

# A New Era in the Creator Economy: Addressing Copyright Issues Between Creators on YouTube

Makena Binker Cosen\*

## INTRODUCTION

The creator economy is the future of American media—a reality content platforms, consumers, traditional media, and brands have recognized for the past decade. The creator economy refers to an “ecosystem of content creation activities in which independent creators generate content on a self-directed basis that is monetizable by the creator.”<sup>1</sup> A quarter of weekly media hours are dedicated to watching user-generated video, with YouTube dominating the market as the largest video-sharing platform.<sup>2</sup> Every day, over half of adults and almost three-quarters of teenagers turn to

---

\* My deepest gratitude to Professor Jane Ginsburg, whose brilliance and mentorship have profoundly shaped my understanding of copyright law. Her commitment to authors' rights remains a beacon. I am also indebted to Franklin Graves, whose leadership in creator economy law not only paved the way for this project, but whose early conversations served as a steady compass. I am especially grateful to my closest intellectual companions and lifelong supporters: my mother Laura, who first nudged me towards copyright law; my father Marcelo; and my brother Andy. This Note began in early conversations with Professor Amy Adler, Professor Jeanne Fromer, Nate Graber-Lipperman, Paige Kaplan, and Doug Shapiro—thank you for your insights and encouragement. Heartfelt thank you to Dylan, Gabrielle, Joey, and the exceptional editors at the *Columbia Journal of Law & the Arts*, whose thoughtful edits made this piece stronger. Finally, to those who patiently endured my endless ruminations on this topic—Emaline, Naria, Natalie, Priscilla, Samrat, Santiago, and Vanna—your feedback and friendship sustained me throughout this journey.

1. Doug Shapiro, *Getting Creators Paid Is the Next Big Thing in Media*, MEDIUM (Aug. 17, 2020), <https://dougshapiro.medium.com/getting-creators-paid-is-the-next-big-thing-in-media-8d5e88bc7895> [<https://perma.cc/8QWG-JYQP>] [<https://web.archive.org/web/20250308005851/https://dougshapiro.medium.com/getting-creators-paid-is-the-next-big-thing-in-media-8d5e88bc7895>].

2. See Todd Spangler, *User-Generated Content Represents 39% of Time Spent with Media: Study*, VARIETY (Jan. 4, 2022), <https://variety.com/2022/digital/news/cta-user-generated-content-study-1235146175/> [<https://perma.cc/4VXT-NEHY>] [<https://web.archive.org/web/20250213185912/https://variety.com/2022/digital/news/cta-user-generated-content-study-1235146175/>]. YouTube commands 79% of the market, while the second-leading platform, Vimeo, only takes up 17%. *Online Video Platforms Market Share*, DATANYZE, <https://www.datanyze.com/market-share/online-video—12> [<https://web.archive.org/web/20250213190702/https://www.datanyze.com/market-share/online-video—12>] (last visited Mar. 7, 2025).

© 2025 Makena Binker Cosen. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction, provided the original author and source are credited.

YouTube.<sup>3</sup> Independent “creator” content is “changing [consumers’] definition of quality,” diminishing the significance of traditional media’s high production value.<sup>4</sup> Among streaming services, YouTube garners more views than Netflix and as many as Hulu, Disney+, Max, Peacock, and Paramount+ combined.<sup>5</sup> At the same time, consumer preference for YouTube videos is expected to increase as the release of new virtual production and AI technologies empower more creators to make content with high production value.<sup>6</sup> For perspective, in the time it takes Hollywood to release 15,000 hours of TV and film, people already post 250 million hours of content to YouTube; if consumers considered only 0.01% of this content to be competitive with Hollywood, YouTube would still double Hollywood’s annual output.<sup>7</sup> Accordingly,

---

3. See Andrew Perrin & Monica Anderson, *Share of U.S. Adults Using Social Media, Including Facebook, Is Mostly Unchanged Since 2018*, PEW RSCH. CTR. (Apr. 10, 2019), <https://www.pewresearch.org/short-reads/2019/04/10/share-of-u-s-adults-using-social-media-including-facebook-is-mostly-unchanged-since-2018/> [https://perma.cc/5645-DYN3] [https://web.archive.org/web/20250308011131/https://www.pewresearch.org/short-reads/2019/04/10/share-of-u-s-adults-using-social-media-including-facebook-is-mostly-unchanged-since-2018/]; Monica Anderson et al., *Teens, Social Media and Technology 2023*, PEW RSCH. CTR. (Dec. 11, 2023), <https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/> [https://perma.cc/7HMM-QWF7] [https://web.archive.org/web/20250308010913/https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/].

4. Doug Shapiro, *What Is Scarce When Quality Is Abundant?*, MEDIATOR (Oct. 22, 2023), <https://dougshapiro.substack.com/p/what-is-scarce-when-quality-is-abundant> [https://web.archive.org/web/20250213185412/https://dougshapiro.substack.com/p/what-is-scarce-when-quality-is-abundant].

5. Erik Gruenwedel, *Nielsen: Streaming Video Market Share Reached Record High in July*, MEDIA PLAY NEWS (Aug. 15, 2023), <https://www.mediaplaynews.com/nielsen-streaming-video-market-share-reached-record-high-in-july/> [https://perma.cc/79GQ-X9S5] [https://web.archive.org/web/20250308012031/https://www.mediaplaynews.com/nielsen-streaming-video-market-share-reached-record-high-in-july/].

6. See Doug Shapiro, *Forget Peak TV, Here Comes Infinite TV*, MEDIATOR (Jan. 4, 2023), <https://dougshapiro.substack.com/p/forget-peak-tv-here-comes-infinite-tv> [https://web.archive.org/web/20250308012450/https://dougshapiro.substack.com/p/forget-peak-tv-here-comes-infinite-tv]. In one survey, more than half of video creators reported that they were using AI in their creative process. See Rebecca Helfenbaum, *How Brands Can Play and Win in the Creator Economy*, ARTLIST (May 15, 2024), <https://artlist.io/blog/trend-report-2024/> [https://web.archive.org/web/20240225120717/https://artlist.io/blog/trend-report-2024/]. YouTube is rolling out guardrails that will require creators to disclose when they have used AI-generated content in their videos. The platform will also introduce content tags that creators can add to their videos to notify users if what they are watching is altered or synthetic. See Jennifer Flannery O'Connor & Emily Moxley, *Our Approach To Responsible AI Innovation*, YOUTUBE OFF. BLOG (Nov. 14, 2023), <https://blog.youtube/inside-youtube/our-approach-to-responsible-ai-innovation/> [https://perma.cc/UF3T-8QUL] [https://web.archive.org/web/20250308013027/https://blog.youtube/inside-youtube/our-approach-to-responsible-ai-innovation/].

7. See Shapiro, *supra* note 4. Researchers, largely unable to access data behind major platforms like YouTube, conducted a study using a randomized sampling process. Their findings show that “the number and perhaps even importance of [viral and popular] videos are dwarfed by hours-long church services, condo-board meetings, and other miscellaneous clips that you’ll probably never see.” Ryan McGrady, *What We Discovered on ‘Deep YouTube’*, ATLANTIC (Jan. 26, 2024), <https://www.theatlantic.com/technology/archive/2024/01/how-many-videos-youtube-research/677250/> [https://perma.cc/7AQG-F5DW].

content creators hold a growing influence over the ideas we share and the culture we foster.

The term was first coined around 2008 by technology forecaster Paul Saffo to describe the shift from a consumer economy to one focused on massive data generation and collection through no- and low-cost digital services, which has since morphed into an explosion of user-generated content enabled by web 2.0 platforms.<sup>8</sup> Following a series of acquisitions in 2011, YouTube adopted the term “creator” to strengthen its position among platforms hosting user-generated content.<sup>9</sup> Additionally, contributing factors include a reduction in content-publishing barriers, improved affordability and quality of film equipment and software, along with the proliferation of high-tech smartphones, social media, internet advertising, and influencer marketing.<sup>10</sup> The COVID-19 pandemic further accelerated participation in the creator economy. Notably, the global creator economy doubled to 303 million creators between 2021 and 2022.<sup>11</sup> Currently valued at \$250 billion, the industry is expected to jump to \$480 billion by 2027.<sup>12</sup>

---

[<https://web.archive.org/web/20250307025902/https://www.theatlantic.com/technology/archive/2024/01/how-many-videos-youtube-research/677250/>].

8. See Ted Greenwald, *The Creator Economy: Futurist Paul Saffo on the New Business Epoch*, FORBES (Oct. 19, 2011), <https://www.forbes.com/sites/tedgreenwald/2011/10/19/the-creator-economy-futurist-paul-saffo-on-the-new-business-epoch/?sh=1127e0eb61c1>; Franklin Graves, Address at the Nashville Bar Association Annual Entertainment, Sports & Media Law Institute: Creator Economy Law (Dec. 2023), [https://www.linkedin.com/posts/franklingraves\\_creator-economy-law-nashville-bar-association-activity-7136822952397828096-Mx29?utm\\_source=share&utm\\_medium=member\\_desktop&rcm=ACoAABGTeyoB8QZ1FSfHyWsBNE6yct3EwBtMxEU](https://www.linkedin.com/posts/franklingraves_creator-economy-law-nashville-bar-association-activity-7136822952397828096-Mx29?utm_source=share&utm_medium=member_desktop&rcm=ACoAABGTeyoB8QZ1FSfHyWsBNE6yct3EwBtMxEU) [https://perma.cc/Z9BC-KAMG] [https://web.archive.org/web/20250308015202/https://www.linkedin.com/posts/franklingraves\_creator-economy-law-nashville-bar-association-activity-7136822952397828096-Mx29?rcm=ACoAABGTeyoB8QZ1FSfHyWsBNE6yct3EwBtMxEU].

9. Taylor Lorenz, *The Real Difference Between Creators and Influencers*, ATLANTIC (May 31, 2019), <https://www.theatlantic.com/technology/archive/2019/05/how-creators-became-influencers/590725/> [https://web.archive.org/web/20250308014048/https://www.theatlantic.com/technology/archive/2019/05/how-creators-became-influencers/590725/].

10. Graves, *supra* note 8.

11. “Future of Creativity” Study: 165+ Creators Joined Creator Economy Since 2020, ADOBE (Aug. 25, 2022), <https://news.adobe.com/assets/downloads/pdfs/2022/08/082522-adobefutureofcreativity.pdf> [https://perma.cc/4GVV-EH8H] [https://web.archive.org/web/20250308032515/https://news.adobe.com/assets/downloads/pdfs/2022/08/082522-adobefutureofcreativity.pdf].

12. *The Creator Economy Could Approach Half-a-Trillion Dollars by 2027*, GOLDMAN SACHS (Apr. 19, 2023), <https://www.goldmansachs.com/intelligence/pages/the-creator-economy-could-approach-half-a-trillion-dollars-by-2027.html> [https://perma.cc/DXZ8-YN2] [https://web.archive.org/web/20250308032937/https://www.goldmansachs.com/insights/articles/the-creator-economy-could-approach-half-a-trillion-dollars-by-2027.html].

Nearly a third of children aspire to become professional YouTubers.<sup>13</sup> More than two million adults are already living out their dreams.<sup>14</sup> However, the profession is plagued by waves of burnout.<sup>15</sup> Making it on YouTube requires dedication. A survey found that it takes an average of seven hours to make a one- to five-minute YouTube video—and the average YouTube video is at least three times longer than that.<sup>16</sup> Aspiring YouTubers are recommended to post new videos between once a day and once a week to find success on the platform.<sup>17</sup> Most creators maintain a full-time job while striving to meet ambitious posting schedules.<sup>18</sup> For those who persevere, the hustle is deemed worthwhile despite the many sacrifices that come with it. Yet, that delicate balance is tipped off-kilter when the videos YouTubers pour their hearts into making are repeatedly taken down, stolen, and shared without credit.

Part I of this Note outlines some of the issues creators run into in relation to copyright law. Whereas most scholarship in the field discusses copyright issues between creators and traditional media companies, this Note primarily focuses on disputes between creators. It focuses on how these issues unfold on YouTube, given its status as the longest-standing platform of its kind and its established record of implementing creator-friendly reforms.<sup>19</sup> Part II explains how content creation challenges copyright law's economic incentives model and why YouTubers are not

---

13. See *LEGO Group Kicks Off Global Program To Inspire the Next Generation of Space Explorers as NASA Celebrates 50 Years of Moon Landing*, HARRIS POLL (July 16, 2019), <https://theharrispoll.com/briefs/lego-group-kicks-off-global-program-to-inspire-the-next-generation-of-space-explorers-as-nasa-celebrates-50-years-of-moon-landing/> [https://perma.cc/PS6T-5RMM] [https://web.archive.org/web/20250308033318/https://theharrispoll.com/web/20250308033318/https://theharrispoll.com/briefs/lego-group-kicks-off-global-program-to-inspire-the-next-generation-of-space-explorers-as-nasa-celebrates-50-years-of-moon-landing/].

14. See ROBERT SHAPIRO & SIDDHARTHA ANEJA, *TAKING ROOT: THE GROWTH OF AMERICA'S NEW CREATIVE ECONOMY* (2019), <https://www.recreatecoalition.org/wp-content/uploads/2019/02/ReCreate-2017-New-Creative-Economy-Study.pdf> [https://perma.cc/L3PK-FNN7] [https://web.archive.org/web/20250226171705/https://www.recreatecoalition.org/wp-content/uploads/2019/02/ReCreate-2017-New-Creative-Economy-Study.pdf].

15. See Julia Alexander, *YouTube's Top Creators Are Burning Out and Breaking Down En Masse*, POLYGON (June 6, 2018), <https://www.polygon.com/2018/6/1/17413542/burnout-mental-health-awareness-youtube-elle-mills-el-rubius-bobby-burns-pewdiepie> [https://web.archive.org/web/20250308034039/https://www.polygon.com/2018/6/1/17413542/burnout-mental-health-awareness-youtube-elle-mills-el-rubius-bobby-burns-pewdiepie].

16. See Vidya Narayanan, *How Long Does It Take To Create a YouTube Video?*, MEDIUM (Sept. 25, 2019), <https://medium.com/rizzle/how-long-does-it-take-to-create-a-youtube-video-266ae3496bf3> [https://perma.cc/Q9VX-5Y6K]; Julia Alexander, *YouTube Videos Keep Getting Longer*, VERGE (July 26, 2019), <https://www.theverge.com/2019/7/26/8888003/youtube-video-length-contrapoints-lindsay-ellis-shelby-church-ad-revenue> [https://perma.cc/9ATP-M3SD].

17. *How Often Should You Post on Youtube: The Ultimate Guide*, REPEATUBE, <https://www.repeatube.net/blog/how-often-should-you-post-on-youtube/> [https://perma.cc/5HXD-KWE6] [https://web.archive.org/web/20250308035909/https://www.repeatube.net/blog/how-often-should-you-post-on-youtube/] (last visited Mar. 7, 2025).

18. ADOBE, *supra* note 11.

19. While this Note focuses on creators based on YouTube, most creators are active on multiple platforms and face copyright issues across them, e.g., a YouTube video is re-uploaded without authorization on TikTok. Furthermore, it is important to understand the interplay between platforms. As platforms compete to retain talent, they are pushed to test and adopt new features.

seeking legal remedies for the copyright issues they face. Part III argues that recent and forthcoming changes in the creator economy and legal landscape will encourage YouTubers to rely on copyright law to make a living and improve the conditions of the profession. Anticipating this transition, Part IV reviews existing proposals that would facilitate the resolution of the copyright issues raised in Part I. Looking ahead to the creator economy's legal needs, conducting a comprehensive examination of challenges and proposed solutions can empower content creators and initiate meaningful discussions within the legal community to support its new clients.

### A. YOUTUBE'S COPYRIGHT MANAGEMENT SYSTEM

YouTube utilizes an automated content recognition system called Content ID that scans uploaded videos against reference files submitted by copyright holders. In 2006, YouTube entered a licensing agreement with Audible Magic for an “audio identification technology” to detect copyright infringement.<sup>20</sup> Still in its early stages, between 2007 to 2009, Viacom, Mediaset, and the English Premier League sued YouTube for insufficient copyright protection efforts.<sup>21</sup> In June 2007, YouTube initiated trials for its own infringement detection tool on uploaded videos.<sup>22</sup> Upon testing its own Content ID system, YouTube terminated its deal with Audible Magic.<sup>23</sup> In 2022, Google reported Content ID payouts of approximately \$50 billion to copyright holders in the previous three years, with development costs exceeding hundreds of millions of dollars.<sup>24</sup>

---

20. *YouTube: A History*, TELEGRAPH (Apr. 17, 2010), <https://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/digital-media/7596636/YouTube-a-history.html>

[<https://web.archive.org/web/20250308040338/https://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/digital-media/7596636/YouTube-a-history.html>].

21. *See Viacom Will Sue YouTube for \$1bn*, BBC (Mar. 13, 2007), <http://news.bbc.co.uk/1/hi/business/6446193.stm> [<https://perma.cc/LBD3-FLSD>]

[<https://web.archive.org/web/20250308040644/http://news.bbc.co.uk/2/hi/business/6446193.stm>]; Giada Zampano & Liam Moloney, *Update: Mediaset Files EUR500 Million Suit Vs. Google's YouTube*, CNN (July 30, 2008), [https://money.cnn.com/news/newsfeeds/articles/djf500/200807301025DOWJONESDJONLINE000654\\_FORTUNE5.htm](https://money.cnn.com/news/newsfeeds/articles/djf500/200807301025DOWJONESDJONLINE000654_FORTUNE5.htm) [<https://perma.cc/FLT2-L6TE>]

[[https://web.archive.org/save/https://money.cnn.com/news/newsfeeds/articles/djf500/200807301025DOWJONESDJONLINE000654\\_FORTUNE5.htm](https://web.archive.org/save/https://money.cnn.com/news/newsfeeds/articles/djf500/200807301025DOWJONESDJONLINE000654_FORTUNE5.htm)]; *Premier League To Take Action Against YouTube*, TELEGRAPH (May 4, 2007), <https://www.telegraph.co.uk/sport/football/2312532/Premier-League-to-take-action-against-YouTube.html> [<https://web.archive.org/web/20250225194839/https://www.telegraph.co.uk/sport/football/2312532/Premier-League-to-take-action-against-YouTube.html>].

22. *See* Steve Chen, *The State of Our Video ID Tools*, GOOGLE OFF. BLOG (June 14, 2007), <https://googleblog.blogspot.com/2007/06/state-of-our-video-id-tools.html> [<https://perma.cc/KX8U-VPEF>] [<https://web.archive.org/web/20250405005203/https://googleblog.blogspot.com/2007/06/state-of-our-video-id-tools.html>].

23. Daniel Sanchez, *Google and YouTube Accused of Stealing Content ID...*, DIGIT. MUSIC NEWS (Jan. 12, 2017), <https://www.digitalmusicnews.com/2017/01/12/google-youtube-audible-magic-content-id/>.

24. YOUTUBE, COPYRIGHT TRANSPARENCY REPORT 1 (2022), <https://www.digitalmusicnews.com/wp-content/uploads/2023/07/youtube-transparency-report-H2->

When a match occurs—even in a short segment of a video—Content ID automatically applies policies pre-selected by right holders, like diverting ad revenue to the claimant or blocking the video entirely.<sup>25</sup> While Content ID provides right holders efficient tools to monetize or remove potential infringement at scale, it also creates a “guilty until proven innocent” system against content creators.<sup>26</sup> In the event of a disagreement with a Content ID decision on YouTube, users can submit a counter-claim form. However, this submission is forwarded directly to the copyright owner, who holds ultimate authority over the outcome unless legal measures are taken.

Critically, Content ID lacks the capacity to accurately assess whether a video’s use of copyrighted material falls under fair use or is permitted under a licensing agreement.<sup>27</sup> Thus, Content ID frequently flags legal uses. This is exacerbated by right holders’ overzealous claims, perhaps resulting from the perceived absence of legal risk for abusing the system.<sup>28</sup> Fearing legal repercussions or constrained by resources, creators often opt for video removal instead of challenging copyright claims.<sup>29</sup> A study suggests that 72% of individuals who receive copyright infringement notices from online platforms would be less inclined to share content in the future.<sup>30</sup> This paints a picture of a system that may inadvertently hinder creative expression.

The Copyright Strikes system on YouTube allows right holders to manually request removal of allegedly infringing videos. When YouTube receives a “complete legal”

---

2022.pdf [https://perma.cc/4SJM-MZJ5]  
[https://web.archive.org/web/20250207162206/https://www.digitalmusicnews.com/wp-content/uploads/2023/07/youtube-transparency-report-H2-2022.pdf].

25. *How Content ID Works*, YOUTUBE, <https://support.google.com/youtube/answer/2797370?hl=en> [https://perma.cc/B4FS-ES2L]  
[https://web.archive.org/web/20250225195009/https://support.google.com/youtube/answer/2797370?hl=en] (last visited Feb. 24, 2025).

26. Paul Tassi, *The Injustice of the YouTube Content ID Crackdown Reveals Google’s Dark Side*, FORBES (Dec. 19, 2013), <https://www.forbes.com/sites/insertcoin/2013/12/19/the-injustice-of-the-youtube-content-id-crackdown-reveals-googles-dark-side/?sh=1a8ac20666c8> [https://perma.cc/RM6R-AWEK]  
[https://web.archive.org/web/20250225195210/https://www.forbes.com/sites/insertcoin/2013/12/19/the-injustice-of-the-youtube-content-id-crackdown-reveals-googles-dark-side/?sh=1a8ac20666c8].

27. See Mike Masnick, *How Google’s ContentID System Fails at Fair Use & the Public Domain*, TECHDIRT (Aug. 8, 2012), <https://www.techdirt.com/2012/08/08/how-googles-contentid-system-fails-fair-use-public-domain/>  
[https://web.archive.org/web/20250225195420/https://www.techdirt.com/2012/08/08/how-googles-contentid-system-fails-fair-use-public-domain/].

28. YouTube adjusted this approach following *Lenz v. Universal Music Corp.*, 815 F.3d 1145 (9th Cir. 2016) (requiring copyright holders to consider whether potentially infringing material was fair use before issuing a takedown notice). See *Submit a Copyright Removal Request*, YOUTUBE, <https://support.google.com/youtube/answer/2807622?sjid=14485426572126247897-NA> [https://perma.cc/59YL-CJ2J] (last visited Apr. 4, 2025) (warning users not to make false claims: “Misuse of the removal request webform, such as submitting false information, may result in the suspension of your account or other legal consequences”).

29. Corynne McSherry, *Hey, Warner, Leave Those Kids Alone*, ELEC. FRONTIER FOUND. (Feb. 26, 2009), <https://www.eff.org/deeplinks/2009/02/hey-warner-leave-those-kids-alone> [https://perma.cc/Y35P-7MFD]  
[https://web.archive.org/web/20250225195625/https://www.eff.org/deeplinks/2009/02/hey-warner-leave-those-kids-alone].

30. Johnathon W. Penney, *Privacy and Legal Automation: The DMCA as a Case Study*, 22 STAN. TECH. L. REV. 412, 447 (2019).

takedown notice under the DMCA, it will remove the identified content and issue a strike against the uploading user's account.<sup>31</sup> Multiple strikes can lead to account termination: Three strikes result in cancellation of the account, any associated accounts, and deletion of all the user's videos. A creator can resolve the strike by (i) waiting six months for a strike to expire automatically; (ii) getting the claimant to retract their takedown request; or (iii) submitting a DMCA counter-notification and successfully arguing that the video removal was a mistake.<sup>32</sup> If the counter-notification meets legal requirements, the uploader can have the strike removed and video restored in fourteen days unless the copyright holder files a lawsuit. Thus, while the Copyright Strikes system gives copyright holders enhanced abilities to enforce claims, accused users still have some built-in statutory protections.

# I. COPYRIGHT ISSUES BETWEEN CONTENT CREATORS

Videos are reproduced in re-posted in clips or in full, non-transformative reaction videos, and recreated scene-by-scene, line-by-line in an appropriative manner. Infringement is done by fellow creators and faceless content farms. By stealing from multitudes of creators and generating a hub of curated content, infringers can out-produce and amass more views than any individual creator could. Theoretically, this implies that content thieves could introduce smaller creators to new viewers. However, comedy YouTuber Jack "jacksfilms" Douglass disagrees.<sup>33</sup> In practice, while viewers might seek out an original creator's work, he explains that they are unlikely to watch the same video twice. Once a content thief re-uploads a creator's entire catalogue, the hoax of exposure value disappears. The reality is that infringers are taking creators' views, watch time, and user engagement, interfering with their advertising revenue and, more importantly, with their ability to bargain with brands for more competitive sponsorship deals—the main source of most creators' income.<sup>34</sup> While infringement

---

31. *Copyright Strike Basics*, YOUTUBE, <https://support.google.com/youtube/answer/2814000> [<https://perma.cc/66UL-NNYM>] [<https://web.archive.org/web/20250211180711/https://support.google.com/youtube/answer/2814000>] (last visited Feb. 11, 2025).

32. *See Retract a Copyright Removal Request*, YOUTUBE, <https://support.google.com/youtube/answer/2807691> [<https://perma.cc/J5BJ-MSCC>] [<https://web.archive.org/web/20250211180857/https://support.google.com/youtube/answer/2807691>] (last visited Feb. 11, 2025); *Submit a Copyright Counter Notification*, YOUTUBE, <https://support.google.com/youtube/answer/2807684?sjid=9221366119256600641-NA> [<https://perma.cc/2VUP-J63P>] [<https://web.archive.org/web/20250211181842/https://support.google.com/youtube/answer/2807684?sjid=9221366119256600641-NA>] (last visited Feb. 11, 2025).

33. jacksfilms, *The War on Stolen Content!*, YOUTUBE (Sept. 29, 2023), <https://youtu.be/eI0VD3Hut0Y?si=yVGyyUQ4tJ-Hze88> [<https://perma.cc/KV3J-ECYV>] [<https://web.archive.org/web/20250214133642/https://www.youtube.com/watch?v=eI0VD3Hut0Y>].

34. *See Creator Earnings: Benchmark Report 2023*, INFLUENCER MKTG. HUB (June 24, 2024), <https://influencermarketinghub.com/creator-earnings-benchmark-report/> [<https://perma.cc/78E9-Y3J4>] [<https://web.archive.org/web/20250308141843/https://influencermarketinghub.com/creator-earnings-benchmark-report/>].

occurs cross-platform, it is critical to stop it on platforms like YouTube, Instagram, TikTok, and Twitch, where brands look at a creator's statistics to negotiate sponsorship deals.<sup>35</sup>

#### A. RE-UPLOADED VIDEOS

Non-consensual re-uploads of clips or full-length videos undermine creators' ownership rights and livelihoods. Small creators—including creators with half a million subscribers—report devastated view counts when their content or livestreams of reactions to their content are re-posted on YouTube.<sup>36</sup> For example, an upload of a livestream reaction of Orr “Pinely” Piamenta's video essay “How to Radicalize a Celebrity” surpassed the original video's views on its first day on YouTube.<sup>37</sup> In a follow-up video, Piamenta explained that he gives streamers like Hasan “HasanAbi” Piker permission to react to his content on other platforms like Twitch, where viewers enter the livestream because they are interested in the Piker, and Piamenta's video is a small portion of the livestream.<sup>38</sup> However, even though many streamers consent to viewers permission to re-upload their livestreams to YouTube, Piamenta does not. He distinguishes the two, explaining that this content competes with his on the same platform, as viewers click on the video for its subject matter, not personality.<sup>39</sup> Furthermore, these re-uploads are more likely to be favored by YouTube's recommendation algorithm—firstly, because the streamer's reaction makes the video twice as long, enabling YouTube to place more advertisements on it and, secondly, because channels that regularly publish non-original content tend to post much more frequently.

While the channel “Hasan Compilations” credited Piamenta in the title, “How to Radicalize a Celebrity | HasanAbi reacts to Pinely,” it replaced his image in the thumbnail with Hasan's and did not link to Piamenta's video. The re-upload was taken down after Piamenta's complaint was picked up by Piker, whom the compilation channel bases its content around. Ironically, after further research, Piker's followers found that “Hasan Compilations” has flooded competing compilation channels with

---

35. 2021 *State of Influencer Rates Report*, BANKNOTES (Feb. 12, 2021), <https://hashtagpaid.com/banknotes/creator-rates> [https://perma.cc/H7NW-PZK6] [https://web.archive.org/web/20250308142010/https://hashtagpaid.com/banknotes/creator-rates].

Creators are left to utilize non-copyright protection mechanisms, such as trademarks and name, image, and likeness rights, to build a robust brand and business protection plan.

36. Colin Rosenblum & Samir Chaudry, *The Murky Ethics of Clipping on YouTube*, COLIN & SAMIR SHOW (Dec. 1, 2023) <https://open.spotify.com/episode/1SYfLEyZQPqdx0GoDSqsCy?si=82fe2a8706ee46cf> [https://perma.cc/H2MC-M43N] [https://web.archive.org/web/20250214134046/https://open.spotify.com/episode/1SYfLEyZQPqdx0GoDSqsCy?si=82fe2a8706ee46cf&nd=1&dlsi=e1e2dd8238fc46b6].

37. Pinely, *How To Steal a YouTube Video*, YOUTUBE (Jan. 5, 2023), <https://www.youtube.com/watch?v=Pb7xJK5aitc> [https://perma.cc/6PXX-M3ZH] [https://web.archive.org/web/20250214134221/https://www.youtube.com/watch?v=Pb7xJK5aitc].

38. *Id.*

39. *Id.*



copyright claims to increase its following.<sup>40</sup> This example highlights how the complex nature of permission and cross-platform interactions demands thorough, manual review by persons knowledgeable in both content creation and the law for infringement claims.

## B. NON-TRANSFORMATIVE REACTION VIDEOS

A reaction video is a genre where individuals or groups provide real-time responses to content they are experiencing for the first time.<sup>41</sup> These videos typically feature additional context and commentary, enhancing the viewer's connection with the reactor. One major concern is the proliferation of reaction videos that fail to sufficiently transform the source material or provide meaningful commentary, essentially appropriating creators' content. In the landmark case *Hosseinzadeh v. Klein*, the U.S. District Court distinguished that "[s]ome reaction videos . . . intersperse short segments of another's work with criticism and commentary, while others are more akin to a group viewing session without commentary."<sup>42</sup>

For example, Douglass has accused popular YouTuber Alia "SssniperWolf" Shelesh of merely summarizing TikToks, cutting them short to appropriate the creator's punchline, and covering up the creators' usernames. He has identified several instances where Shelesh does not react to the TikToks in her videos or even include side-by-side footage of herself on-screen.<sup>43</sup> After news broke that Shelesh bought a multi-million-dollar mansion, Douglass alleged that she reacts to the same TikToks within and across videos to make them long enough to be eligible for additional ad spots on YouTube.<sup>44</sup>

Similarly, Twitch streamer Félix "xQc" Lengyel has also generated controversy for posting monetized streams on YouTube that play other creators' full videos. Though he credits creators in his video and description, many claim he does not add commentary in his reactions. Furthermore, whereas Shelesh usually "reacts" to short-form content, Lengyel "reacts" to videos that are almost two hours long, which take much more work to research, script, and produce. After Lengyel was called out online for his behavior, creators felt that he made a mockery of their concerns by leaving the room for ten minutes during a livestream without pausing the video he was "reacting"

---

40. *Id.*

41. *Reaction Videos: Why They're So Trendy and How To Make Them*, PODCASTLE (Aug. 8, 2023), <https://podcastle.ai/blog/what-are-reaction-videos/> [https://perma.cc/5NYU-FVUN] [https://web.archive.org/web/20250214134703/https://podcastle.ai/blog/what-are-reaction-videos/].

42. *Hosseinzadeh v. Klein*, 276 F. Supp. 3d 34, 40 n.1 (S.D.N.Y. 2017).

43. jacksfilms, *Sssniperwolf Is Getting Worse. Here's Proof*, YOUTUBE (Aug. 16, 2023), <https://www.youtube.com/watch?v=DB7LvVllAQI> [https://perma.cc/4DCV-C429] [https://web.archive.org/web/20250214135013/https://www.youtube.com/watch?v=DB7LvVllAQI].

44. Matt Porter, *SssniperWolf Shows What a YouTube Career Can Buy with Insane New House Tour*, DEXERTO (July 22, 2019), <https://www.dexerto.com/entertainment/sssniper-wolf-shows-what-a-youtube-career-can-buy-with-insane-new-house-tour-832686> [https://perma.cc/89EB-KZK2] [https://web.archive.org/web/20250211193529/https://www.dexerto.com/entertainment/sssniper-wolf-shows-what-a-youtube-career-can-buy-with-insane-new-house-tour-832686/].

to—and proceeding to play the entirety of it during his absence.<sup>45</sup> Such exploitative practices starkly contrast with collaborative reaction video projects between react channels and source creators that expand mutual reach.

### C. RECREATED VIDEOS

Still, other channels misappropriate ideas more subtly. By recreating videos scene-by-scene, line-by-line, these videos bypass technologies that identify infringement, only to be caught by viewers who have watched both videos attentively. It is difficult for creators to identify and take legal action against this kind of content theft because it is non-literal infringement. A video title or thumbnail may just be an idea; speech patterns and editing techniques may just be style. However, a sequence of information, graphics, and shots certainly constitutes expression. Moreover, when all these elements substantially resemble a creator's video, their copyright is likely being infringed.<sup>46</sup>

It is surprising to see personalities with large followings—like Topper Guild or Brent Rivera, who each have almost 30 million subscribers—engage in this behavior, given the value of authenticity on the platform.<sup>47</sup> Some credit its allowance to the “Mr. Beastification” of YouTube: Top creator Mr. Beast claims he strategically makes his videos devoid of personality to be palatable to more audiences, and many have followed suit.<sup>48</sup> Such derivative videos propagate homogeneity, working against copyright law's purpose of incentivizing creative works that are presumably diverse.<sup>49</sup> Having the same work recreated over and over again without any additions does not contribute to the “Progress of Science and the useful Arts.”<sup>50</sup>

### D. LACK OF ATTRIBUTION

Even when a creator's content is used fairly, there remains the issue of attribution. On average, creators value attribution for their work more than getting paid for it or

---

45. Luci S., *The Controversy with xQc and Reaction Content Explained*, GAMERANT (Aug. 4, 2023), <https://gamerant.com/xqc-reaction-content-controversy-explained/> [https://perma.cc/EU3F-R7T3] [https://web.archive.org/web/20250211185815/https://gamerant.com/xqc-reaction-content-controversy-explained/].

46. *But see* Sandra E. Garcia, *Can You Copyright a Vibe?*, N.Y. TIMES (Dec. 5, 2024), <https://www.nytimes.com/2024/12/05/style/clean-girl-aesthetic-influencer-lawsuit.html> [https://web.archive.org/web/20250211185106/https://www.nytimes.com/2024/12/05/style/clean-girl-aesthetic-influencer-lawsuit.html].

47. *See* The Asher Show, *The TikTok Food Waster Is Now Copying Mr Beast.*, YOUTUBE (July 23, 2023), <https://www.youtube.com/watch?v=P6FcbF3CVAw> [https://perma.cc/7YNB-XDXQ] [https://web.archive.org/web/20250214135731/https://www.youtube.com/watch?v=P6FcbF3CVAw]; Mogul Mail, *This YouTuber Steals From Smaller Creators*, YOUTUBE (Apr. 22, 2023), <https://www.youtube.com/watch?v=XyoThIYua88> [https://perma.cc/8VH8-8XQQ] [https://web.archive.org/web/20250214135938/https://www.youtube.com/watch?v=XyoThIYua88].

48. Pinely, *The MrBeast-ification of Youtube*, YOUTUBE (July 30, 2022), <https://www.youtube.com/watch?v=gauf6ZmIXxs> [https://perma.cc/TZA8-P7B6] [https://web.archive.org/web/20250214140236/https://www.youtube.com/watch?v=gauf6ZmIXxs].

49. *See* Jake Linford, *Copyright and Attention Scarcity*, 42 CARDOZO L. REV. 143 (2020).

50. U.S. CONST. art. I, § 8, cl. 8.

protecting it from modification or commercialization by platforms.<sup>51</sup> Attribution can be categorized into:

- (1) “the right to be known as the author of his work;” (2) “the right to prevent others from falsely attributing to him the authorship of a work that he has not in fact written;” (3) “the right to prevent others from being named as the author of his work;” (4) “the right to publish a work anonymously or pseudonymously, as well as the right to change his mind at a later date and claim authorship under his own name;” and (5) “the right to prevent others from using the work or the author’s name in such a way as to reflect adversely on his professional standing.”<sup>52</sup>

For creators, attribution increases productivity and motivates creativity.<sup>53</sup>

The leading priority of the Creators Guild of America is to create an accreditation database as production or work credits “demonstrate a public record of accomplishment, the foundation on which [one’s] reputation rests.”<sup>54</sup> It also enables audiences who appreciate a creator’s work to easily find more of it and financially invest in its continuation through channel memberships, super chat, super stickers, and super thanks.<sup>55</sup> Even if consumers do not pay creators for their work directly, in an attention-based economy, they support creators by consuming and engaging with more of their work. On YouTube, longer watch time is directly associated to advertising revenue and favored by the algorithm that recommends videos to others. The size of audience a creator reaches defines their ability to negotiate rates with brands seeking to sponsor their videos. Attribution regimes also counteract content theft by fostering respect for intellectual property rights and enhancing the perceived legitimacy of copyright law.<sup>56</sup>

On YouTube, creators can be attributed in a video, its title, thumbnail, end screen links, description, and tags. Most commonly, creators express desire to be credited in

---

51. Uri Y. Hacohen et. al., *A Penny for Their Creations—Apprising Users’ Value of Copyrights in Their Social Media Content*, 36 BERKELEY TECH. L.J. 511, 575 (2021).

52. MELVILLE B. NIMMER & DAVID NIMMER, 3 NIMMER ON COPYRIGHT § 8D.02 (2025).

53. See JESSICA SILBEY, *THE EUREKA MYTH: CREATORS, INNOVATORS, AND EVERYDAY INTELLECTUAL PROPERTY* 151 (2015); TERESA AMABILE & STEVEN KRAMER, *THE PROGRESS PRINCIPLE: USING SMALL WINS TO IGNITE JOY, ENGAGEMENT, AND CREATIVITY AT WORK* 89 (2011).

54. *Accreditation: What Is It, and Why Is It Important?*, CREATORS GUILD OF AM. (Apr. 23, 2024) <https://creatorsguildofamerica.org/news/accreditation-what-is-it-and-why-is-it-important> [https://perma.cc/FV2P-HH7V]

[https://web.archive.org/web/20250211184606/https://creatorsguildofamerica.org/news/accreditation-what-is-it-and-why-is-it-important].

55. Super Chat, Super Stickers, and Super Thanks are YouTube features that let viewers financially support creators. Super Chat allows fans to pay to highlight their messages during live streams and Premieres, with higher payments making the messages more prominent. Super Stickers are animated images viewers can purchase to express support visually in live chats. Super Thanks lets fans tip creators on regular videos (not just live content), with the option to leave a highlighted comment to show appreciation. See *Choose How You Want To Monetize*, YOUTUBE, <https://support.google.com/youtube/answer/94522?hl=en> [https://perma.cc/SUKN-EFQE] [https://web.archive.org/web/20250211192525/https://support.google.com/youtube/answer/94522?hl=en] (last visited Feb. 21, 2025).

56. See Catherine L. Fisk, *Credit Where It’s Due: The Law and Norms of Attribution*, 95 GEO. L.J. 49 (2006).

the video, with links to their work in its description. Assuming Shelesh's reaction videos were deemed transformative, they would still violate cultural norms of attribution on YouTube. Viewers and fellow creators have criticized her for covering up or cropping out usernames on the reels she reacts to without providing any other form of credit.<sup>57</sup> This lack of attribution negates any exposure value she could provide smaller creators with her large following. While viewers could go out of their way to identify a creator she reacts to, they are unlikely to do so when she quickly moves on to react to another dozen uncredited shorts. As previously mentioned, Shelesh has also been caught cutting comedy reels short to appropriate the creators' punchlines.<sup>58</sup> This type of misattribution suggests that she is not using other people's work to comment on it or share it with new viewers, but for her own benefit. At the moment, YouTube does not give creators the ability to report lack of attribution where there is no copyright infringement.

Attribution is considered a moral right within copyright law. It originates from the European copyright tradition and is codified internationally in the Berne Convention.<sup>59</sup> The United States takes a minimalist approach to attribution rights compared to many other countries. The absence of strong moral rights protections has been a point of contention, with legal scholars arguing that the existing patchwork of state and federal laws does not provide equivalent protections to an explicit moral rights law.<sup>60</sup> While the Visual Artists Rights Act ("VARA") provides limited attribution rights, it covers only specific categories of visual artworks, excluding audiovisual works.<sup>61</sup> In denying moral rights protections to audiovisual works, lawmakers assumed that right holders could restrict circulation of their works to particular settings.<sup>62</sup> However, social media algorithms lack comparable controls over content distribution.<sup>63</sup> As a result, audiovisual media uploaded to platforms like YouTube cannot reliably safeguard the type of constrained access that Congress envisioned. Instead, online works tend to spread rapidly beyond any single creator's oversight. Thus, when it comes to attribution, creators are inadequately protected by both the platforms themselves and existing legal frameworks.

## II. WHY CONTENT CREATORS HAVE RELIED ON SELF-HELP

Videos are within the scope of copyrightable subject matter.<sup>64</sup> Since YouTube's early days, creators have had the option of addressing the improper copying of their videos through the platform's copyright management tools, notice-and-takedown requests,

---

57. See jacksfilms, *supra* note 33.

58. See *id.*

59. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised July 24, 1971, and amended Sept. 28, 1979, S. TREATY DOC. NO. 99-27 (1986).

60. H.R. REP. NO. 100-609, at 33-34 (1988).

61. 17 U.S.C. § 106A.

62. H.R. REP. NO. 101-514, at 6119 (1990).

63. See Alexandra Smrynios, Note, *Classy, Bougie, Credit: TikTok Choreographers' Fight Against Savage Copycats*, 50 AIPLA Q.J. 821 (2022).

64. 17 U.S.C. § 102(6).

and litigation.<sup>65</sup> Instead of leaning on this legal infrastructure, creators have frequently tolerated copying or made videos calling out copycats. This Part explains why creators have found that making such videos is more accessible than pursuing legal action.

#### A. COPYING IS ENCOURAGED

There is a difference between tolerating and encouraging copying. Tolerating copying implies the act is still reprehensible, whereas encouraging it may remove moral judgment in the eyes of the public. As detailed below, big YouTubers have found it beneficial to encourage viewers and other creators to copy their work. However, smaller creators often do not experience the same gains. In a context like this, where copying is encouraged by leading figures on the platform, it may be more challenging for creators and viewers alike to distinguish instances of permissible and improper copying.

Re-uploading videos without permission is a straightforward case of copyright infringement. Yet, even here, the practices of major YouTubers may normalize copying regardless of the underlying content's origin. YouTube giants like Jimmy "Mr. Beast" Donaldson or Colin Rosenblum and Samir Chaudry of "Colin and Samir" have given viewers express permission to clip and re-post their content for profit.<sup>66</sup> Colin and Samir see "ethical clipping" as "free advertising" for creators. However, the "ads" are not really free: Clipping is often done by clipping channels that are large enough to claim AdSense from YouTube on the content they re-upload. Notably, Colin and Samir granted permission *after* users started re-uploading clips online. The creators explain that they originally intended to compete with clipping channels but quickly found that the channels were faster and better at identifying key moments that would draw new viewers back to the original video. The encouragement of clipping by leading YouTubers may lead viewers to assume all clipping is authorized and that creators who disallow clipping are being imprudent.

It may be harder to determine whether a reaction video adds sufficient commentary or criticism to qualify for fair use. Like clips, popular react channels may provide creators "free advertising." Furthermore, recurring reactions may turn passive viewers into a repeat audience for the reaction video's underlying content. For example, the channel Cut recently celebrated Cody Ko, a creator who reacts to its content, by collaborating with him in their videos. Cut is a creator company with a substantial following of 11 million subscribers built over nine years.<sup>67</sup> It has gained prominence

---

65. Kevin J. Delaney, *YouTube To Test Software To Ease Licensing Fights*, WALL ST. J. (June 12, 2007), <https://www.wsj.com/articles/SB118161295626932114> [<https://web.archive.org/web/20250308153211/https://www.wsj.com/articles/SB118161295626932114>].

66. Rosenblum & Chaudry, *supra* note 36.

67. Hannah Doyle & Nathan Graber-Lipperman, *The Success Behind the Cut x Cody Ko Collab*, PUBLISH PRESS (Nov. 15, 2023), <https://news.thepublishpress.com/p/success-behind-cut-x-cody-ko-collab> [<https://perma.cc/ATP9-Z7Z9>] [<https://web.archive.org/web/20250213010210/https://news.thepublishpress.com/p/success-behind-cut-x-cody-ko-collab>].

through social experiment shows. Its success has spurred a subgenre of creators producing reaction videos specifically responding to Cut's content, with Cody Ko emerging as a leading figure.<sup>68</sup> Notably, Ko's reaction videos to Cut's show "The Button" consistently accrue impressive viewership, often exceeding 3 million views per video.<sup>69</sup> Acknowledging how Ko's humor has added value to channel's content, Cut brought him onto three episodes of "The Button" as a host.<sup>70</sup> The channel explained that this collaborative effort serves as a strategic approach for it to broaden its audience outreach across diverse demographics and content genres.<sup>71</sup> To a certain extent, the prevalence of entertaining, transformative reaction videos on YouTube enables reactions whose commentary is more dubious to stay online.

Video recreations may be the most challenging copies to categorize, as they are unlikely to be perfect matches of the underlying content. This is further exacerbated as creators copy the topics, thumbnails, content formats, and editing styles of successful videos to increase the likelihood that YouTube's recommendation algorithm will disseminate their videos.<sup>72</sup> The "how to make a video like [X creator]" genre is very popular among aspiring creators on YouTube. Viewers and fellow creators may be unsympathetic to complaints of copying as it implies a creator's video was ultimately successful. In addition, recreations may increase the likelihood that YouTube will recommend the original, as the videos are similar enough that the algorithm may predict users who liked one will like the others.

## B. BARRIERS TO LEGAL ENFORCEMENT

### 1. Infringement Is Hard To Identify with Certainty

The low barrier to entry to YouTube implies that creators start off with varying degrees of knowledge of copyright law.<sup>73</sup> Judges often disagree about whether works are substantially similar or whether the subsequent work is a fair use. Many creators may not have the knowledge and training to identify infringement with enough certainty to act on it. As explained above, even creators with more sophisticated understandings of copyright law may be confused about how the encouragement of copying on the platform factors into the analysis. For many YouTubers, their first encounter with copyright law is as a policing force asserted against them. Given the size of the creator economy, providers have emerged with solutions to alleviate

---

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. See Carla Marshall, *How To Optimize Your Thumbnail and Title Click-Through Rates*, TUBEBUDDY (May 24, 2023), <https://www.tubebuddy.com/blog/optimize-youtube-thumbnail-title-ctr/> [<https://perma.cc/YH9B-TDJJ>].

73. Xiaoren Wang, *Youtube Creativity and the Regulator's Dilemma: An Assessment of Factors Shaping Creative Production on Video-Sharing Platforms*, 32 ALB. L.J. SCI. & TECH. 197 (2022).

creators' worries of committing accidental copyright infringement.<sup>74</sup> While this has facilitated the creator economy's growth, it has also delayed efforts to educate its members about the law. Revealingly, discussions about copying on YouTube identify the issue as "plagiarism"—which people learn about as early as elementary school—rather than copyright infringement. Thus, even when creators identify copyright infringement, many lack awareness of available enforcement options.

## 2. Litigation Is Expensive and Lengthy

When creators do realize copyright law empowers them with tools to protect their work, they often run into the issue of formalities. Registration is required to pursue a claim of a U.S. work in court.<sup>75</sup> Furthermore, early registration is a prerequisite for statutory damages and attorney's fees—remedies that make litigation financially viable for many, including small creators. Engaged in the production of multiple weekly videos, many of whose publication is urgent given time-sensitive trends, it becomes impractical and prohibitively expensive to regularly register groups of unpublished videos or singular published videos. As a result, creators are compelled to selectively register only their most viewed or highest-earning works one at a time, after they have received online attention. This selective registration practice exacerbates the frustration for creators with limited resources, who struggle to navigate the intricate process and determine optimal registration strategies. Many creators, facing resource constraints, choose to forgo registration altogether, retaining only tenuous rights over extensive collections of unregistered content. The New Media Rights Group argues that the absence of robust protections relegates under-resourced creators to "second class copyright owners," impeding enforcement even in cases of clear infringement.<sup>76</sup> Based on its clients' experiences, the group reports that litigators often decline to represent unregistered copyright holders, irrespective of the merits of the case, leaving creators defenseless against corporate appropriation.<sup>77</sup> Even when creators have registered their works, actually going to court is exceedingly expensive, especially to face the risk that the case might not go their way. To creators, time spent on legal issues could have been spent making more videos.

---

74. See, e.g., ENVATO ELEMENTS, <https://elements.envato.com/> [https://perma.cc/MZ6D-LCGJ] [https://web.archive.org/web/20250213012622/https://elements.envato.com] (last visited Feb. 12, 2025) (providing royalty-free media for content creators); EPIDEMIC SOUND, <https://www.epidemicsound.com/youtube/> [https://perma.cc/4P5G-BWFW] [https://web.archive.org/web/20250213012344/https://www.epidemicsound.com/youtube/] (last visited Feb. 12, 2025) (same).

75. 17 U.S.C. § 411(a).

76. Art Neill & Erika Lee, *Fixing Copyright Registration for Online Video Creators: The Case for Group Registration of Published Videos*, 28 TEX. INTELL. PROP. L.J. 87, 89 (2019).

77. *Id.*

### 3. Harsh Consequences Harm Reputation

While creators are entitled to feel wronged by improper copying, harsh consequences for copycats may inadvertently harm the reputation of the original creators. Creators who call out copycats online frequently preface their statements requesting that their followers to refrain from harassing copycats. Despite the initial wrong, condoning fans who target copycats may be perceived as cyberbullying. Successfully submitting takedown requests or copyright claims through YouTube's CMS adds copyright strikes to the channel where infringing content was posted. YouTube deletes channels that receive three strikes, as well as all their videos.<sup>78</sup> Thus, creators taking legal action against improper copying may want to consider how frequently the opposing creator copies content, if they do willfully, and how well-liked they are. Creators can reach out to copycats to resolve the issue without such harsh consequences—many creators settle for the deletion of the copied content, an apology, and a commitment to refrain from copying in the future. With this in mind, pursuing litigation may be viewed as excessive, particularly considering the modest earnings most YouTubers make from their channels.<sup>79</sup>

### 4. Limitations of YouTube's Copyright Management System

Frequently, creators are so busy producing content that they are oblivious to potential infringements until notified by their fan base. Small creators have access to a webform for individual takedown submissions or may apply to access the Copyright Match Tool. Creators in the YouTube Partner Program have immediate access to this tool, which scans for potential matches of their videos on other YouTube channels. Creators using this tool must still manually review all matches and decide whether to leave the video up, file a takedown request, or contact the uploader.<sup>80</sup> By contrast, Content ID automatically blocks and pauses the monetization of a video matching an uploaded reference file. As one invalid reference file can negatively impact thousands of videos and users, YouTube limits access to Content ID to movie studios, service providers, and other publishers.<sup>81</sup> Currently, there are less than 10,000 partners with access to Content ID.<sup>82</sup> Concerningly, the video matching technology for Copyright

---

78. *Youtube Community Guidelines Enforcement*, GOOGLE, <https://transparencyreport.google.com/youtube-policy/removals?hl=en> [https://perma.cc/B6M2-RG3A] (last visited Mar. 8, 2025).

79. See Guy Pessach, *Deconstructing Disintermediation: A Skeptical Copyright Perspective*, 31 CARDOZO ARTS & ENT. L.J. 833 (2013) (arguing that there is no direct correlation between lessening of copyright protection and the proliferation of content flow and distribution channels, and that extreme concentration of media power could derive not only from excessive copyright protection, but also from excessive ability to freely utilize content).

80. See *YouTube Copyright Transparency Report*, GOOGLE, <https://transparencyreport.google.com/youtube-copyright/intro?hl=en> [https://perma.cc/7LYW-J2DJ] (last visited Feb. 12, 2025).

81. *Id.*

82. See *YouTube Copyright Transparency Report*, *supra* note 80.



Match Tool and Content ID miss copies with minor alteration, such as mirroring image, pitch-shifting audio, or juxtaposing content with other materials like gameplay. There is a risk that scanning videos for such alterations would overstep onto similar works.<sup>83</sup> Overall, YouTube's CMS does nothing to protect creators whose videos have been recreated with substantial similarity.

### C. MAKING A VIDEO IS EASY, CHEAP, EFFECTIVE, AND FAMILIAR

Making a video denouncing copying is technically easy for creators who make videos for a living. Such videos do not need to be high-quality productions. In fact, a more stripped-back video interrupting a creator's regular posting schedule may appear more authentic and urgent to viewers. The videos do not need to be long or argumentative either. Viewers can compare the works for themselves, with publication dates posted in the videos' descriptions to determine which one came first. Making a ten-minute video is certainly less time-consuming than pursuing legal action—whether it be going to court or completing a webform. Most importantly, creators have important rapport with their audiences that makes video an impactful tool. YouTube provides creators with significant data on user engagement on their videos that can empower creators to tailor videos to their viewers. With more and more videos calling out copycats, viewers are also familiar with the format. The same day as a creator posts a video calling out a copycat, it may garner enough views and attention that the copycat takes their video down. Professors Adler and Fromer raise the concern that self-help “enable[s] individuals to act as judge, jury, and executioner.”<sup>84</sup> While encouraging copying may create a culture that disregards intellectual property rights, public shaming of copying may chill speech. Congress and the courts put much work into balancing intellectual property rights and the public good. Putting copyright determinations in the hands of creators and the public risks making wrong judgment calls without opportunity for due process and review.

## III. CHANGES IN THE CREATOR ECONOMY WILL INCREASE RELIANCE ON COPYRIGHT LAW

### A. MAKING A VIDEO IS NO LONGER EFFECTIVE

#### 1. Subcultures Are Insular

The creator economy's immense growth has signaled to individuals and corporations alike the virtually limitless opportunities to make a profit on YouTube. The video market is so saturated that opportunistic entities can copy a video without audiences noting; i.e., there is little overlap between the viewers watching an original

---

83. *Id.*

84. Amy Adler & Jeanne C. Fromer, *Taking Intellectual Property into Their Own Hands*, 107 CAL. L. REV. 1455, 1505 (2019).

video and those watching a copy. As creators usually discover copying through their viewers, the insular nature of YouTube subcultures poses difficulties in detection.

## 2. Shift To Idea-Centric Videos

Colin and Samir have noted an industry shift from “creator-based videos” to “idea-based videos” that indicates a growing distance in parasocial relationships between creators and viewers.<sup>85</sup> Viewers are increasingly more interested in discovering exciting video concepts than following the journey of a particular creator. With the success of content farms and the rise of channels hosted by AI avatars, some viewers may not care about how their content is sourced.<sup>86</sup> Despite the size of their platforms, creators may not have the power to persuade audiences to consume exclusively original content.<sup>87</sup>

## 3. Audiences Cannot Carry the Burden of Policing Infringement

Audiences cannot be expected to bear the burden of policing copyright infringement, as they lack both the tools and the responsibility to do so. Creator Jack Douglass has voiced concerns that efforts to raise awareness about content theft among viewers may not effectively reach audiences like those of Shelesh, which largely consist of children who may not fully grasp the implications of infringement.<sup>88</sup> While creators often take on the role of monitoring and calling out infringement on behalf of one another, there are lingering doubts about their ability to do so accurately and fairly.<sup>89</sup> The complexities of copyright law and the nuances of transformative use make it difficult even for experienced creators to determine when a violation has occurred, further highlighting the impracticality of relying on audiences for enforcement.

---

85. Rosenblum & Chaudry, *supra* note 36.

86. For more information on content farms, see Sara Gates, Note, “Going Viral” by Stealing Content: Can the Law Cure the Problem of Viral Content Farming?, 26 FORDHAM INTELL. PROP., MEDIA & ENT. L.J. 689 (2016). For more information on AI avatars, see Makena Binker Cosen, Will AI Avatars Ease Creator Burnout?, JLA BEAT (Feb. 7, 2024), <https://journals.library.columbia.edu/index.php/lawandarts/announcement/view/680> [https://perma.cc/8VH7-F256] [https://web.archive.org/web/20250221195355/https://journals.library.columbia.edu/index.php/lawandarts/announcement/view/680].

87. See A.W. Ohlheiser, *Plagiarism Doesn't Need AI To Thrive Online*, VOX (Dec. 7, 2023), <https://www.vox.com/technology/2023/12/7/23991236/youtube-plagiarism-artificial-intelligence> [https://perma.cc/758X-NPQD] [https://web.archive.org/web/20250214123929/https://www.vox.com/technology/2023/12/7/23991236/youtube-plagiarism-artificial-intelligence].

88. jacksfilms, *Let's Tttalk About Ssniperwolf*, YOUTUBE (July 26, 2023), [https://youtu.be/oMjWaPsGY80?si=xdxd4EtPOx\\_fjGmc](https://youtu.be/oMjWaPsGY80?si=xdxd4EtPOx_fjGmc) [https://perma.cc/4ZCX-43ZC] [https://web.archive.org/web/20231120131701/https://www.youtube.com/watch?v=oMjWaPsGY80].

89. See, e.g., Evil Pinely, *He Responded*, YOUTUBE (Feb. 15, 2024), <https://www.youtube.com/watch?v=MbENUD454XI> [https://perma.cc/TQ34-WFNF] [https://web.archive.org/web/20240215165143/https://www.youtube.com/watch?v=MbENUD454XI].

## B. CREATORS ARE READY FOR LEGAL SOLUTIONS

### 1. The Professionalization Movement

The platform's extensive reach has led to an influx of authors and artists from traditional media, presenting an opportunity to transfer enforcement mechanisms knowledge from other industries.<sup>90</sup> Notably, leaders in the industry's professionalization movement are drawing inspiration from Hollywood, as evidenced by the establishment of the Creators Guild of America. This guild aims to create a comprehensive accreditation database akin to IMDb and prioritize DMCA rights.<sup>91</sup> Since 2016, creators have been endeavoring to form unions, and the recent success of the Screen Actors Guild-American Federation of Television and Radio Artists in Hollywood strikes could potentially pave the way for a robust union among creators.<sup>92</sup> Presumably, such unions would demand platforms to intervene and provide better solutions to content theft than self-regulation.

### 2. Increased Advocacy Against Copying

YouTube's appetite for long-form content means more and more creators are dedicating weeks to research, script, film, and edit hour-long video essays.<sup>93</sup> Seeing videos that took so much work to make being widely stolen has made YouTubers more sensitive to plagiarism. Video essayist Harris "Hbomberguy" Brewis recently released a viral four-hour exposé on the issue, tallying 3 million views within forty-eight hours. By highlighting high-profile cases like fellow essayist Internet Historian, culture commentator James Somerton, and former IGN editor Filip Miucin, Brewis stirred anxious discourse around originality standards and attribution norms. After being called out for plagiarism, Somerton deleted his Patreon and Discord community and

---

90. See Stuart Dredge, *YouTubers Hit Mainstream as Digital Media Become Top Choice for New Talent*, GUARDIAN (Apr. 9, 2016), <https://www.theguardian.com/media/2016/apr/09/youtubers-hit-mainstream-digital-media-top-choice-new-talent> [https://perma.cc/L4PQ-86SR] [https://web.archive.org/web/20250208004636/https://www.theguardian.com/media/2016/apr/09/youtubers-hit-mainstream-digital-media-top-choice-new-talent]; Ana Eksouzian-Cavadas, *All the Celebrities You Didn't Know Had YouTube Channels*, VOGUE (Mar. 17, 2021), <https://www.vogue.com.au/vogue-codes/news/all-the-celebrities-you-didnt-know-had-youtube-channels/image-gallery/411d765887ab0b53588838800a03f280> [https://web.archive.org/web/20250208005104/https://www.vogue.com.au/vogue-codes/news/all-the-celebrities-you-didnt-know-had-youtube-channels/image-gallery/411d765887ab0b53588838800a03f280].

91. Accreditation, *supra* note 54.

92. See Hannah Doyle & Nathan Graber-Lipperman, *The Big Battle for Creators*, PUBLISH PRESS (Nov. 22, 2023), <https://news.thepublishpress.com/p/big-battle-creators> [https://perma.cc/252D-MWWW] [https://web.archive.org/web/20250208005458/https://news.thepublishpress.com/p/big-battle-creators].

93. *Long Form Video Content on YouTube Is Evolving. As Influence Marketers, Here's What You Need to Know*, KOL SQUARE (Mar. 16, 2023), <https://www.kolsquare.com/en/blog/long-form-video-content-on-youtube-is-evolving-as-influence-marketers-heres-what-you-need-to-know> [https://perma.cc/GC3H-3HWD] [https://web.archive.org/web/20250208005803/https://www.kolsquare.com/en/blog/long-form-video-content-on-youtube-is-evolving-as-influence-marketers-heres-what-you-need-to-know].

disabled YouTube comments. Writers like Gita Jackson, Katelyn Burns, and Mick Abrahamson, whose words were reused without credit in Somerton's videos, have also spoken up, with Abrahamson calling the video a "wake-up call."<sup>94</sup> Douglass has advocated for creators to utilize available tools from YouTube's CMS, emphasizing its effectiveness in combating content theft by "reaction" and compilation channels. He hopes that inundating infringing channels with take-down notices will act as a deterrent against infringement.

### 3. The Incentive of Direct Monetization

The lack of transparency and the dynamic nature of YouTube's advertising guidelines and monetization restrictions have recurrently endangered creators' income streams, especially during the 2017 "Adpocalypse."<sup>95</sup> When sudden policy shifts led to the demonetization of videos addressing sensitive topics, creators in various niches, such as LGBTQ+ advocacy and political commentary, experienced substantial declines in revenue though they did not violate any of YouTube's community guidelines.<sup>96</sup> While YouTube asserted that these changes aimed to align content with advertiser preferences for brand safety, suspicions arose regarding an ulterior profit motive aimed at attracting corporate sponsors and reshaping viewer demographics.<sup>97</sup> Irrespective of YouTube's intentions, this episode underscored the fragility of building a creative career contingent on the unpredictable shifts of the platform's algorithm.<sup>98</sup> Not to

---

94. Hannah Doyle & Nathan Graber-Lipperman, *How a 4-Hour Video Essay on Plagiarism Went Viral*, PUBLISH PRESS (Dec. 11, 2023), <https://news.thepublishpress.com/p/behind-scenes-karos-creator-popup> [<https://perma.cc/Z3YD-KZFW>]

[<https://web.archive.org/web/20250214174044/https://news.thepublishpress.com/p/behind-scenes-karos-creator-popup>].

95. Julia Alexander, *YouTube Addresses "Aggressive Action" Amid Creator Concerns over New "Adpocalypse"*, POLYGON (Nov. 29, 2017), <https://www.polygon.com/2017/11/29/16716176/youtube-adpocalypse-kids> [<https://perma.cc/7KSD-ZE4W>]

[<https://web.archive.org/web/20250212095158/https://www.polygon.com/2017/11/29/16716176/youtube-adpocalypse-kids>].

96. *Id.* See also Amanda Hess, *How YouTube's Shifting Algorithms Hurt Independent Media*, N.Y. TIMES (Apr. 17, 2017), <https://www.nytimes.com/2017/04/17/arts/youtube-broadcasters-algorithm-ads.html> [<https://web.archive.org/web/20250405012608/https://www.nytimes.com/2017/04/17/arts/youtube-broadcasters-algorithm-ads.html>]; Aja Romano, *A Group of YouTubers Is Claiming the Site Systematically Demonetizes Queer Content*, VOX (Oct. 10, 2019), <https://www.vox.com/culture/2019/10/10/20893258/youtube-lgbtq-censorship-demonetization-nerd-city-algorithm-report> [<https://perma.cc/6YXE-75KC>].

97. Susan Wojcicki, *Expanding Our Work Against Abuse of Our Platform*, YOUTUBE OFF. BLOG (Dec. 5, 2017), <https://blog.youtube/news-and-events/expanding-our-work-against-abuse-of-our/> [<https://perma.cc/ZWT2-V6Z5>].

98. Also consider the volatile longevity of platforms, as seen with the potential TikTok ban in the United States. See Sapna Maheshwari, *What We Know About the TikTok Ban*, N.Y. TIMES (Jan. 19, 2025), <https://www.nytimes.com/article/what-we-know-tiktok.html> [<https://web.archive.org/web/20250218041535/https://www.nytimes.com/article/what-we-know-tiktok.html>] [<https://web.archive.org/web/20250405012800/https://blog.youtube/news-and-events/expanding-our-work-against-abuse-of-our/>].

mention, only 3% of YouTube channels earn above the poverty level through ad spots.<sup>99</sup> These experiences have incentivized creators to diversify their revenue streams beyond YouTube. Some creators have forayed into traditional media, signing deals with book publishers and starring in television and movies. More commonly, through the cultivation of direct fan funding and exploration of alternative distribution channels, creators aim to mitigate the risk of succumbing to future algorithm-driven purges.

Creators are increasingly transitioning to subscription and licensing models enforced by copyright law to become independent of platform for their livelihood—having a presence on many platforms and creating their own. Sites like Patreon, which hosts over 300,000 creators monetizing exclusive content for 10 million paying fans, facilitate direct consumer funding.<sup>100</sup> As TikTok, Twitch, and Instagram compete for creator talent, YouTube has similarly introduced the ability for creators with more than 30,000 subscribers to offer subscription tiers with different perks, which may include early access to content or merchandise, personalized shoutouts or the ability to influence content.<sup>101</sup> While this increases monetization opportunities independent of advertising, creators are still seeking more control. Launched in 2021, Nebula is the largest wholly creator-owned internet streaming platform with over 650,000 subscribers.<sup>102</sup> Creator e-commerce platform Fourthwall is making it more accessible for creators to control their subscriptions by helping them launch fully-branded mobile apps for their members.<sup>103</sup>

Licensing back catalogs to third-party streaming services and investors provides alternate monetization streams. For instance, YouTubers like Steven He have upgraded production quality by licensing their videos to companies like Spotter in exchange for upfront sums of money.<sup>104</sup> Even Mr. Beast, the largest creator on YouTube, has made a

---

99. Chris Stokel-Walker, “Success” on YouTube Still Means a Life of Poverty, BLOOMBERG (Feb. 27, 2018), <https://www.bloomberg.com/news/articles/2018-02-27/-success-on-youtube-still-means-a-life-of-poverty> [<https://web.archive.org/web/20241207104851/https://www.bloomberg.com/news/articles/2018-02-27/-success-on-youtube-still-means-a-life-of-poverty>].

100. See *The Story of Patreon*, PATREON, <https://www.patreon.com/about> [<https://perma.cc/LC57-3MUJ>] [<https://web.archive.org/web/20250405010956/https://www.patreon.com/about>] (last visited Apr. 4, 2025).

101. Shapiro, *supra* note 1.

102. Jennifer Maas, *Nebula CEO Says Indie Streamer Isn’t Trying To Become a YouTube Competitor—It’s Aiming for a Netflix Competitor with A24 Vibes*, VARIETY (Nov. 8, 2023), <https://variety.com/2023/streaming/news/nebula-ceo-dave-wiskus-interview-1235782591/amp/> [<https://web.archive.org/web/20241203120540/https://variety.com/2023/streaming/news/nebula-ceo-dave-wiskus-interview-1235782591/amp/>].

103. Nathan Graber-Lipperman & Hannah Doyle, *Fourthwall Launches Fully-Branded Mobile Apps for Creators*, PUBLISH PRESS (Nov. 6, 2023), <https://news.thepublishpress.com/p/100-thieves-lays-off-20-staff> [<https://perma.cc/RU8J-UBZL>] [<https://web.archive.org/web/20250308220529/https://news.thepublishpress.com/p/100-thieves-lays-off-20-staff>].

104. Hannah Doyle & Nathan Graber-Lipperman, *This Full-Time Creator Bought a Course Company*, PUBLISH PRESS (Dec. 20, 2023), <https://news.thepublishpress.com/p/fulltime-creator-bought-course-company> [<https://perma.cc/88B6-ZNHC>].

deal with Spotter to fund the translating of his videos into 14 different languages.<sup>105</sup> Licensing also enables wider distribution, as FilmRise adapts videos for streaming on Hulu and Roku.<sup>106</sup> Similarly, the Dude Perfect Streaming Service now licenses content to Roku and Samsung TV.<sup>107</sup> A curated, ad-supported feed of Rhett and Link's Mythical shows debuted on Amazon's Freevee streaming platform.<sup>108</sup> Ultimately, whether selling subscriptions or licensing catalogs, creators' ability to monetize access, fight piracy, and capture value beyond ad revenue is backed by copyright law. With platforms competing over talent, creators are leveraging new monetization tools and emerging streaming markets to increase income security through diversification of revenue streams. Rather than relying on YouTube's volatile policies, benefitting from multi-platform distribution and direct user payments allows creators to sustainably fund their work.

### C. THE COPYRIGHT CLAIMS BOARD DECREASES BARRIERS TO ENFORCEMENT

Previously, the costs and uncertainty of litigation made going to court impractical for creators. However, since 2022, it has become more viable for small creators to seek legal recourse through the Copyright Claims Board ("CCB"). Established by Congress in 2020 as an affordable and voluntary alternative to federal court for minor copyright cases, the CCB streamlines accessibility and reduces financial burdens.<sup>109</sup> Moreover, all CCB proceedings are held electronically, obviating travel requirements.<sup>110</sup> Creators can also represent themselves without attorneys or have supervised law students represent them given simplified filing processes. For a single work infringement claim, fees comprise only \$100 to file, \$6 to designate an agent, and \$50 for expedited registration.<sup>111</sup> The viability of enforcement beyond YouTube should motivate the platform to improve its copyright system. The CCB's impact is still emerging—while

---

105. *Spotter and YouTube Partner in Supporting Creator Expansion To Global Audiences*, PR NEWSWIRE (Sept. 28, 2023), <https://www.prnewswire.com/news-releases/spotter-and-youtube-partner-in-supporting-creator-expansion-to-global-audiences-301941766.html> [https://perma.cc/6CPQ-7DWT].

106. Hannah Doyle & Nathan Graber-Lippman, *What It's Like To Share a YouTube Channel*, PUBLISH PRESS (Dec. 1, 2023), <https://news.thepublishpress.com/p/like-share-youtube-channel> [https://perma.cc/A3JL-KALW].

107. Hannah Doyle & Nathan Graber-Lippman, *Dude Perfect, Now Streaming*, PUBLISH PRESS (Oct. 11, 2023), [https://news.thepublishpress.com/p/dude-perfect-made-kidfriendly-streamer?utm\\_campaign=how-dude-perfect-made-a-kid-friendly-streamer](https://news.thepublishpress.com/p/dude-perfect-made-kidfriendly-streamer?utm_campaign=how-dude-perfect-made-a-kid-friendly-streamer) [https://perma.cc/LT98-V3LX].

108. Hannah Doyle & Nathan Graber-Lippman, *Theorist Media Licenses YouTube Content To Streaming Platforms*, PUBLISH PRESS (Dec. 1, 2023), <https://news.thepublishpress.com/p/like-share-youtube-channel> [https://perma.cc/4P53-7CTS] [https://web.archive.org/web/20250208010930/https://news.thepublishpress.com/p/like-share-youtube-channel].

109. See 17 U.S.C. § 1502.

110. 17 U.S.C. § 1506(c).

111. *About the Copyright Claims Board*, COPYRIGHT CLAIMS BD., <https://ccb.gov/about/> [https://perma.cc/U39U-PZTW] [https://web.archive.org/web/20250304231512/https://ccb.gov/about/] (last visited Feb. 7, 2025).

over 900 claims have been filed with the tribunal, outcomes are mixed.<sup>112</sup> More than half of all claims face dismissal due to service or compliance issues, highlighting a critical gap in legal education.<sup>113</sup> The fact that 63% of claimants represent themselves in CCB proceedings further underscores this challenge.<sup>114</sup> While the CCB makes copyright disputes more accessible to individual creators, significant work remains to make the process truly navigable for those seeking to defend their rights.

#### IV. HOW TO MAKE COPYRIGHT LAW ACCESSIBLE TO CONTENT CREATORS

##### A. EDUCATION

Copyright law as it stands today already offers creators substantial rights and remedies. Firstly, to enforce these rights, creators must be informed. Secondly, education can further serve to foster a culture of respect for creators' works, encouraging audiences to refrain from consuming infringing works. Thirdly, lawyers must learn more about the creator economy to help creators and continue finding creative legal solutions that improve their work conditions. When the legal community hears creators seriously, they will begin to meaningfully lean on them for support.

##### 1. For Content Creators

A critical first step is properly informing creators of their rights under existing copyright law. Video sharing platforms could implement a notification system that educates creators about copyrights when they upload videos and provides links to register their works with the Copyright Office. Others have already proposed that Congress mandate that ISPs educate creators receiving copyright claims about fair use rights and procedures for contesting inaccurate copyright claims under the DMCA and platforms' takedown systems.<sup>115</sup> In that vein, creators should be incentivized by the platform to place copyright claims or take-down notices when they perceive their content is being infringed. Furthermore, YouTubers should be made aware that the CCB process is available to them. A web campaign co-led by the CCB and YouTube could disseminate this information on the platform's Creator Studio. Should creators proceed through the CCB, the process in itself would be an educational experience about fair use and the DMCA.<sup>116</sup> Mobilizing creators may also inspire them to pressure

---

112. COPYRIGHT CLAIMS BD., KEY STATISTICS (Oct. 2024), <https://ccb.gov/CCB-Statistics-and-FAQs-April-2024.pdf> [https://perma.cc/G9N8-TPUS] [https://web.archive.org/web/20250219090812/https://ccb.gov/CCB-Statistics-and-FAQs-Oct-2024.pdf].

113. *Id.*

114. *Id.*

115. Leron Solomon, Note, *Fair Users or Content Abusers? The Automatic Flagging of Non-Infringing Videos by Content ID on YouTube*, 44 HOFSTRA L. REV. 237, 239 (2015).

116. Jamie O'Neill, Note, *Lowering Barriers To Entry: YouTube, Fair Use, and the Copyright Claims Board*, 33 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 176, 218 (2022).

Congress towards expanding moral rights statutes. The beauty of educating creators is that, as storytellers with devoted audiences, they may then educate their communities about the law, too.

## 2. For Audiences

Beyond directly informing creators, broader educational efforts focused on general audience members could also curb infringement, misattribution, and misappropriation. Given the vast reach of the Internet, creators most often discover misuse of their content through notifications from their followers.

Douglass strives to educate viewers about non-transformative reaction videos by modeling ethical reaction videos on his new channel “Jjjacksfilms,” a play on Shelesh’s username “SssniperWolf.” In these videos, he requests voluntary submissions to critique and properly credits sources on-screen and in the description.<sup>117</sup> Making audiences care encourages them to self-select non-infringing content, which may shift the recommendations YouTube’s algorithms offers viewers. This change in the algorithm would alleviate creators’ need to conform to trends and result in more unique content, giving viewers more distinctive choices in alignment with copyright law’s purpose. Thus, large-scale public outreach illuminating infringement harms coupled with increased exposure to properly attributed transformative works could organically enhance copyright standards.

## 3. For Lawyers

Finally, legal professionals must better equip themselves to understand the intricacies of the creator economy and address novel copyright issues that are sure to arise as it continues to expand. As the New Media Rights Group highlights, creators are often turned away from legal aid for failing to register their works.<sup>118</sup> Yet, the number of creators impacted demands that attorneys proactively involve themselves in the industry to extend support before situations become dire. Since law school primarily bases its pedagogy on the judicial case method, and creator disputes rarely enter litigation, law students receive limited exposure to this area in the first-year curriculum and introductory intellectual property courses. Currently, less than 1% of cases at the CCB are represented by a law student representative in a pro bono clinic.<sup>119</sup> Attorney Franklin Graves is now producing the first, open-source textbook on creator economy law.<sup>120</sup> In addition, the University of Miami School of Law hosted the first

---

117. Jjjacksfilms, *Welcome To CREATOR BINGO!*, YOUTUBE (Nov. 13, 2023), <https://youtu.be/8VUFLZnpbNw?si=rILMMPCOvr6Br1hG> [https://perma.cc/J8K9-BFKN] [https://web.archive.org/web/20250108200749/https://www.youtube.com/watch?v=8VUFLZnpbNw].

118. Neill & Lee, *supra* note 76, at 89.

119. COPYRIGHT CLAIMS BD., *supra* note 112.

120. See Franklin Graves, *Creator Economy Law: An Open Access Casebook with Materials*, CREATOR ECONOMY LAW (Aug. 8, 2024), <https://creatoreconomylaw.com/book/> [https://perma.cc/BAW5-ZE66] [https://web.archive.org/web/20250405021636/https://creatoreconomylaw.com/book/].



conference bringing together law students, influencers, artists, and trendsetters for a negotiations competition and a conference. The conference hosted panels on the business of content creation, fair use for content creators, clearances for creators, brand deals, compliance and regulatory considerations for creators, and promoter liability.<sup>121</sup> As more lawyers grow conversant with the realities creators face, they can advocate for and provide counsel tailored to this unique constituency. Only when the legal community makes an effort to engage with creators will they begin to meaningfully lean on the law for support—but see class actions.

## B. AMEND REGISTRATION REGULATIONS

### 1. Group Registration of Published Videos

To initiate a claim at the CCB—whether to deter overzealous right holders from issuing baseless claims or to discourage other creators from replicating one’s videos—a creator must have their work registered for copyright. Copyright law permits the Register to authorize “a single registration for a group of related works,” as recognized by Congress to avoid unnecessary burdens and expenses. Consequently, the Copyright Office allows group registration for specific published works like photographs, serials, newspapers, and newsletters. Group registration for published videos is a pragmatic solution, enabling creators to affordably protect their extensive content libraries, while keeping up with their intense and fast-paced posting schedule.<sup>122</sup> This change could be implemented without the need for passing a statute or amendment through Congress; rather, the Copyright Office could initiate a rulemaking process. As New Media Rights Group explains, changes since the 1970s and parallelisms with existing group registration categories show the suitability of this approach for online videos.<sup>123</sup>

### 2. Disclaiming AI-Generated Media

Creators are increasingly integrating AI-generated works into their videos—from using it to generate scripts and music, to adding details into their backdrops. The Copyright Office has stated that original authorial contributions to AI-assisted works may be copyrightable.<sup>124</sup> However, AI-generated elements must be disclaimed. In practice, creators may be able to protect the whole work if human and AI-generated parts are sufficiently enmeshed. Yet, if most elements are AI-generated, a creator may only have thin copyright in a compilation. A few notable creators claim to be posting

---

121. See *Counseling Creators Conference*, U. MIAMI SCH. OF L., <https://www.law.miami.edu/events/counseling-creators/> [https://perma.cc/5R65-EMZN] [https://web.archive.org/web/20250221194157/https://www.law.miami.edu/events/counseling-creators/] (last visited Feb. 21, 2025).

122. Neill & Lee, *supra* note 76, at 88.

123. *Id.* at 90–94.

124. Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (Mar. 16, 2023).

videos entirely generated by AI.<sup>125</sup> Courses are being sold on how to use AI to create films from ideation to post-production.<sup>126</sup> Creators engaging in such work should understand that these works are likely not copyrightable and will probably become part of the public domain—available for clipping, re-uploads, re-creations, and integrations into other videos beyond fair use cases.<sup>127</sup> As creators copy elements of videos that are successful, one might expect that AI-generated elements of viral videos will be widely copied.

### 3. Definition of Online Publication

Publication in copyright law is crucial as it impacts various aspects. Timely registration around publication strengthens copyright validity.<sup>128</sup> Owners who register before infringement can claim attorneys' fees and statutory damages, with a grace period for published works.<sup>129</sup> While notice omission does not forfeit copyright, access to a notice affects infringement claims.<sup>130</sup> Copyright duration for certain works hinges on publication date.<sup>131</sup> Authors or heirs can terminate transfers related to publication.<sup>132</sup> Fair use analysis considers a work's publication status, respecting an author's control over first publication.<sup>133</sup>

The Copyright Act defines publication as "the distribut[ion] of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending."<sup>134</sup> While this definition was clear when the act was established in 1976, modernizing it for the electronic age has posed challenges. Copyright Office regulations mandate that copyright registration applications indicate whether a work has been published, requiring details such as the date and nation of first publication. Typically, the determination of whether a work is published is left to the applicant, following statutory guidelines. As the Copyright Office is currently taking comments to update its regulations, creators are encouraged to advocate for a "publication" term that includes uploading and publishing a video on YouTube.<sup>135</sup>

---

125. See, e.g., Binker Cosen, *supra* note 86.

126. See, e.g., CURIOUS REFUGE, <https://curiousrefuge.com/ai-filmmaking> [<https://perma.cc/7PKV-YPM6>] [<https://web.archive.org/web/20250221200359/https://curiousrefuge.com/ai-filmmaking>] (last visited Feb. 21, 2025).

127. See Jane C. Ginsburg & Luke Ali Budiardjo, *Authors and Machines*, 34 BERKELEY TECH. L.J. 343 (2019); but see Samantha Fink Hedrick, *I "Think" Therefore I Create: Claiming Copyright in the Outputs of Algorithms*, 8 N.Y.U. J. INTELL. PROP. & ENT. L. 324 (2019).

128. 17 U.S.C. § 410(c).

129. 17 U.S.C. § 412.

130. 17 U.S.C. § 401(d).

131. 17 U.S.C. § 302(c).

132. 17 U.S.C. § 203(a)(3).

133. 17 U.S.C. § 107; see *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 552–53 (1985).

134. 17 U.S.C. § 106(3).

135. *Online Publication*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/rulemaking/online-publication/> [<https://perma.cc/BJ4P-YQJR>] [<https://web.archive.org/web/20250221200746/https://www.copyright.gov/rulemaking/online-publication/>] (last visited Feb. 21, 2025).

### C. IMPROVING AND EXPANDING YOUTUBE'S COPYRIGHT MANAGEMENT SYSTEM

Most creators can access Content ID for a small administrative fee by using a third-party service provider. YouTube could safely make Content ID available to all users of its system, or at least more users than it currently does, if it improved its underlying operation and technology. Several scholars have identified small, key changes YouTube could implement to substantially improve its copyright system.<sup>136</sup> Firstly, the platform should restrict access to systems beyond statutory requirements to copyright holders who can prove ownership. Secondly, Content ID should differentiate between egregious and non-egregious uses, with manual review processes for the latter. Thirdly, funds generated from the monetization of claimed content should be held in escrow until a final decision is reached through a manual review, court ruling, or settlement. Fourthly, if the user acknowledges the copyright claim, funds in escrow can be released to the copyright owner, with future revenue reflecting the percentage of the video deemed infringing. Fifthly, disputing a claim should not be contingent on the creator's standing within the platform. Lastly, both YouTubers and claimants should be subject to strikes for system misuse, with three strikes resulting in the suspension of their access to the Content ID system. Altogether, these changes would protect creators from unwarranted demonetization, censorship, and strikes that stifle non-infringing expression. In turn, they would enable more creators to directly access Content ID.

A more demanding proposal would require YouTube to train the AI powering Content ID to consider fair use in its calculations.<sup>137</sup> The magnitude of this proposal would probably require major ISPs to collaborate in building a library of examples of content that qualifies or does not qualify as fair use, along with the system's confidence scores, and what criteria it used in making those fair use judgments. Once this updated technology is launched, its fair use evaluation reports could then be sent to right holders, who would review the identified content and determine in good faith whether it is actually fair use. Under such a set-up, it would be beneficial to have a peer-review system in which volunteer, veteran YouTubers trained on copyright law assess any appeals. Back to the proposal, the final fair use decisions by rightsholders would be incorporated back into the training dataset to further improve the systems' ability to recognize permitted fair uses of copyrighted material. Thus, both the automated fair use detection and the human review help refine the data that teaches these algorithms. This iterative process could allow infringement detection tools to become more precise and circumscribed in what gets flagged, eventually decreasing the proportion of manual review needed. Given the complexity of the AI proposal, it would likely only occur if, as its author advocates, Congress held that failure to do so results in liability for

---

136. See, e.g., Benjamin Boroughf, *The Next Great YouTube: Improving Content ID to Foster Creativity, Cooperation, and Fair Compensation*, 25 ALB. L.J. SCI. & TECH. 95 (2015); Lauren D. Shinn, *Youtube's Content Id As A Case Study of Private Copyright Enforcement Systems*, 43 AIPLA Q.J. 359, 385 (2015).

137. Justin R. Lizalek, *Flipping the DMCA and Its Progeny on Their Heads: Content Creators Reclaiming Revenue from Improper Copyright Claims*, 54 U.I.C. L. REV. 757, 790 (2021).

misrepresentation under the DMCA. This could take a long time. Alternatively, YouTube could simply set an automated fair use threshold at x% identity between uploaded content and fingerprint-identified proprietary content, with appeal of and/or manual review of postings that exceed the identity threshold.

While the DMCA places the burden on copyright owners to monitor infringement, platforms like YouTube could benefit from taking additional steps beyond their basic legal obligations. Namely, fostering a better environment for creators could help YouTube retain talent as it competes with TikTok and Twitch. If YouTube does not take action and Congress does not compel it to, then maybe YouTube will if enough creators go to court. Previously, creators lacked the resources to individually sue copyright infringers or copyright holders submitting wrongful DMCA takedowns. In those times, it was proposed that creators unite in a class action and file a lawsuit, arguing that if their works meet the criteria of fair use, actions such as blocking, monetization, and/or tracking constitute infringement on their exclusive rights under 17 U.S.C. § 106(3).<sup>138</sup> The new CCB presents a more accessible, lower-cost avenue for resolving copyright disputes. Overall, the goal would be to secure enough favorable rulings to deter improper copying and wrongful takedown notices on YouTube. Facing potential CCB liability for willful disregard of fair use, along with the social media backlash associated to facing Internet celebrities in court, might compel creator and companies to reform takedown practices. In effect, by lowering the barrier to enforcement, the CCB opens a path for fair use advocacy that could restrain copyright abuses on YouTube.

#### D. INSTITUTING MORAL RIGHTS

Legal commentators have proposed extending VARA to protect audiovisual works.<sup>139</sup> Given that VARA already codifies attribution and integrity rights, amending it to cover more creators would provide a familiar channel for defining these rights, though context of incorporeal rights is quite different than physical originals.<sup>140</sup> Capitalizing on VARA's three-decade existence enhances legislative familiarity and public awareness.<sup>141</sup> This proposed amendment recognizes that online videos now face attribution vulnerabilities akin to the physical artworks that VARA intends to safeguard. Critically, a moral rights regime could compel platforms to implement rights enforcement technologies like those used for copyright infringement.

Currently, VARA establishes non-transferable moral rights that can be waived via signed written agreement. VARA's waiver provision responded to efficiency concerns about limiting waivability, enabling negotiation of moral rights in contracts.<sup>142</sup>

---

138. See Laura Zapata-Kim, Note, *Should YouTube's Content ID Be Liable for Misrepresentation Under the Digital Millennium Copyright Act?*, 57 B.C. L. REV. 1847, 1849 (2016); O'Neill, *supra* note 106.

139. See, e.g., Smrynios, *supra* note 63.

140. See 17 U.S.C. § 106A(a) (describing the rights of attribution and integrity).

141. See U.S. COPYRIGHT OFF., *WAIVER OF MORAL RIGHTS IN VISUAL ARTWORKS* (1996).

142. See 17 U.S.C. § 106A(e); H.R. REP. NO. 101-514, at 18 (explaining that the Committee determined that prohibiting waivability would inhibit commercial practices).

However, the proposed amendment stresses the need for restrictions on coercion. Even applying VARA's current statute to online video would prove insufficient, as platforms could mandate waiver signatures before uploading through broadly drafted terms of service. While the Berne Convention allows waivability, it does not require it; nations can surpass minimum rights thresholds.<sup>143</sup> Proponents of the amendment anticipate an increased burden on platforms like YouTube to address attribution claims promptly. To mitigate this, they propose waiver provisions for bad faith or arbitrary assertions of rights. This would prevent frivolous lawsuits, while still empowering creators to report attribution violations. If Congress were mobilized to adopt such a solution, it would provide the greatest degree of protection for creators.

Others have proposed to consider attribution rights within the fair use analysis.<sup>144</sup> The courts have traditionally viewed copyright through an economic lens, prioritizing financial interests over moral ones.<sup>145</sup> In practice, however, some claim this justification is more aspirational than a reality.<sup>146</sup> Even if courts maintain such an approach, attribution also carries monetary value that would allow judges to exclude ethical considerations from copyright disputes.<sup>147</sup> Furthermore, there is some precedent of courts weighing defendants' proper acknowledgment of source materials when evaluating claims of infringement. In a few instances, crediting has served as evidence of permissible use and counterevidence to willful misappropriations.<sup>148</sup> Given the evolving landscape of content creation and distribution enabled by modern technologies, explicitly factoring attribution into fair use analyses aligns with contemporary information spreading and its economic impacts. The most compelling aspect of this proposal is that, procedurally, it is more straightforward to change the common law than statutes. Even adding attribution as a fifth fair use factor under Section 107 would be complex.<sup>149</sup> Fortunately, its essence already falls within the existing four factors. Considering attributive use alongside transformative use and commerciality can qualify the purpose and character of potentially infringing conduct. Nonetheless, relegating attribution rights to an infringement defense ignores their role in clear fair use cases. Thus, such proposals would not provide sufficient protection to content creators.

---

143. See *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, WORLD INTEL. PROP. ORG., [https://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](https://www.wipo.int/treaties/en/ip/berne/summary_berne.html) [<https://perma.cc/XMR3-GJLF>] [[https://web.archive.org/web/20250116164452/https://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](https://web.archive.org/web/20250116164452/https://www.wipo.int/treaties/en/ip/berne/summary_berne.html)] (last visited Feb. 14, 2025).

144. See Jane. C. Ginsburg, *The Most Moral of Rights: The Right to Be Recognized as the Author of One's Work*, 8 GEO. MASON J. INT'L COM. L. 44 (2016).

145. See *Gilliam v. Am. Broad. Cos.*, 538 F.2d 14, 24 (2d Cir. 1976) ("American copyright law . . . does not recognize moral rights or provide a cause of action for their violation, since the law seeks to vindicate the economic, rather than the personal, rights of authors.").

146. See John Tehranian, *Toward A New Fair Use Standard: Attributive Use and the Closing of Copyright's Crediting Gap*, 96 S. CAL. L. REV. 1 (2022).

147. *Id.* at 7–8.

148. See *Williamson v. Pearson Educ., Inc.*, No. 00 Civ. 8240 (AGS), 2001 WL 1262964, at \*5 (S.D.N.Y. Oct. 19, 2001); *Núñez v. Caribbean Int'l News Corp.*, 235 F.3d 18, 23 (1st Cir. 2000).

149. Greg Lastowka, *Digital Attribution: Copyright and the Right To Credit*, 87 B.U. L. REV. 41, 84(2007).

## V. CONCLUSION

The creator economy is entering a new era where creator content not only rivals traditional media but also competes within the creator community itself. While creators have historically depended on self-help methods, the evolving landscape of the industry indicates a growing importance of copyright law as a valuable tool for protection. This shift presents opportunities for advancements in education, technological enhancements, and meaningful legal reforms aimed at bolstering access to safeguard creators' original expressions and their fundamental right to be recognized as the authors of their work. As the creator economy continues to grow, embracing these opportunities will be critical to promoting a more equitable and supportive environment for creators to thrive and innovate.