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INTERNAL ARBITRATION AS A MEANS FOR RESOLVING YOUTUBE'S RAMPANT COPYRIGHT PROBLEM

Thomas McGovern

YouTube, like other social media platforms,¹ has given countless individuals the ability to produce and monetize their own videos in a way that has begun to mirror and even revolutionize traditional media and entertainment production. From talk shows² and educational programs³ to cooking shows⁴—and everything in between—“content” creators,” as they are called, have provided lucrative channels for viewership. One of the most notable YouTubers, with the handle MrBeast, has reportedly accrued a net worth of \$25 million.⁵

YouTuber success has not gone unnoticed by traditional media outlets, however. Large outlets such as CNN⁶ and NBCUniversal⁷ have gone on to establish YouTube channels, even going as far as describing YouTube as “central”⁸ to part of its business strategy—likely in the hopes of garnering new, likely younger, viewership. Indeed, this latest media rush has bred a sort of competition between independent YouTubers and large media outlets. One way this competition has manifested is through YouTube’s copyright enforcement feature, or copyright “strikes.”⁹ This feature allows the copyright holder to submit copyright claims, forcing the uploader to either take down the video or edit out the allegedly infringing material.¹⁰ While reserving the ability to crack

¹ Perhaps the newest social media platform of which people have taken advantage is TikTok. *See* Liz Frazier, *5 Ways People Can Make Serious Money on TikTok*, FORBES (Aug. 10, 2020, 7:29 PM), <https://www.forbes.com/sites/lizfrazierpeck/2020/08/10/5-ways-people-can-make-serious-money-on-tiktok/?sh=10b618705afc> [<https://perma.cc/SG3X-J7U6>].

² The most notable success in this category is Joe Rogan, who has amassed nearly 12 million subscribers, resulting in a deal with Spotify reportedly worth \$100 million. *See* PowerfulJRE, YOUTUBE, <https://www.youtube.com/user/PowerfulJRE?app=desktop> [<https://perma.cc/4W6R-APU6>] (last visited Jan. 23, 2022).

³ *See e.g.*, Geography Now, YOUTUBE, <https://www.youtube.com/user/GeographyNow> [<https://perma.cc/WD9R-N7MW>] (last visited Jan. 23, 2022); NileRed, YOUTUBE, <https://www.youtube.com/channel/UCFhXFikryT4aFcLkLw2LBLA> [<https://perma.cc/V8NG-LNRZ>] (last visited Jan. 23, 2022).

⁴ *See e.g.*, Babish Culinary Universe, YOUTUBE, https://www.youtube.com/channel/UCJHA_jMfCvEnv-3kRjTCQXw [<https://perma.cc/3Q4M-QHJG>] (last visited Jan. 23, 2022).

⁵ *MrBeast Net Worth*, CELEBRITY NET WORTH, <https://www.celebritynetworth.com/richest-businessmen/producers/jimmy-donaldson-aka-mrbeast-net-worth/> [<https://perma.cc/7QRY-3FW3>] (last visited Jan. 23, 2022).

⁶ *CNN Net Worth*, YOUTUBERS.ME, <https://us.youtubers.me/cnn/youtube-estimated-earnings> [<https://perma.cc/Z2ZR-DPQR>] (last visited Jan. 23, 2022).

⁷ Tim Peterson, *How NBC News Is Making ‘Many Millions’ of Dollars on YouTube After Adjusting its Strategy*, DIGIDAY (Jan. 26, 2021), <https://digiday.com/future-of-tv/how-nbc-news-is-making-many-millions-of-dollars-on-youtube/> [<https://perma.cc/78D8-ULZQ>].

⁸ *Id.*

⁹ *Copyright Strike Basics*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2814000?hl=en#zippy=%2Cresolve-a-copyright-strike> [<https://perma.cc/G9RV-M77R>] (last visited Jan. 23, 2022).

¹⁰ Lindsay Dodgson, *YouTube Channels Are Being Held Hostage with False Copyright Claims, But the Platform’s Hands Are Tied*, INSIDER (June 2, 2020, 11:16 AM), <https://www.insider.com/youtubers-channels-are-being-held-hostage-with-fake-copyright-claims-2020-6> [<https://perma.cc/FB3Z-PT8J>].

down on infringing material is important, YouTube’s present system has been rife with abuse.¹¹ According to YouTube’s most recent Copyright Transparency Report, their copyright system has led to nearly 3.7 million disputed copyright claims, with over 2.2 million of them being resolved in favor of the uploader.¹² Although the numbers alone suggest that YouTube is correct in almost every instance—with 99.5 percent of copyright claims going undisputed, and the small percentage of disputed claims still producing the correct result 40 percent of the time¹³—the creators themselves tell a different story. One YouTuber recalls that his “poorly hum[med]” rendition of a song resulted in a copyright strike.¹⁴ Even large YouTubers, such as PewDiePie, have noted that their own original music has been claimed as copyrighted by the supposed rights holders¹⁵—despite the fact that he is the rights holder and never initiated such a claim.

YouTube is in a difficult situation given that it wants to continue to appeal to the millions of content creators who have found a home there, and yet still demonstrate to large media companies that it is a safe place for their intellectual property. A wise move would be to take a page out of Amazon’s book. Amazon implemented its Utility Patent Neutral Evaluation Program—an internal patent enforcement procedure—in an effort to resolve potential patent disputes that arise from products listed on its website.¹⁶ Each participant has to pay a fee and submit their arguments to a neutral party, who then evaluates the claims and makes a decision.¹⁷ Given the volume of YouTube’s disputes,¹⁸ arbitration can serve as a particularly helpful format. YouTube can adapt the internal dispute resolution structure of Amazon but incorporate arbitration as a way to expedite the process so that matters can be ideally solved within one or two rounds. This would allow both content creators and corporations to reach an amicable agreement as a way of avoiding future problems. Given the dissatisfaction¹⁹ content creators have had in the past with YouTube’s processes, YouTube would have to be careful to select arbitrators that do not have a history of favoring one side over the other. With YouTube making up a significant portion of Google’s revenue,²⁰ and with the content creator space growing ever more competitive,²¹ YouTube will have to make a strong effort to appease both sides here.

¹¹ See e.g., Shoshana Wodinsky, *YouTube’s Copyright Strikes Have Become a Tool for Extortion*, VERGE (Feb. 11, 2019, 8:20 AM), <https://www.theverge.com/2019/2/11/18220032/youtube-copystrike-blackmail-three-strikes-copyright-violation> [<https://perma.cc/AJ2H-W4FP>].

¹² The YouTube Team, *Access For All, A Balanced Ecosystem and Powerful Tools*, YOUTUBE OFF. BLOG (Dec. 6, 2021), <https://blog.youtube/news-and-events/access-all-balanced-ecosystem-and-powerful-tools/> [<https://perma.cc/K2LE-XYHA>].

¹³ *Id.*

¹⁴ See Dodgson, *supra* note 10.

¹⁵ PewDiePie, *YouTube Copyright Seriously Pisses Me Off*, YOUTUBE, at 6:29–7:12 (Dec. 9, 2021), <https://www.youtube.com/watch?v=Ku1ykhGP764> [<https://perma.cc/SA7W-H38Z>].

¹⁶ *Amazon’s Utility Patent Neutral Evaluation Program Explained*, RED POINTS, <https://www.redpoints.com/blog/amazons-neutral-evaluation-program/> [<https://perma.cc/72MY-YYAL>] (last visited Jan. 23, 2022).

¹⁷ *Id.*

¹⁸ See The YouTube Team, *supra* note 12 (noting that there were over 729 million copyright claims in the first half of 2021).

¹⁹ See Dodgson, *supra* note 10.

²⁰ Nick Statt, *YouTube Is a \$15 Billion-a-Year Business, Google Reveals for the First Time*, VERGE (Feb. 3, 2020, 4:24 PM), <https://www.theverge.com/2020/2/3/21121207/youtube-google-alphabet-earnings-revenue-first-time-reveal-q4-2019> [<https://perma.cc/AF8A-SW4Y>].

²¹ Aaron Pressman & Danielle Abril, *YouTube’s Creator Economy Is Bigger and More Profitable than Ever*, FORTUNE (June 2, 2021, 11:17 AM), <https://fortune.com/2021/06/02/youtube-creator-economy-advertising-revenue-war-for-talent-yt-influencers/> [<https://perma.cc/JML7-W6N2>].