



Copyright on YouTube: Above and Beyond the Digital Millennium Copyright Act

The DMCA allows for service providers to be free from liability as long as they take down material that infringes copyright when they are notified about it, and have a specified approval process for those takedown notices

YouTube goes above and beyond what is required of them by the DMCA to police copyright infringement, exacerbating existing DMCA flaws and introducing new ones

Content ID: Lack of Discretion

~99% of copyright claims on YouTube were made through Content ID, a collection of algorithms that automatically claim any video with material matching material in Content ID's database.²

Copyright holders can choose what they want YouTube to do with their flagged videos out of five options:⁵

- Mute the video's audio
- Block the whole video from being viewed on YouTube
- Monetize the video by running ads
- Track the video's viewership statistics
- Do nothing

Problems:

Copyright holders cannot choose which content to tolerate, and so even if a company has announced that they tolerate and encourage YouTubers to upload their content, such as in game reviews, YouTubers still must dispute the claims, and until then²

If the video is automatically monetized the YouTuber will receive no money from the video

Generally, when a video is claimed, if the copyright holder elects to block or monetize, the *entire* video is blocked or monetized, not just the portion/proportion that has the copyrighted material¹

YouTube admits that Content ID cannot distinguish between fair use²

Disputes: Bias Towards Claimants

When confronted with a copyright claim, creators can choose to:

- Accept the claim and abandon their video
- Dispute the claim
- Edit out a component of their video
- If the creator is a member of the YouTube Partner Program they can request to share revenue with the claimant

If they dispute a Content ID claim, the claimant presides over the dispute in the first and second instance

If a creator files an appeal and the claimant submits a takedown request, the creator will automatically receive a copyright strike⁴

- If a YouTuber receives three copyright strikes, it results in account termination and deletion of all uploaded videos²

If they appeal the decision twice more, the claimant can either let it go or initiate a court action⁴

YouTubers may be hesitant to appeal even clearly fair use uses due to the fear of litigation

- Median cost of litigating a copyright infringement case through trial ranged from \$550,000 to \$6.5 million in 2019²

In the first half of 2022, 0.5% of content ID claims were disputed, and over 55% of those disputes were resolved in favor of the uploader⁷

- YouTube interprets this as a sign that Content ID works, but it may be a sign of YouTubers not disputing for fear of copyright strikes and/or litigation

Lack of Transparency

YouTube's copyright policies, in particular Content ID have little transparency into how exactly the programs function, leading to confusion among YouTubers about what exactly they are allowed to do and what is allowed

In a sample of YouTube videos, creators often speculated about what would trigger the Content ID system

- Some thought it would only claim copyrighted material over 20 seconds long, others thought it could be triggered by a much smaller amount
- Some warned that YouTube's royalty free music library was untrustworthy and the license could be revoked and a video claimed at any time
- Multiple creators pointed to a lack of transparency in the process of making and disputing a claim and to the lack of sufficient recourse provided to creators by YouTube⁴

Since these disputes are a series of private notices and actions by private parties, these notices and takedowns largely operate without public visibility into the practices of the stakeholders

The anecdotal quality of much of the reporting makes it difficult to determine how prevalent such failures are and whether they reflect systemic issues⁶

YouTube publishes a twice-annual Transparency Report

- This mainly provides high-level aggregations that are insufficient to probe the contours and social effects of the intricacies of their copyright policies

References

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