generates income above a certain threshold, the parent is legally required to set aside a percentage of that revenue in a trust for the child ⁵⁵ ⁵⁷ . The funds in the trust belong to the child and can be accessed when they turn 18, and if the parent fails to do this, the child can sue for their share ⁵⁷ . This law essentially treats child influencers similarly to child actors under Hollywood's **Coogan Law** (which California has had on the books since the 1930s, mandating trusts for child actors' earnings) ⁵⁸ . Illinois updated the concept for the YouTube/TikTok era. Other states are already considering similar bills ⁵⁹ . This reflects growing concern that children who are the subject of vlogs or family YouTube channels could be exploited or have their earnings misused by parents. Paralegals may encounter cases or questions around these laws as they develop. Creators who include their kids in content now must be mindful that they might be legally considered the **employer of their child** in a sense, with duties to account for their earnings.

Another labor-related issue: **unionization and collective bargaining for creators**. While not a legal requirement, there have been movements in this direction. For instance, some YouTubers attempted to form a union or guild to negotiate with YouTube over policy changes. In late 2022, the Screen Actors Guild (SAG-AFTRA) extended an invitation for social media influencers to join the union (if they do advertising work under certain contracts), which could give them access to union benefits and protections. This is optional and still nascent, but it's a sign that content creation is being recognized as part of the entertainment industry workforce.

Privacy and Defamation: Creators should also consider **privacy rights** and **defamation law** in their content. For example, filming people and posting it could lead to privacy claims if done in a private space without consent. Using someone's name or likeness commercially (like putting a celebrity's face on your merch) could violate **right of publicity** laws. And making false statements about individuals or companies can potentially lead to defamation suits, just as in traditional media. One high-profile instance: a few years ago, a YouTuber's video accusing a business of wrongdoing led to a defamation case that forced the video's removal and damages paid. While these aren't unique to "content creation" (they are extensions of long-standing law to a new medium), creators need to remember that being an "influencer" doesn't immunize them from the laws everyone else follows. If anything, being high-profile can make one *more* of a target for lawsuits if not careful.

Academic Commentary and Policy Debates: Scholars are actively debating how to balance the interests of creators, consumers, and platforms. Some argue for greater **platform accountability** and transparency, suggesting laws that require social media companies to explain their moderation and not arbitrarily yank monetization. For example, proposals like the *Platform Accountability and Transparency Act* in Congress aim to force big tech to share data about content moderation and algorithm impacts ⁶⁰ ⁶¹ . Others caution that over-regulating platforms could backfire and limit free expression online ⁶² . On the copyright front, academics discuss reforms to the DMCA that could make life easier for creators – such as **copyright small claims (now realized in the CCB)**, or tweaking the safe harbor to encourage platforms to use less blunt tools than complete takedowns. There are also discussions about **antitrust and competition law** potentially being used to give creators more options (for instance, if YouTube's terms are too strict, could a competitor arise? Or should app stores guarantee alternative platform access?). While these are high-level debates, they eventually shape the legal landscape in which creators operate. As of 2025, no sweeping "Creator's Bill of Rights" exists, but there's growing recognition in legal scholarship that the "creator economy" has unique needs. For example, one law review note suggests more proactive solutions to policing influencer marketing, such as **technological aids to detect undisclosed ads, stronger co-regulation with state agencies, voluntary certification programs for compliant influencers, and greater accountability for brands** who use influencer advertising ⁶³ . These ideas stem from the observation that manual enforcement (the FTC catching every influencer) is impractical, so systemic solutions are needed. In the realm of platform moderation, some commentators propose requiring platforms to offer a sort of **due process** to creators – such as a meaningful opportunity to appeal demonetization decisions, or even arbitration mechanisms for disputes. Indeed, YouTube and others have internal appeal processes, but creators often find them opaque or unhelpful. Legally mandating more transparency or consistency is a contentious idea, intersecting with the platforms' rights and innovation.

Practical Tips for Creators (Monetization & Platforms): Given this complex environment, creators should:

- **Read the Fine Print:** Make sure to actually read platform policies and updates (YouTube's monetization policies, Patreon's content guidelines, TikTok's community rules, etc.). They often spell

out what could get you demonetized or banned. As a paralegal, you might be the one summarizing these for a client – translating the legalese into clear advice.

- **Diversify Income:** Relying solely on one platform's ad revenue is risky; many creators diversify (e.g., sponsorships, merchandise, memberships, etc.) so that a policy change or algorithm tweak doesn't wipe out all earnings. From a legal view, multiple income streams also means multiple sets of rules to comply with (e.g., merch involves consumer product laws, running a Patreon involves honoring whatever rewards you promise, etc.), but it hedges against one point of failure.
- **Stay Professional:** As a creator's operation grows, treat it like a business. That could mean forming an LLC, getting insurance (some creators get media liability insurance, especially if doing journalism or commentary that could prompt lawsuits), and keeping accounting records. It also means being mindful of employment laws if you hire editors or assistants – even if your workplace is your home studio.
- **Protect Your Brand:** Many creators trademark their channel or persona names to prevent copycats from impersonating them or selling knock-off merch. This is an area where a paralegal could assist in filing applications or monitoring infringement. Conversely, avoid infringing others' trademarks – e.g., don't name your channel something that's a famous brand or too close to one, as that can cause legal trouble or platform username disputes.
- **Engage with Policy Changes:** The creator community has shown it can have a voice – for instance, during the COPPA changes, many YouTubers submitted comments to the FTC and educated their fans to do so, highlighting the impact on family content creators. While the law still went into effect, the FTC acknowledged creators' feedback and issued clarifications. Creators should keep an ear out for legislation that might affect them (such as those state "social media laws" or new tax rules for digital earnings) and consider joining advocacy groups or at least staying informed via reliable sources (like the Electronic Frontier Foundation for digital speech issues, or creator industry organizations).

Conclusion

The world of content creation is no longer a legal vacuum – it's intertwined with multiple areas of law. A content creator today must wear many hats: entertainer, entrepreneur, and (like it or not) compliance officer for their personal brand. For undergraduate students interested in supporting creators (for example, as paralegals or legal consultants), it's important to have a **holistic understanding** of these issues. Influencer marketing law teaches us about truth-in-advertising and the power of disclosure ⁶⁴ ¹⁰. Copyright law reminds us that creativity often builds on existing works, but permission or exceptions are required to do so legally ²⁸ ³⁵. Platform monetization brings in elements of contract law, policy, and even child labor regulations in the digital space ⁵⁵ ⁴⁶.

As the creator economy matures, we can expect further legal developments. Already, precedent-setting cases and new statutes are emerging, from class actions testing the boundaries of influencer liability ¹² to state laws ensuring child YouTubers get a fair share of earnings ⁵⁵. The FTC shows no sign of slowing down on policing social media commerce, and copyright holders continue to push for stricter enforcement online – while creators push back for fair use and flexibility. This dynamic will likely spur more debate about the right balance of regulation and creative freedom.

For a content creator, navigating these challenges is like steering a ship with legal icebergs in the water. But with knowledge and preparation, they can avoid most dangers. Being transparent with your audience, respecting intellectual property, and adhering to platform rules go a long way in building a sustainable and

legally sound creator career. In summary, **legal literacy is as important as digital savvy for today's content creators**. By understanding the current U.S. legal landscape – through cases, regulations, and commentary like those discussed – creators and those who assist them can better anticipate issues and respond proactively. The result is not just legal compliance, but also fostering trust with audiences and partners, which is the true foundation for long-term success in the content creation field.

Sources:

- FTC, **Guides Concerning the Use of Endorsements and Testimonials in Advertising**, 16 C.F.R. Part 255 (rev. 2023) – Summary of disclosure requirements ¹ ³ .
- Stephanie Sheridan et al., “#ClassAction: Influencer Marketing Class Actions are Trending,” *Benesch Client Bulletin* (May 1, 2025) – Describes recent lawsuits against brands and influencers over undisclosed sponsorships ¹⁵ ¹² .
- Libby O'Neill, “Revolve Faces Legal Scrutiny Over Influencer Marketing Practices,” *Loeb & Loeb QuickTakes* (Apr. 23, 2025) – Notes a lawsuit alleging Revolve failed to ensure influencers disclosed connections (violation of consumer protection laws) ⁶⁵ .
- Franklin Graves, “Here Are The Legal Issues Affecting Content Creators In 2022,” *TubeFilter* (Jan. 11, 2022) – Overview of creator legal issues, including FTC enforcement (700 warning letters) ¹⁰ , influencer trademark liability (Molly Sims case) ²⁴ , and DMCA/fair use cases ⁶⁶ .
- Nathan Grayson, “Twitch makes deal with NMPA, but streamers still can't play licensed music,” *Washington Post* (Sept. 21, 2021) – Account of Twitch's DMCA issues and the music industry deal, explaining that unlicensed music is still prohibited on streams ²⁹ ⁶⁷ .
- PatentPC Blog, “Real-Life DMCA Cases and Lessons for Digital Platforms” (2023) – Discusses cases like *Lenz v. Universal* (dancing baby fair use – requirement for copyright owners to consider fair use before takedown) ³⁸ and *Viacom v. YouTube* (affirming YouTube's DMCA safe harbor).
- Doina Chiacu et al., “Kim Kardashian pays \$1.26 million fine for paid crypto ad, SEC says,” *Reuters* (Oct. 3, 2022) – Details the SEC's enforcement against Kardashian for failing to disclose a paid crypto endorsement ²¹ ²³ .
- Lisa Wiznitzer, “New Illinois Law Mandates Influencers to Compensate Child Participants,” *Loeb & Loeb QuickTakes* (July 10, 2024) – Summarizes Illinois' child influencer labor law and its requirements (trusts for minors, etc.) ⁵⁵ ⁵⁷ .
- Rebecca Jennings, “Kids' YouTube will change in 2020 thanks to COPPA and the FTC,” *Vox* (Dec. 20, 2019) – Explains the impact of the FTC-YouTube COPPA settlement on children's content creators (loss of targeted ads, revenue drop) ⁴⁵ ⁴⁶ .
- Eric Goldman, “Court Finally Rejects ‘Discrimination’ Lawsuit Against YouTube – *Divino v. Google*,” *Technology & Marketing Law Blog* (July 14, 2023) – Analysis of case where LGBTQ+ creators alleged unfair demonetization; court upheld YouTube's broad discretion per its contract and Section 230 ⁵⁰ ⁵² .
- *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. ____ (2023) – Supreme Court opinion holding Warhol's use of a photo was not fair use, clarifying how the purpose of the new use is weighed when it supplants the original's market ³⁹ .
- FTC, “Endorsement Guides: What People Are Asking” (June 2023) – FTC business guidance document in Q&A form, addressing common questions on influencer disclosures ²⁶ .
- Makena B. Cosen, “A New Era in the Creator Economy: Addressing Copyright Issues Between Creators on YouTube,” 48 Colum. J. Law & Arts 342 (2025) – (Note discussing how creators sometimes infringe each other's content on YouTube and proposing dispute resolution mechanisms).

- Rosalena Morrell, “Get Ready With Me for Court: Increasing FTC Enforcement in Influencer Marketing” (2025) (Seton Hall Law student scholarship) – Argues for proactive regulatory strategies for influencer marketing, such as tech solutions and federal-state collaboration ⁶³ .
- Jonathan Stempel, “Google defeats conservative nonprofit’s YouTube censorship appeal,” *Reuters* (Feb. 27, 2020) – News on the PragerU v. Google case, confirming YouTube is not a public forum and can restrict content as a private company ⁴⁷ ⁴⁸ .

¹ ² ³ ⁵ ⁶ ⁷ ¹¹ ¹² ¹³ ¹⁴ ¹⁵ ¹⁶ ¹⁷ ⁶⁴ **#ClassAction: Influencer Marketing Class Actions are Trending | Benesch, Friedlander, Coplan & Aronoff LLP**

<https://www.beneschlaw.com/resources/classaction-influencer-marketing-class-actions-are-trending.html>

⁴ ⁸ ⁹ ⁶⁵ **Revolve Faces Legal Scrutiny Over Influencer Marketing Practices, Libby O'Neill**

<https://quicktakes.loeb.com/post/102k99w/revolve-faces-legal-scrutiny-over-influencer-marketing-practices>

¹⁰ ²⁴ ²⁷ ⁴¹ ⁴³ ⁴⁴ ⁶⁶ **Here Are The Legal Issues Affecting Content Creators In 2022 - Tubefilter**

<https://www.tubefilter.com/2022/01/11/content-creators-legal-cases-copyright-infringement/>

¹⁸ ⁶³ **GET READY WITH ME: UNVEILING THE REGULATORY REALITIES OF INFLUENCER MARKETING**

<https://bclawreview.bc.edu/articles/3177/files/679bb57b56f39.pdf>

¹⁹ **FTC Finalizes Rule Banning Fake Reviews and Testimonials**

<https://ftcattorney.com/what-digital-advertisers-and-influencers-need-to-know-about-the-ftc-final-rule-banning-fake-consumer-reviews-and-testimonials/>

²⁰ ²⁵ ²⁶ **Endorsements, Influencers, and Reviews | Federal Trade Commission**

<https://www.ftc.gov/business-guidance/advertising-marketing/endorsements-influencers-reviews>

²¹ ²² ²³ **Kim Kardashian pays \$1.26 million fine for paid crypto ad, SEC says | Reuters**

<https://www.reuters.com/markets/us/sec-charges-kim-kardashian-unlawfully-touting-crypto-security-statement-2022-10-03/>

²⁸ ²⁹ ³⁰ ³¹ ³² ³³ ³⁴ ⁶⁷ **Twitch makes deal with NMPA, but streamers still can't play licensed music - The Washington Post**

<https://www.washingtonpost.com/video-games/2021/09/21/twitch-nmpa-streamers-licensed-music/>

³⁵ ³⁶ ⁴² **How YouTube Works - Copyright Tools: Rightsholders and Creators - How YouTube Works**

<https://www.youtube.com/howyoutubeworks/copyright/>

³⁷ ³⁸ **Real-Life DMCA Cases and Lessons for Digital Platforms | PatentPC**

<https://patentpc.com/blog/real-life-dmca-cases-and-lessons-for-digital-platforms>

³⁹ ⁴⁰ **Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith**

https://en.wikipedia.org/wiki/Andy_Warhol_Foundation_for_the_Visual_Arts,_Inc._v._Goldsmith

⁴⁵ ⁴⁶ ⁵³ **Kids' Youtube will change in 2020 thanks to COPPA and the FTC | Vox**

<https://www.vox.com/the-goods/2019/12/20/21025139/youtube-kids-coppa-law-ftc-2020>

⁴⁷ ⁴⁸ ⁴⁹ **Google defeats conservative nonprofit's YouTube censorship appeal | Reuters**

<https://www.reuters.com/article/technology/google-defeats-conservative-nonprofits-youtube-censorship-appeal-idUSKCN20K33L/>

⁵⁰ ⁵¹ ⁵² **Court Finally Rejects "Discrimination" Lawsuit Against YouTube-Divino v. Google - Technology & Marketing Law Blog**

<https://blog.ericgoldman.org/archives/2023/07/court-finally-rejects-discrimination-lawsuit-against-youtube-divino-v-google.htm>

⁵⁴ Determining if your content is "made for kids" - YouTube Help

<https://support.google.com/youtube/answer/9528076?hl=en>

⁵⁵ ⁵⁶ ⁵⁷ ⁵⁸ ⁵⁹ New Illinois Law Mandates Influencers to Compensate Child Participants, Lisa Wiznitzer

<https://quicktakes.loeb.com/post/102jcbq/new-illinois-law-mandates-influencers-to-compensate-child-participants>

⁶⁰ Platform Accountability and Transparency Act, S. 1876, 118th Cong ...

<https://harvardlawreview.org/print/vol-137/platform-accountability-and-transparency-act-s-1876-118th-cong-2023/>

⁶¹ A Policy Primer for Free Expression and Content Moderation, Part III

<https://publicknowledge.org/safeguarding-users/>

⁶² Dear Congress: Platform Accountability Should Not Threaten Online ...

<https://www.aclu.org/news/free-speech/dear-congress-platform-accountability-should-not-threaten-online-expression>