

Amar Chhina
April 4, 2022
Legal and Business Affairs
Ian Penman

How YouTube Protects IP For Creators and Musicians

In 2005, 3 former *Pay-Pal* employees named Steve Chen, Chad Hurley, and Jawed Karim, came up with an idea for sharing videos (Hosch, 2022). By the time they officially launched they were generating over 2,000,000 video views per day. Within a span of 6 months, they were seeing upwards of 100,000,000 video uploads per day. This platform was called *YouTube*. Not only were they underprepared for scaling their servers and digital space, but also for potential lawsuits. A lot of the videos that were being uploaded contained copyrighted material. These three guys could not contain the increasing costs associated with their platform so they decided to sell to *Google* in 2006 for \$1.6 Billion (Hosch, 2022). *Google* had its own video sharing platform but it did not see the level of success that *YouTube* saw. So, they shutdown their own platform and continued operating *YouTube* as their own. According to Britannica “To reduce the risk of copyright-infringement lawsuits, *Google* negotiated deals with a number of entertainment companies that would allow copyrighted video material to appear on *YouTube* and would give *YouTube* users the right to include certain copyrighted songs in their videos” (Hosch, 2022). However in order for this to happen, Google had to agree to remove thousands of videos with other copyrighted content. Since its launch *YouTube* has been involved in numerous lawsuits however they are protected by the 1998 DMCA. The DMCA puts the blame on the user uploading the copyrighted material rather than *YouTube* itself, as they are not in control of what viewers decide to upload. However they do have measures in place to screen videos for content that goes against their guidelines such as explicit content. Although *YouTube* was made for all video types and purposes, it drastically changed the music industry as well. *YouTube* came out at a time when *MTV* stopped showing music videos in exchange for reality tv shows. *YouTube* quickly became the new home to music videos and a place where musicians can easily share their works. It allowed artists like Justin Bieber to get discovered,

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and it allowed artists like Post Malone to exploit the platform and rise to #1 on Billboard just for uploading a 3 minute loop of the hook from *Rockstar* (Tramell, 2017). Since *YouTube* became one of the most popular platforms for sharing music, in 2013 they launched their *Content ID* technology. In this essay I will be breaking down how *YouTube* operates in the entertainment business and break down whether or not their methods for protecting intellectual property are preventing independent creators from releasing content and having their revenue go towards major labels.

YouTube operates similarly to *Facebook* and *Google*, meaning they generate their majority of revenue off advertising (YouTube, 2022). With over 50 million paid subscribers, they also offer a subscription service that allows users to save videos to watch offline as well as not having to watch ads before a video (Funk, 2020). This extra cost covers the amount of revenue lost from not displaying ads to these users. According to The Verge, *YouTube* made over \$15 Billion from ads alone in 2019 (Statt, 2020). After the pandemic, that number doubled and they made over \$28 Billion in 2021 (Tubics, 2022). According to *YouTube*, creators part of their “YouTube Partner Programme (YPP) are eligible to share in advertising revenue” (YouTube, 2022). In order to become part of the program you need to meet the following requirements:

1. *Live in a country/region where the YouTube Partner Program is available.*
2. *Have no active Community Guidelines strikes on your channel.*
3. *Have more than 4,000 valid public watch hours in the last 12 months.*
4. *Have more than 1,000 subscribers.*
5. *Have a linked AdSense account. (YouTube, 2022)*

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Here they state that a user must have no community guideline strikes on their channel. This is in reference to content that includes violence or explicit content rather than copyright strikes. However your application to monetize your channel has to get approved regardless if you meet the above requirements. On a separate part of their agreement they state that:

“The first time you get a copyright strike, you’ll need to go through Copyright School. Copyright School helps creators understand copyright and how it’s enforced at YouTube.

Copyright strikes may affect your ability to monetize. In addition, if your active live stream is removed for copyright, your access to live streaming will be restricted for 7 days.

If you get 3 copyright strikes:

- 1. Your account, along with any associated channels, is subject to termination.*
- 2. All the videos uploaded to your account will be removed.*
- 3. You can’t create new channels” (YouTube, 2022)*

Copyright strikes are not taken lightly at YouTube, however Content ID matches are. Content ID claims do not result in a strike. Copyright owners get to decide what to do with the video that is ID’d with their content in it. Their policy says “Copyright owners can set Content ID to block uploads that match a copyrighted work they own the rights to. They can also allow the claimed content to remain on YouTube with ads. In these cases, the advertising revenue goes to the copyright owners of the claimed content” (YouTube, 2022). This feature allows musicians and record labels to prevent other people from making money off their works. However with the DMCA in place, it is difficult to dispute and win against a Content ID claim. Disputing it might just result in a DMCA notice and your account could be deleted along with all of your content.

According to *The Electronic Frontier Foundation* “Losing one’s account, having one’s videos

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deleted, or taking the chance on a lawsuit against a better-funded and resourced rightsholder are all too great a risk for most independent video creators. The DMCA hangs over the entire Content ID process—in comparison to the DMCA's possible penalties, Content ID seems like a better bet for video creators, no matter how unfair it actually is" (Trendacosta, 2020). This takes the power away from independent creators and puts it in the hands of big corporations or major artists/labels.

Due to the commercialization of *YouTube* and music on *YouTube*, the company could get into serious trouble if they do not take action against every claim. It is almost like Content ID is put into place to protect *YouTube* first rather than the original artist. Content ID throws everything we know about *Fair Use* out of the window. In a report published by The Verge titled "YouTubers and Record Labels are Fighting, and Record Labels Keep Winning", they talk about the stories of video creators who have lost huge amounts of money due to overly aggressive claims. They mention "Jimmy "MrBeast" Donaldson, who said he lost more than "five figures" on a video for simply saying the Bon Jovi lyric "livin' on a prayer" (The Verge, 2019). The Verge also mentions how pages that educate about music making are also facing issues. "Music channel, The Guitar Manifesto, has run into problems using riffs from popular songs to show what different guitars sound like. Rob, who operates the channel and doesn't disclose his last name, has received copyright claims on videos that include brief covers of songs from popular bands like Nirvana. When a record label issues a copyright claim, it has two different options: either pull the video down entirely, or allow the video to remain up but collect some or all of its ad revenue. Because of requirements under the Digital Millennium Copyright Act, YouTube is obligated to take down copyrighted content that's been uploaded by users, with little incentive to question ambiguous cases once they've been identified by a label" (The Verge, 2019). It seems like there is no balance for creators. Independent video creators need music however the labels

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of major artists are not allowing that to happen. It is the label that rakes in the majority of the cash from these claims rather than the musicians. The Verge also says that Content ID took 7 years to payout its first \$1 Billion to labels and musicians, but then after that first \$1B, it then took another 4 years to surpass \$3 Billion in payouts from Content ID. *YouTube* had clearly made their algorithm more picky and aggressive, shutting down the hopes of many indie video creators.

YouTube also proves that it can be easily manipulated to count streams and break artists onto the Billboard 100. In 2015, rapper Post Malone released his single *Rockstar feat. 21 Savage*. However, when it was first released on YouTube they uploaded a 3 minute loop of only the chorus, leaving out Malone's and Savage's verses. In essence they released a snippet which counted as streams of a full length single and went towards their Billboard count. It debuted at number 2 without it even being on radio yet (Tramell, 2017). When this first happened, *YouTube* was under fire for allowing streams to count off of a snippet because it is an unfair advantage towards those who release a full song. However, *YouTube* was generating ad revenue off of every play. Due to the fact that Post Malone's channel is also monetized, his label was generating part of that ad revenue for each view as well. In this case, their monetization system is skewed and unfair to those who have a smaller following. At first it was a huge issue, however, this type of snippet release is what we now see everyday on platforms like *TikTok*, *Instagram*, and even *YouTube Shorts*. All of these platforms have a dedicated music store which allows creators to pick an official sound released from an artist onto their platform and create a video with it. The catch is though, creators are able to upload original sounds which can also be someone else's song, a leaked song, or an unofficial remix. This is not yet covered by Content ID however people would be able to reuse sounds that other people make and they would link to the original creators profile. This in essence is providing credit. This new system is the only

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system that *YouTube* has that fully supports independent creators. Their short can still be taken down if it goes against community guidelines or if it is reported by someone, however Content ID is not as strict on this side of the platform.

It is unfortunate to see a platform that was developed for sharing videos freely on the internet - a place where freedom should extend further, has now become restricted by an algorithm they have created. I think that the company must do what it needs to do to not face lawsuits and get shut down by the DMCA however I do think certain videos like educational videos should be exempt from Content ID. For example the Guitar video makers and the audio engineers that faced action due to using songs for demonstrative purposes. I can understand videos that completely steal and repost a whole song without paying as that would be considered a synchronization if done legally, however other videos are not well justified in my opinion. Furthermore, I think *YouTube* has now stepped away from their initial mission as a company, which was to allow users to freely share videos with their friends, family, and the public. It makes sense that content and copyright laws are in place, but aggressive algorithms sniffing out every video uploaded has now taken away that freedom. This also brings up questions for artists when the majority of payouts are going towards the labels, are the artists even seeing that money? Regardless of all of the issues I can pick out, *YouTube* still has no competition in terms of full length video sharing platforms. Which means they can continue to operate how they choose and see fit. Hopefully new platforms will release with fairer Content ID technology using Blockchain and Smart Contracts to their advantage, allowing more control for creators and independent copyright owners.

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