

YouTubers and the crisis of YouTube's Copyright Policy

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Abstract <p>Video platform YouTube has recently faced criticism from its video creators, nicknamed YouTubers, concerning its management of copyright-related issues. The feud intensified as the online community slowly strengthened itself behind the idea that their creativity was being robbed by the platform, as well as by major entertainment production companies whose material is often used by pop-culture inspired channels.</p> <p>The thesis, designed to serve the purpose of the remaining JAMK's Music and Media Management study section, studied the origin and the various effects of this phenomena on YouTubers' creativity and sense of understanding. The lack of interest such angle had inspired so far lead to none prior academic research to be examined. Thus, aspiring and existing YouTubers, and most importantly entertainment company producers, could benefit from further research on the topic.</p> <p>The research was carried out using qualitative case study methods. Observation, a standardized questionnaire sent to a selected focus group, and semi-structured interviews were conducted in order to gather as much broad knowledge as possible on the thesis topic. The observed entities and respondents all had a close relation to YouTube and its copyright policy, ranging from aspiring to veteran YouTubers. Hundreds of hours of videos were observed, nine persons participated in the focus group, and three veteran YouTubers answered the semi-structured interviews. Qualitative Content Analysis was used in order to analyze the result thoroughly.</p> <p>The results demonstrated that major entertainment companies were the actual cause of YouTubers' deception, more than YouTube whose implication and responsibility in the copyright dispute resolution process remains limited. The interpretation of the principles of fair use and promotion is the principal issues raised and thoroughly explained by all observed subjects and respondents. Results showed that YouTubers and companies clearly do not share the same point of view regarding these factors. There is a breach in their communication which needs to be addressed diligently, and solved.</p>		
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1 Introduction

1.1 Research Background

Since the video platform YouTube started to offer the possibility for its users to monetize creator-owned content back in May 2007, based on a share of revenue generated by online ad spaces bought by business partners, incidents concerning Intellectual Property Rights (IPR) and the use of copyrighted material in creators' videos have been causing much trouble as to how artists without the adequate education on the topic would deal with its mechanisms. From the actual share of revenue to the material fairness of use on online channels emerging from pop-culture, the platform and its creators, nicknamed YouTubers, frequently enter in conflict and appear to demonstrate clear communication issues. Moreover, YouTube policy regarding copyrighted material use is still nowadays changing on a regular basis, making it difficult for users and board alike to determine whether or not a work is considered off-limit, given some videos are still deleted without detailed explanation up to months after it was posted online, although their creators had stayed fair to the policy in place back when they shared said content.

In practice, YouTubers are individuals whose part or sole income is earned through the ad spaces they sell to the platform on original videos they make available online. According to YouTube data (2015), *“more than a million channels in dozens of countries are earning revenue from the YouTube Partner Program, and thousands of channels are making six figures per year”*. On top position of this statement are music channels, often Vevo-based, followed by gaming and comedy programs. The most popular YouTuber since 2013 is the Swedish amateur gamer and video-maker PewDiePie, with over 36 million subscribers and 8 billion of views (socialblade.com). Yet, no matter how many subscribers a YouTuber has, IPR issues are a major downside depending on the creative field one chooses to represent. In comedy and gaming, adding copyrighted music or iconic, pop-culture video excerpts, often lead to conflicts while this sub-culture is by its nature influenced by such

material, and the use of frequent references is not rare within the community when it comes to establish a dialogue based on common influences and hobbies.

Angered by YouTube's ever-changing management of IPR issues and "abusive" control over their creations, as it is often described by YouTubers, hundreds of video-makers have left the platform within the past two years, thus leaving what was or could have been their profession, in order not to feel limited or "robbed" of their creativity on the video platform. Thousands of other users provided their subscribers with explanatory videos to express their distress, lack of productivity and/or of willingness to go on dealing with such stressful matters. This was due YouTube's choices of new policy rules, or mere anger. The use of *networks*, which can be seen as YouTubers' trade unions, is a solution that do not guarantee remaining out of conflicts. It has however been proven to improve communication between YouTube and its users by actually suppressing it almost entirely, creating a more immediate link with YouTube board through intermediaries. The revenue share is cut in even smaller pieces when using networks, and their existence is sometimes completely unknown to new users due to the very small amount of advertising.

All in all, this phenomenon points out the lack of a constant and perceived-as-fair policy concerning the use of copyrighted material. Money and fame are usually the main issues discussed on the subject, and successful YouTubers tend to avoid too strong positions in the matter of IPR so that they can preserve a sufficiently neutral Public Relations strategy when incidents happen. Yet, some of them do not hesitate to speak their minds freely, placing creativity as their main concern.

YouTubers also regularly address the lack of explanations concerning punishments ("*strikes*"), as well as their failed attempts to discuss incidents with the firm in order to solve conflicts without facing harsh consequences, such as seeing their content deleted all-together. In general, creators tend to express how over-looked they feel as responsible entities, especially when it is

seen that networks are taken seriously by the platform, whereas individual creators do not have as much possibility to enter matters under dispute resolution.

Inevitably, with time, YouTube has become an artistic battlefield on which taking side on the matters of copyrights and freedom of creation has become the norm. The secrecy and confidentiality of legal operations imposed by the platform to creators monetizing their videos are highly criticized along with a very poor revenue share. This criticism has grown even stronger since late 2014 when the platform introduced a premium account option to its users, forcing the creators to promptly take part in it. Otherwise their videos would be classified as “private”, hence would stop generating money as stated in a letter sent by the YouTube Team to the creators in April 2015. This goes dramatically against the main belief of some successful European video makers, such as Antoine Daniel or Mathieu Sommet, who both define their strength as YouTubers, in loose words, as being able to “*provide entertaining and geek-culture referenced content to people for free, outside of the narrowed frame of public television channels’ content possibilities*” (2013, 2014).

Still, despite the turmoil, new YouTubers as well as successful veterans are regularly posting monetized videos using certain amounts of copyrighted material. The video platform remains a leader on the distributed original content market, right behind Netflix (Lloyd, 2013), with up to 300 hours of video posted on the platform every minute and hundreds of millions of hours watched daily by users from 75 countries around the world, according to YouTube’s official statistics (2015).

1.2 Scope, Objectives, and Research Questions

Research background highlights the complexity and vastness of subjects such as YouTube's user-generated content and IPR policy. Yet, the angle chosen for this research has been sufficiently and carefully narrowed down in order to produce meaningful and applicable results within a more focused, yet not limited, scope.

Instead of blaming on or the other side, which has common within YouTube community, and in order to avoid taking any biased side, the primary objective of this thesis was to understand the state of mind of the platform-based creators in regard of their freedom of creativity and their vision of fairness concerning their status and use of copyrighted references in their creations. Another aim was to collect YouTubers' views on IPR issues and the future of their artistic work. Unlike previous studies, speculations as to whether or not being a YouTuber can legitimately be considered a profession were disregarded. Moreover, the question of their revenues was only touched in surface in profit of a more focused scope on matters which have not gained as much attention before. Although theoretical literature is scarce and does not directly address the feelings of creators, it provides a fundamental knowledge as of the status of IPR laws and regulation on both global and platform-based scales. In addition, it is necessary to understand the various articles published about YouTubers' situation as artists and members of a specific community as well as the reactions of YouTubers and of their audience.

The main questions this research raises are then as follows: 1. How do YouTubers feel as creators in front of YouTube's Intellectual Property Rights Policy? 2. Are YouTube's policy frequent changes and subtleties too overwhelming for new artists to embrace? 3. Why are most YouTubers still willing to remain on the platform and new creators eager to become part of it despite the frequent disputes and complains?

2 Theoretical Context

2.1 About YouTube

The USA-based video platform YouTube was founded by ex-PayPal employees Chad Hurley, Steve Chen and Jawed Karim. Launched publicly in May 2005, the website traffic grew very quickly and placed the platform at the top of its kind. This was because it was deemed user-friendly and its practicality aspects overthrew the more complicated, time-consuming platforms such as Vimeo or the now-down ClipShack. (Graham, 2005; O'Malley, 2006.)

The first video ever posted on the platform was “*Me at the zoo*”, a 19 seconds clip uploaded on April 23, 2005 by its creator Jawed Karim to test the system before its public launch. Interestingly, with a bit over 13,337,000 views by April 2015, this video is far from being in the *Top 500 Most Viewed Videos of All-Time*, all of which have well passed the milestone of 100,000,000 views (MyTop100Videos, 2015).

YouTube was bought by the giant Google in October 2006 for a total of \$1.65 billion in an all-stock transaction only a few days after the rumor of the transaction started to spread on the Internet (Arrington, 2006).

This acquisition conferred YouTube with much bigger server spaces and representation, but saw the beginning of an era of complaints coming from the video platform users. Shortly after the acquisition, social media platforms started to be filled by comments from angry users whose content, although then non-monetized, was deleted from YouTube by Google for the first reports on copyright infringements going against the newly installed policy born from this company merger.

Launched in December 2007, the YouTube Partner Program “*allows creators to monetize content on YouTube through a variety of ways including advertisements, paid subscriptions, and merchandise*”, as stated on YouTube

official support website (2015). The program quickly gained popularity and resulted in thousands of creators earning full-time work income. According to YouTube's official statistics (2015), more than a million users were benefiting from the Partner Program by late 2014.

YouTubers, as platform-based monetized content creators are now called by the community whereas YouTube systematically refer to them with the term "*partners*", can enter the program early in their career. They do not need any specific amount of videos, subscribers or views to benefit from its services, granted that they do not violate the IPR policy prior to their application. All creators are treated according to the same basic range of services. However, special advantages are given to YouTubers whose channels record at least 75,000 cumulative watch hours within 90 consecutive days. These privileges include Advance Product Features, Eligibility to Apply for Advanced Programs (most importantly an access to YouTube Spaces, see below), as well as Strategic and Technical Support from the YouTube Team itself. (YouTube, 2015).

All creators have access to YouTube Creator Academy, an online program available directly on YouTube for free, whose purpose is to give theoretical knowledge and practical advice to those interested in the various topics these online master-classes and case studies present. From the artistic aspects to the technical skills required by the job, without forgetting Copyrights 101, creators can improve their knowledge and acquire new competences, regardless of the type of channels they host, their educational background or their basic level of competences.

In order to enhance popular YouTubers' experience, from 2012, Google also launched YouTube Spaces in Los Angeles, Tokyo, London, New York and Sao Paulo so far. The purpose of these premises is to provide successful creators from around the world with fully equipped networking and recording spaces, specifically allocated to them and designed for their technical and artistic needs. The company regularly organizes events such as get-togethers, workshops and conferences there. Some residency positions, assessed on a

case-by-case basis, are also available for YouTubers with ambitious projects for which they do not have the adequate funding or technical equipment.

YouTube Partner Program demands YouTubers to strictly follow the platform's IPR policy, originating from wider-scale IPR Laws, otherwise creators might lose some privileges, up to the status of Partner itself. Too many infringements could also lead to the suppression of the channel as a whole. (YouTube, 2015.)

The last major adjustment of automated software Content ID (see below), in December 2013, once again triggered the community as the sensitivity of the algorithm designed to spot the use of copyrighted material was deemed too high, particularly in the case of Music, Movies and Video Games-themed channels, more prone than the others to present background excerpts of copyrighted works due to the very nature of their content (Campbell, 2013).

Nevertheless, the company kept on growing at a fast and steady pace, hitting the milestone of 1 billion unique users visit every month on March 11, 2013 (Reuters, 2013). It is still nowadays one of the leaders of online video streaming, behind Netflix (Lloyd, 2013).

2.2 Overview of Intellectual Property Rights Laws and Treaties

The World Intellectual Property Organization (WIPO) Handbook of IPR places the cornerstone of IPR protection as far back as March 20, 1883, when the Paris Convention for the Protection of Industrial Property was signed (2004, 241). The first international convention of its kind, its origin departs from the need of artists, inventors and alike to protect their creations from plagiarism and misuse on an international level. Indeed, with the world appearing smaller as travels and exchanges of industrial goods became more common,

differences of liable treatment regarding rights over a work between one nation and another slowly became an issue which needed to be addressed diligently. (WIPO, 2004, 241-242)

Hence, the main purpose of the Paris Convention was to provide a set of common rules to be applied to industrial property rights. Originally signed by the 11 participative members of the Convention (Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, El Salvador, Serbia, Spain and Switzerland), it is nowadays in force in 176 countries around the world.

Paris Convention introduced various key concepts later included and enhanced in ulterior treaties on IPR concerning Literary and Artistic Works.

Following its foundations, the Berne Convention for the Protection of Literary and Artistic Works, signed in 1886, is defined by the WIPO Handbook as “*the oldest international treaty in the field of copyrights*” (2004, 262). As such, and unlike Paris Convention, it focused on the case of creators from an artistic point of view, and expanded the set of rules previously settled. The principle of automatic protection, which gives legal protection to a work without the need for an extensive registration procedure, was introduced. Artists were now granted a whole new set of rights, referred to as *economic rights*, protecting their work and its application: the rights to translate a work, to adapt or arrange it, to perform or recite it in public, to communicate its existence to the public, to broadcast it, to reproduce it and to use it as the basis for an audiovisual work of it are now solely under the scope of decision of the right-owner(s). Additionally, the concept of *moral rights* entered into force, ensuring the rightful author of a work to claim authorship over it as well as having his name automatically mentioned in case the work is exploited somehow, and giving the right-owner(s) the possibility to complain if any use of its work is judged harmful to the author’s integrity, honor or reputation. Duration of protection was standardized up to 50 years after the death of the author, 25 in the case of applied arts and photography. Limitations and exceptions concerning the exploitation of the work without the express

authorization of its author, or any monetary compensation to be given, also made their appearance, under the term “free use”. This allowed the exploitation of the work within a certain scope – mainly for educational and review purposes, as well as perishable broadcast. (WIPO, 2004, 262-268)

The concept of “fair use”, present in the Law of the United States of America and especially relevant to the present research topic since YouTube, being part of Google, operates within this legal system, found its sources in this notion of ‘free use’ (see below).

Among other treaties following the Berne Convention, a few are noticeable as they aimed to expand the scope and types of copyrights, as well as enforce related rights in order to conceive a system as fair as could be for various kind of works, some of which also directly address issues related to YouTube.

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, more commonly referred to as the Rome Convention, was signed in 1961, and introduced the need for separate recognition and rights for performers, producers and broadcasters of a phonographic work. In that case, a phonographic work is defined as “*an aural fixation of sounds of a performance or of other sounds*”. These rights also took the name of *related rights*, as they derive from copyrights but are not as such necessarily held by the author of a work. Although a minimum of 20 years of protection was agreed, national laws usually extend it up to 50 years, at least for performers and producers, two categories both directly concerned by the set of economic and moral rights listed under the Berne Convention. (WIPO, 2004, 314-320)

Such consideration concerning the rights allocated to performers and producers as separate entities was later enhanced, in 1996, when the WIPO Performances and Phonograms Treaty (WPPT) was signed. The purpose of this document was to define more clearly said rights, as well as adapt them to the newly arising digital technology era. Performers were granted economic

rights over their performances fixed on phonogram (thus excluding audiovisual exploitation of the record), whereas producers were granted the same economic rights over the phonograms they produced, including audiovisual documents. These common allocated rights are the right of reproduction, the right of distribution, the right of rental, and the right of making the work available to the public – would it be physically or digitally. In addition, performers were granted moral rights over their performance as defined by the Berne Convention. Protection has been extended to at least 50 years. Limitations and exceptions were once again included, following Berne Convention rules. (WIPO, 2004, 325-331)

All these treaties have led to the signing, in 1994, of the Agreement on Trade-Related Aspect of Intellectual Property Rights, a cooperation between WIPO and the World Trade Organization (WTO), entered into force on January 1st, 1996.

The most up-to-date agreement as of the regular revision of the provisions concerning copyrights and copyright related rights, TRIPS agreement is heavily based on the Berne Convention again, but also on various treaties amongst which the Paris Convention and WPPT. It aimed to legally level and monitor the trading aspects of copyrights and related rights regarding every kind of human produced work between WTO member states. It has been signed by 158 countries so far, all members of WTO. By making the rules common although allowing national exceptions as long as it does not enter in conflict with any provision of the agreement, WIPO and WTO guarantee a fair and equal treatment of every right-owner of a work emitting (or, if applicable, registered) from any member states.

It also and more importantly introduced the installation of a special court settled in order to solve disputes, along with providing right-owners with prime information concerning the steps to follow if a copyright infringement is noticed. It is to be noted that the right-owner is the sole responsible to the notification of copyright infringement and the follow-up of the situation. Indeed, neither WIPO nor WTO is tracking the exact exploitation of registered works, placing the right-owner as the sole entity able to send a case of

infringement to court. Contestation of infringement is also possible, if the person exploiting the work considers that it does not fall into the case of copyright infringement, rather of fair use, or if it is, more rarely, a mere wronged delation. (WIPO, 2004, 345-363)

These agreements and treaties altogether brought life to YouTube's IPR policy, its core functions and mechanisms. Due to the extensive amount of study they require in order for one to feel comfortable when confronted by it, it is of prime importance to at least understand its core concepts as well as the rights, duties and limitations given to creators over their work.

On a side-note, Neighboring Rights, another name for Related Rights, concern as stated above Performers' Rights, more particularly rights over a live performance or broadcast of a work. Although in force in European Union and many other countries, all signatory members of the previously discussed treaties and agreements, these related rights are however *not* recognized as such in the United States of America, where YouTube is based, causing much trouble on the platform on both international and local levels, particularly in the case of phonographic works (Howard, 2012).

2.3 YouTube IPR Policy

YouTube IPR Policy follows the same laws and principles detailed above. YouTube's official support center puts emphasis on the fact that prospecting Partners (YouTubers) are not only expected to follow the rules, but also highly encouraged to extensively read about them.

In order to facilitate this, various support pages are available via YouTube official website on the matters of copyrights laws as overviewed above, along with extensive information concerning Content ID (a copyrighted-material

identifying software), the principle of Fair Use, and the possibility for creators to enter Networks.

The basis of YouTuber 101 is undeniably the understanding of the mechanisms, features and possible outcomes of YouTube's copyright tracker: Content ID (seldom but still sometimes spelled as 'ContentID').

Content ID continuously scans through a giant database of copyrighted material in order to determine whether or not a video matches such material. To be eligible to enter the database, a user (or, if applicable, a company) must provide proofs that one owns and controls the exclusive rights of the copyrighted material. (YouTube, 2015)

In practice, this criteria means that content such as gameplays, recording of performances, mash-ups, medleys, remixes, compilations, unlicensed music and/or videos, and so on, are not eligible as the exclusive rights cannot be proven to belong to the sole applicant. As such, Content ID is more likely to be used by major and indie companies, composers, and original video makers (webseries, comedy – granted they also own the exclusive license of a possible soundtrack).

Would they not meet the requirements to obtain the right to use Content ID, creators still benefit from various copyright management options at hand. Would their videos or parts of their videos be stolen and/or posted elsewhere on the platform, or remixed without their consent, it is still possible to fill in a copyright infringement claim, which would carry the same direct effects than if their claim was automated by Content ID. (YouTube, 2015.)

The mechanisms of Content ID are often considered complex by mere users and new YouTubers. It is, however, relatively easy to understand once the treaties and agreements on IPR are known, as the basic process of copyrights trading rules and dispute resolution are the core principles of its function, all monitored by YouTube to ensure an optimum service for its customers.

To describe the system simply, Content ID is a tool helping right-owners to spot copyright infringement, as the software will scan through every uploaded videos in order to determine whether or not any substantial amount (in general, more than 5 seconds) of copyrighted material has been used. If that is the case, YouTube will automatically send a notification to the creator of the video, explaining which part(s) of the video have been flagged (in loose terms: determined as an unauthorized use of copyrighted material), and why. At the same time, the right owner(s) of said copyrighted material will be notified of the existence of the video, and can decide whether or not the filing of a copyright claim is necessary. If not, they will simply release the flag put on the video, and nothing special will happen.

However, if the right-owner decides that a copyright claim is in order, two situations are possible. If the claim is confirmed as valid by the YouTuber, the right-owner can chose to mute, block, monetize the video, and/or track its viewership, which are the basic extra-features available to authorized Content ID users over their works. On the other hand, if the claim is considered illegitimate or abusive by the YouTuber, she or he has the possibility to dispute the claim. Negotiations, monitored by YouTube, will thus happen between the right-owner, the creator (in case she or he is a member of any network, the network managers are most likely to take the creators' place in the debate), and a YouTube representative in order to determine whether or not the copyright claim was an honest one, or if it can fall into the scope of *fair use* (see below).

In most cases involving experienced YouTubers, less prone to 'beginner mistakes' such as believing that adding a disclaimer in the video, or allegedly using copyrighted material in hope that it will not be spotted, the issues arise from the automated side of Content ID.

Indeed, spotting content in an automated manner does not allow this tool to determine with precision the actual use of the copyrighted material. Hence the determining principle of fair use, widely used by popular YouTubers for movie/internet video reviews, game walkthroughs, music reviews and such.

Aside from that fact, techniques developed by YouTubers to avoid being spotted by Content ID, such as constantly talking over or remixing copyrighted material, sometimes disturb both the system and the way to solve disputes with equity, as it stands on the edge of fair use, especially in media review, and disguised copyright infringement.

Failing to acknowledge copyright infringement along with too frequent infractions can lead to punishment for the creators. Taking the name of ‘*strikes*’, these punitive measures affect only some benefits given to the YouTuber, unless three of them are received within a six month time span. In such case, the repetitively punished YouTube account will simply be terminated, which includes the loss of all material and related rights the user had uploaded online. (YouTube, 2015.)

In December 2013, YouTube revised the Content ID system by making it more sensitive, and expanded it to a greater amount of channels like never before, including those managed by Multi-Channels Networks. The outcry following this decision and dramatic issues on YouTubers’ part led to YouTube to publicly react, only a few days after the launch of the new system, in hope to quiet down the tensions which quickly rose between the platform and its users. Providing more information about copyrights, and the possibility to counter a claim, this letter has been coldly welcomed by the community, particularly among gamers. (Totilo a., 2013)

Content ID, as it will later be discussed, is by far the most criticized and discussed topic concerning YouTubers’ freedom to create and share within an acceptable scope of liability. This mostly relates to the primary flaw in the system that is the inability to identify and recognize fair use.

In order to determine whether or not a video containing copyrighted material is doing so within the scope of fair use, a very simple four-aspect verification can be done, based on Berne Convention’s notion of ‘free use’.

These aspects, as stated on YouTube's official website, are '*the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work (is it factual, or purely fictional?); the amount and substantiality of the portion used in relation to the copyrighted work as a whole (is the excerpt fairly short, or a complete movie?); the effect and the use upon the potential market for, or value of, the copyrighted work (relates to moral rights)*'.

If a video using copyrighted material meets the criteria to have it classified as a fair use of the work, it will quickly be released of the copyright claim. However, due to the interpretative nature of these aspects, some dispute over copyrights might take longer than other and require a mediator on YouTube's part.

Sometimes, this mediator can also be the 'representative' of the creator(s) involved in the dispute. *Networks*, also named Multi-Channel Networks due to the fact that a single network usually manages several channels at the same time, are defined by YouTube as '*entities that (...) offer assistance in areas such as product, programming, funding, cross-promotion, partner management, digital rights management, monetization/sales, and/or audience development*' (2015).

Although networks are not part nor endorsed by YouTube, or more generally Google, their number and recognition have increased over the years, especially since the latest changes applied on Content ID in late 2013.

The emergence of a need for YouTubers of a more accurate and professional handling of the matter of IPR in general, and more particularly of digital rights, made networks more valuable than ever. They are now seen as a trustful intermediary between some YouTubers and YouTube. Networks also tend to be taken more seriously by publishing, game, audiovisual and music companies since a more professional understanding and management of the legal issues at stake are usually demonstrated by the networks managers.

YouTubers who wish to join a network must apply to it directly, generally after the YouTube partnership has been approved. Two separate applications can also be filled at the same time. Networks usually take a certain amount of the income made by each channel they manage as a fee for their provided services. Much like YouTube partnership contracts, those between networks and YouTubers are often kept in a certain secrecy. There is no minimum nor maximum number of channels required for a network to be considered as such, as long as it follows the rules imposed by YouTube's guideline for networks recognition. (YouTube, 2015.)

In the past, minor complaints started to arise together with the popularity of networks, namely the fact that they tended to abuse of their position to have individuals YouTubers sign contracts which were not profitable for them as creators, taking advantage of their reputation as legal experts, and the amateurism of certain otherwise talented creators (Wong, 2012). This is still the case nowadays, but with more accessible information at hand, YouTubers tend to be more careful when joining a network. However, it appears quite unrealistic that the advice given by YouTube concerning the signing of a contract ("*talk to a lawyer beforehand*") could be followed by the majority of the community, students and/or young adults for the most part.

Overall, networks are a solution chosen by countless YouTubers nowadays, and have lately gained a less suspicious look upon their actual activities and revenues after the several waves of bad feedback, and over-flow of content claims, YouTubers sent and received, respectively. The way networks proved their importance in times of crisis contributed to their popularity, still high nowadays despite the extensive amount of explanatory pages YouTube support website has built around copyrights basics, Content ID, dispute resolution and general YouTuber 101.

2.4 Criticism

While users tend to criticize YouTube's system as a whole, sometimes going as far as denying any use for *copyrights* altogether, journalists and internet-based writers are more likely to concentrate their criticism on Content ID, and, in smaller measure, on major companies' ways to handle digital disputes.

The primary issue of Content ID, as explained above, is the lack of human perspective inherent to the automated, robotic system in place. Gaming channels were the first to be hit hard when the new algorithm of the system was put in place in December 2013, soon followed by all media-related content, up to the point that neither YouTube nor YouTubers, nor even companies whose copyrighted material had been detected, could keep up with the constant pace imposed by an over-flow of complaints, most of which were deemed illegitimate and acknowledged as such by some of the companies right away. (Totilo b., 2013)

The policy of a common treatment of users was criticized since it meant putting in the same bag YouTubers posting content they had worked on, on their own, and users illegally uploading full-length movies, albums or any other copyrighted material on the platform. (Cram, 2013)

However, another and more important issue deriving directly from this new installment of the system lies in the fact that for years, and particularly in 2013, major entertainment companies were often looked at with suspicion after numerous rumors and alleged acts that could be qualified as plain censorship. The conflicts arose as some YouTubers started to find themselves sued by companies whose games had not been praised as much as they would have liked to.

With Content ID, the same issue had a dramatic follow-up within the community, as it quickly came back under the infamous spotlight. Campbell, on December 14, 2013, only a few days after the enforcement of the new system, stated that '*an automated, opaque system like ContentID allows*

companies to pick and choose what they like and what they don't like'. In theory, it simply means that only good promotion would see the claim withdrawn, while criticism could be monitored so that bad reviews would not be given on any discussed media. The freedom of speech and of creation of YouTubers hence seemed somewhat compromised, leading to a major wave of negative feedback sent by the whole community, YouTubers and mere users alike, a criticism randomly directed toward Content ID, the entertainment companies, and/or IPR in general.

Overall, YouTube mechanics do present basic rules and subtleties emerging from those introduced along the various treaties and agreements related to IPR, but also seem to function on an unbalanced judgment when external companies are involved. Content ID, although often criticized, is still in place on the platform and is regularly the subject of waves of negative feedback from YouTubers. Driven by a community where novices and experts on the matters of IPR merge, YouTubers and companies are often either heavily influenced or deaf to the community calls, which makes it especially difficult to quietly discuss the issues encountered on the platform over time.

3 Method

3.1 Overview of the method and its reliability

The purpose of this research is to access and understand the feelings, sense of artistic freedom and prospected future of both present YouTubers and eventual newcomers, in relation to the IPR policy in place. Previous studies on the topic focused on the economic and sociological aspects of the job, which makes this research the first of its kind as it was designed to approach as closely as possible the state of mind of creators confronted by a legal, ever-changing policy affecting their work, creativity and self-awareness as artists and members of an online community. Hence, a qualitative methodology was selected, allowing the informants, and the community itself, to discuss and reflect on the topic within an expandable frame of focus, which would not be possible had a quantitative methodology been selected instead.

To encompass the chosen angle of such an emerging yet already vast and complex topic, the case study method was selected. This method allows the researcher to access various prime, real-life sources of in-depth information relevant to both the observed and underlying phenomena (Bell, 1993, 8-9). The main strength of case study, for this research, lies in the fact that multiple methods and cases can be used at once in order to cover the research questions from different angles and points of view merging and sometimes entering into conflict within the same research frame, thus giving a multi-dimensional approach to the topic (Yin, 1984, 23).

The scarcity of available theoretical literature and academic studies on the research topic emerges from its core nature. YouTube as a prospected company to work for from one's room was still a rarely considered option for young creators before 2010's. Nowadays, it is still wrapped in secrecy on various aspects. The richest and more up-front sources of information about the topic in practice are to be found on the video platform itself, where

YouTubers' freedom of speech is respected and widely used to provide the audience with practical and up-to-date information about the situation of content creators.

An extensive observation study based on YouTubers' and YouTube users' artistic feedback was thus conducted, using mostly audiovisual documents but also written statements about their experiences on the platform in regard of IPR and creativity in order to give solid prime and inadvertent sources to base the further research on (Bell, 1993, 67-68).

A focus group was also gathered and given a standardized questionnaire in order to think about YouTube and its legal dimension. This questionnaire allowed a quick and effective classification of data, and helped to refine the background studies by giving space and time for respondents to think about their answers more carefully and privately than when driven by the instant or influenced by the community (Patton, 2002, 346). It also revolved around the same four salient themes that the video analysis aimed to fathom (see Observation Study, below).

Semi-structured interviews were then deemed the most reliable way to discuss the findings of both the observation study and the questionnaire, along with the personal experiences and feelings of the informants. In this technology-driven topic, it is particularly difficult to observe everything, more specifically what happens on the other side of the creators' screens. Feelings, opinions, struggles and insecurities are tough to access using mere observation as a tool (Patton, 2002, 340-341). Hence chosen to gather more relevant and broad information relative to the research questions, this method allowed the informants to deepen their thoughts over the boundaries of a given standard questionnaire sent to them prior to the interview date. By using clarification probes and allowing free talk about the topic in their native language, the interviewees were able to produce more clarity, spontaneity and flexibility in their answers (Patton, 2002, 374-392). It also gave the researcher the opportunity to analyze the various experiences each YouTuber encountered on the platform over time and with each change of rules, by dedicating one part of

the interview to the critical incidents faced and explained in their own words by the interviewees, aiming to understand how their feelings as creators were affected at the time, and how their current situation came to be (Flanagan, 1954, 327-358). Keeping recordings of the interviews offered the researcher the possibility to analyze the data again, weighting the informants' words and tone more carefully after some time (Patton, 2002, 380).

3.2 Observation Study

In order to understand the changes YouTube's policy has gone through within the past year and a half and, most importantly, the impact it had on the creators' and their audience's feelings, video archives directly related to the research topic have been studied and compared so that common patterns, along with differences in opinion, could be identified. For more meaningful and up-to-date results, only videos created by YouTubers with over 30,000 subscribers, and posted from 2012 on to study the situation both before and after the policy, were taken into account in this research, offering a collection of small case studies supporting the thesis objectives.

Hundreds of hours of videos posted from France, the United Kingdom, Italy, Canada and the United States were watched and later sorted out in order to pick the most representative ones, ensuring that a broad enough range of opinions and a concrete grasp on common ideas would be displayed by the chosen sample. The exhaustive list and links to these selected videos can be found in Appendix 1.

YouTubers from various countries of Europe and North-America were selected so that the global dimension of the phenomenon could be observed.

Observed data was collected and classified using qualitative content analysis (QCA). As summarized by Hsieh and Shannon (2005, 1278), this method

consists of a systematic classification of data aiming to interpret the content through codes, and by identifying themes or patterns in the results.

Assessment of data was conducted within three salient themes:

- A. Is the policy in place fair in the creators' opinion? In their audience's?
- B. In which terms do YouTubers talk about their freedom of creation when an incident is discussed publicly?
- C. Why do YouTubers choose to stay, or depart from the platform?

Each chosen video was examined so that declarations relevant to any of these themes were transcribed, translated in English if needed, and automatically classified to ensure an efficient way to analyze and compare the results. In general, the same issues, concerns and scope of acceptance of the platform policy were observed. However, some regional disparities of opinions were also found, highlighting the fact that societal differences between one country and another can sometimes allow variations of nuances in the creators' perception of fairness of treatment and freedom of creativity.

3.3 Questionnaire

A standardized questionnaire was sent online to a focus group. Members had been pre-selected on the basis of the serious wish they expressed to join the platform as creators in the near future. The researcher also made sure that the informants did not know each other beforehand in order to ensure individuality in the given answers.

The questions revolved around theme A (see above), within the frames of both the type of channels the respondents wish to build and a much wider scope – namely, the platform as a whole. Four respondents were based in France, three in Finland, and one in the UK. The last question of the survey was open-

ended and optional, asking the respondents to explain, in their native language and their own words, what their thoughts about YouTube's IPR policy and the treatment of YouTubers are. Only one respondent chose to skip this question.

The same QCA procedure was used when collecting the answers to the standardized questionnaire.

Interestingly enough, the last, open-ended question, showed very similar results in the given answers, even though the respondents were contacted on an individual basis, and that the other answers focusing on their prospected channel status and handling of IPR were diverse.

3.4 Semi-structured interviews

Eight YouTubers were contacted between mid-February and mid-March. Five of them (from four different channels) expressed interest in taking part in the research. Ultimately, only three returned the interview pre-questionnaire on time, and agreed on an online meeting.

Gamers Lauriane Kirsch and Damien Vidot, known on YouTube as *Lyrae* and *Milu*, are the creators behind the popular *Let's Play*-type channel *OcariKnights*. Students in the civil, they started their part-time career as YouTubers in 2012, currently have more than 61,000 subscribers, and post videos almost daily.

Le SadPanda started his journey on YouTube in 2012, and currently has over 63,000 subscribers. He specialized in parody of tutorial videos, regularly hosts a French adaptation of YouTube star program "*Your Grammar Sucks*" by jacksfilm (Jack Douglass), and also uploads gaming videos of various kinds

from time to time. Attached to his confidentiality, his wish not to have his name published in this thesis has been respected.

The informants were asked to briefly discuss the results emerging from both the observation study and the questionnaire, as well as provide their own thoughts about these. However, the main content on the interviews in itself put emphasis on three other segments of thoughts, in direct relation to the research questions, and close to the themes the background study focused on (see below).

When first contacted via e-mail, the topic of the research was described to the interviewees, along with the ideal procedure of the interview, namely the optional filling of a pre-questionnaire to be later discussed in-depth using Skype or any other instant communication service.

Interested YouTubers were then sent the list of questions, and an inquiry about their availability to discuss these was attached to the e-mail as well.

YouTubers Lauriane Kirsch and Damien Vidot answered quickly, and a discussion was scheduled on Skype a few days after they returned the questionnaire, completed in both French and English. The live interview, in French, lasted a bit over an hour and a half, and was recorded using a portable recorder.

Despite managing the same channel and being interviewed at the same time, the two creators provided different answers to the clarification probes sent to them, along with various memories of misunderstandings and incidents which affected them differently. It was interesting for the researcher to observe them answer to each other after a probe was sent, deepening their thoughts and providing details to complete one another's opinions with both spontaneity and constructiveness.

Le SadPanda was also quick to return the question sheet, which he completed in detail and entirely in English. However, due to his wish to remain as

anonymous as possible past his online alias, he only agreed to an instant chat discussion on Facebook, in French this time. Despite the situation, the informant nevertheless answered probes quickly and deepened his previously given answers with honesty, cuss words included.

QCA was once again used to classify and analyze the provided answers. Apart from the discussion revolving around the results of the theoretical context, data was classified within three more focused salient themes:

- A. How were past incidents or claims, and misunderstandings, handled from YouTubers' point of view?
- B. How do networks affect the work and creativity of YouTubers?
- C. How can one avoid copyright infringement on the platform when pop and geek cultures references are involved?

Although the informants were all French, started their carriers almost at the same time, and had roughly the same amount of subscribers, they presented very different opinions and visions of how YouTube's IPR policy affect their work, and how it should be, for them as well as the newcomers.

Their channels were also not of the same kind, which gave insights about a wider range of experiences, opinions and issues faced by YouTubers.

All in all, insightful information and opinions about the changes of YouTube's IPR policy were expressed, and deep analysis of the current artistic issues faced by creators was provided. Different salient themes, aimed directly at YouTubers, offered the possibility to analyze the research topic from another angle, ensuring a more reliable and complete approach of the subject.

3.5 Language of study

Due to the global presence of YouTube, videos posted in several languages were observed in order to gather information and formulate results. The open-end question was answered in French three times on the standardized questionnaire. The semi-structured interviews were also occasionally conducted in French.

For the need of this research, all the direct statement excerpts of the non-English speaking sources directly quoted in this thesis have been translated in English carefully, in hope to match their original and intended meanings as closely as possible. Most of the time, they have also been summarized instead of directly quoted.

The original excerpts and their corresponding translations can be found in integrality in Appendix 2.

4 Results

4.1 Observation Study

December 2013 introduced in early what users on the platform around the globe often refer to as the *'black year'* of YouTube. The thought is widely shared, especially by non-YouTubers and YouTubers' audience, and influenced by the public statements of creators on the platform following this major turn of events. In front of the suppression of thousands of videos due to automated flags Content ID generated within the past year and a half, both creators and their audience reacted sometimes with restless passion, sometimes with a more composed measure, always worried for one aspect or the other of their current and prospected situations.

Hence, a multitude of angry and, on the contrary, collected answers, were observed on the platform. Two channels were selected as the most representative of their respective kind, one per side, to illustrate this observation.

Texas-based YouTube superstar Angry Joe, host of video game review channel AngryJoeShow, posted three videos between December 13, 2013 and January 18, 2014, after up to 62 of his Video Games review videos were automatically flagged by the new Content ID algorithm.

The first video is very passionate, does not tune down the cussing-filled rant, and presents YouTube as an ungrateful company which is now stealing from the very people who, in loose words, created its success, namely what Angry Joe defines as *"legit content creators"*, by helping publishers to abuse the system of Content ID. The sensitivity of the algorithm is ridiculed, peaking with Angry Joe stating that *"[his] Tomb Raider Interview with the Tomb Raider people has been claimed by Tomb Raider."* His main rant, representative of the general feeling observed, addresses the issue of fair use on the platform – about which the YouTuber directly asks YouTube and

companies “*have you ever heard of Fair Use section 107 of US Law?*” As often observed, a different interpretation of which material is considered fair use and/or promoting material seems to be the center of the rant – “*These people, whether they talk shit about you, or whether they promote you, or whether they create remixes of your content, they promote you. (...) That’s how the shit works. You fail to understand how media works.*”

The implication of YouTube in this failure is highly emphasized, as can be seen on thousands of comments on popular videos, but Angry Joe also points out the old-fashioned way of major companies to handle the case of copyright in the digital era. A worry raised by Angry Joe concerning new YouTubers has very often been expressed by wannabes, newcomers, as well as successful YouTubers – “*How the hell are smaller channels supposed to get started if you are chocking them out?*”

The passionate and almost violent way things are explained by the YouTuber is in general supported by his audience. The second video of this little series tries to define what the immediate needs of YouTube, YouTubers and companies in matter of copyrights are, and joins the general ideas found on the platform and its related forums, namely the need of a better separation between legit users’ work and obvious copyright infringement.

The third video, subtitled “*Good Guys / Bad Guys*”, raises new concerns and directions of thoughts which later spread within the community. In this update of his situation, Angry Joe states that the amount of claims he is still fighting against is now down to 24. The YouTuber then separates companies in two camps, the ‘*good*’ and the ‘*bad*’, based on whether or not they have released their claims over his reviews. This way to proceed is not isolated. Sony Music Entertainment, particularly called out by Angry Joe as well as music and video review channels in general, Nintendo and affiliated companies, especially those based in Japan (said to be “*late*” on the matter of fair use), are the ones most called out around the platform for their harsh and almost inflexible way to treat copyrights. Angry Joe raises the problem of

automatic strikes given when a company fills a complaint before the dispute even starts between the parties, defining it as “*unfair*”.

A very important statement is made by the YouTuber when he points out that the game he elected as “*Best Game of 2013*”, and for which he used a few seconds clip at the end of the video, is being flagged and not released under a copyright infringement notice, a situation that came out as a new way for the community, so far more prone to believe that only bad reviews could lead to a strike, to think about copyrights and the implication of each company’s way to handle this matter in the decision of keeping or releasing the claim.

As a conclusion of this triptych, Angry Joe lists the companies he claims not to buy from ever again. Interestingly enough, due to his clear popularity, his followers tend to stick around with the idea of boycotting said companies, as it is often the case with popular YouTubers’ fandoms.

On the other side of the ocean, French YouTube superstar Antoine Daniel, hosting the popular video review show *What The Cut?!* (based on the concept of RayWilliamJohnson’s *Equal Three*), uploaded an explanatory video on December 30, 2013, in which he presents a more composed manner to discuss the events storming around YouTube.

Focusing his public statement on the way Content ID has been updated and what it means in practice for YouTubers, he axes his argumentation on the fact that the lack of double standards between thieves and mere video makers, as mentioned above, is what causes true harm to user-generated content. As many YouTubers before and after him complained, Antoine Daniel deplores the fact that this new adjustment of Content ID raised again the question of the legitimacy of the remuneration of creators’ content, an argument used by major companies to justify their copyright claims when these are disputed publicly. On a wider scale, the YouTuber considers that “*copyrights are not coherent anymore based on the media on which we evolve nowadays, and supplementary nuances must be found*”. His audience is divided on the subject, just like the majority of the European users. Although a general understanding of the workload YouTubers achieve is perceived, a persistent

current of thoughts sides with companies and does not consider the use of copyrighted material legitimate in the case where the YouTuber's videos are monetized, no matter the type of channels the creators host. This way of thinking is particularly common in Western-Europe where the status of artists in general is criticized, and the belief that if one enjoys his job, it does not make it legitimate as such, but rather a lucrative hobby.

Antoine Daniel, just like fellow popular YouTubers Angry Joe, Mathieu Sommet, Lilly Singh, Sébastien Rassiati, Frédéric Molas, and many others (see Appendix 1), are angered by the management of copyright claims on the platform, and consider themselves '*robbed*' of their work when the revenue generated by their videos goes or will potentially go directly to the right-owner of any copyrighted excerpt of work used in their videos during seconds only, or, worse, within the scope of what YouTubers would define as fair use.

The matter is complex and most non-YouTubers radicalize their opinions either in favor or against the system, lifted by the mass effect that defines the online community. Newcomers and prospective YouTubers are caught between the current events of a policy that is still changing on a regular basis in order to satisfy two major entities who do not understand themselves well (namely the YouTubers and the media companies). The degree of influence of one YouTuber or another has a heavy impact on the reasonability and legitimacy of expressed opinions.

The immediacy of reactions often led to the making of very angered, straightforward and desperate videos, while explanations provided by various YouTuber sometimes up to several months after the system was enforced produced quieter, more rational videos whose voice is less biased by feelings. In the latter case both sides of the debate are explored, although a side is ultimately and automatically taken in order to access closure.

Concerning the attractiveness of the platform, most non-YouTubers, but also new and popular YouTubers, place the possibility to access a substantial income generated by the traffic on user-generated videos as the main reason to remain or become video creators. In the global society of recognition as the factor of human value on a large scale, especially amid the youth, most prospective YouTubers mention both money and fame as their main reasons to enter the circuit, regardless of IPR. The question of copyrights and how well they could be handled by the newbies is often met with critical answers, with some users affirming assurance on the matter whereas other fear the possibility to ever receive a strike.

Although money is thus the first or eventually close second reason for new creators to come and/or stay on the platform, followed by the possibility to reach a wide audience, Antoine Daniel, in December 2013, February 2014 and June 2014, demonstrated the importance of two other key aspects of YouTube: *ergonomics* and *server space*.

Indeed, since the platform was bought by Google, the available space, bandwidth and possibility of simultaneous traffic on a same video is of a whole inaccessible level for creators to ever be able to pay for themselves, as they sometimes, like Antoine, have to anticipate up to a million views on a single video within the 24 hours after said content is released on the platform.

Another factor that tends to retain people is *loyalty*. As recognized by most, the possibility YouTube gave to unknown creators and artists to produce and promote their work on the platform in relation to their true passions and skills, and/or to express their own opinion in front of an ever-growing audience, has given YouTubers a sense of belonging and gratitude toward the platform. Frédéric Molas and Sébastien Rassiati, co-creators of the hit retro video game review channel *Le Joueur du Grenier*, constantly remind their audience and interviewers of the fact that they were both unemployed before their success story on the platform started in 2011. Mathieu Sommet, the host of the video review channel *Salut Les Geeks*, on his part, likes to mention the fact that without YouTube, he'd still be "*flipping burgers at McDonald's*".

Altogether, YouTubers are still willing to stay on YouTube as the advantages and recognition it offered to relatively unknown creators, and the extra features it provides to veterans, are valuable enough. Nevertheless, YouTubers and users alike claim to be waiting for “*a reliable alternative to YouTube*”, that is, a platform on which the concept of fair use would be more precisely determined and with ergonomics and server space comparable to those of YouTube, which objectively appears as unrealistic.

Some creators, usually not working full-time on the platform but still seeing it as a side-income generated by their passion, were not ready to wait until things evolve for the better, and decided to leave for other platforms such as Vimeo or Dailymotion. In rare cases, websites with ad-generated income had been set up, but the traffic possibility of such spaces almost always leads to a massive limitation of uploads and visitors.

4.2 Questionnaire

The results of the online questionnaire given to the focus group showed that the eight informants, asked to think of YouTube’s IPR policy, would most likely open a media review channel of some sort. Five people gave this answer, whereas the three others all expressed the wish to produce different types of content – namely music, make-up/beauty tips, and a vlog, respectively.

Consequently, only one respondent affirmed to be unlikely to use copyrighted material in his video, whereas four stated that they would be likely to, and three very likely to recourse to such content support. In general, all informants admitted being a bit nervous in front of IPR matters, excepting one who claimed to be confident in the handling of it.

The topic of networks divided the group a little. Five respondents knew about their existence and purposes, but only one respondent wished to enroll in a

network. One did not clearly understand their concept while the last two respondents simply did not know about networks at all.

These answers demonstrate the partial lack of publicity networks receive on a non-professional, non-creators audience, but also highlight the feeling of power creators can have over IPR now that information is more clearly accessible, following the crisis of late 2013. This can be, however, due to an idealized and/or formatted vision on the matter, as 50% of the respondents admitted having never even tried to search for information about IPR in general, while 37.50% admitted a certain struggle to understand the core principles of IPR Law, leaving only one respondent confident about his/her knowledge on the matter.

If the decision to monetize their content is said to be generally affected by IPR on a mere '*little*' level, respondents were once again greatly divided when the question of the effects of copyrights on their creativity was asked.

On a scale of 0 to 5, the group scored a 2.88 on the matter, with five people admitting a certain influence over their creations, including one stating that copyright laws would affect his/her creativity '*a lot*', whereas only two respondents felt confident it would not affect any of their decision, leaving one respondent in-between these answers.

Concerning the fairness of YouTube's copyright policy, the group was divided as well. If two respondents found the policy '*fair*', one found it '*unfair*' and another one '*definitely unfair*'. The four remaining respondents stood on a more neutral side, although two answers tended to balance more toward the '*fair*' side, and another toward the '*unfair*' side of the scale. None of the respondents found the policy '*definitely fair*'.

Last but not the least, and despite the various results previously observed with the set of multi-choice questions, the optional open-end question concerning personal views on IPR and YouTube's IPR Policy was answered in very similar terms among the seven respondents – one chose to leave this answer blank.

The importance of IPR in general was widely expressed and viewed as a positive fact. However, YouTube's IPR Policy received much harsher criticism from the respondents. The general feeling is that the inconsistency in the policy and its changes make it difficult to apprehend – *“It's pretty complicated, and YouTube changing stuff all the time is not helping”, “You know, it can be a bit confusing at times, they seem to be focusing on the wrong points”*, as two respondents stated.

The lack of double standards from Content ID is also referred to several times. A respondent raised the idea that only monetized content should suffer from copyright infringement, not every video.

The first respondent to complete this last question, interestingly, describes quite well the general feelings the group expressed thorough the whole questionnaire in two simple sentences: *“YouTube makes weird IPR management decisions: some videos get reported for nothing important, it's ridiculous. But I admit that right owners must benefit from income generated from YouTube channels.”* The last respondent, on his/her part, stated the less commonly expressed, but still underlying opinion that *“YouTube's IPR policy is pretty fair. We are free to express ourselves through this channel but it is normal to respect others' property.”*

4.3 Semi-Structured Interviews

The insight brought to the table by Lauriane Kirsch, Damien Vidot and Le SadPanda helped to gather a better understanding of where the situation is standing in the beginning of 2015.

Both Damien Vidot and Le SadPanda, when asked about their initial reasons to join the platform as YouTubers/Partners, stated that they started to create and share videos because of their passion for media culture and sub-cultures, as well as the influence of foreign YouTube-based shows they enjoyed

watching. Lauriane Kirsch, on her part, joked over the fact that she arrived where she is now. *“I don't know how I got there”*, she said, *“I wasn't interested before Milu [Damien] talked about it.”*

Hence, money was not a primary motivation to join the YouTubers/Partners community. Monetizing their videos, however, affects each of them to some extent. *“We are both students, Damien and I”*, Lauriane Kirsch pointed out. *“This is like a student job”*. Le SadPanda defines his earnings on the platform as *“petty money”*, but enjoys the fact that none of his viewer has to pay anything to access his creations, while he still earns some retribution for these.

At the beginning of their journeys, these three YouTubers perceived the understanding and managing of copyright mechanisms on the platform in different ways. While Lauriane Kirsch and Damien Vidot admitted to having had *“some fears”* about getting in trouble because of copyright notices, Le SadPanda saw it more as a challenge and a way to motivate oneself to create a 100% original work. *“It pushes you to create stuff while not using things that don't belong to you; I find it to be quite awesome, ‘cause you have to be crafty and be even more creative”*, he wrote.

When asked about the possible incidents they faced, Lauriane Kirsch and Damien Vidot recall quite a few of them. *“We had to remove our ending theme, which lasted about 20 seconds, since it was the subject of a claim,”* Damien Vidot said. Other claims *“led [them] to make some adjustments on [their] videos”*, namely altering or removing the incriminated parts. *“We have to talk all the time over the video, otherwise the bots can spot us real quick, and the claim could be approved”*, Lauriane Kirsch reminded, when asked about what especially triggers the algorithm.

Incidents related to copyright rarely happened to Le SadPanda. However, while he recalls receiving a few minor claims emerging from his Video Game / Let's Play type videos when he first started his channel, claims he declared bearing no grudge upon, his only major copyright claim did not leave him a good memory. *“I had one claim about making a parody of the Starsky and*

Hutch theme song once,” he told. “But it was made by Sony and fuck those greedy assholes.” He contoured the claim by applying his Do It Yourself philosophy. “I just deleted the video and made some a capella version of the instrumental track, and put my parody lyrics on top of it, then re-uploaded the video. After that, the claim was gone. It was my only “major” middle finger to a company.”

Interrogated on the matter of major companies and their implication in the crisis of copyrights on the video platform, Lauriane Kirsch and Damien Vidot deplore the fact that some media companies are more tolerant than others concerning the determination of fair use, and the likelihood to claim copyrighted material. About the latter case, these two YouTubers struggle to understand these companies’ point on marketing and Public Relations. *“We do not understand why certain publishers persist on claiming some videos (...) especially since we give them free promotion for their products,”* they wrote. Asked live for more details about this statement, Damien Vidot pointed out one of the latest ways for Nintendo to monitor the use of their publications, namely the fact that the Japanese company almost exclusively allows video makers they hire themselves to review said publications, of course meaning a biased review commissioned by the video game giant – an unofficial new policy the YouTuber finds *“unequal”*.

All informants found it logical that popular YouTubers are usually favored and more easily released in case copyright claims are filled. Not only do they acknowledge the fact that these creators bring most of YouTube traffic, but they also all recognize the status of YouTube, and more generally Google, as *“a company that needs to make profit or else they will just shut down,”* as Le SadPanda puts it.

The influence of these YouTubers over their audience concerning external media companies’ sales is also admitted by Lauriane Kirsch and Damien Vidot, who nevertheless *“do not find it fair because the video quality does not depend on the number of subscribers”* a channel has.

The duet of creators is also part of a network. The description of their experiences with it is overall very positive, but they do agree on the fact that networks cannot solve all problems encountered on the platform. “*Since we joined a network, we send them a mail with the URL of the video with a claim and it is the network that tries to resolve the issue, sometimes it works, in the other case it's up to us,*” they wrote. They also later pointed out the fact that unlike external companies, their network seems more equalitarian as it took care of the IPR-related issues the YouTubers encountered just as much when they first started their career as now that they are fairly popular.

The question of creativity and the effect IPR have over it is treated differently by the three YouTubers, but overall, they do not feel that affected by YouTube’s copyright policy when creating content. One of the reasons evoked by all lies in the fact that they try to stay as fair as possible to the policy in place. Another one is experience. In addition, Lauriane Kirsch and Damien Vidot consider that what works, *works*, and learnt with time to recognize companies that will be most likely to claim copyrighted material for mere seconds of use over the other, and how to counter it. Le SadPanda, on his part, considers that creativity can be on the contrary increased by the policy in place, as mentioned above.

Various ways to avoid copyright claims are provided by all the informants. Aside from the ones already mentioned, technical remixes such as lowering the key of the music played in the video background, using only mere seconds excerpts, and/or cropping the picture / frame, are sometimes enough to avoid copyright claims and stand on the side of fair use of the works. Le SadPanda considers that the best way to avoid copyright claims is to be “*crafty*” and, if possible, to use it in order to produce as much original content as possible, all while ensuring that the references to pop and/or geek cultures would remain identifiable.

In general, the informant found that tolerance is lacking in YouTube’s IPR policy, particularly in the case of small channels, who are denied all effective communication when a claim is filled against them. Differences of opinions

between creators, YouTube and media companies concerning what is defined as fair use and/or promotion is placed as the main issue encountered on the platform. Some major media companies are once again described as old-fashioned in their way to handle IPR in the digital age, and within a community influenced by pop and geek cultures.

However, nuances were willingly made by the informants, as they try to understand the reasons behind the various decisions made by YouTube within the past year and a half. *“I try to think of [YouTube] as a huge company that still has to deal with bigger companies,”* Le SadPanda rationalized. *“Yes, the rules seems to be dodgy at times and then can enforce them way too often. But then again they don't do it just for fun, they know their audiences and their importance but they have to please both sides, the creators, the public and the companies that make claims.”*

The situation related to Content ID *“became worse during January 2014, but improved around April 2014”* according to Lauriane Kirsch. To this day, all three informants are willing to stay on the platform as long as their enjoyment of creating videos will last.

5 Discussion

5.1 Summary of Results

Table 1. Observation study, questionnaire and semi-structured interviews results: key points.

<p>Is YouTube's IPR Policy fair?</p>	<p>Automated tracking tool Content ID unable to recognize Fair Use of works.</p> <p>Both monetized and non-monetized content flagged.</p> <p>Sensitivity of the algorithm set too high; low tolerance.</p> <p>Frequent changes in policy difficult to keep up with, and to adapt to.</p> <p>Acknowledgement of copyrights still deemed necessary.</p> <p>Some media companies reckoned as abusive or keeping a too old-fashioned, non-adapted way to handle disputes.</p> <p>Favored treatment of successful YouTubers.</p>
<p>YouTubers' freedom of creation and opinion</p>	<p>Reported cases of disguised censorship from media companies using Content ID as a way out of bad reviews.</p> <p>Freedom of creation lived differently, on case-by-case basis.</p> <p>YouTubers feeling robbed of their work regularly.</p> <p>Small YouTubers possibly choked out.</p>
<p>Handling and outcomes of copyright claims</p>	<p>Massive waves of claims, legitimate or not, generated by Content ID in Dec. '13 and still common place nowadays.</p> <p>Media companies divided between greedy and fair ones.</p> <p>Differences of opinions between YouTubers and company concerning the notions of fair use and promotion.</p> <p>Small YouTubers barely listened to when countering claims.</p>

<p>Networks in practice</p>	<p>Provide legal, technical and marketing support to channels.</p> <p>Taken more seriously and more listened to than independent creators when a claim is countered.</p> <p>Tend to treat YouTubers equally, regardless of success.</p>
<p>Avoiding copyright infringement when copyrighted material is used</p>	<p>Craftiness as main key.</p> <p>Strictly sticking to the policy in place.</p> <p>Strict fairness of use.</p> <p>Relatively small excerpts of works.</p> <p>Constant voice-over in case of video or game excerpt.</p> <p>Changing original media settings (size, colors, tuning key)</p>
<p>Why do YouTubers arrive and/or stay?</p>	<p>Passion.</p> <p>Money.</p> <p>Fame.</p> <p>Ergonomics and server spaces.</p> <p>Possibility to access a worldwide audience relatively fast.</p>

In order to clarify the results produced by the data collection methods used, a summary of these has been condensed in Table 1.

Generally speaking, the results obtained by each method, although homogenous, relied heavily on the context within which answers were found in their details and nuances. The real difficulty to establish a common answer to the research questions finds its sources within the time, space and

theoretical context inherent to each data collection method used. Observation study was thus conducted so that it assessed the various reactions of YouTube community regarding the platform's policy and features immediately after major changes were installed, whereas the focus group and the interviewees had over a year to overcome the first shock of the change and to adapt to it, which produced more nuances in their answers, as well as in their understanding of other involved parties' points of view.

With this kept in mind, according to the results at hand, how do YouTubers feel as creators in front of YouTube's IPR Policy? Findings in the results demonstrate that a wide variety of answers is possible, with each YouTuber observed, contacted and interviewed being affected differently by this policy. Although the main feelings tend to revolve around the lack of fairness of the policy in place, creativity as such does not appear at stake in YouTubers' opinion, rather challenged and/or enhanced by the limitations the system imposes.

Various respondents, including the interviewees and most of the focus group, also discussed the fact that the real issue concerning the created content may not in fact arise from YouTube itself, not even from the flaws observed in the algorithm of Content ID, but rather from media companies that can sometimes be prone to abuse the system in place in order to sort out reviews, keeping only the best. Yet, the case of Angry Joe demonstrates that even the "*Best Game of 2013*" can be flagged for copyright infringement by its right-owners, thus determining the idea that only bad reviews are flagged as misconceived at the beginning of the crisis. The case of Nintendo, however, has lately brought back suspicion over this disguised censorship, as pointed out by Damien Vidot.

Despite a general feeling of moral loyalty toward YouTube, as discovered during the observation study, YouTubers willingly and spontaneously admit that the system in place is not adapted to the needs of the community. Companies filling in the most copyright claims are looked at with a bad eye

since they do not appear ready to understand the online community on a human basis as opposed to the corporate classification said community, namely their audience, falls into.

The tools used by YouTube to ensure copyright protection and the determining of possible fair use of a work have to be perfected, according to the platform users. Most importantly, what appears to be a conflict of generations finding themselves unable to communicate with each other due to the differences in their prime language (infringement against fair use, popular media references used as a tool of communication from and aimed for a human community against the sole economical dimension of these references...) can be observed extensively.

YouTubers' individual personalities also deepen the difficulty to give a standardized answer. As it has been found, the situation within which YouTubers are observed and/or questioned affects their interpretation of their common situation. Yet, YouTubers are also human and, as such, do not present the same way to react to major turns of events.

Even so, a common pattern of reaction can be extracted from the results, and it appears to follow step-by-step the Kübler-Ross model (1969), more commonly known as the *five stages of grief*: denial (YouTube and media companies would not cause moral harm to the people promoting and feeding them), anger (derived from the immediate feeling of robbery), bargaining (countering claims), depression (feeling too small in front of the system and the companies' power anyway), and finally acceptance (this situation happened, and will happen again as long as the rules remain the same).

The observed reactions of Angry Joe and Antoine Daniel perfectly illustrate this example. While one reacts immediately with anger, the other one takes a step back to look at the situation once the first shock is passed. Angry Joe himself, a month after his first video rant, appears much calmer and ready to accept that he might never see his creations making their way back on his channel, not monetized at least. The three interviewees also demonstrated pondered, although spontaneous answers when asked about their past,

present and prospected situations on the platform, having had time to put incidents behind.

Concerning YouTube's frequent policy changes and subtleties, and their effect on new artists, the results demonstrated that this question remains a recurring worry formulated by the community as a whole. Just like what can be observed in the comments of popular videos and sometimes through the statements of YouTubers, the frequent changes of policy and variation in the details have been brought up by the focus group as a major downside for hopeful YouTubers, namely due to the fact that information regarding IPR on a strict legal frame is already one piece of a work. Nevertheless, all of the interviewees opted to temper the observed worry. They emphasized that experience and nurtured creative automatisms, as well as practical solutions such as the use of a network in order to avoid receiving copyright claims, and/or tricks helping to pass through the detection of the bot, were the keys to avoid strikes.

Last, most YouTubers are still willing to remain on the platform, and new creators eager to become part of it as well, for economical as well as moral reasons. The possibility to monetize creators' content, to access a wide audience, to be part of a more influent community on the platform, to benefit from the ergonomics and server space of the platform, as well as the loyalty felt by most YouTubers already present on the platform, are major factors influencing the willingness to come and/or stay.

Yet, the most important factor quoted by the interviewees and often observed on the platform is the notion of passion. As one of the most common reason for creators to join the network, it is, once confronted by the legal and relational aspects of the work, the most determining feature that will lead the creator to stay, or on the contrary leave would the passion run dry.

5.2 Limitations

The chosen scope, although brought down to a more accessible scale, remained wide and affected by numerous factors. Due to the absence of previous research of the same kind, the available literature to base the theoretical background of the thesis on was scarce and not directly related to the thesis, even though it met its aim to define a legal framework within which the research was carried and could be used as a solid base for further research related to the various aspects of user-provided content on YouTube.

Unlike the observed subjects and the focus group, the interviewees were all French, which can limit the interpretation of the results obtained from the interviews to a certain geographic and/or sociological scope. The primary language of investigation, during the interviews as well as during a part of the observation study, was French. Since this paper was produced in English, and although the original transcripts used are to be found in Appendix 2, the meaning and scope of the quotations might slightly differ, and/or some underlying meanings might have gotten lost in translation.

These limits could, however, be brought down by further research expanding the present document to a wider geographical and linguistic scale.

6 Conclusion

The video-platform YouTube, and more generally its parent company Google, has taken a bold step towards a standardized, legal system tracking the unauthorized use of copyrighted material. By introducing an entirely automated tool, Content ID, which by its core nature lacks the human discernment of what can be considered a factual infringement and what actually is a legitimate, fair use of a work, the platform brutally forced its creative independent partners, the YouTubers, and on a certain scale its community as a whole, to get involved in the matters of copyrights and fair use in the digital era.

Doing so, YouTube also raised the question of the obsolescence of the legal system within which it operates when it comes to digital rights, especially among a young community heavily influenced by pop and geek cultures as well as free access to various types of media. Nevertheless, the actual implication of YouTube in the wrongful claims filled by media companies against YouTube tends to be more and more diminished, whereas the media companies, from which the claims come, and alleged frauds, said to have brought the radicalization of Content ID system, are designated at the main issues faced nowadays.

Moreover, independent YouTubers are nowadays a determining influence on sales and Public Relations of the media companies whose products they review, since their audience can sometimes go up to tens of millions of viewers per video. An additional approach determined by the various results of this thesis also suggests that the broken communication between YouTubers and media companies is the weakest link of the system, since this breach often leads to a mere misunderstanding from and about both parties.

Further research based on this paper could thus focus on other sociological aspects of the role of YouTubers and their influence on the marketing and

Public Relations of media companies. Another important topic to be explored, perhaps more urgently, is to determine whether or not communication between YouTube community and media companies could be restored. Such study could greatly impact the trading aspects of copyrights in a digital environment, a topic that has not gained enough attention within the scope of the video platform, despite the increasing popularity of YouTubers over more traditional 'stars', in North-America and European Union, as stated on YouTube official statistics page and widely observed all over the platform.

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APPENDICES

Appendix 1: Videos concerning YouTube's IPR policy

The following short selection of videos served as the basis of the observation study. To facilitate their access, they are listed in alphabetical order according to their respective creator's *YouTube ID*. If known, the actual names of these creators are indicated after their online pseudonyms. In addition, videos posted by the same creator are listed one after another under a separate subsection in chronological order. Last, if applicable, the videos titles have been translated in English right after the original titles.

AngryJoeShow, aka Angry Joe:

11 December 2013. *YouTube copyright disaster! Angry rant.*

<https://www.youtube.com/watch?v=JQfHdasuWtI>

13 December 2013. *YouTube copyright – What's broken and how to fix it.*

https://www.youtube.com/watch?v=QAi81_uvztM

18 January 2014. *Angry Joe copyright battle update! (Good guys / bad guys).*

<https://www.youtube.com/watch?v=xkFEDQaVxrE>

Biloulette:

22 December 2012. *Canap' Et... L'interview de Salut Les Geeks – Mathieu Sommet [Sof' And... The interview of Salut Les Geeks – Mathieu Sommet].*

<https://www.youtube.com/watch?v=lZcRN-OuG1Q>

13 July 2013. *Canap' Et... L'interview du Joueur du Grenier [Sof' And... The interview of Antoine Daniel].*

<https://www.youtube.com/watch?v=b7mferrOml4>

31 August 2013. *Canap' Et... L'interview de LinksTheSun [Sof' And... The interview of LinksTheSun].*

<https://www.youtube.com/watch?v=G52J3UF5gDw>

***Joueurdugrenier*, aka Frédéric Molas and Sébastien Rassiati (and occasionally Karim Debbache):**

26 March 2013. *Bonus – Remerciement 1 million d’abonnés [Bonus – Thank you for 1 million subscribers]*.

https://www.youtube.com/watch?v=xPg3_saI8Fg

21 December 2014. *La FAQ chiante du grenier [Grenier’s boring FAQ]*.

<https://www.youtube.com/watch?v=d4cErSSnYq8>

***Mathieu Sommet*, aka himself :**

20 December 2013. *SLG #76*. <https://www.youtube.com/watch?v=lZcRN-OuG1Q>

25 April 2014. *Conférence Polymanga [Polymanga Conference]*.

https://www.youtube.com/watch?v=5T233d3P_oo

***MrAntoineDaniel*, aka Antoine Daniel:**

29 December 2013. *Le 29 avec Antoine Daniel #10 [The 29th with Antoine Daniel #10.]* <https://www.youtube.com/watch?v=aiomK9Ibrog>

29 June 2014. *Le 29 avec Antoine Daniel #13. [The 29TH with Antoine Daniel #13]*. <https://www.youtube.com/watch?v=RHF1Q5tfvpA>

***Superwoman*, aka Lilly Singh:**

21 August 2014. *The truth about YouTubers*.

<https://www.youtube.com/watch?v=ne1qYkpBEsA>

***TanRu Nomad*:**

15 December 2015. *My own game has been flagged by YouTube!*

<https://www.youtube.com/watch?v=wJKhGl5DIDU>

Appendix 2: Translation of statements

This appendix only concerns adapted and direct quotes, as used in this thesis. Please note that most parts of the questionnaire and semi-structured interviews have been answered in English by the respondents. Clarifications given in French by Lauriane Kirsch and Damien Vidot have not been directly quoted but synthesized, with only one exception, as it was particularly lengthy.

Page 4. Antoine Daniel and Mathieu Sommet. “YouTube est un media plus libre que la television. *YouTube is a media more free than television, creativity-wise.*” “Le public peut accéder à un vaste contenu de programmes gratuitement. *The audience can access a wide variety of contents for free.*” “C’est un media qui nous permet de créer quelque chose sur ce qui nous passionne, loin des carcans de la télévision. *It is a media where we can create what we’re passionate about, outside of the television’s narrowed frame.*” Adapted as “*provide entertaining and geek-culture referenced content to people for free, outside of the narrowed frame of public television channels’ content possibilities*”. It is to be noted that, since 2012, hundreds of quotes from these YouTubers concerning YouTube in general can be found online.

Page 28. Antoine Daniel: “Les droits d’auteur ne sont plus cohérents avec le média sur lequel nous nous trouvons à l’heure actuelle, et il faudrait créer des nuances supplémentaires. *Copyrights are not coherent anymore based on the media on which we evolve nowadays, and supplementary nuances must be found.*”

Page 30. Mathieu Sommet. “Si Salut Les Geeks n’avait pas marché, je serais encore en train de faire des burgers à McDo. *If Salut Les Geeks had not be popular, I’d still be flipping burgers at McDonald’s.*”

Page 36. Lauriane Kirch. “[La situation concernant Content ID] était pire en Janvier 2014, mais s’est améliorée vers Avril. *[The situation of Content ID] became worse during January 2014, but improved around April 2014.*”