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YouTube, K-Pop, and the Emergence of Content Copycats

by Sam Quach¹

Abstract

YouTube is the internet's largest and most recognized video streaming platform; the website has millions of daily active users from all over the world and hosts billions of videos. With so much content being hosted on the website, YouTube has developed basic protocol when it comes to copyright issues, including a standardized system for dealing with copyright infringement. But with such a large audience and technology constantly growing and changing, YouTube is constantly faced with new problems. Among content on YouTube, Korean entertainment and pop music (commonly referred to as K-Pop) has quickly become one of the largest markets, with videos garnering billions of views in the past few years. However, a new type of content infringement has emerged in the web media industry, with YouTube channels stealing web articles from digital publishers—especially K-Pop entertainment websites—and uploading them as their own content.

While YouTube's system of detecting and removing infringing content has been able to protect content creators with traditional video and audio media, there is now a glaring need for YouTube to address these new copyright infringement issues. As the K-Pop industry continues to grow and expand internationally, more and more channels are emerging and uploading videos using content by digital publishers. As this issue continues to grow and become more apparent, YouTube must address this issue for the integrity of its business and as a leader in the industry.

1. J.D. Candidate 2019, University of California, Hastings College of the Law. B.A. 2015, University of California, Davis. I wish to thank Professor Frank Wu, for his guidance and invaluable feedback, and Flowsion Shekar for his inspiration. This Note is dedicated to Im Nayeon, Yoo Jeongyeon, Hirai Momo, Minatozaki Sana, Park Jihyo, Myoui Mina, Kim Dahyun, Son Chaeyoung, and Chou Tzuyu for inspiring me to always put in all my effort into my work and providing me with energy and happiness.

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Introduction

Culture as we know it has been shaped by the internet; and on the internet, video content is king. Online video content has quickly become one of the most popular forms of entertainment in the world; in fact, YouTube, the internet's largest and most-recognized video streaming platform, has over a billion daily active users watching its content.² With so much content being hosted on the website, YouTube has unquestionably been home to many instances of copyright infringement as well. In fact, the website has even developed their own basic protocol when it comes to copyright issues, including a standardized system for dealing with copyright claims.³ However, a new type of content infringement has emerged in the web media industry, with YouTube channels replicating web articles into simple text videos. While YouTube's system of detecting and removing infringing content has been able to protect content creators with traditional audio/visual

2. *YouTube Stats: Site Has 1 Billion Active Users Each Month*, HUFFPOST (May 20, 2013, 11:15 PM), https://www.huffingtonpost.com/2013/03/21/youtube-stats_n_2922543.html.

3. *Copyright and rights management*, YOUTUBE, https://support.google.com/youtube/topic/2676339?hl=en&ref_topic=6151248 (Last visited Feb. 3, 2018).

media, there is now a glaring need for YouTube to address these new copyright infringement issues.⁴

With the traditional audio/visual media such as music videos and television shows, YouTube has implemented proprietary media recognition technology that allows for detection and automated copyright claims.⁵ But with users copying text articles and converting them into simple videos, this technology simply cannot be utilized in the same way to protect copyright owners.⁶ As the popularity of digital media content continues to rise, content providers need to adapt to help copyright owners protect their intellectual property.

Part I of this note will establish YouTube as the internet's premier video content provider. It will discuss the cultural impact of YouTube and its creators, as well as emerging new industries within YouTube itself. Part II will discuss the DMCA and its significance to content on YouTube. Part III will break down YouTube's current copyright policies and the process copyright owners need to take when their rights have been infringed. Part IV will focus on the emergence of K-Pop Content Copycats. Part V will outline a potential solution to stopping this particular issue of copyright infringement on YouTube.

I. YouTube is the Internet's Top Video Content Provider

YouTube is a video-sharing website that allows users to watch and share videos from around the world.⁷ The website hosts millions of videos, which users can watch for free through a computer or cellphone.⁸ YouTube has established itself as the internet's top digital content provider; according to their online press release, "YouTube has over a billion users - almost one-third of all people on the Internet—and each day those users watch a billion hours of video, generating billions of views."⁹ While television has traditionally been the main source of digital content to consumers in the United States, internet content has completely changed the industry in the

4. *What is a Content ID claim?*, YOUTUBE, <https://support.google.com/youtube/answer/6013276?hl=en> (last visited Feb. 3, 2018).

5. *How Content ID works*, YOUTUBE, <https://support.google.com/youtube/answer/2797370> (last visited Feb. 3, 2018).

6. YouTube Help, *YouTube Content ID*, YOUTUBE (Sept. 28, 2010), <https://www.youtube.com/watch?v=9g2U12SsRns>. According to YouTube, their Content ID system can only detect audio and video matches.

7. Jefferson Graham, *Video websites pop up, invite postings*, USA TODAY, http://usatoday30.usatoday.com/tech/news/techinnovations/2005-11-21-video-websites_x.htm (last visited Mar. 16, 2018).

8. *Id.*

9. *YouTube for Press*, YOUTUBE, <https://www.youtube.com/intl/en-GB/yt/about/press> (last visited Feb. 3, 2018).

past few decades.¹⁰ In fact, “YouTube overall, and even YouTube on mobile alone, reaches more 18-34 and 18-49-year-olds than any cable network in the US.”¹¹ While video streaming platform such as Netflix and Hulu continue to expand and replace traditional television, YouTube has continued to prove that it is the number one video content provider in the United States, claiming almost 80% of the market share in 2016.¹² Even with Facebook emerging as a competitor with their new platform, Watch, YouTube, is still recognized by experts as the clear leader in the industry.¹³ And despite only focusing on video content, YouTube has remained the most-used social media platform on the internet in the United States, surpassing competitors such as Facebook, Instagram, and Twitter.¹⁴ In fact, according to a 2018 study conducted by the Pew Research Center, YouTube ranks ahead of Facebook in every single age group; according to the data, 94% of U.S. adults between the ages of 18 and 24 say they use YouTube, compared to only 80% for Facebook.¹⁵

YouTube is also unique in its unmatched international reach. Outside the United States, YouTube has launched in more than 91 countries and in 80 different languages.¹⁶ Perhaps the most outstanding example of YouTube’s international appeal is that for almost five years, the top video on YouTube was the music video for the song “Gangnam Style” by Psy, a South Korean singer.¹⁷ And while “Gangnam Style” was inevitably unseated from the number one spot, Puerto Rican singer and songwriter Luis Fonsi’s “Despacito” became the first video to reach 4 billion views and took the title of the most-watched clip on the internet.¹⁸ To date, the music video for

10. Todd Spangler, *Younger Viewers Watch 2.5 Times More Internet Video Than TV (Study)*, VARIETY (Mar. 29, 2016, 7:00 AM), <http://www.variety.com/2016/digital/news/millennial-gen-z-youtube-netflix-video-social-tv-study-1201740829>.

11. *YouTube for Press*, *supra* note 9.

12. *U.S. market share of leading multimedia websites 2016*, STATISTA, <https://www.statista.com/statistics/266201/us-market-share-of-leading-internet-video-portals> (last visited Feb. 3, 2018).

13. Kevin Tran, *Facebook Watch may become more like YouTube*, BUSINESS INSIDER (Mar. 7, 2018), <http://www.businessinsider.com/facebook-watch-may-become-more-like-youtube-2018-2>.

14. Aaron Smith & Monica Anderson, *Social Media Use in 2018*, PEW RESEARCH CENTER (Mar. 1, 2017), <http://www.pewinternet.org/2018/03/01/social-media-use-in-2018/>.

15. *Id.*

16. *YouTube for Press*, *supra* note 9.

17. Taylor Weatherby, *Psy’s ‘Gangnam Style’ Has Officially Lost the Title of Most-Watched YouTube Video*, BILLBOARD (July 11, 2017), <https://www.billboard.com/articles/columns/pop/7864953/psy-gangnam-style-video-most-watched-youtube-record-see-you-again>.

18. Lars Brandle, *Luis Fonsi & Daddy Yankee’s ‘Despacito’ Is First Clip to Hit 4 Billion Views on YouTube*, BILLBOARD (Oct. 11, 2017), <https://www.billboard.com/articles/news/7997618/luis-fonsi-daddy-yankee-despacito-first-4-billion-views-youtube>.

“Despacito” is still the most-watched video on YouTube, with over 5.7 billion views.¹⁹

Even in countries where YouTube is seen as an international competitor, the website is thriving. For example, in 2014, major South Korean broadcasting channels announced that they would be blocking people in South Korean territory from watching their official videos through YouTube in an effort to encourage using Korean streaming sites such as Naver and DaumKakao.²⁰ But despite users in South Korea no longer having access to these video via YouTubes, the South Korean broadcasting channels’ official videos still reached tens of millions of viewers from other parts of the world. In fact, K-Pop girl group TWICE’s “Cheer Up” performance video on CJ E&M’s “Mnet K-POP” channel has accumulated over 23 million views despite not being available on YouTube in South Korea.²¹ Not only are YouTube users consuming content from their own countries, they are also consuming more and more international content through the streaming platform as well.

A. Scope of Content and Online Personalities

What has really set YouTube apart from any other streaming service is the scope of its content.²² Like other streaming services, users can also pay to watch individual full-length movies.²³ But while other online streaming platforms continue to promote traditional television-style shows, what sets YouTube apart is that it features both amateur and professionally produced content. In terms of content variety, YouTube is unmatched. In 2017, the top trending clips on YouTube included a wide variety of content, ranging from Lady Gaga’s live performance at the Super Bowl Halftime Show to a Ping Pong trick shot video.²⁴ Undoubtedly, YouTube is still the place to go for amateur-produced content and home videos—but it has become much more than just that.

As the platform and its audience has grown, so has the diversity in content; for example, today, some of the most popular video genres on

19. LuisFonsiVEVO, *Luis Fonsi - Despacito ft. Daddy Yankee*, YOUTUBE (Jan. 12, 2017), <https://www.youtube.com/watch?v=kJQP7kiw5Fk>.

20. SBS, MBC, CJ E&M, JTBC to halt people in South Korea from streaming videos on Youtube, KoreaBoo (Nov. 29, 2014), <https://www.koreaboo.com/news/sbs-mbc-cj-em-jtbc-halt-streaming-videos-youtube>.

21. Mnet K-POP, *[TWICE - Cheer Up] Comeback Stage 1 M COUNTDOWN 160428 EP.471*, YOUTUBE (Apr. 28, 2016), <https://www.youtube.com/watch?v=1Kg4yomNEgs>.

22. Ash Mardell, *Supporting Diverse Creators on YouTube*, MEDIUM (Nov. 3, 2016), <https://medium.com/internet-creators-guild/supporting-diverse-creators-on-youtube-9221c2c8556a>.

23. YouTube Movies, YOUTUBE, https://www.youtube.com/channel/UClgRkhTL3_hImCAmdLfD E4g (last visited Feb. 3, 2018).

24. Lisa Eadicicco, *The Top Viral YouTube Videos of 2017*, TIME (Dec. 6, 2017), <https://www.time.com/5049496/top-viral-youtube-videos-2017>.

YouTube include product reviews and instructional videos.²⁵ Through instructional videos on YouTube, viewers can learn how do everything from playing the guitar to building their own computer.²⁶ And far from just learning from other amateurs, YouTube has also allowed for viewers to do what they could have never imagined just a few decades before: learn from the masters themselves. For example, users can actually learn how to cook dishes from multi-Michelin starred chef Gordon Ramsay himself through his official YouTube channel.²⁷ To date, Gordon Ramsey has amassed over 5.6 million subscribers on his YouTube channel, with many videos gaining millions of views from all over the world.

And perhaps what YouTube has become most known for is viral content.²⁸ “Going viral” on the internet refers to a sudden rise in popularity seemingly out of nowhere.²⁹ Although viral content can come from anywhere, some of the internet’s top viral sensations started from YouTube.³⁰ For example, Adam Nyerere Bahner (better known by his stage name Tay Zonday) gained nationwide attention for his song “Chocolate Rain,” which earned him appearances on shows like CNN and Jimmy Kimmel.³¹ This single video, which has now surpassed 119 million views on YouTube, launched his career overnight.³² Having a large audience on YouTube can also open up a major source of revenue. For example, YouTube’s most popular content creator, Swedish YouTuber Felix Kjellberg (better known as PewDiePie), has accumulated over 50 million subscribers on the platform and had an estimated 2016 salary of \$15 million.³³ The primary source of revenue for creators on YouTube is through advertisements on videos; however, creators on YouTube can also earn money through other ways, including crowdfunding and merchandising.³⁴ In

25. *The 13 Most Popular Types Of YouTube Videos*, MEDIAXIX (June 1, 2017), <http://mediakix.com/2016/02/most-popular-youtube-videos/#gs.goqJwYg>.

26. David Nield, *8 new skills you can learn by watching YouTube*, POPULAR SCIENCE (June 20, 2017), <https://www.popsi.com/learn-new-skills-from-youtube>.

27. Gordon Ramsay, *Christmas Cooking Playlist – Gordon Ramsay*, YOUTUBE (Dec. 20, 2013), <https://www.youtube.com/watch?v=T7kiRNSMB-g>.

28. Maryam Mossavar, *Secrets of YouTube – what makes a video go viral*, THE GUARDIAN (Nov. 5, 2015), <https://www.theguardian.com/voluntary-sector-network/2015/nov/05/youtube-what-makes-video-go-viral-charities>.

29. Susan Scutti, *Accidentally famous: The psychology of going viral*, CNN (Mar. 16, 2018), <https://www.cnn.com/2018/03/16/health/social-media-fame/index.html>.

30. *Id.*

31. *Id.*

32. TayZonday, *“Chocolate Rain” Original Song by Tay Zonday*, YOUTUBE (Apr. 22, 2007), <https://www.youtube.com/watch?v=EwTZ2xpQwpA>.

33. Nathan McAlone, *These are the 18 most popular YouTube stars in the world – and some are making millions*, BUSINESS INSIDER (Mar. 7, 2017, 12:48 PM), <http://www.businessinsider.com/most-popular-youtuber-stars-salaries-2017/#no-17-dantdm-144-million-subscribers-2>.

34. *Lesson: Earn money with YouTube*, YOUTUBE, <https://creatoracademy.youtube.com/page/lesson/revenue-basics?cid=earn-money&hl=en> (last visited Mar. 17, 2018).

fact, merchandising has become one of the most lucrative businesses creators can start through their YouTube channel.³⁵ With so much earning potential through several different avenues on YouTube, becoming famous on YouTube has become more and more prestigious.

In addition to creators who are still using YouTube, the site also helped launch the careers of many mainstream celebrities as well, including Justin Bieber, Kate Upton, and Darren Criss.³⁶ And with celebrities such as Gordon Ramsay uploading content to YouTube as well, the platform has begun to blur the lines between their top creators and the traditional Hollywood celebrities.³⁷ YouTube has also become the main platform for recording artists to upload their official music videos, which have generated billions upon billions of views for the website.³⁸ As mentioned earlier, Luis Fonsi's "Despacito" is currently the most-watched video on YouTube, with more than 4 billion views since it was uploaded in January of 2017.³⁹ In fact, of the ten most-watched videos on YouTube, all but one are music videos.⁴⁰ And while the market for music streaming has become quite diverse and competitive, YouTube essentially has a monopoly when it comes to music videos.⁴¹ And sometimes, artists will even release special content through YouTube. For example, Korean girl group TWICE debuted the music video for their single "Candy Pop" on January 11, 2018, almost a full month ahead of its February 7 official digital and physical release date.⁴² For four weeks, fans could only officially listen to "Candy Pop" through the music video, contributing to the over 40 million views it gained since it was released.⁴³

On top of traditional streaming videos, YouTube has also introduced live streaming to encourage community growth and audience interaction.⁴⁴

35. YouTube Creator Academy, *Selling merchandise on YouTube (ft. The Most Popular Girls in School)*, YOUTUBE (Nov. 22, 2016), <https://www.youtube.com/watch?v=EUdve0Nazjs>.

36. Madison Malone Kircher, *9 major stars who got their start on YouTube, Vine, and even MySpace*, BUSINESS INSIDER (Aug. 25, 2015, 2:38 PM), <http://www.businessinsider.com/9-major-stars-who-were-discovered-online-2015-8/#justin-biebers-musical-career-exploded-thanks-to-his-youtube-channel-1>.

37. Gordon Ramsay, *supra* note 27.

38. Taylor Weatherby, *YouTube's 10 Most-Watched Music Videos*, BILLBOARD (July 12, 2017), <https://www.billboard.com/articles/news/magazine-feature/7709247/youtube-most-watched-videos>.

39. Lars Brandle, *supra* note 18.

40. Get Movies, *Masha and the Bear: Recipe for Disaster*, YOUTUBE (Jan. 31, 2012), <https://www.youtube.com/watch?v=KYniUCGPGLs>.

41. Parker Hall, *The best music streaming services*, DIGITAL TRENDS (Feb. 6, 2018), <https://www.digitaltrends.com/music/best-music-streaming-services>.

42. TWICE JAPAN OFFICIAL YouTube Channel, *TWICE 'Candy Pop' Music Video*, YOUTUBE (Jan. 11, 2018), https://www.youtube.com/watch?v=wQ_POFToaVY.

43. *Id.*

44. *Live streaming on YouTube*, YOUTUBE, <https://creatoracademy.youtube.com/page/course/livestream> (last visited Feb. 3, 2018).

Live video has expanded the scope of YouTube's content and allows for more viewer interaction.⁴⁵ In addition to being able to interact with content creators in real-time, live video has also opened up new markets for YouTube, such as wildlife cams.⁴⁶ But perhaps the most impactful result of live video on YouTube is through gaming. By expanding to live streaming, YouTube also launched itself into the live gaming industry, becoming a direct competitor to Twitch.⁴⁷

After Google acquired YouTube back in 2006, it quickly integrated YouTube into its search algorithms and transformed YouTube into the world's biggest video search engine.⁴⁸ In addition to searching for videos using YouTube's search function, users are also directed to YouTube upon using Google's web browser, Chrome, as well as its search engine, the most-used search engine in the world.⁴⁹ With such diversity in content and creators, as well as exposure through the world's top search engine, there seems to be no limit to YouTube's scope of content and reach.

B. Content ID and the Content Verification Program

With so many creators using the platform, YouTube has reported that over one billion hours of content are being watched on a daily basis.⁵⁰ And as a measure to protect its creators, YouTube has implemented techniques to manage their copyrighted material, with Content ID being the site's primary system for detection.⁵¹ Through Content ID, "[v]ideos uploaded to YouTube are scanned against a database of files that have been submitted . . . by content owners."⁵² When copyrighted content is detected, copyright owners can choose between three options: block the whole video from being viewed, monetize the video, or in some cases, share revenue with the uploader.⁵³ Using content ID, music and video creators are automatically protected against users who repost their works. According to YouTube, as of July

45. *Id.*

46. Southwest Florida Eagle Cam, *Southwest Florida Eagle Cam*, YOUTUBE (Jan. 22, 2018), <https://www.youtube.com/watch?v=hVATVF-816U>.

47. Sarah Perez, YouTube Gaming grew its streamer base by 343% in 2017, Twitch by 197%, TECHCRUNCH (Jan. 25, 2018), <https://www.techcrunch.com/2018/01/25/youtube-gaming-grew-its-streamer-base-by-343-in-2017-twitch-by-197>.

48. Victor Luckerson, *A Decade Ago, Google Bought YouTube – and It Was the Best Tech Deal Ever*, THE RINGER (Oct. 10, 2016), <https://www.theringer.com/2016/10/10/16042354/google-youtube-acquisition-10-years-tech-deals-69fdbelc8a06>.

49. Alex Chris, *Top 10 Search Engines In The World*, RELIABLESOFT.NET, <https://www.reliablesoft.net/top-10-search-engines-in-the-world> (last visited Mar. 5, 2018).

50. *YouTube for Press*, *supra* note 9.

51. *What is a Content ID claim?*, YOUTUBE, <https://www.support.google.com/youtube/answer/6013276> (last visited Feb. 3, 2018).

52. *How Content ID works*, *supra* note 5.

53. *Id.*

2016, the site has paid two billion dollars to rights-holders through the Content ID system.⁵⁴

However, to use the Content ID system, creators must be part of the Content Verification Program.⁵⁵ According to YouTube, the Content Verification Program “helps copyright owners search for material that they believe to be infringing and provide YouTube with information reasonably sufficient to permit us to locate and remove that material.”⁵⁶ But in order to qualify for the Content Verification Program, creators must own the distribution rights for digital videos; that is, they need to provide evidence of the copyrighted content for which they control exclusive rights.⁵⁷ Additionally, even if creators can prove they own the copyright for their videos, they must be registered as part of a company to be accepted.⁵⁸ YouTube explains that the Content Verification Program is “designed especially for copyright-holding companies to issue multiple removal requests” and that individuals should instead use their standard copyright complaint form for single takedowns.⁵⁹

C. The Emergence of the MCN

And as YouTube continued to grow and host more and more creators, the market allowed for the emergence of the Multi-Channel Network (MCN). MCNs are third-party service providers that work with multiple YouTube channels and offer services, including audience development, creator collaborations, and digital rights management.⁶⁰ MCNs can manage two types of channels under their YouTube network: affiliate channels or Owned & Operated (O&O) channels.⁶¹ While affiliate channels are merely managed by the MCN, O&O channels are owned and operated by their respective MCNs, who obtain the rights and liability for their content on YouTube.⁶²

According to YouTube, when a creator has received a copyright claim, strike, or takedown, MCNs can help creators understand or resolve them, but

54. Katherine Oyama, *Continuing to create value while fighting piracy: an update*, GOOGLE (July 13, 2016), <https://www.blog.google/topics/public-policy/continuing-to-create-value-while>.

55. *Content Verification Program*, YOUTUBE, <https://www.support.google.com/youtube/answer/6005923?hl=en> (last visited Feb. 3, 2018).

56. *Id.*

57. *Content Verification Program Application*, YOUTUBE, https://www.youtube.com/cvp_app (last visited Mar. 5, 2018).

58. *Id.*

59. *Content Verification Program*, *supra* note 55.

60. *Multi-Channel Network (MCN) overview for YouTube Creators*, YOUTUBE, <https://www.support.google.com/youtube/answer/2737059?hl=en> (last visited Feb. 3, 2018).

61. *Id.*

62. *Id.*

they cannot prevent any claim, strike, or takedown.⁶³ However, according to some MCNs, being part of an MCN may help creators make copyright claims because many MCNs are part of the Content Verification Program, which is only available to copyright-holding companies.⁶⁴ According to Freedom!, one of the benefits they provide to their partners is the use of Content ID.⁶⁵ While many successful creators do not rely on MCNs, some of the site's top stars have utilized this service. For example, Fullscreen, one of the biggest MCNs, has signed several major channels, including Jack Douglass (jacksfilms) and Max Schneider.⁶⁶ Because the Content Verification Program has allowed MCNs to register a large volume of individual user-created videos for Content ID, more and more content is being detected and managed through YouTube's copyright system.

II. THE DMCA

Perhaps the most powerful tool that YouTube and other service providers have in preventing copyright infringement liability is through Section 512 of the Digital Millennium Copyright Act (DMCA).⁶⁷ The DMCA, which was adopted in 1998, was an effort by the United States to recognize the evolving relationship between technology and U.S. copyright law.⁶⁸ Traditionally, anyone who reproduces copyrighted works without the permission can be liable for damages to the copyright owner.⁶⁹ But with technological advancements and the emergence of online service providers hosting so much content, the United States adopted section 512 of the DMCA to limit the remedies available against service providers for "incidental copying that is essential to the operation of the Internet."⁷⁰ While it limited the liability for service providers, the DMCA also outlined steps and requirements that service providers needed to take in order to qualify for protections. The DMCA therefore could protect service providers from unknowingly hosting copyrighted works and create a more uniformed structure for content hosting and sharing as well.

63. *Id.*

64. *Content Verification Program Application*, *supra* note 57.

65. *What features does Freedom! offer their partners?*, FREEDOM!, <https://freedom.support.tm/hc/en-us/articles/236023108-What-features-does-Freedom-offer-their-partners> (last visited Mar. 6, 2018).

66. *Creators*, FULLSCREEN MEDIA, <https://www.fullscreenmedia.co/creators> (last visited Feb. 3, 2018).

67. 17 U.S.C. § 512

68. *Executive Summary Digital Millennium Copyright Act Section 104 Report*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/reports/studies/dmca/dmca_executive.html (last visited Mar. 16, 2018).

69. 17 U.S.C. § 106

70. *Executive Summary Digital Millennium Copyright Act Section 104 Report*, *supra* note 68.

Under the DMCA, service providers are protected from liability for hosting or transmitting infringing content as long as they adhere to certain standards and restrictions.⁷¹ As defined in section K of the act, a service provider refers to an entity offering the transmission, routing or providing of connections for digital online communications without modification to the content of the material or a provider of online services or network access.⁷² To be eligible for DMCA protection, a service provider must have adopted, reasonably implemented, and notified their subscribers of a policy that can terminate the accounts of repeat infringers.⁷³ Through 17 U.S.C. § 512(c), which has become known as the DMCA's safe harbor protections, a service provider can avoid liability for monetary, injunctive, or other equitable relief, for infringement of copyright if the service provider: does not have the requisite level of knowledge of the infringing activity, does not receive a financial benefit directly attributable to the infringing activity, or expeditiously takes down or blocks access to any material upon proper notification of claimed infringement.⁷⁴

Using its Content ID and manual copyright complaint systems, which takes down or blocks access to infringing content upon detection or review, respectively, YouTube has seemingly satisfied the DMCA's safe harbor protections. In addition to the DMCA's safe harbor protections, YouTube also places emphasis on 17 U.S.C. § 512(f).⁷⁵ Section 512(f) of the DMCA covers misrepresentations of infringing material, explaining that any person who knowingly materially misrepresents that material or activity is infringing or that the material or activity was removed or disabled by mistake or misidentification, will be liable for damage incurred by the infringer or claimant, respectively.⁷⁶ In its copyright complaint form, claimants are asked to acknowledge that they have a good faith belief that the alleged infringing material is used in a manner that is not authorized by the copyright owner, its agent, or the law.⁷⁷ Before a manual copyright complaint can be submitted, claimants must also certify that they understand the abuse of the form will result in the termination of their YouTube account, ensuring that any complaints will be legitimate.⁷⁸

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Copyright Infringement Notification*, YOUTUBE, https://www.youtube.com/copyright_complaint_form (last visited Mar. 5, 2018).

76. 17 U.S.C. § 512, *supra* note 67.

77. *Copyright Infringement Notification*, *supra* note 75.

78. *Id.*

A. YouTube's History with Copyright Infringement

But despite YouTube's measures to stay within the DMCA's safe harbor protections, they have not been able to completely avoid litigation involving copyright infringement liability as a service provider. In *Viacom Int'l, Inc. v. YouTube, Inc.*, Viacom International, Inc., The Football Association Premier League Ltd., and various film studios, television networks, music publishers, and sports leagues (Plaintiffs) brought action against YouTube, Inc., YouTube, LLC, and Google Inc. (YouTube) for direct and secondary copyright infringement based on the public performance, display, and reproduction of approximately 79,000 videos that appeared on the YouTube website between 2005 and 2008.⁷⁹ Before the case was brought to United States Court of Appeals for the Second Circuit, the District Court held that "the defendants not only were generally aware of, but welcomed, copyright-infringing material being placed on their website," but noted that whenever YouTube "received specific notice that a particular item infringed a copyright, they swiftly removed it."⁸⁰ YouTube was granted summary judgment, but the case was appealed and the order granting summary judgment was reviewed by the Court of Appeals.

In its review, the Court of Appeals reaffirmed that regardless of knowledge or awareness of infringing activity, the provider "retains safe-harbor protection if it 'acts expeditiously to remove, or disable access to, the material.'"⁸¹ In the appeal, Plaintiff focused on 17 U.S.C. § 512(c)(1)(A)(i) regarding actual knowledge of the infringement, known as the red flag provision.⁸² The section provides that a service provider will not be liable if "in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent."⁸³ Plaintiffs argued that the red flag provision should be interpreted to require less specificity than actual knowledge; however the Court of Appeals held that the red flag provision "turns on whether the provider was subjectively aware of facts that would have made the specific infringement 'objectively' obvious to a reasonable person."⁸⁴ Following the clarification and addressing several other issues that were raised, the Court of Appeals remanded the case back to the District Court.⁸⁵ The District Court ruled in favor of YouTube, renewing the motion of summary judgment.⁸⁶ In the decision, the District Court also clarified that "knowledge of the prevalence of infringing activity,

79. *Viacom Int'l, Inc. v. YouTube, Inc.*, 676 F.3d 19, 26 (2d Cir. 2012)

80. *Viacom Int'l, Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514, 518-519 (S.D.N.Y. 2010)

81. *Viacom Int'l, Inc. v. YouTube, Inc.*, *supra* note 79, at 30.

82. *Id.* at 32.

83. *Id.*

84. *Id.*

85. *Id.* at 43.

86. *Viacom Int'l, Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110, 123 (S.D.N.Y. 2013)

and welcoming it, does not itself forfeit the safe harbor. To forfeit that, the provider must influence or participate in the infringement.”⁸⁷

III. The Sufficiency of YouTube’s Copyright Policies

While the Content ID system will automatically detect matching content and take necessary action, manual submission using YouTube’s copyright complaint form requires review by YouTube.⁸⁸ Upon successful review by YouTube, content that is considered copyright infringement is removed; however, the user who uploaded the content is given the option to dispute the claim by submitting a counter notification.⁸⁹ Counter notifications can be submitted if the copyright claim is invalid for one of several reasons: the video was the user’s original content and the user owns all the rights to it; the user has a license or permission from the proper rights holder to use the material; the user’s use of the content meets the legal requirements for fair use or fair dealing under applicable copyright laws; or the content is in the public domain or is not eligible for copyright protection.⁹⁰

After a counter notification has been processed, the claimant will have ten business days to provide evidence that they have initiated a court action to keep the content down; otherwise, the video that had been previously removed will be restored.⁹¹ The *Viacom* case affirmed that the DMCA safe harbor protections are not forfeited with knowledge of the prevalence of infringing activity, or welcoming it; however, it also explains that influence or participation in the infringement does forfeit the protections. While YouTube does take action to remove videos detected through Content ID and reported through the manual copyright complaint system, restoring any content involved in a counterclaim could be considered participating in the infringement.

IV. Current Problem with Content Copycats

YouTube’s lax copyright policy has allowed for the emergence of third-party channels (Content Copycats) who repost original from copyright owners as their own. And while occasionally stealing and reposting content is nothing new, channels dedicated to systematically doing so have started to

87. *Id.* at 120.

88. *Copyright Infringement Notification*, *supra* note 75.

89. *Counter Notification Basics*, YOUTUBE, <https://support.google.com/youtube/answer/2807684?hl=en> (last visited Mar. 5, 2018).

90. *Step 3: Dispute the Copyright Notification*, FAIR USE TUBE, <https://fairusetube.org/guide-to-youtube-removals/4-disputing-copyright-notifications> (last visited Mar. 5, 2018).

91. *Counter Notification Basics*, *supra* note 89.

emerge and thrive.⁹² YouTube's copyright policies are geared mostly to protect music and film, as the content that it hosts is in video format. Content ID is meant for creators to submit their copyrighted music or filmed performances.⁹³ However, YouTube's Content ID was not made to detect text, and channels have started abusing this loophole and uploading video using copyrighted material in the guise of their own original content.

A. K-Pop and Digital Publishers

Korean entertainment and pop music (K-Pop) has proven itself as one of the top niche genres in music; but at its current growth rate, industry experts are expecting to see K-Pop break through into the mainstream music scene on an international level.⁹⁴ Perhaps the best example of K-Pop's expansion into the global market is the rise of BTS. In 2017, BTS shocked the industry by taking home the Top Social Artist award at the Billboard Music Awards, beating out pop superstars like Justin Bieber and Selena Gomez.⁹⁵ Despite the language barrier between most of the group and their fans, BTS has embraced social media as a way to open up and actively communicate with international fans.⁹⁶ Following their win, BTS was also featured on several American television shows, including *Jimmy Kimmel Live!*, *The Late Late Show with James Corden*, and *The Ellen DeGeneres*.⁹⁷ And with popular artists like Steve Aoki, Desiigner, Fall Out Boy, and The Chainsmokers having released hit songs in collaboration with them, BTS has proven themselves as rising stars in the mainstream music scene.

But the rise of BTS isn't an isolated incident; according to Billboard, several K-Pop artists have become some of the most popular artists on social media today.⁹⁸ K-Pop groups are known for constantly updating their fans with selfies, videos, and teasers, allowing international to feel a closer

92. Jack Marshall, *Need More Video Content? Try Stealing Some*, DIGIDAY (Nov. 11, 2013), <https://digiday.com/media/video-content-mail-online-break-com>.

93. *How Content ID works*, *supra* note 5.

94. *How K-pop Grew Beyond Niche*, SXSWSW, <https://schedule.sxsw.com/2018/events/PP76424> (last visited Mar. 16, 2018).

95. Jason Lipshutz, *BTS Thanks Fans For Top Social Artist Win at Billboard Music Awards 2017*, BILLBOARD (May 21, 2017), <https://www.billboard.com/articles/news/bbma/7801216/bts-video-top-social-artist-win-billboard-music-awards-2017>.

96. Marian Liu, *Bigger than Bieber? K-pop group BTS beats US stars to win Billboard Music Award*, CNN (May 22, 2017), <https://www.cnn.com/2017/05/22/entertainment/k-pop-bts-billboard-music-awards/index.html>. Of the seven members of BTS, only Kim Nam-joon (better known by his stage name, RM) is fluent in English.

97. Tamar Herman, *BTS' ARMY Reflects on Seeing Band on 'Ellen', 'Kimmel Live!', & 'Late Late Show'*, BILLBOARD (Nov. 28, 2017), <https://www.billboard.com/articles/columns/k-town/8047080/bts-army-reflects-seeing-band-us-tv>.

98. Kevin Rutherford, *BTS, EXO, Wanna One & Got7 Help Make K-Pop History in Top 10 of Social 50 Chart*, BILLBOARD (Mar. 14, 2018), <https://www.billboard.com/articles/columns/chart-beat/8246995/bts-exo-wanna-one-got7-social-50-chart-top-10>.

connection to the artists and stay updated with their schedules.⁹⁹ And the prevalence of K-Pop fans on social media has not gone unnoticed; for example, with so many fans on Twitter, fans have created viral trends and hashtags on several occasions.¹⁰⁰ K-Pop is also extremely popular on YouTube, where several artists have released music videos with hundreds of millions of views.¹⁰¹ With many fans from all over the world, music videos from some K-Pop groups even find themselves on YouTube's trending page in multiple countries; and sometimes, the videos do so well that YouTube will take notice.¹⁰² In fact, YouTube has even joined up with BIGBANG, one of the most well-known K-Pop groups in the world, for *Run, BIGBANG Scouts!*, an original YouTube Red series.¹⁰³ Following the success of *Run, BIGBANG Scouts!*, BTS will also be launching their own YouTube Red series, a documentary series titled *Burn The Stage*.¹⁰⁴

K-Pop has become an emerging market that has gained fans from all over the world.¹⁰⁵ But despite the apparent international growth of K-Pop, mainstream media outlets do not typically cover Korean entertainment news outside of major accomplishments and new releases. Instead, English language K-Pop news has become its own industry, dominated by three major publishers: Koreaboo, allkpop, and Soompi.¹⁰⁶ These publishers not

99. Yoon Min-sik, *Social media, a double-edged sword for celebrities*, THE KOREA HERALD (Dec. 3, 2017), <http://www.koreaherald.com/view.php?ud=20171203000264>.

100. *BTS Fans Trend #WhereIsHoseok Worldwide When He Doesn't Show Up With Jimin At The Airport*, KOREABOO (Feb. 14, 2018), <https://www.koreaboo.com/news/bts-fans-trend-where-ishoseok-worldwide-twitter/>.

101. *10 Most Viewed K-Pop MVs of All Time*, KOREABOO (Jan. 28, 2018), <https://www.koreaboo.com/lists/top-10-most-viewed-kpop-mvs-of-all-time>.

102. Koreaboo (@Koreaboo), TWITTER (Oct. 31, 2017, 2:56 AM), <https://twitter.com/koreaboo/status/925058789056823296>; Koreaboo (@Koreaboo), TWITTER (Nov. 4, 2017, 10:16 AM), <https://twitter.com/koreaboo/status/926619154672578562>.

103. BIGBANG, *THE GATHERING BEGINS - Run, BIGBANG Scout! (Ep 1)*, YOUTUBE (Apr. 26, 2017), https://www.youtube.com/watch?v=E8Qonb3UHLE&list=PLgyxPQqhtaivwj cFiYGpdx7IcpeV_Gd79. YouTube Red series are videos created in collaboration with YouTube through YouTube's paid streaming subscription service. Videos on YouTube Red are available in the United States, Australia, Mexico, New Zealand, and South Korea. The first episode of *Run, BIGBANG Scout!* includes English subtitles and has gained over 10 million views since it was published.

104. Tamar Herman, *BTS Documentary Series 'Burn The Stage' to Air on YouTube Red*, BILLBOARD (Mar. 14, 2018), <https://www.billboard.com/articles/columns/k-town/8245963/bts-documentary-series-burn-the-stage-youtube-red>.

105. *About Us*, KCON, <http://www.kconusa.com/about-us/> (last visited Mar. 17, 2018). KCON, a convention all about K-Pop, has expanded to an international scale, with events in cities like Los Angeles, New York, Tokyo, and Abu Dhabi.

106. KOREABOO, <https://www.koreaboo.com> (last visited Mar. 17, 2018); ALLKPOP, <https://www.allkpop.com> (last visited Mar. 17, 2018); SOOMPI, <https://www.soompi.com> (last visited Mar. 17, 2018). While other K-Pop publishers do exist, Koreaboo, allkpop, and Soompi are the only publishers who are verified on Facebook and Twitter, and all have over 1 million followers on both platforms.

only publish articles about major accomplishments and music releases, but also update readers about the Korean entertainment industry trends, collaborate with entertainment companies, and create exclusive content for fans.¹⁰⁷ With over seven million fans on Facebook and over one million followers on Twitter, Koreaboo's content reportedly reaches over eight million readers worldwide; allkpop and Soompi have also reported similar numbers.¹⁰⁸

B. K-POP and Korean News Content Copycats

As the demand for K-Pop content has increased, the three major international K-Pop publishers have also expanded to having their own channels on YouTube.¹⁰⁹ But despite having millions of readers on their websites and posting similar content on their respective websites and YouTube channels, their channels have not achieved the same results on YouTube.¹¹⁰ An explanation for this could be content dilution as a result of Content Copycats, which are particularly prevalent in K-Pop news videos.¹¹¹ Users on internet forum Reddit noted that there were channels that copied articles from digital Korean entertainment news publishers, from the title to the photos used.¹¹² A recent example can be seen in an article from Koreaboo.¹¹³ Titled *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked*, the piece discussed K-Pop girl band TWICE members Nayeon and Chaeyoung's recent live broadcast and included short scenes from the broadcast in the form of animated images (GIFs).¹¹⁴ And while K-Pop news stories aren't typically featured on western media outlets,

107. *About Koreaboo*, KOREABOO, <https://www.koreaboo.com/about> (last visited Mar. 17, 2018).

108. *Id.*; *Koreaboo*, FACEBOOK, <https://www.facebook.com/koreaboo> (last visited Mar. 17, 2018); *Koreaboo*, TWITTER, <https://twitter.com/koreaboo> (last visited Mar. 17, 2018). With a similar amount of followers across social media accounts on Facebook and Twitter, allkpop and Soompi should have a similar amount of readers.

109. *Koreaboo*, YOUTUBE, <https://www.youtube.com/channel/UCwm19dM-xZQrQMfEJmIwZXg> (last visited Mar. 8, 2018); *allkpop*, YOUTUBE, <https://www.youtube.com/user/allkpop> (last visited Mar. 8, 2018); *SoompiTV*, YOUTUBE, <https://www.youtube.com/channel/UcmURbJCSXtcOKUCSYsWgc9Q> (last visited Mar. 8, 2018).

110. *Id.*

111. *YouTube K-pop News Channels Are Plagiarizing*, REDDIT (July 22, 2017), https://www.reddit.com/r/kpop/comments/6owdns/youtube_kpop_news_channels_are_plagiarizing.

112. *Id.*

113. From May 2017 to August 2018, I worked at Koreaboo's office in Seoul to try to solve the problem of K-Pop Content Copycats infringing on Koreaboo's copyrighted content. Koreaboo and their YouTube MCN, Collab Asia, are very aware of the Content Copycat channels and have attempted to take down the videos.

114. *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked*, KOREABOO (Jan. 29, 2018), <https://www.koreaboo.com/buzz/nayeon-chaeyoung-twice-bare-face-s-camera>.

Nayeon and Chaeyoung's live stream was featured on Allure.¹¹⁵ However, while Koreaboo and Allure posted very different articles about the same live broadcast, YouTube channel Abiz – Entertainment Buzz posted a video with a title almost identical to article published by Koreaboo; the only source provided was a line in the video description that read “via: KB,” presumably citing to Koreaboo.¹¹⁶ Taking a look at the Abiz – Entertainment Buzz channel, more videos with the same title as Koreaboo's articles immediately show up.¹¹⁷

As noted by Reddit users, Abiz – Entertainment Buzz is far from the only channel recreating content from Koreaboo and other K-Pop news websites.¹¹⁸ By simply searching the title “Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked,” four videos with virtually the same title and feature image from four different channels will show up.¹¹⁹ In all four cases, the clip in question does not constitute a traditional video; instead, it was a collection animated images taken from the article and uploaded within a week after Koreaboo's original article was published.¹²⁰ And while three of the videos also used the text found in Koreaboo's original article as captions, one had the exact text read word for word through a text to speech application.¹²¹ As with Abiz – Entertainment Buzz, these other channels have taken more than just one article from

115. Devon Abelman, *Members of K-Pop Group Twice Reveals Their Skin-Care Secrets*, ALLURE (Jan. 29, 2018), <https://www.allure.com/story/twice-nayeon-chaeyoung-skin-care-routine-k-pop-stars>. Allure is an American women's beauty magazine. The Allure article was also featured on Insider as well.

116. Abiz - Entertainment Buzz, *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked!*, YOUTUBE (Jan. 31, 2018), <https://www.youtube.com/watch?v=J-PxOQVhS70>. While other K-Pop news stories may only be available through K-Pop publishers like Koreaboo, this instance of Abiz – Entertainment Buzz copying Koreaboo's article stood out because it was a story reported on by mainstream outlets as well, and yet Abiz – Entertainment Buzz chose to take content from Koreaboo's article.

117. Abiz - Entertainment Buzz, YOUTUBE, <https://www.youtube.com/channel/UCbpnFeAJ4Kv0iZNV6FLVDLA/videos> (last visited Feb. 3, 2018). Some titles that are exactly the same include: *Shocking Statistic Shows How Much More Popular TWICE Is Than Other Girl Groups Right Now*, *Koreans Girls Reveal How They Feel about Guys Who Wear Makeup*, and *SHINee's Key Uploads A Never Before Seen Video Of Jonghyun*.

118. *YouTube K-pop News Channels Are Plagiarizing*, *supra* note 111.

119. *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked*, YOUTUBE, https://www.youtube.com/results?search_query=Nayeon+And+Chaeyoung+Removed+All+Their+Makeup+On+Camera%E2%80%A6Fans+Shocked (last visited Mar. 6, 2018). The four channels with videos titled *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked* include Abiz - Entertainment Buzz, K-World News, Show Now, and Kpop News 4E.

120. Abiz – Entertainment Buzz, *supra* note 116.

121. Show Now, *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked*, YOUTUBE (Feb. 3, 2018), <https://www.youtube.com/watch?v=Ph3yPVT8oPk>. This video, like the three others, used the exact text from Koreaboo's original article, including all of the typos and grammatical errors.

Koreaboo. In fact, upon looking at the channel K-World News, every one of their five most-viewed videos draws directly from a Koreaboo article.¹²²

Many of these K-Pop Content Copycat channels, such as K-World News, do not publicly disclose how many subscribers they have.¹²³ But by looking at their most-viewed videos, it's clear that they are drawing in a lot of views; in fact, the K-World News channel's top five videos alone total to over two million views.¹²⁴ And while ad revenue for videos on YouTube cannot be easily calculated, reports have estimated that "1,000 views on the video site will earn a creator somewhere between 25 cents and \$4, with the actual amount brought in not clear until the payment has actually been disbursed."¹²⁵ According to YouTube, K-World News has accumulated over 4.5 million views across all of their uploaded videos since May 2016, which could have earned them from \$1,125 to \$18,000 in less than two years.¹²⁶ Larger K-Pop Content Copycat channels, like Abiz – Entertainment Buzz, which has a publicly displayed count of over 100,000 subscribers, have even gained significantly more views uploading similar content.¹²⁷

C. Negative Effects to Digital Publishers

Not only are these Content Copycat channels profiting from the copyrighted material of the original content creators, they're also hurting the digital publishers' respective market shares as well. For online publishers, including K-Pop entertainment websites like Koreaboo and its competitors, one of the most important focuses is search engine optimization (SEO).¹²⁸ Maximizing SEO often involves the strategic use of key words, making titles

122. *K-World News*, YOUTUBE, https://www.youtube.com/channel/UCTxPAL57_3v0UBu7dDpYdig/videos?flow=grid&sort=p&view=0 (last visited Mar. 7, 2018). The channel's top five most-viewed videos share the exact same title and text as Koreaboo articles. These videos, listed in order by amount of views, are: *PRISTIN Nayoung learned of Jonghyun's death during a livestream, her reaction was heartbreaking, Kang Daniel Didn't Realize Why Everyone Was Laughing At Him On Stage, IU Made Red Velvet's Yeri Cry During The 2017 Melon Music Awards, JYP failed a young girl during an audition but now she's a top level K-Pop idol, and Here's Why Idols Sometimes Remove Their Earpieces While On Stage*.

123. *Id.*

124. *Id.*

125. Hugh McIntyre, *How Much Money Does 3 Billion YouTube Views Actually Generate For A Musician?*, FORBES (Sept. 18, 2017), <https://www.forbes.com/sites/hughmcintyre/2017/09/18/how-much-money-does-3-billion-youtube-views-bring-in/#7ea9b2244aec>.

126. *K-World News*, YOUTUBE, https://www.youtube.com/channel/UCTxPAL57_3v0UBu7dDpYdig/about (last visited Mar. 7, 2018).

127. *Abiz - Entertainment Buzz*, YOUTUBE, <https://www.youtube.com/channel/UCbpnFeA14Kv0iZNV6FLVDLA/about> (last visited Mar. 7, 2018). Abiz – Entertainment has gained over 92 million total views since it was started on August 29, 2016. Using reported revenue numbers, the channel has earned between \$23,000 and \$368,000 in that time frame.

128. *Search Engine Optimization (SEO) Starter Guide*, GOOGLE, <https://support.google.com/webmasters/answer/7451184> (last visited Mar. 7, 2018).

very important for publishers.¹²⁹ And SEO has proven so vital to digital publishing companies that many will hire search engine optimizers to focus on their SEO.¹³⁰

Like mainstream digital publishers such as *The Huffington Post*, Vox Media, and *Business Insider*, K-Pop publishers earn revenue by hosting advertisements on their website and selling merchandise.¹³¹ While YouTube channels which earn revenue through advertisements automatically served through YouTube, publishers serve advertisements directly on their website through ad networks; the more readers, the more revenue the publisher will earn.¹³² For content posted on YouTube, traffic sources can come externally or internally, through YouTube's mobile application and other features.¹³³ According to YouTube, the top traffic sources within YouTube include YouTube search, suggested videos, and browsing features.¹³⁴ For content hosted by digital publishers, however, website traffic generally comes from external sources; in fact, Google and social media website Facebook are known as the two top traffic sources among publishers on the internet.¹³⁵ Many major publishers share their content on Facebook, where the social media service's post feed and share function allow their pages can reach millions of viewers; however, with Facebook's push to prioritize posts from friends and family over publishers, Google has taken over as the top external traffic source for digital publishers.¹³⁶ With Google becoming the top traffic source for publishers, SEO has become even more important.

And while digital publishers need to focus on strong titles for SEO on Google, YouTube videos have a special advantage.¹³⁷ Because Google owns YouTube, YouTube videos naturally have higher SEO than digital

129. *Id.*

130. *Do you need an SEO?*, GOOGLE, <https://support.google.com/webmasters/answer/35291?hl=en> (last visited Mar. 7, 2018).

131. JP Mangalindan, *So who's making money publishing on the web?*, FORTUNE (May 10, 2013), <https://www.fortune.com/2013/05/10/so-whos-making-money-publishing-on-the-web/>; *About Soompi*, SOOMPI, <https://www.soompi.com/about> (last visited Mar. 17, 2018); *allkpop: The Shop*, ALLKPOP, <https://shop.allkpop.com> (last visited Mar. 17, 2018). While Koreaboo seems to focus primarily on serving advertisements from third parties, Soompi also serves native advertisements from its parent company Viki, Inc., while allkpop focuses on selling merchandise through its shop.

132. Adam Clark Estes, *How Online Ads Work*, GIZMODO (Feb. 25, 2014), <https://gizmodo.com/how-online-ads-work-1530627881>.

133. *Traffic sources report*, YOUTUBE, <https://support.google.com/youtube/answer/1714921?hl=en> (last visited Mar. 7, 2018).

134. *Id.*

135. Rani Molla, *Google is sending more traffic than Facebook to publishers – again*, RECODE (Dec. 11, 2017), <https://www.recode.net/2017/12/11/16748026/google-facebook-publisher-traffic-2017-increase>.

136. *Id.*

137. Vinay Patankar, *How to Rank YouTube Videos on the First Page of Google*, SEMRUSH (Dec. 30, 2014), <https://www.semrush.com/blog/rank-youtube-videos-first-page-google>.

publishers that are unaffiliated with Google.¹³⁸ And unlike normal web pages, which only display the page's title, link, and a short description, video links appear on Google's search engine results with a thumbnail.¹³⁹ With these advantages, content uploaded by K-Pop Content Copycats have strong SEO and in some cases even ranked higher on Google's search engine results than the original work.¹⁴⁰ By showing up higher on Google's search engine results, the videos uploaded by K-Pop Content Copycats are essentially lowering the relative SEO of the original content, which will hurt the publisher's website traffic and advertisement revenue.

D. The Fair Use Argument

Perhaps the most common defense that YouTube users use to combat copyright takedown notices is the doctrine of fair use; in fact, YouTube even has a guidelines page to help users grasp the basics of the doctrine.¹⁴¹ In YouTube's own guidelines page, it advises users that "transformativeness is usually a key in the fair use analysis. Giving credit to the owner of a copyrighted work won't by itself turn a non-transformative copy of their material into fair use."¹⁴² According to 17 USCS § 107, in determining whether the use of a work qualifies under fair use must consider: the purpose and character of the use (whether it is transformative), the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market of the copyrighted work.¹⁴³

Outside of the internet, the Court of Federal Claims has used the four factors to determine whether or not items transformed into different media qualified as fair use.¹⁴⁴ In *Gaylord v. United States*, a sculptor filed suit against the United States Postal Service for infringing his exclusive copyright by issuing a commemorative stamp containing the image of his

138. *Id.*

139. Ryan Stewart, *9 Hacks to Rank YouTube Videos in Google*, MEDIUM (Aug. 31, 2015), <https://medium.com/@ryanwashere/9-hacks-to-rank-youtube-videos-in-google-284fc4597db3>.

140. *Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked*, GOOGLE, <https://www.google.com/search?q=Nayeon+And+Chaeyoung+Removed+All+Their+Makeup+On+Camera%E2%80%A6Fans+Shocked&oq=Nayeon+And+Chaeyoung+Removed+All+Their+Makeup+On+Camera%E2%80%A6Fans+Shocked&aqs=chrome..69i57j69i60l3j69i61.671j0j7&sourceid=chrome&ie=UTF-8> (last visited Mar. 7, 2018). In this case, when the title "*Nayeon And Chaeyoung Removed All Their Makeup On Camera . . . Fans Shocked*" is entered into Google's search engine, the four videos uploaded by the YouTube channels Abiz – Entertainment Buzz, K-World News, Show Now, and Kpop News 4E ranked higher than the original article by Koreaboo.

141. *What is fair use?*, YOUTUBE, <https://www.youtube.com/yt/about/copyright/fair-use/#yt-copyright-myths> (last visited Mar. 5, 2018).

142. *Id.*

143. 17 USCS § 107

144. *Gaylord v. United States*, 85 Fed. Cl. 59, 68-71 (2008)

sculpture.¹⁴⁵ In its analysis, in which it determined the stamp was indeed transformative in nature, the court explained that the stamp provided a different expressive character than the sculpture by itself.¹⁴⁶ In the opinion, the court did not claim that the Stamp was transformative because it was transformed into a different form of media; rather, the court explained that the photographer who took the photo of the sculpture had experimented with “angles, exposures, focal lengths, lighting conditions, as well as he time of year and day” to create a surrealistic environment that contrasted with the original sculpture.¹⁴⁷ Focusing on this element, as well as the stamp having little impact on the sculpture’s potential market, the court found that the United States Postal Service’s use of the sculpture qualified as fair use.¹⁴⁸

The most well-known fair use argument involving YouTube was a case between Stephanie Lenz and Universal Music Corporation.¹⁴⁹ In *Lenz v. Universal Music Corp.*, Lenz argued that the inclusion of Prince’s song “Let’s Go Crazy” in a video of her thirteen month-old son qualified as fair use.¹⁵⁰ Lenz’s 29-second video, titled “‘Let’s Go Crazy’ #1,” featured her two young children in the family kitchen dancing to the song.¹⁵¹ After Lenz obtained legal counsel and sent counter-notifications to YouTube claiming her use of “Let’s Go Crazy” was permissible under fair use, her video was reinstated.¹⁵² Since *Lenz v. Universal Music Corp.*, the market for YouTube videos using copyrighted content under fair use has grown tremendously in videos such as remixes, news reporting, and criticism.¹⁵³

Many YouTube channels have thrived on adding new expression or meaning to original content, but K-Pop Content Copycats continue to merely copy from the original. Looking at the four qualifying factors under 17 USCS § 107, the videos uploaded to YouTube by K-Pop Content Copycats cannot be covered by fair use.¹⁵⁴ The content created by K-Pop Content Copycats are commercial in nature, with advertisements running on the videos through YouTube. The original copyrighted work has the same aim as the content uploaded by K-Pop Content Copycats: to report on interesting news and

145. *Id.* at 62.

146. *Id.* at 68.

147. *Id.* at 68-69.

148. *Id.* at 71.

149. *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1148-1149 (9th Cir. 2016)

150. *Id.*

151. *Id.* at 1149.

152. *Id.* at 1150.

153. *What is fair use?*, *supra* note 141.

154. 17 USCS § 107, *supra* note 143. The four factors include (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

events. As noted earlier, the videos uploaded by K-Pop Content Copycats use the entirety of the original work, including the title, exact text, and images. Lastly, with both YouTube videos and publisher articles targeting the same market of K-Pop fans on the internet, K-Pop Content Copycats are diluting the value of the copyrighted work on the market and diluting the copyright owner's market share.

Content Copycats may also argue that news content falls under fair use, or that disallowing the use of text articles as a source for their videos would constitute unfair competition. However, the Supreme Court of the United States has already found it is unfair competition for a news collection agency to distribute the news collected by another news collection agency.¹⁵⁵ In the case of news on YouTube, some channels have developed ways to deliver news through other agencies but remain protected by fair use. For example, popular YouTube personality Phillip DeFranco covers news and pop culture through his channel, with videos five days a week.¹⁵⁶ Although he does use news from news outlets including Fox News, NBC News, and NPR, his commentary on the news stories and his opinions on the outlets' reporting is considered fair use.¹⁵⁷ Meanwhile, by literally taking all of the content from the original work, including the title, images, and exact text, K-Pop Content Copycats are not transforming the original work in any way to create their videos.

V. The Future of Video Content Claims

Digital publishers aren't able to utilize YouTube's Content ID system, which can only detect audiovisual content using reference files and does not have optical character recognition needed to detect text in videos; on the other hand, YouTube's counter notification system gives K-Pop Content Copycats an upper hand over digital publishers who submit copyright complaints against videos stealing their content.¹⁵⁸ By submitting a counter notification claiming that the video meets the legal requirements for fair use, the video will be restored unless the claimant provides evidence that they have initiated a court action to keep the content down within ten days after the counter notification is processed.¹⁵⁹ With so many K-Pop Content Copycats uploading countless videos using copyrighted content from K-Pop publishers, the burden of having content creators manually submit copyright

155. *Int'l News Serv. v. AP*, 248 U.S. 215, 247 (1918).

156. *Philip DeFranco*, YOUTUBE, <https://www.youtube.com/user/sxephil/about> (last visited Mar. 8, 2018).

157. *Philip DeFranco, INSANE! Rhode Island Porn Ransom, Lithuanian Murder Conspiracy Explained, and More . . .*, YOUTUBE (Mar. 7, 2018), <https://www.youtube.com/watch?v=Te3AeloV0BA>.

158. *How Content ID works*, *supra* note 5.

159. *Counter Notification Basics*, *supra* note 89.

takedown notices is inefficient and ineffective. The market for K-Pop Content Copycats is only growing over time, with some channels uploading dozens of videos every day by stealing content from publishers.¹⁶⁰ Rather than continue to let these channels commit copyright infringement and reduce the market share for legitimate content creators, YouTube needs to implement a system to better detect infringement by K-Pop Content Copycats and prevent it.

A. The “Adpocalypse” and Manual Review

Some of YouTube’s most popular functions, including their search algorithm and video recommendation, are automatic processes; in fact, even the Content ID system, YouTube’s strongest tool for copyright claims, is entirely automatic. But in a world where more and more users are discovering loopholes to bypass automation, manual review has become a vital tool to ensure quality content and protect content creators.¹⁶¹

In late 2017, Medium writer James Bridle brought to light that YouTube was hosting thousands of disturbing videos targeted to children.¹⁶² According to Bridle, there were channels on YouTube using keywords and YouTube’s automated algorithm to exploit views from children for more advertisement revenue.¹⁶³ In fact, many of these channels were even able to have their videos appear in YouTube Kids, an official application launched by YouTube designed to only broadcast family-friendly videos for children.¹⁶⁴ In light of the controversy, major brands, including Adidas, Mars, and HP, began pulling their advertisements from YouTube in what is popularly referred to as the “Adpocalypse.”¹⁶⁵ YouTube quickly took action on the issue, removing videos that it considered inappropriate and updating

160. *Love Topic*, YOUTUBE, <https://www.youtube.com/channel/UCRBq7Jnc95T-kHtiwGu40A/videos> (last visited Mar. 8, 2018). This channel was created on Jan 12, 2018, and has uploaded over one hundred videos with the same title, text, and photos as articles posted by Koreaboo; such videos include *The Full Story Behind J-Hope and Jo Kwon’s Friendship That Goes Back Years*, *12 Korean Celebrities Who Openly Support The #MeToo Movement*, and *9 Most Lovable Male X Female Idol Friendships*.

161. Rishi Iyengar, *Google is hiring 10,000 people to clean up YouTube*, CNN (Dec. 6, 2017), <http://money.cnn.com/2017/12/05/technology/google-youtube-hiring-reviewers-offensive-videos/index.html>.

162. James Bridle, *Something is wrong on the internet*, MEDIUM (Nov. 6, 2017), <https://medium.com/@jamesbridle/something-is-wrong-on-the-internet-c39c471271d2>.

163. *Id.*

164. *Id.*

165. Todd Spangler, *YouTube Faces Advertiser Boycott Over Videos With Kids That Attracted Sexual Predators*, VARIETY (Nov. 25, 2017), <https://www.variety.com/2017/digital/news/youtube-ad-boycott-pedophile-sexual-children-videos-1202622790>.

its advertisement policy.¹⁶⁶ In addition to clearly address that videos depicting family friendly entertainment characters engaged in inappropriate behavior would not be eligible for advertising, YouTube also introduced a new policy of automated demonetization to appease advertisers.¹⁶⁷

With YouTube's new automated system identifies videos that are deemed unsuitable for advertisers and disables monetization from them; however, many creators reported losing drastic amounts of their earnings from their videos because of the system without knowing why or how to avoid it.¹⁶⁸ To work with creators and to prevent incorrect flagging, YouTube opened up an appeal system with the use of experts who manually review videos.¹⁶⁹ But with so many videos getting flagged as "not suitable for most advertisers," YouTube has reportedly hired more than 10,000 people to review content.¹⁷⁰

B. Increased Liability

BMG Rights Mgmt. (US) LLC v. Cox Communs., Inc. established that merely implementing a repeat infringement policy does not automatically grant service providers safe harbor protections.¹⁷¹ In *BMG Rights Mgmt. (US) LLC v. Cox Communs., Inc.*, plaintiff BMG Rights Management (US) LLC (BMG) filed suit against defendants Cox Communications, Inc. and CoxCom, LLC (collectively, Cox) alleging they were "contributorily liable for infringement of BMG's copyrights by subscribers to Cox's Internet service."¹⁷² When the case was brought to the United States Court of Appeals for the Fourth Circuit, the court affirmed the district court's ruling that Cox had not produced evidence that it had implemented a policy entitling it to a statutory safe harbor defense.¹⁷³ Cox had implemented a repeat infringer policy, but the court found that Cox's policy was not reasonably implemented because it was clearly determined to not terminate subscribers and accounts that had been terminated were easily reactivated.¹⁷⁴ For its termination policy, YouTube employs a three strike policy: if a user receives three copyright strikes, their account will be subject to termination, all the

166. Zoë Bernard, *YouTube is reportedly pointing kids to thousands of disturbing, violent, and inappropriate videos*, BUSINESS INSIDER (Nov. 8, 2017), <http://www.businessinsider.com/youtube-has-thousands-of-disturbing-videos-targeted-at-kids-report-2017-11>.

167. Rachel Dunphy, *Can YouTube Survive the Adpocalypse?*, SELECT ALL (Dec. 28, 2017), <http://nymag.com/selectall/2017/12/can-youtube-survive-the-adpocalypse.html>.

168. *Id.*

169. *Appeal videos marked "Not suitable for most advertisers"*, YOUTUBE, <https://support.google.com/youtube/answer/7083671?hl=en> (last visited Mar. 8, 2018).

170. Rishi Iyengar, *supra* note 161.

171. *BMG Rights Mgmt. (US) LLC v. Cox Communs., Inc.*, 881 F.3d 293, 298 (4th Cir. 2018)

172. *Id.*

173. *Id.*

174. *Id.* at 299.

videos on their account will be removed, and they will no longer be able to create new channels.¹⁷⁵ However, when a user submits a successful counter notification, not only is the claimed video restored, but the copyright strike on the user is also removed.¹⁷⁶ Although YouTube's repeat infringement policy is clearly more strict than Cox's policy had been, the automated removal of strikes after ten days with no proof of a court action by the claimant could suggest that a repeat infringer policy has not been reasonably implemented.

Without access to an automated system for copyright takedowns, copyright owners who are ineligible for the Content Verification Program are unduly burdened, even if a copyright holder were to prevail in a court action following a counter notification, the court victory would not preclude a different K-Pop Content Copycat from uploading infringing content or expedite the process in any way.¹⁷⁷

YouTube should allow publishers to join the Content Verification Program and submit text articles for Content ID detection. When it became clear that too many users were uploading copyrighted content, YouTube took affirmative steps to protect copyright owners by implementing their Content Verification Program.¹⁷⁸ While Content ID currently does not support optical character recognition (OCR), YouTube can work to integrate Google's Cloud Platform OCR into the Content ID system.¹⁷⁹ By implementing OCR technology and allowing publishers to use Content ID, they can demonetize or block all videos using their copyrighted content, effectively ending the market for K-Pop Content Copycats. In the meantime, YouTube could follow the manual review model it used to appease advertisers in response to the "Adpocalypse." By automatically demonetizing videos with certain tags, such as "K-Pop News" or "K-Pop Buzz" and forcing them to submit manual review requests, YouTube could deter K-Pop Content Copycats from making videos while they work on finding a way to allow publishers to use Content ID.

175. *Copyright strike basics*, YOUTUBE, <https://support.google.com/youtube/answer/2814000?hl=en> (last visited Mar. 8, 2018).

176. *Id.*

177. Even if Koreaboo were to hire legal counsel and win a case against one K-Pop Content Copycat, YouTube's current policies would not affect other K-Pop Content Copycats. To win another claim against a different Content Copycat, Koreaboo would have to take legal action against every Content Copycat it can find, one at a time.

178. *Content Verification Program*, *supra* note 55.

179. *Optical Character Recognition (OCR) Tutorial*, GOOGLE, <https://cloud.google.com/functions/docs/tutorials/ocr> (last visited Mar. 16, 2018).

Conclusion

In today's world of constantly evolving technology and innovation, YouTube's current copyright system is not sufficiently protecting copyright owners. While its content ID system can help creators of audiovisual content, it is not useful to media publishers, who are facing copyright infringement by Content Copycats. This infringement is most notable in the rising K-Pop market, where channels are churning out dozens of videos on a daily basis that blatantly steal from articles written by entertainment websites. Rather than shielding themselves from liability and appeasing their advertisers, as the leader in video content on the internet, YouTube should serve as an example for service providers by ending market exploits. YouTube needs to utilize its system of manual review to limit the damages to copyright holders and integrate OCR technology to properly vet videos and put an end to Content Copycats once and for all.