THE UNIVERSITY *of* EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e.g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.
A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.
This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.
The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.
When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

Cover songs, Remixes, and Copyright: An empirical examination of music prosumers' interactions with copyright and related enforcement regimes on YouTube.

Giorgos D. Vrakas

THE UNIVERSITY *of* EDINBURGH

Ph.D. in Law

The University of Edinburgh

2021

Acknowledgements

I would first and foremost like to thank my supervisors, Dr. Smita Kheria and Prof. Candace Jones for their valuable guidance, advice and patience. They were always there to listen to my ideas and challenge my thoughts every step of the way, which not only enabled the completion of this thesis but helped me develop my own critical thinking skills.

I am also very grateful to the Scottish Graduate School for Arts and Humanities, and the A.G. Leventis Foundation for the studentships which enabled me to pursue this research, but also which allowed for me to develop my empirical research skills, attend academic conferences, and tap into a network of academics from the UK and beyond.

I have been fortunate enough to have the most amazing fiancé, Athina Georgiou Shippi, who has always been by my side. Especially throughout the rollercoaster of a journey that is called a PhD. I am deeply grateful to her for supporting me throughout my PhD journey, not least for providing an extra pair of investigative eyes, which thoroughly proofread my thesis. Similarly, I am extremely thankful to my future sister-in-law, Dr. Maria Georgiou Shippi for also thoroughly proofreading my thesis.

Being surrounded by the best group of friends anyone could ever ask for also played a major role in the completion of this thesis and PhD journey. Moreover, I would also like to thank the Marathon Writing session group which helped add some structure to an inherently unstructured journey called a PhD.

My four-legged friend, Biscuit, also deserves a special mention for his seemingly infinite source of happiness, love, and affection.

Finally, I am deeply grateful to my family for their love and support. I would especially like to acknowledge my wonderful mother for her endless support and encouraging words whenever they were needed and for always being there and believing in me. Similarly, I would like to thank my father for his encouraging words, belief, and patience in helping me through my PhD journey.

Abstract

This thesis, via two separate phases of empirical research, provides novel empirical insights into how users who create and disseminate derivative musical works, to YouTube – prosumers of music – understand, perceive, experience, and interact with the regulatory frameworks they encounter at different stages of their dissemination journeys. Specifically, this thesis focuses on two distinct, but prominent areas of music prosumption – cover songs and remixes.

In phase one, a web ethnography was conducted of online discussion forums used by prosumers of music (N=1762 posts). In phase two, an online questionnaire was administered to a selection of such prosumers (N=90) followed by email interviews with participants who were willing to share further insights (N=7).

The central contribution of this thesis is fourfold. First, through an examination of prosumers' knowledge and understanding of copyright and related enforcement regimes, this thesis shows that copyright knowledge varies amongst prosumers of music, but that generally prosumers of music lack copyright knowledge. This thesis ultimately finds that prosumers' lack of copyright knowledge often negatively impacts how prosumers interact with copyright and related enforcement regimes throughout their dissemination journey.

Second, through an examination of prosumers' encounters with rights clearance, this thesis reveals that prosumers who attempt to secure rights clearance, describe the process as time consuming, confusing, and expensive. However, a lack of awareness of the need to do so, coupled with YouTube's operationalisation of copyright and related enforcement regimes, translates to prosumers of music typically circumventing traditional rights clearance processes. Hence, this thesis reveals a gap between law in action and black letter law, in the context of rights clearance, which enables a more welcoming route to publication for prosumers of music.

Third, this research explored whether informal norms regulate any of the decisions prosumers of music make whilst uploading their works to YouTube. This thesis reveals that informal norms regulate some but not all decisions prosumers of music make whilst uploading their works to YouTube. Such informal norms operate alongside copyright regulatory frameworks, complementing them.

Fourth, existing studies show that rightsholders often overzealously enforce their rights against UGC online. However, by examining music prosumers' encounters with copyright enforcement regimes on YouTube, this thesis demonstrates that prosumers of music generally experience a more welcoming route to publication.

This research took place whilst the European Union was undergoing a review and subsequent modernisation of how online intermediaries like YouTube are regulated, which resulted in the Digital Single Market (DSM) Directive. Although the findings of this research provide novel insights into how prosumers of music interact with copyright and related enforcement regimes which predate the DSM Directive, some of its findings provide practical insights into what effect, if any, the DSM Directive is likely to have for UGC that is disseminated online.

Lay summary

Over time, easier access to home recording tools coupled with the rise of websites like YouTube, has meant that musicians have been able to create and share their own renditions of original songs, online more easily. Such renditions are often referred to as cover songs and remixes.

Legal frameworks, namely, copyright law, regulate how a range of cultural goods including music can be used, and although not specifically intended towards regulating cover songs and remixes continue to apply. As a result, users who create and share their own renditions of original songs online, encounter copyright frameworks.

This research examined how users who create and share their own renditions of original songs on YouTube (arguably the most popular dissemination platform), understand, perceive, experience, and interact with the copyright frameworks they encounter. It did so by first examining online discussion forums used by users who share their own renditions of original songs on YouTube. This allowed for initial theories to be developed and later tested using an online survey which was completed by users who create and share their own renditions of original songs on YouTube. This was followed up by interviews via email, with survey participants who were interested in providing further insights.

This research found that users who share their own renditions of original songs on YouTube, do not all share a common understanding of the copyright frameworks they encounter. This often negatively affects prosumers' interactions with the copyright frameworks they encounter.

Copyright law rewards creators of new music, with certain rights, including the right to recreate their work. As a result, before sharing their own renditions of original songs on YouTube, users are, in accordance with copyright law, expected to seek permission to do so, from those who control the right to recreate the songs users have created their own renditions of. This research found that users who do so, describe the process as time consuming, confusing, and expensive. However, a lack of awareness of the need to do so, coupled with YouTube's private practices and policies, means that most users do not usually seek to obtain such permission before sharing their own renditions of original songs on YouTube. This thesis thus, brings to light the fact that users who share their own renditions of songs on YouTube, may not always follow what is prescribed by law in favour of a more welcoming route to publication.

Whilst in the process of sharing their own renditions of original songs on YouTube, users are given the choice of how to title their works, what to include in the descriptions of their works, but also, under certain circumstances, they are given the option to commercialise their works allowing for them to earn money. Such decisions are to a certain extent governed by copyright law. However, existing

research supports the idea that such decisions are often controlled by non-legal frameworks. This research shows that, non-legal frameworks control some but not all the decisions such users make whilst uploading their works to YouTube.

If a user fails to seek permission before sharing their own rendition of an original song to YouTube, upon sharing that work, they are likely to encounter copyright frameworks via YouTube's private practices and policies. Although existing research shows that such users should encounter hurdles at this stage of their dissemination journey, this research reveals that YouTube creates a more welcoming route to publication for users who wish to share their own renditions of original songs online.

This research took place whilst discussions were taking place in the European Union with regards to how platforms like YouTube should be regulated. Such discussions resulted in a new regulatory framework coming into place after this research took place. Although this research's findings provide novel insights into how users who share their own renditions of songs on YouTube, interact with laws which predate this new regulatory framework, some of its findings provide practical insights into what effect, if any, this new framework is likely to have for user created content that is disseminated online.

Table of Contents

Acknowledgements ..... **i**
Abstract ..... **ii**
Lay summary ..... **iv**
Table of Figures ..... **ix**
Table of Tables ..... **xi**
Introduction. **1**
PART ONE **8**
Chapter 1 – Scoping and Legal Analysis. **8**
1.1 What are works of "music prosumption"? 9
1.1.1 What is a remix? 10
1.1.2 What are cover songs? 13
1.1.3 Summary. 15
1.2 YouTube as a dissemination platform for works of music prosumption. 16
1.3 Music prosumers' encounters with copyright related regulatory frameworks 18
1.3.1 Before Uploading. 20
1.3.2 Whilst Uploading. 47
1.3.3 After Uploading. 67
1.3.4 Legal Consciousness. 82
1.4 Summary. 87
Chapter 2 - Methods and methodology **89**
2.1 Categorising this research. 89
2.2 Research Methods. 95
2.2.1 Phase one: A web ethnography. 96
2.2.2 Phase two: Questionnaire and Email Interviews. 103
2.3 Limitations 123
2.4 Conclusion. 124
PART TWO. **125**
Chapter 3 – Music Prosumers' Legal Consciousness. **125**
3.1 Music prosumers' knowledge and understanding of copyright law 127
3.1.1 Music prosumers general knowledge and understanding of copyright law 128
3.1.2 Music prosumers' knowledge and understanding of copyright infringement. 134
3.1.3 Music prosumers' knowledge and understanding of copyright exceptions. 137
3.2 Sources of Knowledge. 143
3.3 Interim Conclusion. 146
Chapter 4 – Before Uploading **147**

4.1 What do prosumers of music know about the legal processes they encounter before they upload their works to YouTube? 149
4.2 What are music prosumers' experiences of rights clearance processes? 153
4.2.1 Do prosumers seek to obtain rights clearance? 154
4.2.2 How do those music prosumers, who seek to obtain rights clearance, experience the rights clearance process? 161
4.2.3 Prosumers and the use of royalty free samples. 164
4.2.4 What influences prosumers' decision to either seek or not seek permission to reuse works included in their work? 166
4.3 Interim Conclusion. 169
Chapter 5 – Whilst Uploading. 170
5.1 The choices prosumers encounter whilst uploading in the context of formal black letter law. 174
5.1.1 Attribution in the context of copyright law. 175
5.1.2 Monetisation in the context of copyright law. 179
5.2 Do non-legal regulatory frameworks influence the decisions prosumers of music encounter whilst they are uploading their works to YouTube? 181
5.2.1 Non-legal regulatory frameworks in the context of how works of music prosumption are titled and described on YouTube. 182
5.2.2 Non-legal regulatory frameworks in the context of monetising works of music prosumption. 200
5.3 Interim Conclusion. 212
Chapter 6 – After Uploading. 213
6.1 Music prosumers' knowledge and understanding of copyright enforcement regimes and how they are operationalised on YouTube. 215
6.1.1 Music prosumers' knowledge and understanding of Content ID. 216
6.1.2 Music prosumers' knowledge and understanding of the regulatory framework which forms the basis of Copyright Strikes. 220
6.1.3 Summary of prosumers' knowledge and understanding of Content ID and Copyright Strikes. 225
6.2 How prosumers of music experience and interact with copyright and related enforcement regimes after they have uploaded their works to YouTube. 226
6.2.1 Music prosumers' experiences and interactions with Content ID. 227
6.2.2 Music prosumers' experiences and interactions with copyright strikes. 242
6.3 Interim Conclusion. 254
PART THREE. 255
Chapter 7 – Conclusion. 255
7.1 Article 17 of the DSM Directive. 256

7.1.1 Licensing route. 259
7.1.2 Best efforts. 261
7.2 Overview, main conclusions, implications, and recommendations. 266
7.2.1 Copyright Knowledge. 267
7.2.2 Rights clearance. 270
7.2.3 Enforcement. 274
7.2.4 Social Norms. 279
7.3 Final concluding remarks. 282
BIBLIOGRAPHY 285
Journal Articles and Reports 288
Websites 297
Table of cases 304
Table of Legislation 306
Appendix 307
Phase one 307
Tables pertaining to phase one 307
Phase two 312
Email invitations and reminders to participate in the questionnaire 312
Questionnaire 317
Tables pertaining to the questionnaire 380
Email interview information sheet and consent form 384
Template for email Interviews 386
Tables pertaining to the email interviews 388

Table of Figures

Figure 1: Depiction of prosumers of music. 2

Figure 2: Illustration of the analogy of covers and remixes as houses 15

Figure 3: Illustration of the prompt a prosumer is faced with upon choosing to upload their work to YouTube. 47

Figure 4: Illustration of the prompt John will be faced with upon selecting which file he wishes to upload to YouTube. 48

Figure 5: Illustration of YouTube's obligation to comply with the US Children's Online Privacy Protection Act (COPPA). 49

Figure 6: Illustration of the pre-publishing prompt entitled "video elements" 50

Figure 7: Illustration of the pre-publishing prompt entitled "visibility". 51

Figure 8: Illustration of the pre-publishing prompt entitled “monetisation” 52

Figure 9: Illustration of the pre-publishing prompt entitled "Ad suitability". 53

Figure 10: Illustration of the new pre-publishing prompt entitled "Checks". 55

Figure 11: Combination of Creswell and Piano Clark’s mixed methods research design (exploratory/explanatory sequential design). 93

Figure 12: Frequency of posts made by the same usernames. 100

Figure 13: Illustration of how questions in the questionnaire were presented. 108

Figure 14: Illustration of how questions in the questionnaire were presented. 109

Figure 15: Illustration of the TPB. 111

Figure 16: Line chart showing the number of participants that started and competed the questionnaire and on which dates 115

Figure 17: Bar chart of respondents reported geographical locations. 116

Figure 18: Heatmap illustrating respondents reported geographical locations. 117

Figure 19: Illustration of number of respondents and their corresponding number of correct categorisations. 133

Figure 20: Diagram illustrating the right clearance process for John. 155

Figure 21: Specific works of music prosumption and their propensity to receive a Content ID claim. 233

Figure 22: Illustration of YouTube's Content ID Claim, dispute process 238

Figure 23: How respondents typically react upon receiving a Content ID claim. 239

Figure 24: How respondents typically react upon receiving a copyright strike. 250

Figure 25: Illustration of the message that displays on a video that has been taken down. 251

Figure 26: Illustrating of a platform's obligations under Article 17 of the DSM Directive, if they are to avoid liability for their users' infringements. 258

Table of Tables

Table 1: Number of results from text query results for each of the documents. 99

Table 2: Top 3 songs on Spotify Global Charts and the Corresponding Covers/Remixes of those songs on YouTube on the 25/11/2019. 105

Table 3: The number of email addresses attached to each of the channels that had uploaded a cover and/or remix to YouTube. 106

Table 4: Gender demographics. 115

Table 5: Age demographics. 116

Table 6: Demographics regarding when approximately those who upload cover songs to YouTube began uploading cover songs. 117

Table 7: Demographics regarding when approximately those who upload remixes to YouTube began uploading remixes. 118

Table 8: Demographics regarding how many views respondents' cover songs attract. 118

Table 9: Demographics regarding how many views respondents' remixes attract. 119

Table 10: Make-up of interviewees. 121

Table 11: Respondents' perceived copyright knowledge. 130

Table 12: All copyright law statements presented to questionnaire participants, their correct categorisation and how participants responded. 132

Table 13: Categorisation of knowledge in relation to the correct number of responses. 133

Table 14: Coding matrix query for knowledge of copyright exceptions or lack thereof. 137

Table 15: Respondents' sources of knowledge. 145

Table 16: How many respondents ever attempted to secure rights clearance. 157

Table 17: Crosstab between the type of content questionnaire respondents reported uploading and whether they attempted to secure rights clearance. 160

Table 18: Frequencies of why respondents sought to secure rights clearance. 167

Table 19: Frequencies of why respondents did not seek to secure rights clearance 167

Table 20: How many of those who upload cover songs attribute. 183

Table 21: How many of those who upload remixes attribute. 183

Table 22: How often do those who upload cover songs attribute. 185

Table 23: How often do those who upload remixes attribute..... 185

Table 24: How many of those who upload cover songs to YouTube, think it is common practice among users who upload cover songs to YouTube, to credit the original artists. 186

Table 25: How many of those who upload remixes to YouTube, think it is common practice among users who upload remixes to YouTube, to credit the original artists. 186

Table 26: How many of those who upload cover songs to YouTube, think that other users who upload cover songs to YouTube should credit the original artists. 188

Table 27: How many of those who upload remixes to YouTube, think that other users who upload remixes to YouTube should credit the original artists 188

Table 28: Participants' who upload cover songs to YouTube, rating of the statement: "when uploading a cover song to YouTube, you must credit the original artists"..... 188

Table 29: Participants' who upload remixes to YouTube, rating of the statement: "when uploading a remix to YouTube, you must credit the original artists"..... 189

Table 30: How many participants who upload cover songs to YouTube, think that other users who upload cover songs to YouTube think that they should credit the original artists..... 190

Table 31: How many participants who upload remixes to YouTube, think that other users who upload remixes to YouTube think that they should credit the original artists. 190

Table 32: If only 10% of users who upload cover songs to YouTube credited original artists, but 90% of users who upload cover songs to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the cover songs they uploaded to YouTube..... 194

Table 33: If 90% of users who upload cover songs to YouTube credited original artists, but only 10% of users who upload cover songs to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the cover songs they uploaded to YouTube..... 194

Table 34: If only 10% of users who upload remixes to YouTube credited original artists, but 90% of users who upload remixes to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the remixes they uploaded to YouTube. 194

Table 35: If 90% of users who upload remixes to YouTube credited original artists, but only 10% of users who upload remixes to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the remixes they uploaded to YouTube. 194

Table 36: How many respondents who upload cover songs to YouTube, look at how other who upload cover songs to YouTube title their own cover songs. 197

Table 37: How many respondents who upload remixes to YouTube, look at how others who upload remixes to YouTube title their own remixes..... 197

Table 38: How often do respondents who upload cover songs to YouTube, look at how other who upload cover songs to YouTube title their own cover songs. 197

Table 39: How often do respondents who upload remixes to YouTube, look at how others who upload remixes to YouTube title their own remixes. 197

Table 40: How many respondents who upload cover songs to YouTube monetise any of the cover songs they upload to YouTube..... 201

Table 41: How many respondents who upload remixes to YouTube monetise any of the remixes they upload to YouTube..... 201

Table 42: Why do respondents who do not monetise the cover songs they upload to YouTube, not monetise those works..... 202

Table 43: Why do respondents who do not monetise the remixes they upload to YouTube, not monetise those works..... 204

Table 44: Why do respondents who monetise the cover songs they upload to YouTube, monetise those works..... 206

Table 45: Why do respondents who monetise the remixes they upload to YouTube, monetise those works..... 206

Table 46: How often do respondents who monetise the cover songs they upload to YouTube, monetise those works..... 207

Table 47: How often do respondents who monetise the remixes they upload to YouTube, monetise those works..... 207

Table 48: How many respondents who upload cover songs to YouTube, think it is common practice among users who upload cover songs to YouTube, to not monetise the cover songs they upload to YouTube. 208

Table 49: How many respondents who upload remixes to YouTube, think it is common practice among users who upload remixes to YouTube, to not monetise the remixes they upload to YouTube 208

Table 50: How many respondents who upload cover songs to YouTube, when making the decision of whether or not to monetise the cover songs they upload to YouTube, look at how others who upload cover songs to YouTube monetise their own cover songs 209

Table 51: How many respondents who upload remixes to YouTube, when making the decision of whether or not to monetise the remixes they upload to YouTube, look at how others who upload remixes to YouTube monetise their own remixes? 210

Table 52: How often do respondents who upload cover songs to YouTube look at how others who upload cover songs to YouTube monetise their own cover songs. 210

Table 53: How often do respondents who upload remixes to YouTube, look at how others who upload remixes to YouTube monetise their own remixes? 211

Table 54: Participants' perceived knowledge of how Content ID operates. 217

Table 55: All Content ID related statements presented to questionnaire participants, their correct categorisation and how participants responded. 218

Table 56: How many Content ID related statements respondents correctly categorised. 218

Table 57: Coding matrix query for knowledge of notice and takedown regimes or lack thereof. 220

Table 58: The notice-and-takedown regime related statements presented to questionnaire participants, their correct categorisation and how participants responded. 223

Table 59: How many respondents received a Content ID claim. 228

Table 60: How many Content ID claims respondents received. 232

Table 61: Crosstab between the number of works uploaded and the number of Content ID claims received 234

Table 62: Crosstab between the type of works uploaded and the number of Content ID claims received 235

Table 63: How many respondents have received a copyright strike. 243

Table 64: How many copyright strikes respondents received. 246

Table 65: Crosstab between the number of copyright strikes received and the number of Content ID claims received 247

Introduction.

One of America's favourite composers – John Philip Sousa – once argued that new machines which enabled works of music to be played back, referred to as "*mechanical music*", resulted in musical works being more accessible.[1] John Philip Sousa feared that "*mechanical music*" would lead to "*cultural emptiness*",[2] and that the advent of machines in music would lead to a lack of musical participation and as a result, amateurism which is correlated with a love for music, would disappear.[3] Society would no longer engage in the production of music, but would merely hear what they wanted to hear on demand.[4] Consequently, the role of producers in music would disappear and we would have a musical culture dominated by consumers, which Lessig refers to as a "Read-Only" culture.[5]

Over time, however, we have witnessed the progressive distortion of the once distinctive roles of consumers and producers, leading to what Toffler described as the rise of prosumption.[6] Toffler argued that the two terms had first converged in pre-industrial societies thereby creating what he referred to as the "first wave" of prosumption.[7] This was followed by the "second wave" – marketisation – which once again separated the two terms – producer and consumer.[8] Nevertheless, Toffler concludes that contemporary society in the 1980's was witnessing the rise of prosumption again – the "third wave".

This progressive distortion of the line between consumers and producers has only intensified with the rise of Web 2.0 which is defined as "*the ability of users to produce content collaboratively*".[9] Furthermore, advancements of technology in music, the popularisation and ease of access to home recording software/hardware and the creation of user generated content (UGC) orientated websites, and their subsequent proliferation, have enabled easier recording and distribution of recordings. As a result, we have witnessed a move from users exhibiting a mere passive role towards having a more active role in the creation and dissemination of music and as such, have witnessed the rise of

[1] Lawrence Lessig, *Remix : Making Art and Commerce Thrive in the Hybrid Economy.* (A & C Black 2008).
[2] Ibid.
[3] Ibid, 27.
[4] Ibid.
[5] Ibid, 28.
[6] Alvin Toffler, *The Third Wave* (Morrow 1980).
[7] ibid 266.
[8] ibid.
[9] George Ritzer and Nathan Jurgenson, 'Production, Consumption, Prosumption: The Nature of Capitalism in the Age of the Digital "Prosumer"' (2010) 10 Journal of Consumer Culture 13, 19.

prosumers of music,[10] i.e. users who recreate versions songs they have listened to and share those recreations online.

One could argue that unlike what John Philip Sousa predicted, technological advances in music have not destroyed amateurism but have facilitated the creation of a participatory culture in music,[11] and ultimately led to the creation of prosumers of music (Figure 1).

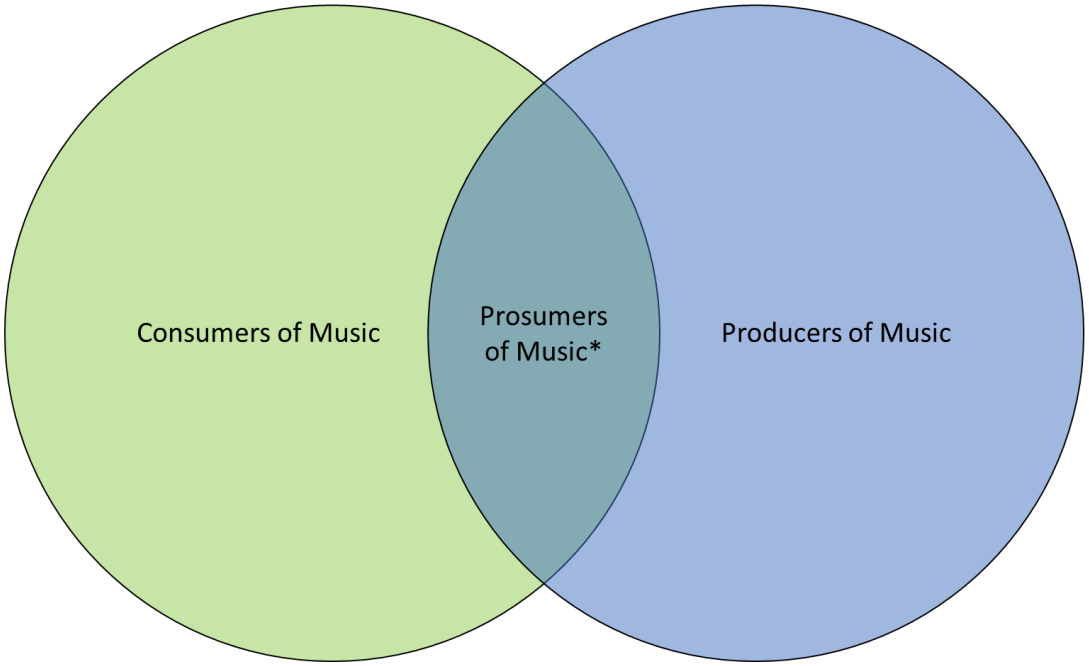


Figure 1: Depiction of prosumers of music.

However, user agency is not as simple as claiming that the proliferation of a participatory culture translates to everyone actively participating in the participatory culture. As observed by a guardian technology reporter "*an emerging rule of thumb suggests that if you get a group of 100 people online then one will create content, 10 will "interact" with it (commenting or offering improvements) and the other 89 will just view it".*[12] An American survey which categorised user behaviour in accordance with six levels on a participation ladder found that of all online users of UGC orientated platforms, 13% are what they refer to as 'active creators' – *"people actually producing and uploading*

[10] Toffler (n 6).
[11] J Cabay and M Lambrecht, 'Remix Prohibited: How Rigid EU Copyright Laws Inhibit Creativity' (2015) 10 Journal of Intellectual Property Law & Practice 359.
[12] Charles Arthur, 'What Is the 1% Rule?' *The Guardian* (20 July 2006) <http://www.theguardian.com/technology/2006/jul/20/guardianweeklytechnologysection2> accessed 8 March 2022.

content such as webblogs, videos or photos".[13] Hence, although not all internet users would be regarded as creators of UGC there is undoubtably, a proliferation of a participatory culture taking place in the realm of music, a key contributor of which are advancements of technology in music, enabling the easier and more cost efficient reproduction and distribution of user generated music.

The proliferation of a participatory culture has meant that we have witnessed an influx of businesses shifting their models from consumer-based activities to prosumer-based activities.[14] This is evidenced by the emergence and subsequent popularisation of UGC orientated websites.[15] UGC orientated websites allow for users to easily share the content they create and essentially act as distribution platforms for the masses.[16] The most prominent UGC orientated website is YouTube with 1.3 billion users worldwide and approximately 300 hours of UGC uploaded every minute.[17] Content on YouTube ranges from "auto and vehicles" to "gaming" and "comedy".[18] Content on YouTube also ranges from professional to amateur.[19] One of YouTube's most prominent genre of content, however, is music.[20] In fact YouTube competes with platforms like Spotify and Apple Music, in terms of popularity, whose sole purpose is music streaming.[21] Hence, YouTube acts as a popular online music distribution platform which is accessible to not only already established musicians but unsigned and amateur musicians alike. Hence, original music and user generated recreations of that original music are both available on YouTube.

Copyright underpins the dissemination of creative content online. Specifically, copyright frameworks regulate how a range of cultural goods including music can be used.[22] Copyright frameworks typically award rightsholders a bundle of rights including but not limited to, the right to reproduce their

[13] José van Dijck, 'Users like You? Theorizing Agency in User-Generated Content' (2009) 31 Media, Culture & Society 41, 44.
[14] ibid 46.
[15] Christian Christensen, 'YouTube: The Evolution of Media?' [2007] Screen Education 36.
[16] Anjana Susarla, Jeong-Ha Oh and Yong Tan, 'Social Networks and the Diffusion of User-Generated Content: Evidence from YouTube' (2011) 23 Information Systems Research 23.
[17] 'How User-Generated Content on YouTube Can Be Important for Your Brand?' (*Helplama.com*, 9 September 2021) <https://helplama.com/user-generated-video-content-youtube/> accessed 9 March 2022.
[18] TechPostPlus, 'YouTube Video Categories List (Complete Guide)' (*TechPostPlus*, 26 April 2019) <https://techpostplus.com/youtube-video-categories-list-faqs-and-solutions/> accessed 9 March 2022.
[19] 'YouTube's Big Transition: Moving from Amateur to Professional Era of Online Video' (*ReadWrite*, 22 May 2012) <https://readwrite.com/2012/05/22/youtubes-big-transition-moving-from-the-amateur-to-professional-era-of-online-video/> accessed 8 March 2022.
[20] Hugh McIntyre, 'Report: YouTube Is The Most Popular Site For On-Demand Music Streaming' (*Forbes*) <https://www.forbes.com/sites/hughmcintyre/2017/09/27/the-numbers-prove-it-the-world-is-listening-to-the-music-it-loves-on-youtube/> accessed 8 March 2022.
[21] Mark Mulligan, 'How YouTube's Domination of Streaming Clips the Market's Wings' (*Music Industry Blog*, 3 January 2019) <https://musicindustryblog.wordpress.com/2019/01/03/how-youtubes-domination-of-streaming-clips-the-markets-wings/> accessed 8 March 2022.
[22] See for instance, in the UK the Copyright, Designs and Patents Act 1988.

work,[23] and as will emerge from discussions below, works of music prosumption are based upon already existing musical works, which results in them often being regarded as amounting to copyright infringement. Related regulatory frameworks determine how online platforms like YouTube, which host potentially copyright protected content, are to be regulated.[24] As a result, prosumers of music who upload their works to YouTube will inevitably encounter copyright and other related regulatory framework, throughout their dissemination journeys.

Scholarly work in the realm of music prosumption has primarily remained within the remits of traditional doctrinal legal research. Studies have explored how certain categories of works of music prosumption, operate within a legal framework which restricts copying. Namely, scholars have explored whether musical remixes deserve to be protected by copyright law,[25] how they amount to copyright infringement in different jurisdictions and whether any exceptions apply.[26] This research, using empirical research methods, provides novel empirical insights into how these regulatory frameworks operate in action, within the realm of music prosumption. Although, existing scholarly work has empirically examined other communities' encounters with similar regulatory frameworks, to date, music prosumers' encounters with the regulatory frameworks met when using YouTube as a dissemination platform remain unknown. This was the gap which drove this research's empirical enquiry. This research provides novel empirical insights into how prosumers of music understand, perceive, experience, and interact with the regulatory frameworks encountered throughout their dissemination process. It does so in three separate parts.

[23]As per Goldstein and Hugenholtz "*the rights granted under copyright will vary with legal traditions and national implementations, but will usually, at the very least, consist of the exclusive rights to reproduce […] a work".* Paul Goldstein and P Bernt Hugenholtz, *International Copyright: Principles, Law, and Practice* (OUP USA 2013) 4.

[24] At the time this research took place, in the EU, platforms were regulated by the Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ 2 178/01.

[25] Sabine Jacques, 'Mash-Ups and Mixes: What Impact Have the Recent Copyright Reforms Had on the Legality of Sampling?' [2015] Entertainment Law Review (Sweet & Maxwell); Paul Théberge, 'Technology, Creative Practice and Copyright', *Music and Copyright* (Taylor and Francis 2013).

[26] Sabine Jacques, 'Are the New "fair Dealing" Provisions an Improvement on the Previous UK Law, and Why? Part of a Wider Reform' (2015) 10 Journal of Intellectual Property Law & Practice; Em McAvan, 'Boulevard of Broken Songs: Mash-Ups as Textual Re-Appropriation of Popular Music Culture' (2006) 9 Journal of Media and Culture <http://journal.media-culture.org.au/0612/02-mcavan.php> accessed 8 March 2022; Wellett Potter, 'Music Mash-Ups: The Current Australian Copyright Implications, Moral Rights and Fair Dealing in the Remix Era' (2013) 17 Deakin Law Review 349; Emily Harper, 'Music Mashups: Testing the Limits of Copyright Law as Remix Culture Takes Society by Storm' (2010) 39 Hofstra Law Review <http://heinonline.org/HOL/Page?handle=hein.journals/hoflr39&id=409&div=19&collection=journals> accessed 8 March 2022; Maxime Lambrecht and Julien Cabay, 'Remix Allowed: Avenues for Copyright Reform Inspired by Canada' (2016) 11 Journal of Intellectual Property Law & Practice 21; Cabay and Lambrecht (n 11); Mathias Klang and Jan Nolin, 'Tolerance Is Law: Remixing Homage, Parodying Plagiarism' [2012] SCRIPTed <https://script-ed.org/article/article-3/> accessed 8 March 2022.

Part 1, which consists of Chapters 1 and 2, essentially acts as the foundation for this thesis. Despite the proliferation of a participatory culture which has ultimately led to the creation of "prosumers of music", as of yet there is no clear definition of what can be categorised as a work of music prosumption. Hence, Chapter 1, begins by categorising and providing working definitions for the categories of works of music prosumption which are the focus of this research. It then provides a descriptive analysis of how YouTube has become a prominent dissemination platform for works of music prosumption thereby providing a justification for why it was chosen as the premise of this research's focus. Next, using a hypothetical scenario of a prosumer uploading their work to YouTube, Chapter 1 follows a prosumer on their dissemination journey chronologically, mapping out prosumers' encounters with copyright and related enforcement regimes. Hence, what further differentiates this research from existing scholarly work, is that it provides a holistic chronological portrayal of prosumers' encounters with such regulatory frameworks. Specifically, it follows "John", a hypothetical prosumer, before, whilst and after uploading a work of music prosumption to YouTube, mapping out his encounters with copyright and related regulatory frameworks. This allows for the identification of the research questions which helped guide this research's empirical enquiry. Chapter 2, then outlines and critically analyses the methods and methodology employed in answering those questions.

Part 2, which consists of Chapters 3 – 6, then presents and critically discusses this research's findings. Each individual chapter of part 2 is dedicated towards answering each of the research questions presented in part 1. Namely, this research provides novel empirical insights into how prosumers of music understand, perceive, experience, and interact with the regulatory frameworks they encounter before, whilst and after uploading their works to YouTube.

The decisions prosumers of music make throughout their dissemination process are to a certain extent guided by their knowledge, understanding and perceptions of the regulatory frameworks they encounter. Nonetheless, to date, the level of copyright knowledge music prosumers possess remains unknown. Using the empirical data collected, Chapter 3 presents music prosumers' knowledge, perceptions and understanding of copyright law. Chapter 3 demonstrates that copyright knowledge varies amongst prosumers of music, but that prosumers of music, ultimately lack copyright knowledge. This lack of copyright knowledge often negatively impacts how prosumers interact with copyright and related enforcement regimes throughout their dissemination journey.

The subsistence of copyright protection which grants rightsholders a bundle of rights, means that prosumers of music, must seek permission to reuse works used in their works of music prosumption that they upload to YouTube. Consequently, before uploading, prosumers of music are expected to

secure rights clearance. Music prosumers' understandings, perceptions, experiences, and interactions with rights clearance are presented in Chapter 4 which shows that a gap has been created between law in action and black letter law, in the context of rights clearance, in the realm of music prosumption. Prosumers who attempt to secure rights clearance, describe the process as time consuming, confusing, and expensive. However, a lack of awareness of the need to do so, coupled with YouTube's operationalisation of copyright and related enforcement regimes, translates to prosumers of music typically circumventing traditional rights clearance processes. Consequently, prosumers of music tend to utilise a more welcoming route to publication than the one prescribed by law.

Whilst uploading, among other things, prosumers of music are given the choice of how to title their works, what to include in the descriptions of the works they upload to YouTube, but also, under certain circumstances, they are given the option to commercialise their works. Such decisions are to a certain extent governed by copyright law. However, existing literature shows that certain communities regulate such decisions through informal norms. Chapter 5 uncovers the choices prosumers of music choose to make whilst uploading their works to YouTube, but also what might influence those choices. It reveals that informal norms regulate some but not all decisions prosumers of music make whilst uploading their works to YouTube. Such informal norms operate alongside copyright regulatory frameworks, complementing them.

Once a prosumer has uploaded their work of music prosumption to YouTube, they are likely to encounter enforcement mechanisms, which are born out of YouTube's need to comply with copyright and related enforcement regimes. Existing research which tends to focus on the procedural aspects of online copyright enforcement mechanisms shows that such processes are often taken advantage of by rightsholders to the expense of online creativity. Nevertheless, the scene in the realm of music prosumption remains unknown. Chapter 6 presents music prosumers' encounters with online copyright enforcement mechanisms. It reveals that YouTube has created a space for unauthorised works of music prosumption to be published, whilst allowing for rightsholders to choose how their works are reused, further highlighting the fact that YouTube's operationalisation of copyright and related enforcement regimes, provides a welcoming route to publication for works of music prosumption.

Whilst this research was taking place the European Union was undergoing a review and subsequent modernisation of how online platforms like YouTube are to be regulated. Although the findings of this research provide novel empirical insights into how prosumers of music interact with copyright and related enforcement regimes which predate these recent policy developments, some of its

findings provide practical insights into what effect, if any, such developments are likely to have for UGC that is disseminated online. The third and final part of this thesis which consists of Chapter 7, revisits this research's main findings, in light of these recent policy developments in the field, providing this thesis's main conclusions, as well as their implications where relevant, for researchers, policymakers, YouTube as a dissemination platform for works of music prosumption and, for prosumers of music themselves.

PART ONE

Chapter 1 – Scoping and Legal Analysis.

This chapter is the first of two chapters which act as the foundation for this thesis. Specifically, this chapter aims to set a foundation for this thesis by:

1. defining and categorising works of music prosumption,
2. describing how YouTube acts as a dissemination platform for works of music prosumption, and,
3. providing a portrayal of a typical music prosumer's encounters with copyright and related enforcement regimes.

Scholars from a variety of disciplines and legal practitioners alike, have attempted to define certain categories of works of music prosumption. Nonetheless, despite the proliferation of a participatory culture which has ultimately led to the creation of "prosumers of music", as of yet there is no clear definition of what can be categorised as a work of music prosumption. Hence, to set the scope of this thesis, section 1 of this chapter first provides definitions for, and categorises works of music prosumption.

Section 2 of this chapter then provides justifications for why this research focuses on YouTube as dissemination platform for works of music prosumption. It highlights YouTube's progressive rise in popularity, demonstrating why it was chosen as the focus of this research.

Copyright governs the production, and dissemination of music meaning that, prosumers of music will undoubtedly interact with copyright and related enforcement regimes in their pursuit to disseminate their works on YouTube. Hence, section 3 of this chapter then aims to provide a portrayal of a typical music prosumer's interactions with copyright and related enforcement regimes in their attempt to upload their works to YouTube. Using a hypothetical scenario of a prosumer uploading their work to YouTube, this chapter follows a prosumer on their dissemination journey chronologically, examining any encounters they may have with copyright and related enforcement regimes ultimately bringing to light the research questions which aided the empirical enquiry of this research.

1.1 What are works of "music prosumption"?

Over time we have witnessed advancements of technology in music, the popularisation and ease of access to home recording software/hardware and the creation of UGC orientated websites, and their subsequent proliferation. These have resulted in users exhibiting a more active role in the creation and dissemination of music and as such, we have witnessed the rise of prosumers of music i.e. users who recreate versions songs they have listened to and share those recreations online.

Two commonly encountered forms of user generated music i.e. works of music prosumption; are remixes and cover songs.[27] Remixes and cover songs were only commonly encountered in bars and clubs around the world, most often, performed live by musicians. However, with this aforementioned rise of a participatory culture, the rise of technology in music and increasing popularity of websites like YouTube, remixes and cover songs are now commonly encountered online. There are countless remixes and cover songs freely available on YouTube, with approximately 12,000 music prosumer works uploaded daily.[28] Hence, remixes and cover songs are two common areas of music prosumption that are worth examining. But what are remixes and cover songs exactly?

[27] Another form of music prosumption may be the parodic reuse of a work. This, depending on the definition of cover songs and/or remixes adopted, may also fall under either of the categories.
[28] Andy Baio, 'The Tangled Issue of Cover Song Copyright on YouTube' (*WIRED UK, 3 May 2012)* <http://www.wired.co.uk/article/cover-song-licensing-on-youtube> accessed 8 March 2022; 'YouTube Cover Versions Have Gone from Being Unwelcome to Broadly' (*The Independent*, 23 July 2014) <http://www.independent.co.uk/life-style/gadgets-and-tech/features/youtube-cover-versions-have-gone-from-being-unwelcome-to-broadly-tolerated-and-why-not-9624378.html> accessed 8 March 2022; Using "remix" as a search term on YouTube, yields 232,000,000 results, see'(2) Remix - YouTube' <https://www.youtube.com/results?search_query=remix> accessed 8 March 2022.

1.1.1 What is a remix?

The term "remix" could be used to describe a broad variety of works ranging from appropriation art to film.[29] However, the act of remixing appears to be more common in the music industry.[30] This is also evidenced by dictionaries, whose focus seems to be on musical remixes when defining the term "remix". For instance, the Oxford English Dictionary defines remixing as:

"*A new version of a recording in which the separate instrumental or vocal tracks are rebalanced or recombined; (now also) a reinterpretation or reworking, often quite radical, of an existing music recording, typically produced by altering the rhythm and instrumentation; a commercial release of such a recording"*.[31]

Also, the Cambridge dictionary defines remixing as:

"*To use a machine or computer to change or improve the different parts of an existing music recording to make a new recording*".[32]

In today's music industry, remixing could result in widespread recognition and increased popularity and as a result has become common amongst mainstream artists.[33] The act of remixing, however, whether that be musical remixes, or otherwise, is not a new phenomenon. Most cultures that exist today are the result of a history of mixing and merging of different cultures.[34] Moreover, the public has progressively had an active role in creating and recreating culture and has consequently been referred to as a "Read Write" culture.[35]

One of the first "remixes" of the music industry can be traced back to the 1940's where Pierre Schaeffer remastered pre-recorded sounds by manipulating the speed of songs, adding delay effects,[36] and looping various parts of songs.[37] The earliest example of popularised remixing, for

[29] Ben Murray, 'Remixing Culture And Why The Art Of The Mash-Up Matters' (*TechCrunch*) <https://social.techcrunch.com/2015/03/22/from-artistic-to-technological-mash-up/> accessed 8 March 2022.
[30] Eric Hellweg, 'Mix and Mash: The Mashup Is Born from a Blend of Two Songs' (*Edutopia*, 2004) <https://www.edutopia.org/mix-mash-mashup-born-blend-two-songs> accessed 8 March 2022.
[31] 'Remix, n.' <https://www.oed.com/view/Entry/246356> accessed 8 March 2022.
[32] 'REMIX | Meaning in the Cambridge English Dictionary' <https://dictionary.cambridge.org/dictionary/english/remix> accessed 8 March 2022.
[33] Hugh McIntyre, 'More And More, It's The Remix That's Actually The Hit' [2016] *Forbes*. Also, a relatively recent example is provided by Despacito by Luis Fonsi & Daddy Yankee which managed to reach number one on global charts after it had been remixed by Justin Bieber. See also Roses by Saint Jhn released in 2016, which topped charts after it was remixed by Kazakh producer Imanbek in 2019.
[34] Guilda Rostama, 'Remix Culture and Amateur Creativity: A Copyright Dilemma' [2015] *WIPO MAGAZINE*.
[35] Lessig (n 1).
[36] Which consist of the recording of snippets of a song which are then played back/repeated after a set period of time.
[37] Jonathan Patrick, 'A Guide to Pierre Schaeffer, the Godfather of Sampling' [2016] *FACT* 1.

remixing as we know it today, was Rappers Delight by Sugarhill Gang in 1979 which had incorporated the bass riff from Good Times by Chic, and arguably paved the way for the remix culture that exists today in the music industry.[38]

Despite the popularisation of remixing in the music industry, there does not seem to be an appropriate definition of remixing which could encompass all forms of musical remixes. Different categories of musical remixes deserve their own definitions, and this can be achieved by drawing upon various academic and legal definitions.

Lessig defines remixing as "*an essential act of Read Write creativity. It is the expression of a freedom to take the songs of the day or the old songs and create with them*".[39] Furthermore, the Delhi High Court defined the act of remixing as "*a sound recording made of an already published song by using another voice or voices and with different musicians and arrangers*".[40] Nevertheless, such definitions do not differentiate between forms of remixing that exist in the music industry and as is discussed in greater detail below, different forms of remixing translate to different levels of borrowing. Consequently, the way in which copyright regimes treat different forms of remixing will differ making the aforementioned definitions of remixing devoid of merit, in the context of copyright law.

One form of remixing that is encountered in the music industry, is often referred to as sampling. Sampling is defined as taking part of a song such as the beat or underlying melody and using it in the "*sonic fabric*" of a new musical work.[41] The example provided above of the Sugarhill Gang which popularised the act of remixing in the music industry would fit within this form of remixing.

Another form of remixes that is encountered in the music industry, is what is known as a mashup. A mashup can be understood as the merging of already existing songs together without much editing involved. This form of remixing is also referred to as A+B remixing.[42] A mashup could involve a certain degree of sampling. One may sample the beat of a song and the melody of another and merge them together. This form of remixing would still be considered as a mashup. An example of such a remix is provided by DJ Earworm's "Shape of Now", where nine different songs are sampled

[38] Steven Daly, 'The Sole Track That Launched Commercial Hip-Hop in 1979' [2005] *Vanity Fair*.
[39] Lessig (n 1).
[40] *Gramophone Co. of India v Super Cassettes Industries Ltd.,* (1996) PTC (16), at 47.
[41] Madhavi Sunder, 'IP3' (2006) 59 Stanford Law Review. Courts have also provided definitions of sampling. See *Newton v Diamond*, 388 F.3d 1189, at 1192 (9th Cir. 2004); *VMG Salsoul, LLC v Ciccone*, No. 13-57104 (9th Cir. 2016); Case C-476/17 *Pelham GmbH, Moses Pelham and Martin Haas v Ralf Hutter and Florian Scheider-Esleben* [2019] para 35.
[42] Em McAvan, 'Boulevard of Broken Songs: Mash-Ups as Textual Re-Appropriation of Popular Music Culture' (2006) 9 Journal of Media and Culture. .

and layered to create a mashup.[43] However, there is no limit on the number of songs that can be used in mashups. For instance, Gregg Gills, a famous mashup artist more commonly known as Girl Talk, had used over three hundred songs in a single album.[44] This form of mashups has been characterised by music scholars as resembling an "audio collage".[45] Nevertheless, the existence of a mashup does not necessarily imply that sampling has taken place. Songs may be merged in their entirety as a medley and still be classed as a mashup. Also, artists who sample may add original lyrics and/or melodies to sampled tracks, and hence, sampling may in certain circumstances involve a lower degree of borrowing than that of mashups. Consequently, as will be discussed in greater detail in chapters that follow, sampling may be treated more favourably by copyright regimes as opposed to mashups. Therefore, as aforementioned, it is useful to think of samples and mashups as two distinct forms of musical remixes. For this research unlike sampling, mashups will be seen as the musical practice whereby solely existing works are reused so as to create a new work.

Taking a synoptic view of the abovementioned, it can be deduced that there are two distinct forms of musical remixes – sampling and mashups. Sampling is defined as the copying of sounds from existing recordings which are used in the sonic fabric of a new musical work and mashups as the musical practice which resembles an audio collage, whereby solely existing works are reused so as to create a new work.

[43] 'DJ Earworm Mashup - Shape of Now - YouTube' <https://www.youtube.com/watch?v=NRJh-o65CUQ> accessed 8 March 2022.
[44] Kerri Eble, 'This Is a Remix: Remixing Music Copyright to Better Protect Mashup Artists' (2013) 2013 University of Illinois Law Review.
[45] Jamie Sexton, 'Introduction' in Jamie Sexton (ed), *Music, Sound and Multimedia: From the Live to the Virtual* (Edinburgh University Press 2007) 7.

1.1.2 What are cover songs?

To date, unlike remixes, it seems as though courts have not had to define what a cover song is. The Indian Copyright Act of 1957, however, seems to use the term "cover version" as applying to all forms of secondary sound recordings including remixing.[46] Furthermore, legal scholars tend to define cover songs simply as a performance/recording of an already existing song by another artist.[47]

Using the above definition provided by legal scholars, arguably the first song ever recorded, was a cover song of a traditional folk song named "Au clair de la lune".[48] This was recorded by Édouard-Léon Scott de Martinville, a French printer and bookseller who sang the song into a new invention he had termed a "phonautograph".[49] The phonautograph was only able to record sound and did not allow for the recording to be played back. It was not until 2008 when scientists were able to play back the cover song.[50] The first recording made on a device which could play back the recording, namely a phonograph, came from Thomas Edison in 1877, which was once again, in accordance with legal scholars' definition, a cover song, specifically a cover of "Mary had a little lamb".[51]

This is indicative of the fact that sheet music is what a recipe book is to a chef. Musicians learn from other musicians' creations before they are able, if ever, to compose their own music. Consequently, it can be argued that cover songs act as a steppingstone for musicians with regards to honing their skills both in terms of recording and performing.

As correctly identified by music scholars there are, however, varying degrees of cover songs. Specifically, Don Cusic, a music scholar, differentiates between cover songs and cover records. A cover song can be defined as the recreation of a previously recorded song.[52] Cover records, on the other hand, are defined as the re-recording of a previously existing song, as an exact replica of a previously recorded song "*except sung by a different singer and played by different musicians"*.[53] Hence, unlike cover records, "*cover songs represent a form of artistic interpretation that goes*

[46] Eira Mishra, 'Cover Versions and the New Copyright Regime in India' (2014) 9 Journal of Intellectual Property Law & Practice 510, 510.
[47] Shwetashree Majumdar, 'Sing a Song for Sixpence- the Coming of Age of Copyright Law in the Light of New Developments in the Music Industry' (2003) 14 Entertainment Law Review 193, 197.G Nanayakkara, 'Mimesis, Cover Versions and the Commercial Vocalists' Dilemma; Sri Lankan Perspective' [2012] International Conference on Asian Studies 4 <http://create.canterbury.ac.uk/16219/> accessed 8 March 2022.
[48] Ray Padgett, *Cover Me: The Stories Behind the Greatest Cover Songs of All Time* (Sterling 2017) 2.
[49] ibid 2.
[50] ibid.
[51] ibid.
[52] Don Cusic, 'In Defense of Cover Songs' (2005) 28 Popular Music and Society 171, 174.
[53] ibid 174.

beyond mere copying."[54] An example of a cover record would be Hallelujah by Leonard Cohen which was later recorded by Jeff Buckley. Whereas a cover song would be Pentatonix's version of Hallelujah.[55]

However, views on the exact definition of a cover song also vary amongst music scholars. This is evident in "*Play It Again: Cover Songs in Popular Music",*[56] a collection of fifteen essays where each contributor seems to use their terminology to refer to the term described above as "cover song".[57] George Plasketes, the editor of this collection of essays defines covering as "*the musical practice of one artist recording or performing another composer's song*" thereby adopting a similar definition to that developed by legal scholars.[58]

Nonetheless, cover songs are multifaceted. For instance, another form of cover songs which is prevalent on UGC orientated websites like YouTube is instrumental covers.[59] Instrumental covers are covers which are recreations of already existing songs using a musical instrument, typically not vocals. This may be achieved either by playing a single instrument over the original sound recording of the song being covered which acts a "backing track", or by playing an instrument on its own without using a "backing track". Another form of instrumental covers are covers whereby multiple instruments are used to recreate an already existing song, but the vocals or lyrics of the song in question are removed. Hence, not all cover songs are the same. Thus, for this research a broad definition of cover songs is taken, adopting all forms of covers whether that is the re-recording of an already existing song as an instrumental cover or otherwise and either as an exact replica, or the recreation of a song, that goes a step beyond mere copying altering the original work, whether that be a change of genre, melody, or lyrics.

[54] ibid 171. An example of a cover record would be Hallelujah by Leonard Cohen which was later recorded by Jeff Buckley. Whereas, a cover song would be Pentatonix's version of Hallelujah. See PTXofficial, *[OFFICIAL VIDEO] Hallelujah - Pentatonix* <https://www.youtube.com/watch?v=LRP8d7hhpoQ> accessed 8 March 2022. This version of Hallelujah would not be regarded as amounting to a cover record since it is not an exact replica of Leonard Cohen's original (it is created using acapella vocals and no instruments).

[55] PTXofficial, *[OFFICIAL VIDEO] Hallelujah - Pentatonix* <https://www.youtube.com/watch?v=LRP8d7hhpoQ> accessed 8 March 2022. This is version of Hallelujah would not be regarded as amounting to a cover record since it is not an exact replica of Leonard Cohen's original (it is created using acapella vocals and no instruments in the traditional sense).

[56] *Play It Again: Cover Songs in Popular Music* (Ashgate Publishing, Ltd 2010).

[57] Melissa Hok Cee Wong, 'Play It Again: Cover Songs in Popular Music. Ed. by George Plasketes.' (2012) 93 Music and Letters 639.

[58] *Play It Again: Cover Songs in Popular Music* (n 58) 1.

[59] There are countless drum, piano, guitar, flute etc. covers available on YouTube. For instance, searching for "drum covers" on YouTube (on the 13th of March 2020) yields 6,430,000 results.

1.1.3 Summary.

Despite the proliferation of a participatory culture in music which resulted in the subsequent popularisation of works of music prosumption, as of yet, there is no clear definition and categorisation of works of music prosumption. This research identifies and defines two distinct but prominent areas of music prosumption – cover songs and remixes.

One legal scholar argues that cover songs and remixes are analogous to building a house.[60] She argues that cover songs are akin to "*building a house similar to the one built by the original owner, using one's own building materials*".[61] She then argues that a remix, which is her interpretation of a mashup, is the "*building of a new house using the bricks of the house built by the original owner*".[62] I would more appropriately, argue that a mashup would be the combination of the design and building materials of two or more already existing houses. Finally, she argues that a "*house which has an entirely different design and is built with new building materials, but which copies the window design of the original house would be comparable to a music sample*".[63] Figure 2 below, illustrates this analogy of building a house, and cover songs and remixes.

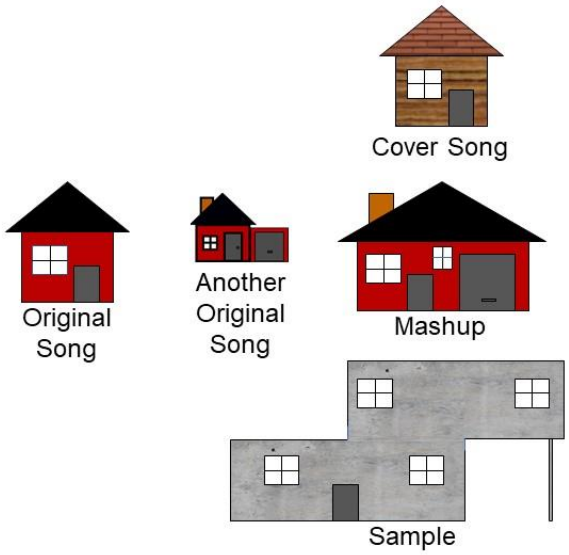


Figure 2: Illustration of the analogy of covers and remixes as houses

[60] Mishra (n 48) 511.
[61] ibid.
[62] ibid.
[63] ibid.

1.2 YouTube as a dissemination platform for works of music prosumption.

YouTube was developed in 2005, and has since then grown exponentially.[64] YouTube was created with the intention of acting as a platform enabling society to share their "home videos".[65] It came at the advent of "Web 2.0" platforms and was, from its inception described as the leading Web 2.0 platform for videosharing.[66] *"By the summer of 2006, YouTube was serving more than 100 million videos per day, and the number of videos being uploaded to the site showed no sign of slowing down".*[67] As a result of the increased volume of content being uploaded, YouTube was in a constant state of technological catch up, developing its services to meet ever-growing demands.[68] Additionally, as will be discussed in more detail below, as the volume of content being uploaded increased, so did the risk that such content contained copyright protected material, which was being brought to the attention of relevant rightsholders.[69] As a result, YouTube was forced to set aside much of its financial resources as a way of developing its technology but also as way of dealing with potential litigation.[70] This, coupled with its limited success in commercialising the platform, meant that YouTube was ultimately set up "for sale" and was eventually bought by Google for $1.65 billion in late 2006.[71]

To this day, YouTube continues to attract 1.3 billion users worldwide and approximately 300 hours of UGC being uploaded every minute.[72] However, content on YouTube has transitioned from solely "home videos" to also housing professional content and official releases.[73] As a result, YouTube, has become a user-centric platform where UGC sits alongside official releases which are fully licensed. Nonetheless, this does not negate the fact that YouTube hosts copious amounts of UGC.

Moreover, YouTube's most prominent genre of content is music.[74] In fact YouTube is one of the most popular platforms for consuming music, even when compared to platforms like Spotify and

[64] William L Hosch, 'YouTube | History, Founders, & Facts', *Encyclopedia Britannica* <https://www.britannica.com/topic/YouTube> accessed 8 March 2022.
[65] Jean Burgess and Joshua Green, *YouTube: Online Video and Participatory Culture* (Polity Press 2018) 14.
[66] Burgess and Green (n 67).
[67] Hosch (n 66).
[68] ibid.
[69] ibid.
[70] ibid.
[71] ibid; Burgess and Green (n 67) 16.
[72] 'How User-Generated Content on YouTube Can Be Important for Your Brand?' (n 17); 'These Are the World's Most Popular Websites' (*World Economic Forum*) <https://www.weforum.org/agenda/2017/04/most-popular-websites-google-youtube-baidu/> accessed 8 March 2022.
[73] 'YouTube's Big Transition: Moving from Amateur to Professional Era of Online Video' (*ReadWrite*, 22 May 2012) <https://readwrite.com/2012/05/22/youtubes-big-transition-moving-from-the-amateur-to-professional-era-of-online-video/> accessed 8 March 2022.
[74] McIntyre (n 22).

Apple Music, whose sole purpose is music streaming.[75] Hence, YouTube acts as a popular online music distribution platform which is accessible, to not only already established musicians, but unsigned, and amateur musicians alike.

In global search rankings in terms of traffic, YouTube ranks second behind Google, and the next platform which could house UGC, albeit not exclusively, is Facebook which ranks seventh.[76] This consequently translates to YouTube not only housing vast amounts of works of music prosumption, but also attracting the most viewership in terms of traffic online, making it the ideal hosting platform for which this research to focus on.

[75] Mulligan (n 23).
[76] 'Alexa - Top Sites' <https://www.alexa.com/topsites> accessed 8 March 2022.

1.3 Music prosumers' encounters with copyright related regulatory frameworks.

This section, using a hypothetical scenario, maps out prosumers' encounters with copyright and related regulatory frameworks. Doing so allows for the elucidation of the research questions which helped guide this research's empirical enquiry.

Hypothetical Scenario:

John, an amateur musician, wishes to create and disseminate an acoustic cover version of a popular song on YouTube. He aims to extract, modify by adding various effects such as reverb, distortion, and delay to the original vocals of the song, and play and record an acoustic guitar over the original edited vocals.

This example encompasses all potential issues a prosumer of music may encounter throughout their dissemination process. Since John is reusing the original vocal sound recording, a practice resembling the act of remixing in the form of a sample, the issues John may face are equally applicable if the prosumer would have been a remix artist.

This section follows John throughout his dissemination journey chronologically highlighting his encounters with copyright and related regulatory frameworks. Namely this section, consist of four subsections each respectively highlighting John's encounters with regulatory frameworks before, whilst and after uploading his cover song to YouTube. The final section exemplifies what role John's knowledge of the regulatory frameworks he encounters may have.

In presenting John's interactions with copyright law, it uses UK copyright law as a guide, drawing on case law from the UK and beyond. However, as previously indicated, works of music prosumption are disseminated on platforms like YouTube and consequently, on a global scale. As a result, music prosumers' interactions with copyright may vary depending on their geographical locations. Nevertheless, although the analysis of certain aspects of copyright law may vary in terms of jurisdiction, the issues that may arise will be the same. For instance, as will emerge from the discussion below, works of music prosumption typically interfere with a rightsholder's reproduction right and signatories to the Berne Convention, which include all, but 20 countries of the world, will grant rightsholders the right to reproduce their work.[77] As such, it is likely that prosumers of music will interfere with a rightsholder's right to reproduce their work, irrespective of their geographical locations. How an interference with a rightsholder's reproduction right is analysed may vary from

[77] Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), Article 9(1).

country to country, due to the variety and variability of borrowing involved in the production of covers and remixes, but the right of reproduction is likely to be infringed. Where relevant, different jurisdictional perspectives will be analysed, but the focus of this section is on an analysis of UK copyright law.

1.3.1 Before Uploading.

YouTube asks of its users to "*please be sure not to violate others' copyright*",[78] and in its terms of service informs users that "*before they upload their next great video, they should secure the rights to all parts of their video*".[79] As a result, prior to uploading his work to YouTube, John would have to obtain authorisation. The process of obtaining authorisation is referred to as the "rights clearance process", and YouTube's request for users to obtain rights clearance, is mandated by the subsistence of copyright protection.

Copyright protection, confers the right to copy that work, more commonly referred to as the "reproduction right", and prosumers of music may often encroach upon a rightsholders "reproduction right".[80] This is due to the fact that bearing in mind the definitions provided previously for all forms of music prosumption, it is evident that both cover songs and remixes would be categorised as "derivative works", defined by the Guide to the Berne Convention as a work which is "*based on another, pre-existing, work*".[81] As such one could argue that works of music prosumption, depending on context, reproduce whole or parts of other works, encroaching upon a rightsholder's "reproduction right", meaning that they could potentially be regarded as amounting to copyright infringement.

Hence, this section, before providing insights into the rights clearance process itself, sheds light on the regulatory framework which mandates the rights clearance process. It begins by determining to what extent works of music prosumption amount to copyright infringement. It then discusses to what extent prosumers of music could rely on copyright exceptions as a way of avoiding infringement and consequently the rights clearance process. Finally, this section, following John on his dissemination journey, drawing upon existing empirical research, provides insights into what the rights clearance process may look like for prosumers of music. This acts as the foundation for presenting this research's first research question. As will be discussed in more detail below, the rights clearance process is complex and context specific. The multi-layering of rights in music, mean that a subtle change in John's reuse would result in a change in the rights clearance process. Which

[78] This as will be discussed in more detail in the sections that follow (see section 1.3.2) appears when users attempt to upload a work to YouTube.
[79] 'Know When You Need Copyright Permissions - YouTube' <https://creatoracademy.youtube.com/page/lesson/manage-copyright-permissions_know-when-you-need-copyright-permissions_list?cid=manage-copyright-permissions&hl=en-GB> accessed 8 March 2022.
[80] Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), Article 9(1).
[81] Claude Masouyé, 'Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)' (1978) 19 <https://www.wipo.int/publications/en/details.jsp?id=3172&plang=HU> accessed 8 March 2022.

rights a prosumer of music chooses to reuse directly influences their interactions with the rights clearance process.

1.3.1.1 Works of Music Prosumption and Rightsholders' Economic Rights.

Copyright protection confers a private right usually to the author of that work,[82] which allows for them to take action when their rights are interfered with. The author of an original song will be awarded a bundle of rights, including the exclusive right to copy that work, more commonly referred to as the "reproduction right".[83]

This section aims to examine under what circumstances works of music prosumption would be regarded as interfering with a rightsholder's reproduction right. This section will use the UK as an example,[84] drawing upon EU case law where relevant, using John's example to examine how courts in the UK would approach a case involving a work of music prosumption. However, as will emerge from the discussion that follows, courts, irrespective of geographical location would *"apply virtually the same rules"* in determining whether a work amounts to infringement.[85] Hence, it is argued that although the analysis provided below is exclusive to the UK's approach, the general approach can be extrapolated to works of music prosumption created outside the UK. To establish that an alleged reproduction amounts to copyright infringement it must first be established that the prosumer's act amounts to one of the restricted acts covered by the so-called bundle of rights. Bearing in mind the definitions of cover songs and remixes established above, it can be deduced that cover songs and remixes are created by drawing on other original musical works. This translates to cover songs and remixes typically amounting to copyright infringement under s16(1) and 17 of the Copyright, Designs and Patents Act 1988 (CDPA) i.e., infringing the original author's reproduction right, which as aforementioned would be the case irrespective of a prosumer's geographical location.

There are two main rights attached to any original musical work – recording rights (i.e., copyright in the sound recording protected under s5A of the CDPA) and publishing rights (copyright in the song i.e., lyrics and musical composition protected under s3 of the CDPA) and thus, a multitude of potential infringements. Using the hypothetical example, by reusing the original vocals and

[82] This is not always the case, for instance if the work is created within the context of an employment relationship see in the UK for instance, CDPA 1988 s11(2).
[83] At the international level, the reproduction right is arguably the most well-established right awarded. As per Goldstein and Bernt "*In 1886, when the Berne Convention was promulgated, the reproduction right was evidently so well established that it did not need to be stated as a minimum treaty standard"*. Goldstein and Hugenholtz (n 25) 298.
[84] In the UK this is enshrined under CDPA 1988 s17.
[85] Goldstein and Hugenholtz (n 25) 299.

recording guitar over them, John will most likely have infringed both the publishing and recoding rights attached to the original song in question.

Yet, for there to be an infringement, a substantial part of the original work must be reproduced.[86] What this means, is that it is not necessary for the entire work in question to be reproduced, but a portion of that work would suffice,[87] and UK courts have suggested several ways of assessing substantiality.[88] To begin with, substantiality is not only assessed quantitatively,[89] but is mostly judged on a qualitative basis.[90] Therefore, if John were to be taken to court in the UK, judges would have to look beyond literal note for note copying, but more towards the overall impression that the cover song creates.[91]

Moreover, substantiality is corelated with the elements of the work from which a portion is allegedly copied, that would be regarded as "original", resulting in the granting of copyright protection. For instance, in *Designers Guild Ltd v Russell Williams (Textiles) Ltd,* Lord Hoffmann stated that:

"*Generally speaking, in cases of artistic copyright, the more abstract and simple the copied idea, the less likely it is to constitute a substantial part. Originality, in the sense of the contribution of the author's skill and labour, tends to lie in the detail with which the basic idea is presented. Copyright law protects foxes better than hedgehogs*".[92]

In this extract, Lord Hoffmann was referring to a famous Greek proverb which states that "*the fox knows many things, but the hedgehog knows one big thing*",[93] which was expanded by Isaiah Berlin in his essay, entitled "The Hedgehog and the Fox", where he divides writers and philosophers in two distinct categories – those whose perception of the world is guided by one main idea and those who are guided by multiple ideas.[94] Hence, what Lord Hoffmann meant by "*copyright law protects foxes better than hedgehogs"* is that the more details one decides to reuse in their expression, the more likely that reuse, will be regarded as amounting to a substantial reproduction. Similarly, for works of music prosumption, cover songs and remixes in the form of mashups are more likely to be regarded

[86] s16(3)(a) CDPA 1988.
[87] Ibid.
[88] Charlotte Waelde and others, *Contemporary Intellectual Property: Law and Policy* (4 edition, OUP Oxford 2016) 128.
[89] *Hawkes & Sons (London) Ltd v Paramount Film Services Ltd* (1934) Ch. 593, at 604.
[90] *Ladbroke v William Hill* (1964) 1 WLR 273; *University of London Press Ltd v University Tutorial Press Ltd* (1916) 2 Ch. 601, at 610.
[91] *Ladbroke v William Hill* (1964) 1 WLR 273, at 276.
[92] *Designers Guild Ltd v Russell Williams (Textiles) Ltd* (2001) FSR 11, at 26.
[93] Desiderius Erasmus, *Adagia* (1500). Adagia is a collection of Latin and Greek proverbs. The Greek proverb Lord Hoffmann was referring to is attributed to Archilochus, a 7th century Greek poet.
[94] Isaiah Berlin, *The Hedgehog and the Fox: An Essay on Tolstoy's View of History* (Weidenfeld & Nicolson 1953).

as reusing a substantial amount of a copyright protected work when compared to remixes in the form of samples which tend to only use one element of a given work. However, this would have to be judged on a case-by-case basis.

This coincides with the test that, courts around the world use in determining whether unlawful appropriation has taken place, which is derived from the so-called "*idea/expression dichotomy*".[95] Courts will look to the aspect of the copyright protected work that merits copyright protection, in order to determine whether an unlawful appropriation has taken place. In the UK, this translates to courts having to assess whether the aspect being reused forms an important part of the "skill, labour and judgment" expended by the original author.[96]

The EU test, laid out in the case of *Infopaq,* states that the parts in question must "*contain elements which are the expression of the intellectual creation of the author of the work*", in order to amount to an infringement, which is the EU test for awarding copyright protection.[97] Some have argued that unlike the UK, the EU must assess the quality or merit of a work in determining originality.[98] However, the UK courts have used the two tests for assessing originality ("skill, labour, and judgment" and "author's own intellectual creation") interchangeably,[99] which could indicate that the two tests are in fact the same.[100] Nevertheless, this thesis argues that the two tests are in fact different. The UK approach requires that the courts look at whether the aspect being reused forms a substantial part of the original work, requiring an analysis of the original work, whilst the EU approach simply asks whether the part being reused is itself original.[101]

The EU test has been followed in more recent UK case law. For instance, in the case of In *SAS Institute v. World Programming,* in providing an analysis of whether parts computer manuals which had been copied amounted to a substantial reproduction Lewison LJ stated that "*In Infopaq the court said that parts of a work are entitled to the same protection as the work as a whole. But the parts in question must contain elements which are the expression of the intellectual creation of the author of the work. […] This is now the test for determining whether a restricted act has been done in relation to a substantial part of a work*".[102] In the case of *Newspaper Licensing Association v.*

[95] Goldstein and Hugenholtz (n 25) 299.
[96] Designers Guild v. Williams [2000] 1 WLR 2416, 2420, 2426. See also, Lionel Bently and others, *Intellectual Property Law* (5 edition, OUP Oxford 2018) 209.
[97] *Infopaq v Danske Dagblades Forening* (2009) ECDR 16, 39.
[98] E Derclaye, 'Wonderful or Worrisome? The Impact of the ECJ Ruling in Infopaq on UK Copyright Law' [2010] European Intellectual Property Review 247.
[99] *Forensic Telecommunications Services Ltd v Chief Constable of West Yorkshire* (2011) EWHC 2892; *Temple Island Collections Ltd v New English Teas Ltd* (2012) FSR 9.
[100] Waelde and others (n 97) 58.
[101] Bently and others (n 105) 209.
[102] SAS Institute v. World Programming [2013] EWCA Civ 1482, 38 and 39.

Meltwater & PRCA,[103] the Court of Appeal in determining whether a news alert system forwarding links to web pages of news stories, would amount to a substantial reproduction, applied the EU test finding that where what was reproduced was the "*author's own intellectual creation*", a substantial reproduction will have taken place.[104]

The UK ceased being a member of the EU on 31 December 2020.[105] Since then, there have not been any major changes to copyright law in the UK and this is largely due to the fact that EU Directives have been implemented into national law, but also because EU Directives, often transpose international treaties for which the UK still remains a signatory to.[106] The UK could however, depart from EU copyright law, through national courts' interpretations of evolving case law. Whether UK courts choose to continue the trend of implementing the EU test laid out in *Infopaq* or choose to return to the test of "*skill, labour and judgment*" remains to be seen. But given its refrain from implementing the EU test over the years, it is possible that the UK could depart from the EU test.[107]

Given the fact that, in the hypothetical example, John will be reusing the lyrics in their entirety, it is highly likely that the lyrics of the original song will be substantially reproduced, resulting in literary copyright being infringed, irrespective of which test is used. Moreover, given the fact that John also aims to reuse the original vocal recording, it is highly likely that recording rights attached to the original song will have been infringed. However, what if John were only to use a small snippet of the vocal sample of the sound recording? The Court of Justice of the European Union (CJEU) in a recent case, ruled that a two-second sample of a sound recording amounted to infringement.[108] Whilst decisions of the CJEU prior to the end of the UK's transition period for its exit from the EU, are binding on lower courts, the UK's Supreme Court has the power to depart from them.[109] Hence, it is possible that the UK could depart from such a strict interpretation of what amounts to an infringement. However, the High Court recently ruled that 8-second clips shared on social media amounted to copyright infringement.[110] Consequently, it is argued that, currently, rightsholders are able to enforce their rights against any amount copied in the UK. Hence, it is highly likely that a work

[103] [2011] EWCA Civ 890.
[104] Ibid.
[105] Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019 (''Withdrawal Agreement''), Art. 126.
[106] Yin Harn Lee, 'United Kingdom Copyright Decisions and Post-Brexit Copyright Developments 2020' (2021) 52 IIC - International Review of Intellectual Property and Competition Law 319, 326.
[107] ibid 328; Ana Ramalho and Maria C Gomez Garcia, 'Copyright after Brexit' (2017) 12 Journal of Intellectual Property Law & Practice 669, 671.
[108] Case C-476/17 *Pelham GmbH, Moses Pelham and Martin Haas v Ralf Hutter and Florian Scheider-Esleben* [2019].
[109] European Union (Withdrawal) Act 2018, s6(4).
[110] *England And Wales Cricket Board Ltd. & Anor v Tixdaq Ltd. & Anor* [2016] EWHC 575 (Ch).

of music prosumption, whether that be a cover song or remix, will amount to copyright infringement, since as can be deduced from the definitions provided and the analysis above, works of music prosumption will often reuse a substantial amount a work both quantitatively and qualitatively.

Furthermore, to identify whether a reuse amounts to a reproduction of a substantial part of an original song, courts may be able to rely on expert evidence. However, evidence provided is merely persuasive so as to ensure objectivity.[111] Nevertheless, home recording software like "ProTools" and "Logic" allow for modern forensic evidence to be used in court. Thus, it is relatively easy to identify when a reuse has been copied directly and if so, from which source.

Moreover, to establish that an alleged reproduction amounts to infringement, a causal link must be shown between the alleged reproduction and the "original" work.[112] Consequently, "*unlike patent law, copyright law does not protect a copyright owner against independent creation*".[113] Nonetheless, as aforementioned, cover songs and remixes are by their very nature "derivative works". As such, a causal link will always be established between a prosumer's work and the work which is reused in that work. Nevertheless, one important point to note is that it is not a requirement that the alleged reproduction be derived directly, or the causal link be directly between the "original" work and alleged copy.[114] Hence, if a prosumer were to create a cover song of a cover or a remix of a remix, or vice versa a causal link between the original and alleged copy would be established.

Hence, taking a synoptic view of the abovementioned, it can be deduced that works of music prosumption, whether that be in the form of a cover song or a remix, will typically interfere with a rightsholder's reproduction right, resulting in works of music prosumption amounting to copyright infringement.

1.3.1.2 Works of Music Prosumption and Copyright Exceptions.

Although, it has been demonstrated above, that copyright frameworks will typically treat unauthorised cover songs and remixes as amounting to copyright infringement, there are also certain exceptions to copyright, which if applicable, would legalise the otherwise illegal distribution

[111] *Produce Records Ltd v BMG Entertainment UK and Ireland Ltd* Unreported, January 19, 1999.
[112] See for instance, the very recent case of *Sheeran v Chokri* [2022] EWHC 827 (Ch), at para 205, where Mr Justice Zacaroli, whilst acknowledged, there were similarities between Ed Sheeran's, "Shape of You" and Chokri's "Oh Why", concluded that no infringement had taken place as there was "*compelling evidence*" that the allegedly appropriated "Oh I" phrase in Shape of You's hook "*originated from sources other than Oh Why*".
[113] Bently and others (n 105) 194.
[114] s16(3)(b) CDPA 1988.

of unauthorised cover songs and remixes. Copyright regimes, irrespective of jurisdiction, typically allow for certain exceptions, albeit using different terminologies, such as "defences", "permitted acts" or "users' rights",[115] and different approaches in determining their applicability.

International treaties permit these exceptions but do little to harmonise them.[116] For instance, the Berne Convention, under Article 9(2), allows for member states to introduce exceptions to the right of reproduction of protected literary and artistic works, but allows for a certain degree of freedom for contracting states in their implementation at the national level.[117] They must meet the so-called "three-step" test. Article 9(2) of the Berne Convention provides that ""*It shall be a matter for legislation in the countries of the Union to permit the reproduction of such [protected literary and artistic] works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.*".[118] The scope of the "three-step test" was extended by its inclusion in Article 13 of the TRIPS Agreement which does not limit its scope to literary and artistic works, but also, not simply to the reproduction right.[119] Hence, subject to some exceptions, notably the mandatory quotation exception under Article 10(1) of the Berne Convention,[120] discussed in greater detail below, exceptions must meet the standard of the "three-step test".

There are, two main schools of thought across different jurisdictions, in determining the applicability of exceptions – those which operate a "closed-list" approach whereby a reuse must fall under one of the so called "permitted acts", and those which allow for any use to be potentially regarded as permitted "*pursuant to a set of factors that aid in the decision-making process"*, i.e. an open-ended system.[121] Copyright exceptions would only come into play after it has been established that a cover song and/or remix amounts to infringement, and the burden of proof would fall upon the prosumer in terms of proving that an exception would apply.

This section aims to take a closer look at the UK and US perspectives which provide a portrayal of both a typical closed list and open-ended system of copyright exceptions. Ultimately, as will emerge

[115] Robert Burrell and Allison Coleman, *Copyright Exceptions: The Digital Impact* (Cambridge University Press 2005) 1.
[116] Goldstein and Hugenholtz (n 25) 360.
[117] ibid.
[118] Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, Article 9(2).
[119] Daniel J Gervais, *(Re)Structuring Copyright: A Comprehensive Path to International Copyright Reform* (Edward Elgar Publishing Ltd 2017) 62.
[120] Tanya Aplin and Lionel Bently, 'Displacing the Dominance of the Three-Step Test: The Role of Global Mandatory Fair Use' in Haochen Sun, Ng-Loy Wee Loon and Shyamkrishna Balganesh (eds), *The Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press 2021) 49–50.
[121] Gluseppina D'Agostino, 'Healing Fair Dealing - A Comparative Copyright Analysis of Canada's Fair Dealing to U.K. Fair Dealing and U.S. Fair Use' (2008) 53 McGill Law Journal 309, 314.

from the discussion below, although the analysis of the applicability of copyright exceptions may vary between closed and open list systems, with a slightly more favourable approach towards works of music prosumption in the eyes of an open list system,[122] the result is ultimately the same. Copyright exceptions will only under certain specific circumstances apply to works of music prosumption.

1.3.1.2.1 Closed list system.

As aforementioned, the UK operates a closed list system of exceptions to copyright, meaning it has an "*exhaustive set of exceptions in which each provision focuses on a specific act"*.[123] The CDPA, under Chapter III contains six defences for the purposes of "fair dealing". If an alleged infringer reuses a work for a purpose which falls under one of the six defences under the CDPA, courts must determine whether the reuse, or "dealing" of that work, would be regarded as "fair". As a general requirement of assessing "fairness", UK courts ask whether "*a fair minded and honest person would have dealt with the copyright work in the same manner as the defendant did*".[124] They do so by weighing a number of factors up against each other, depending upon the nature of the permitted purpose, such as the quantity of the material, which is being reused, [125] and the impact a reuse will have on the market of the right-holder's work.[126]

With regards to the quantity of the material, which is being reused, as per Lord Denning in *Hubbard v Vosper,* "*it is impossible to define what is "fair dealing." It must be a question of degree. You must consider first the number and extent of the quotations and extracts. […] To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also*".[127] As such, fair dealing exceptions will not apply in cases where entire works are being reused. Consequently, some works of music prosumption such as mashups in the form of a medley and some cover songs, such as those which use instrumental backing tracks, may not qualify for an exception. This may thus, exclude John from being able to rely on an exception. Nonetheless, courts have in some cases found that fair dealing exceptions can apply where an entire work has been reused.[128] Furthermore, and once again according to Lord

[122] Andrew Gowers, 'Gowers Review of Intellectual Property' (2006).
[123] Michael Handler and Emily Hudson, 'Fair Use As an Advance on Fair Dealing? Depolarizing the Debate' in Haochen Sun, Ng-Loy Wee Loon and Shyamkrishna Balganesh (eds), *The Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press 2021) 140.
[124] *Hyde Park Residence Ltd v Yelland* (2001) Ch. 143, at 38; *Pro Sieben Media AG v Carlton UK Television Ltd* (1999) WLR 605, at 614; *Sillitoe v McGraw-Hill Book Co* (1983) FSR 545, at 562.
[125] *Hubbard v Vosper* (1972) 2 QB 84 CA.
[126] *IPC Media Ltd v News Group Newspapers Ltd* (2005) FSR (35) 752.
[127] *Hubbard v Vosper* (1972) 2 QB 84, 94.
[128] Ibid, 98-99 As per Megaw L.J. "*Let me give an example. Suppose that there is on a tombstone in a churchyard an epitaph consisting of a dozen or of 20 words. A parishioner of the church thinks that this sort of*

Denning in *Hubbard v Vosper* "*after all is said and done, it must be a matter of impression. As with fair comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide"*.[129] As a result, it is argued that although this assessment of "fairness" may at first instance seem to imply that some works of music prosumption may fall outside the scope of "fair dealing", including John's, it is argued that this will be judged on a case-by-case basis.

Given the lack of litigation and case law specific to cover songs and remixes, how UK courts might assess whether a case involving a cover song and/or remix falls under one of the six defences for the purposes of "fair dealing" found under Chapter III of the CDPA is uncertain. Nevertheless, the two fair dealing defences which could apply to works of music prosumption – quotation (s30(1ZA) CDPA) and caricature, parody or pastiche (s30A CDPA) – are discussed below.[130]

1.3.1.2.1.1 Quotation.

Article 10(1) of the Berne Convention, obliges signatories to permit "*quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries*.".[131] What is important to note is that, bar some exceptions,[132] Article 10(1) is understood by most scholars, from both civil and common law systems as being phrased as a mandatory exception,[133] meaning that national legislatures must include a quotation exception, but are given freedom to prescribe the conditions of its application.

---

epitaph is out of place on a tombstone. He writes a letter to the parish magazine setting out the words of the epitaph. Could it be suggested that that citation is so substantial, consisting of 100 per cent. of the "work" in question, that it must necessarily be outside the scope of the fair dealing provision? To my mind it could not validly be so suggested. In this present case, having considered what we have been shown of the passages taken from the various works in relation (because I think this test must also be applied) to the nature and purpose of the individual quotations, I find myself unable to say that the plaintiffs have made out a case that the quotations are so substantial that this does not fall within the fair dealing provision. To my mind the plaintiffs have failed to establish to the required degree, in relation to an application of this sort and in relation to all the other factors that have to be taken into account, that they ought to be granted an interlocutory injunction in relation to the alleged breach of copyright". *Sillitoe v. McGraw Hill* [1983] *FSR* 545; *Associated Newspapers Group v. News Group Newspapers* [1986] *RPC* 515, 520.

[129] *Hubbard v Vosper* (1972) 2 QB 84, 94.

[130] Most existing doctrinal research tends to focus on the applicability of these two exceptions to remixes. See for instance: Cabay and Lambrecht (n 11) 368; Jacques, 'Mash-Ups and Mixes: What Impact Have the Recent Copyright Reforms Had on the Legality of Sampling?' (n 27). As will emerge from the discussion below, these two exceptions are the only two which could potentially apply to cover songs.

[131] Berne Convention, 1971 Paris Text Article 10(1).

[132] Silke von Lewinski, *International Copyright Law and Policy* (Oxford University Press 2008) 156; J Blomqvist, *Primer on International Copyright and Related Rights* (Edward Elgar Publishing Ltd 2014) 159–160.

[133] Goldstein and Hugenholtz (n 25) 379; Lionel Bently and Tanya Aplin, 'Whatever Became of Global, Mandatory, Fair Use? A Case Study in Dysfunctional Pluralism', *Is Intellectual Property Pluralism Functional?* (Edward Elgar 2019) 13.

Bently and Aplin argue that the phrasing of Article 10(1), could even be interpreted as giving rise to what they call a "global, mandatory, fair use" exception.[134] This would mean that, unlike what was presented above, "closed-list" systems would cease to exist, allowing scope for the global adoption of an "open-list" system of copyright exceptions. This could potentially widen the scope of copyright exceptions,[135] allowing for works of music prosumption to escape copyright infringement. However, as of yet, states have only rarely implemented Article 10(1) verbatim.[136] Many countries have added conditions to the scope of Article 10(1) which as per Bently and Aplin, has resulted in Article 10(1) being "*refracted and distorted into a raucous mob of malformed, and mostly narrower, exemptions".*[137] This sections aims to take a closer look at the UK's approach towards accommodating a quotation exception, drawing upon EU case law for guidance on issues which have yet to have been explored by UK courts.

The meaning of quotation and hence, its boundaries are not limited by the typical qualities of literary quotations commonly associated with the academic publishing sector.[138] Furthermore, nothing in the CDPA restricts its application to this extent.[139] Moreover, the CJEU, has held that the quotation exception could equally apply in cases involving photography.[140] Therefore, it could potentially also apply to musical works. In fact, the A.G. in providing guidance for the CJEU in *Pelham* stated that:

"*The quotation exception has its origin and is mainly used in literary works. However, in my opinion, there is nothing to indicate that, under European Union (EU) copyright law, the quotation exception may not concern other categories of works, in particular, musical works. It must also be assumed that such a quotation may be effected through the reproduction of an extract of a phonogram, since the exceptions and limitations provided for in Article 5 of Directive 2001/29 concern the rights of phonogram producers as well as the rights of authors*".[141]

Hence, it is argued that it could also apply to both cover songs and remixes, provided certain requirements are fulfilled.[142] s30(1ZA) CDPA states that "*copyright in a work is not infringed by the*

[134] Bently and Aplin (n 142); Tanya Aplin and Lionel Bently, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (Cambridge University Press 2020).
[135] Bently and Aplin (n 142) 35.
[136] ibid 16.
[137] ibid.
[138] Bently and others (n 105) 246.
[139] Jacques, 'Mash-Ups and Mixes: What Impact Have the Recent Copyright Reforms Had on the Legality of Sampling?' (n 27).
[140] *Eva-Maria Painer v Standards Verlags GmbH* (C-145/10) [2011] E.C.D.R. 13.
[141] Opinion in *Pelham GmbH v Hutter EU:C:2018:1002; [2019] E.C.D.R. 3* at [62].
[142] Under subsections (a) – (d) of the s30(1ZA) CDPA 1988 respectively, the work which is being reused must be available to the public prior to its reuse, its use must be fair (which is judged by courts on a case-by-case

use of a quotation from the work […] provided that: (a) the work has been made available to the public, (b) the use of the quotation is fair dealing with the work, (c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and (d) the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

s30(1A) of the CDPA which was added by SI 2003/2498 in order to give effect to Article 5(3)(d) of the InfoSoc Directive, states that: *"a work has been made available to the public if it has been made available by any means, including (a) the issue of copies to the public; (b) making the work available by means of an electronic retrieval system; (c) the rental or lending of copies of the work to the public; (d) the performance, exhibition, playing or showing of the work in public; (e) the communication to the public of the work".* Given the fact that works of music prosumption, are by their very nature derivative, translates to the work being reused typically having already been made available to the public. Arguably, successful works of music prosumption, in terms of popularity, owe much of their success to the reused work's level of popularity.[143] Hence, it is posited that typically, works of music prosumption will draw upon already existing works which would be considered as "popular". Hence, it is argued that most works of music prosumption will meet the first requirement of this exception.

The second requirement that must be fulfilled, is that the dealing of the work was "fair". As demonstrated above, a number of factors are taken into account when determining "fairness" in terms of reusing another's work and that this will be decided on a case-by-case basis.

When determining the application of this exception, significant emphasis is placed on the length of the quotation. Thus, quantitatively the reproduction must be insubstantial. This may prove to be an issue for artists like John who reuse entire portions of original works. However, sampling artists who only reuse certain parts of works may fall under this exception. Nonetheless, the A.G. interpreted this exception very narrowly in *Painer* by stating that the original work must be reproduced without modification.[144] Hence, this exception is unlikely to apply to sampling either. It is however, argued that the A.G.'s opinion is not legally binding. This means that courts could potentially go against the AG's opinion in a case involving the applicability of the quotation exception.

analysis), the length of quotation must be reasonable and finally, it must be accompanied by sufficient acknowledgement.

[143] Kirby Ferguson, *Everything Is a Remix* (Vimeo 2015) <https://vimeo.com/63008759> accessed 8 March 2022.

[144] Opinion of AG Trstenjak in *Eva-Maria Painer v Standards Verlags GmbH (C-145/10)* (2011) ECDR 13, at 208-209.

Nonetheless the A.G. Szpunar, in providing guidance in *Pelham* reinforced A.G. Trstenjak's opinion by stating that:

"*Accordingly, in the first place, the extract quoted must be incorporated in the quoting work as such or, in any event, without modification (certain amendments being traditionally permitted, particularly translation). In the second place — this is the point directly raised by the question referred — the quotation must be incorporated into the quoting work so that it may be easily distinguished as a foreign element. That requirement may be inferred from the first condition: how could the quoting work enter into dialogue with or be compared to the work quoted if the two are indissociable from one another?".*[145]

The CJEU in *Pelham*, reinforced the A.G.'s opinion stating that two works must be distinguishable from one another and the derivative work must enter into a dialogue with the work being reused.[146] This can be achieved by "*illustrating an assertion, of defending an opinion or of allowing an intellectual comparison between that work and the assertions of that user*".[147] Hence, it is unlikely that either cover songs or remixes would qualify under this exception since, although the work being reused may sometimes be distinguishable, in the case of samples, would the same apply in the case of cover songs and mashups? Also, what does engaging in a dialogue actually entail? Would John's editing of the original vocal recording by adding various effects such as reverb and distortion result in the work being indistinguishable? Would the addition of an acoustic guitar to the editing (hopefully distinguishable) vocal extract amount to a dialogue?

Finally, in order for this exception to apply, the quotation must be "*accompanied by a sufficient acknowledgement".*[148] This, in essence requires that the original author is identified. s178 of the CDPA defines sufficient acknowledgement as "*an acknowledgement identifying the work in question by its title or other description, and identifying the author".*[149] Hence, not only must the author be identified but the title of the work must also be acknowledged. There are various ways in which the author can be identified such as by name, pseudonym, or by other means, such as a photograph or a logo.[150] As per Laddie J., whichever way a defendant chooses to "credit" an author, it must express "*to a reasonably alert member of the relevant audience that the identified person is the author".*[151]

---

[145] Opinion in *Pelham GmbH v Hutter EU:C:2018:1002; [2019] E.C.D.R. 3* at [65].
[146] Case C-476/17 *Pelham GmbH, Moses Pelham and Martin Haas v Ralf Hutter and Florian Scheider-Esleben* [2019], at 72-73.
[147] Ibid at 71.
[148] s30(1ZA)(d) CDPA 1988.
[149] S178 CDPA 1988.
[150] *Pro Sieben Media v. Carlton Television* [1999] *FSR* 610; *Newspaper Licensing Agency* [1999] *EMLR* 369, 384 (Ch).
[151] *Pro Sieben Media* [1997] *EMLR* 509, 597.

One important point to note, is that it is the author of the work which must be identified and not the rightsholder.[152] This may, under certain circumstances, such as cases where ghost-writers are involved, prove to be difficult for a prosumer to do and may thus, fall outside the scope of this exception. Nonetheless s30(1ZA)(d) CDPA of the CDPA states that where is impossible for a defendant to "credit" *"for reasons of practicality or otherwise"* then this exception will still apply. Hence, it is argued that provided a prosumer attempts to credit the author of the work they intend to reuse, they will surpass the requirement of sufficient acknowledgement.

Hence, works of music prosumption could theoretically avoid being regarded as amounting to copyright infringement under the fair dealing exception for the purposes of quotation, provided four requirements are fulfilled. However, upon an analysis of those requirements, it is likely that this exception would only apply to cover songs or remixes in limited circumstances.

1.3.1.2.1.2 Caricature, parody, or pastiche.

The second potential fair dealing exception which could apply to cover songs and remixes exempts the reuse of a work for the purposes of creating a caricature, parody, or pastiche. Exceptions for the purposes of parody are not expressly mentioned in the Berne text. However, most likely, because such an exception meets the requirements of the "three step test", it is widely accepted across the Berne signatories as a permitted use.[153]

In the UK such an exception is found under s30A of the CDPA. Jacques argues that as of yet, it is reasonable to conclude that the UK's parody exception satisfies the three-step test.[154]

The CDPA does not specify when this exception will apply. [155] However, the CJEU clarified the scope of this exception in *Deckmyn v Vandersteen*,[156] and held that in order to determine whether a reuse would be regarded as amounting to a parody, the term's everyday meaning should be taken into account.[157] Subsequently, in order for a cover song and/or remix to be exempt two essential characteristics must be fulfilled. A potentially exempt work must first "*evoke an existing work while being noticeably different from it, and, secondly, constitute an expression of humour or mockery*".[158] It is argued that music prosumers, like John will typically fulfil the first requirement, but may not fulfil the second one. As discussed above, works of music prosumption draw upon already existing

[152] *Express Newspapers v. Liverpool Daily Post* [1985] 3 *All ER* 680; *Forensic Telecommunication Services v. Chief Constable of West Yorkshire* [2012] *FSR* 428.
[153] Goldstein and Hugenholtz (n 25) 380.
[154] Sabine Jacques, *The Parody Exception in Copyright Law* (Oxford University Press 2019) 60.
[155] s30A CDPA 1988.
[156] *Deckmyn and Vrijheidsfonds VZW v Vandersteen (C-201/13)* (2014) ECDR 21.
[157] Ibid, at 20.
[158] Ibid.

works, and apart from some exceptions such as those posed by cover records, they will often be noticeably different from the original work. Hence, provided a work of music prosumption constitutes an expression of humour or mockery, then it will arguably qualify for an exception under s30A of the CDPA. While a large number of pop parodies will fulfil the second requirement of the parody exception,[159] this does not necessarily translate to the application of this exception to a large number of works of music prosumption. On the contrary, identifying an element of humour or mockery in music is difficult.[160] Also, in the case of mashups where numerous works are combined, and it is their combination which creates an element of humour or mockery,[161] it is unclear as to whether all instances of infringement would be exempt. Hence, even though it seems as though s30A of the CDPA could theoretically apply to cover songs and remixes, it is unlikely to do so in reality.

Although s30A of the CDPA provides exemptions for works which could be regarded as either caricature, parody or pastiche, scholars seem to interpret this as giving rise to one exception – parody. For instance, Jacques argues that "*It is also worth noting that in this decision* [Deckmyn], *the court implicitly indicates that "parody", "pastiche" and "caricature" are overlapping, rather than impervious terms. While it is possible to highlight characteristics of each genre, it may be impossible to delineate each term completely. Ultimately, parody must be understood as a "multivalent" term which operates at different levels and comprises many genres, such as satire, pastiche and caricature*".[162] However, Hudson argues that these terms are in fact distinct and should be interpreted that way.[163] Namely, the author argues that "*s.30A into the CDPA is far more significant than has been appreciated thus far owing to the inclusion of pastiche as one of the three fair dealing purposes, thereby giving the UK a defence covering mash-ups, fan fiction, music sampling, collage, appropriation art and other forms of homage and compilation*".[164] If this is the case, a pastiche has been defined as "*a musical or other composition made up of selections from various sources or one*

[159] An empirical study by the UK IPO found that a large number of pop parodies sample earlier works, see Kris Erickson, Martin Kretschmer and Dinusha Mendis, 'Copyright and the Economic Effects of Parody: An Empirical Study of Music Videos on the Youtube Platform and an Assessment of the Regulatory Options' (2013) Intellectual Property Office Research Paper No. 2013/24.
[160] Sabine Jacques, 'Are the New "fair Dealing" Provisions an Improvement on the Previous UK Law, and Why? Part of a Wider Reform' (2015) 10 Journal of Intellectual Property Law & Practice.
[161] See for instance, *Slipknot Feat. Justin Bieber - Psychosocial Baby Remix* <https://www.youtube.com/watch?v=NPtJt4A7iOA> accessed 8 March 2022. Here, the mix of genres (metal and pop) is arguably what makes the mashup humoristic.
[162] Sabine Jacques, 'Are National Courts Required to Have an (Exceptional) European Sense of Humour?' (2015) 37 European Intellectual Property Review 134, 136.
[163] Emily Hudson, 'The Pastiche Exception in Copyright Law: A Case of Mashed-up Drafting?' (2017) 4 Intellectual Property Quarterly 346.
[164] ibid 368.

that imitates the style of another artist or period".[165] Although often perceived as an "*imitation of style*", it is also defined as including "*any work incorporating different styles, or made up of parts drawn from a variety of sources*" and can thus be understood as going beyond a mere imitation of style.[166] We have however, no official guidance on how this exception should be interpreted and applied. Hudson argues that guidance should in fact be taken from *Deckmyn* thereby adopting the "*everyday meaning*" of pastiche meaning that it should be interpreted broadly and should not require an element of humor since "*in contrast with caricature and parody, pastiche includes uses that are neutral towards, or celebrate, the referent*".[167] Hence, if the inclusion of the term pastiche in s30A of the CDPA is indeed interpreted as giving rise to a copyright exception similar to that described by Hudson, then one could argue that both cover songs and remixes could be regarded as not giving rise to copyright infringement. Bearing in mind the definitions of works of music prosumption provided above, extending the scope of this exception to the extent posited by Hudson, would allow for works of music prosumption to qualify for an exception under the CDPA. However, extending the scope of s30A to this extent would arguably diminish the value of copyright. It is possible that any reuse, apart from direct copying, would fall under the definition of "*any work incorporating different styles, or made up of parts drawn from a variety of sources*".[168] Whilst this would allow for numerous reuses to qualify for an exception, working to the benefit of prosumers as a whole, this would unfairly favour prosumers to the expense of rightsholders. Similarly extending the scope of this exception to this extent, would arguably mean that s30A no longer complies with the three-step test.[169] Hence, as of yet, this exception is interpreted narrowly, and it is consequently posited that the view adopted by Jacques which views the term parody as a *"multivalent"* is currently more fitting.

The European Copyright Society (ECS) has however posited the notion that Article 17 of the Digital Single Market (DSM) Directive, discussed in greater detail later on in this thesis, could potentially allow for Member States to "*take a fresh look at the concept of "pastiche" and clarify that the exemption of pastiches is intended to offer room for user generated content*".[170] Furthermore, the

[165] Oyinade Adebiyi, '"Law Imitating Life": Will the Day Ever Come? Parody, Caricature, and Pastiche' (2014) 25 Entertainment Law Review 243.
[166] JP Miranda Branco Tomé Quintais, 'Copyright in the Age of Online Access: Alternative Compensation Systems in EU Copyright Law' 204 <https://dare.uva.nl/search?identifier=393eff6c-a580-46ce-88dd-cba21e6972f5> accessed 8 March 2022.
[167] Hudson (n 173) 364.
[168] JP Miranda Branco Tomé Quintais, 'Copyright in the Age of Online Access: Alternative Compensation Systems in EU Copyright Law'.
[169] Aplin and Bently (n 143) 221.
[170] Axel Metzger and Martin Senftleben, 'Comment of the European Copyright Society on Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market Into National Law' [2020] European Copyright Society 13.

ECS proposes that Hudson's interpretation of how such an exception would apply, be used as "*guidelines for a sufficiently flexible application of the pastiche exemption in the light of the underlying guarantee of free expression*".[171] Hence, if Article 17 of the DSM does indeed result in Member States actively recognising a pastiche exception similar to that described by Hudson, then as abovementioned both forms of remixing could potentially avoid being regarded as amounting to copyright infringement, thereby providing remixes with access to markets and consequently creating a gateway towards supporting musical creativity. However, as of yet, such an analysis remains hypothetical.

As aforementioned, with the UK' departure from the EU, national courts are afforded room to deviate from EU law,[172] meaning that the UK could, theoretically in the future widen the scope of s30A of the CDPA. Whether the UK chooses to do so, whilst unlikely, however, remains to be seen.

Thus, it can be deduced that infringement is highly likely and typically, cover songs and remixes will not fall under any of the UK "fair dealing" exceptions which operates a "closed list system" of "permitted acts".

1.3.1.2.2 Open-ended system.

As discussed above, unlike the UK which operates a "closed list system" meaning it has an "*exhaustive set of exceptions in which each provision focuses on a specific act*",[173] the US allows for any use to be potentially regarded as permitted "*pursuant to a set of factors that aid in the decision-making process",*[174] which could otherwise be referred to as an "open-ended system".[175] However, although this approach to determining the applicability of copyright exceptions has been regarded as more favourable towards derivate works,[176] as will emerge from the discussion below, the result is most likely the same; copyright exceptions will only apply to works of music prosumption under certain specific circumstances.

Under section 107 of the US Copyright Act 1976, four factors are laid out, upon which the application of a fair use defence is determined. Section 107 states that:

[171] Metzger and Senftleben (n 180).
[172] European Union (Withdrawal) Act 2018, s6(2) and s6(4).
[173] Michael Handler and Emily Hudson, 'Fair Use As an Advance on Fair Dealing? Depolarizing the Debate' in Haochen Sun, Ng-Loy Wee Loon and Shyamkrishna Balganesh (eds), *The Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press 2021) 140.
[174] D'Agostino (n 130) 314.
[175] Handler and Hudson (n 132).
[176] Gowers (n 131).

(1) *"the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit 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".*[177]

In determining whether a work of music prosumption would be regarded as a fair use, courts must balance these four factors against each other.[178] However, it has been implied that the first factor is the most important determinant, consequently meaning that surpassing the first factor will most likely lead to the finding of a fair use defence.[179]

1.3.1.2.2.1 The purpose and character of the use.

Courts usually break down their analysis of the first factor into three further constituent parts.[180] To begin with, courts are asked to determine whether and to what extent the use is transformative. This simply allows for the identification of how much the original work has been altered. In doing so courts try and identify whether a secondary work *"adds something new, with a further purpose or different character, altering the first with new expression meaning, or message"*.[181] Professor Jaszi has argued that transformative use may consequently favour substantially altered samples.[182] Hence, it is unlikely that a mashup would be seen as amounting to a transformative use whereas a substantially edited sample would. Similarly, a cover song which is significantly altered, for instance by changing the genre of the song, may be regarded as "transformative" whereas a cover record which resembles an exact replica would most likely not. Whether John's reuse would be regarded as "transformative" remains to be seen. Would the modification of the original vocals through various effects be enough? Would the incorporation of an acoustic guitar be enough?

In *UMG Recordings Inc. v MP3.co, Inc.* it was held that a secondary work must add "*new meaning, new understanding, or the like"* in order to be considered as being transformative.[183] Hence, bearing in mind the definitions of both cover songs and remixes that have been provided, it is argued that

[177] U.S. Copyright Act, 17 U.S.C. § 107.
[178] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, 576-578.
[179] Emily Harper, 'Music Mashups: Testing the Limits of Copyright Law as Remix Culture Takes Society by Storm' (2010) 39 Hofstra Law Review.
[180] *Harper & Row v. Nation Enterprises, 471 U.S. 539, 561-562; Fitzgerald v CBS Broad Inc., 491 F. Supp. 2d 177, 185-187 (D. Mass. 2007).*
[181] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, 579.
[182] Kembrew McLeod and Peter DiCola, *Creative License : The Law and Culture of Digital Sampling* (Duke University Press 2011), 236.
[183] *UMG Recordings Inc. v MP3.co, Inc.*, 92 F. Supp. 2d 349, 351 (S.D.N.Y 2000).

several works of music prosumption, such as medleys and cover records, would not be regarded as being transformative.

In *Campbell v. Acuff-Rose Music* the Supreme Court had overruled lower courts decisions in finding that a parody could be regarded as a transformative use, and defined a parody as *"the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works".*[184] Consequently, it is argued that certain works of music prosumption could in theory be regarded as "transformative" provided they are for the purposes of a parody, which comments on the original author's work.[185] However, courts employ a strict interpretation of a use being transformative.[186] Moreover, above, in the context of the UK's fair dealing exception for the purposes of creating a caricature, parody or pastiche, it was discussed that identifying an element of humour or mockery in music is difficult.[187] The same would apply when determining whether a parody would be regarded as "transformative".

In the somewhat less related, but still relevant case of *Cariou v Prince*,[188] which involved Richard Prince's appropriation of Patrick Cariou's photographs of the Rastafarian community in Jamaica, the US Court of Appeals for the Second Circuit found that for the bulk of Prince's works, minimal editing such as the increasing of the size and the addition of content such as a mosaic cut-out of a guitar, were sufficient so as to be regarded as "transformative" and ultimately amounting to "fair use", effectively reducing the threshold for what amounts to "transformative use".[189] Could the same apply to works of music prosumption? If so, then provided a minimum editing has taken place, one could argue that works of music prosumption would not be seen as amounting to copyright infringement in the US.[190] Similarly, under this interpretation John's cover song would most likely be regarded as being transformative. However, in the more recent case of *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*,[191] the US Court of Appeals for the Second Circuit clarified its decision in *Cariou v Prince* claiming that the key factor is not how major the transformation is, but whether the secondary work adds "*new expression, meaning or message*", thereby once more increasing the

[184] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, 580.
[185] David Mongillo, 'The Girl Talk Dilemma: Can Copyright Law Accommodate New Forms of Sample-Based Music?' (2009) 9 Pittsburgh Journal of Technology Law and Policy.
[186] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, 578-585.
[187] Jacques, 'Are the New "fair Dealing" Provisions an Improvement on the Previous UK Law, and Why? Part of a Wider Reform' (n 170).
[188] *Cariou v. Prince*, 714 F.3d 694 (2d Cir. 2013).
[189] Julian Azran, 'Bring Back the Noise: How Cariou v. Prince Will Revitalize Sampling' (2014) 38 Columbia Journal of Law & the Arts 69.
[190] ibid.
[191] *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 992 F.3d 99 (2d Cir. 2021).*

threshold for what amounts to "transformative".[192] Hence, it is arguably, unlikely that works of music prosumption, such as the example presented by John, would meet the requirement of being transformative. However, there are perhaps instances where a work of music prosumption would likely be treated as "transformative", for instance, where a change of genre, lyrics or chord structure has taken place, thereby adding a "new meaning" to the work. This, however, would have to be judged on a case-by-case basis, thereby not allowing for any definitive conclusions to be made.

Secondly, in determining the purpose and character of a use, courts ask whether the use is commercial. Some research shows that communities where appropriation is common tend to avoid monetising their works. [193] However, such generalisations cannot be made. As will be discussed in greater detail below, with the rise of YouTube and the ability to monetise content that is uploaded, it is argued that any reuse nowadays could to a certain extent be seen as potentially amounting to a commercial use. Nevertheless, it has been argued that traditional musicians simply create for the sake of creating and do not intend to commercialise their music.[194] If the same can be said in the context of prosumers of music, then it is argued that a large proportion of works of music prosumption will not be commercialised since websites like YouTube give musicians the option not to monetise their videos.

Finally, courts examine whether the alleged infringer acted in good faith.[195] One determining factor is the date at which the original work was published.[196] If a work of music prosumption is published which reuses a work which has yet to have been published then this will be regarded as acting in bad faith. Nevertheless, as demonstrated above, works of music prosumption will typically reuse an already familiar work. Hence, prosumers of music will often be found to have not acted in bad faith in this regard. However, rightsholders have argued that first publication is not the only determinant of good faith.[197] It is argued that knowingly reusing a work against the original authors will, also amounts to acting in bad faith.[198] However, in *Campbell v Acuff-Rose Music Inc.* the Supreme court

[192] Jane Ginsburg, 'Comment on Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 992 F.3d 99 (2d Cir. 2021)' [2021] Journal of Intellectual Property Law & Practice, forthcoming; Columbia Public Law Research Paper No. 14-691 <https://scholarship.law.columbia.edu/faculty_scholarship/2756> accessed 8 March 2022.
[193] See for instance: Marta Iljadica, *Copyright Beyond Law: Regulating Creativity in the Graffiti Subculture* (Hart Publishing 2016) 200–201. See also in the context of remixing: Steven A. Hetcher, Using Social Norms to Regulate Fan Fiction and Remix Culture, (2009) 157 U. PA. L. REv. 1869, 1907. This will be discussed in more detail later in the thesis.
[194] Jiarui Liu, 'Copyright for Blockheads: An Empirical Study of Market Incentive and Intrinsic Motivation' [2015] Columbia Journal of Law & the Arts.
[195] *Harper & Row, Publishers, Inc. v Nation Enters,* 471 U.S. 539, 562; NXIVM Corp., v Ross Inst., 364 F.3d 471, 478-479 (23 Cir. 2004).
[196] *Harper & Row, Publishers, Inc. v Nation Enters,* 471 U.S. 539, 564.
[197] NXIVM Corp., v Ross Inst., 364 F.3d 471, 478.
[198] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, 585.

held that "2 Live Crew" had not necessarily acted in bad faith despite having been denied authorisation to reuse "Oh, Pretty Woman" from the rightsholder.[199] Thus, it can be deduced that prosumers of music will typically be seen as having acted in good faith.

To conclude, based on the analysis above, one can argue that works of music prosumption will typically not be regarded as meeting the first cumulative requirement for being regarded as "fair use", but this may vary from case to case.

1.3.1.2.2.2 The nature of the copyrighted work.

The second factor which must be taken into account for the identification of whether or not a secondary work can be regarded as amounting to a fair use asks courts to consider the nature of the work which is being used.[200] First, whether the original work is factual or fictional is taken into consideration.[201] Second, courts look at whether the original work was published.[202] Hence, this factor is unlikely to be an issue for works of music prosumption.

1.3.1.2.2.3 The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

The third factor, taken into account by courts when determining whether a reuse would be regarded as "fair use" asks of courts to consider how much, both quantitatively and qualitatively, an alleged infringer has copied.[203] Thus, copying works in their entirety does not necessarily negate the existence of fair use.[204] In the US, there is a *de minimis* threshold whereby if the reuse is quantitatively too small, no infringement will be found. For example, a single note or chord would not be seen as an infringement but beyond that, courts will have to undergo a qualitative analysis of the sample taken.[205] However, in *Bridgeport Music, Inc. v Dimension Films,* it was held that the *de minimis* threshold does not apply to sound recordings.[206] Thus, in the US, any amount reused in a work of music prosumption, would most likely be treated as giving rise to copyright infringement. Hence, the result is similar to that of the UK, whereby a *de minimis* threshold does not seem to apply. However, a recent case seems to have overruled *Bridgeport* and thus, the *de minimis* threshold may equally apply to sound recordings.[207] As a result works of music prosumption, which

[199] Ibid.
[200] U.S. Copyright Act, 17 U.S.C. § 107(2).
[201] *Harper & Row, Publishers, Inc. v Nation Enters,* 471 U.S. 539, 563.
[202] Ibid, 564.
[203] U.S. Copyright Act, 17 U.S.C. § 107 (3).
[204] *Sony Corp. v Universal City Studios Inc.,* 464 U.S. 417, 449-450, 456 (1984).
[205] Kembrew McLeod and Peter DiCola, *Creative License : The Law and Culture of Digital Sampling* (Duke University Press 2011).
[206] *Bridgeport Music, Inc. v Dimension Films*, 410 F.3d 792 (6th Cir. 2005).
[207] *VMG Salsoul, LLC v Ciccone*, No. 13-57104 (9th Cir. 2016).

only reuse a small snippet of a song such as a single bass note, or chord, would likely not be regarded as amounting to infringement in the eyes of a US court. However, this would most likely differ on a case-by case basis.

1.3.1.2.2.4 The effect of the use upon the potential market for or value of the copyrighted work.

Finally, in determining the existence of fair use, courts consider whether the secondary work caused harm to the original work's market.[208] It is argued that works of music prosumption do not typically impact the market of the work, which is being reused, but in fact create a new market,[209] where works of music prosumption arguably target new audiences for already existing songs, often breathing new a new life into already existing songs. Thus, this factor weighs in favour of remixing being regarded as amounting to fair use.

1.3.1.2.3 Conclusion.

It can be deduced that the U.S fair use exceptions are wider than the UK "closed list" fair dealing exceptions since they are open-ended. Nevertheless, they are very much fact dependant, and this creates unpredictability. However, as has already been established above, works of music prosumption will often fail to surpass the arguably most important factor in determining the existence of "fair use" – whether the reuse is "transformative". Thus, bar exceptions such as the situation posed by new exceptions in Canada,[210] irrespective of whether a jurisdiction adopts a closed list or open-ended approach, works of music prosumption are only under certain circumstances going to be regarded as falling under a copyright exception. This in combination with the fact that YouTube asks of its users to "*secure the rights to all parts of their video*",[211] means that, in order for a prosumer of music like John to legally disseminate their work on YouTube, they would have to secure what is known as "rights clearance" prior to uploading their works to YouTube.

1.3.1.3 Rights Clearance Process.

Rights clearance refers to the process of obtaining permission to reuse another artist's work. As previously discussed, there are two main rights attached to any musical work – recording rights and

[208] U.S. Copyright Act, 17 U.S.C. § 107 (4). See Also, *Harper & Row, Publishers, Inc. v Nation Enters,* 471 U.S. 539, 566-567.
[209] Cusic (n 54) 174; Robert M Vrana, 'The Remix Artist's Catch-22: A Proposal for Compulsory Licensing for Transformative, Sampling-Based Music Note' (2011) 68 Washington and Lee Law Review 811, 827; Erickson, Kretschmer and Mendis (n 169).
[210] Canada which operates a "closed list system" similar to that of the UK, has introduced a new exception directed towards permitting a reuse for non-commercial user-generated content. See Article 29, Copyright Modernization Act (S.C. 2012, c. 20, An Act to amend the Copyright Act).
[211] 'Know When You Need Copyright Permissions - YouTube' (n 86).

publishing rights. Such rights are either licensed directly or through a collecting society (in the UK Phonographic Performance Limited (PPL)[212] and Performing Rights Society (PRS)[213] respectively). In most instances, prosumers of music will need to clear both these rights prior to disseminating their work. This section, using John's example, aims to outline what the rights clearance process looks like for a typical prosumer of music. It will use the UK as an example to illustrate what the process may look like if John were to secure rights clearance using the route offered by a collecting society, which is discussed in more detail below. However, collecting societies exist throughout the world, and may differ in their approach.[214] The steps involved in securing rights clearance will, nevertheless, be the same irrespective of geographical location. A user will have to first identify who the rightsholders are before identifying which rights need to be cleared. The means for doing so may differ depending upon the collecting societies which exist within a user's specific geographical location. However due to a lack of time and space, this section will assume John is located in the UK examining his interactions with UK-based collecting societies.

1.3.1.3.1 STEP 1: Identifying the respective right-holders.

Before identifying what licenses John will have to obtain, his first step would be identifying who the relevant rightsholders of the song he wishes to create a cover of, are. With regards to identifying the owners of the publishing rights, John could use the "PRS for Music" database as a first step.[215] Provided the publishing rights attached to the song intended to be covered, have been transferred to PRS, then John will be able to identify the relevant publishing right owners through PRS's database. Nevertheless, with regards to publishing rights in the UK, artists typically only assign their performing rights to PRS, and other elements of publishing rights are assigned to their respective music publisher, who then has the option to either licence collectively through PRS or directly

[212] PPL licenses the use of recorded music, see 'PPL - PPL Licenses Recorded Music Played in Public' <http://www.ppluk.com/> accessed 8 March 2022.
[213] PRS licenses the use of publishing rights, see 'PRS for Music: Royalties, Music Copyright and Licensing' <https://www.prsformusic.com:443/> accessed 8 March 2022.
[214] Goldstein and Hugenholtz (n 25) 273.
[215] 'Searching the Database' <https://www.prsformusic.com:443/works/searching-the-database> accessed 8 March 2022.This is the database in which all songs registered under "PRS for Music" can be found. However, it must be noted that in order to be able to use this database you must have an account for PRS yourself, which itself may be a challenging process since, the only option available for creating an account directly is being a writer or member of MCPS and/or PRS. There are also two other options, specifically for: Online/broadcasting customers; and, customers of MCPS. However, in order to create an account under these options, you are requested to contact a member of the PRS for Music team.

through themselves.[216] Hence, John may have to use other avenues for identifying the relevant publishing right owners, such as searching through individual music publishing websites.[217]

With regards to copyright in the sound recording, provided the recording artist or relevant label has assigned the relevant rights to PPL, John could use PPL's "Repertoire Search" to identify the relevant owners of the recording rights.[218] However, artists typically only assign their equitable remuneration to PPL whilst other aspects of the recording copyright will be assigned to the record label, who once again has the option of either licencing directly or through PPL.[219]

There may also be co-ownership over any aspect of the copyright (publishing/recording copyright). Co-ownership is common amongst publishing copyright since collaboration is common in song-writing.[220] This further complicates the rights clearance process for John who may have to seek permission to reuse a single aspect of a work (e.g. the lyrics) from multiple copyright owners, their respective labels/publishers and/or their respective collecting societies.

Hence, it can be deduced that John will most likely be faced with a number of hurdles when identifying the respective right owners. The process of identifying right-holders would also be the same if John would have been a remix artist. The only potential difference would be the number of right-holders that would have to be identified, i.e. greater number for remix artists.[221] Assuming John has identified the relevant right-holders, his next step would be obtaining appropriate licenses, which would authorise his reuse of the specific work.

1.3.1.3.2 STEP 2: What rights need to be cleared.

Provided the owner of the rights to the song which John wishes to create a cover version of is registered with a respective collecting society, John would have to clear certain rights attached to that song through the relevant collecting society. Firstly, he would have to obtain permission to

[216] Chris Cooke, 'DISSECTING THE DIGITAL DOLLAR - Part One - "How Streaming Services Are Licensed and the Challenges Artists Now Face"' (Music Managers Forum 2015) 20.
[217] See for instance, 'Artists & Writers | Universal Music Publishing Group UK' <http://www.umusicpub.com/uk/Artists.aspx> accessed 8 March 2022. Universal Music Publishing Group have their own database of artists they represent.
[218] 'PPL Repertoire Search' <http://repsearch.ppluk.com/ars/faces/pages/audioSearch.jspx?_afrLoop=105413326625144230&_afrWindowMode=0&_adf.ctrl-state=fsz7302n9_4> accessed 8 March 2022. This is similar to PRS's database but is more accessible in that you do not need to have an account to use it.
[219] Cooke, 'DISSECTING THE DIGITAL DOLLAR - Part One - "How Streaming Services Are Licensed and the Challenges Artists Now Face"' (n 226) 20.
[220] ibid 26. Also see s10A CPDA 1988.
[221] For instance, looking at the example of Girl Talk which was used previously to describe what a mashup is, over three hundred songs had been reused in a single album meaning the identification process would be significantly harder when compared to a typical cover song scenario.

reuse the publishing rights attached to that song. To do so he would have to obtain a mechanical license from the Mechanical Copyright Protection Society Limited.[222] A mechanical license grants authorisation to reproduce and distribute John's work. He can do so through PRS's online application form.[223] Furthermore, given the fact that John will be uploading his work to YouTube, a video will most likely be used to complement his work. This means that he would also require a sync license which would allow for John to synchronise the music with a visual media output.

As aforementioned, not all songs will be available for rights clearance through a collecting society. Hence, John may have to obtain a license directly through the specific publisher representing the artist of the song John wishes to create a cover version of, most of which will have detailed rules of how to obtain a license from them included on their websites.[224]

Furthermore, given the fact that John will be reusing the original vocals for that song, he will also need to clear the recording rights attached to the song in question. This is something which will not typically be required from cover artists since, although they may, they would not usually reuse an original sound recording but has been included in this example so as to demonstrate what a remix artist would typically have to go through. John would do so by obtaining a license through PPL. Nevertheless, record labels typically provide licenses directly, except where the digital platform intended to be used as a vehicle for dissemination is more analogous to traditional radio stations e.g. webcasting.[225] Hence, given the fact that John intends to use YouTube as a dissemination platform, he will most likely have to obtain a license to reuse the recording rights in the vocals directly from the respective record label.

1.3.1.3.3 What can be drawn from existing research?

Taking a synoptic view of the above, it can be deduced that the task of obtaining permission to reuse a work is cumbersome. There are, however, currently no empirical studies looking specifically at music prosumers' experiences with the rights clearance process. Existing research has examined libraries' experiences of securing the rights to the mass digitisation of the literature they offer,[226]

[222] Which together with PRS also trades under the name "PRS for Music".
[223] 'Find a Licence' <https://www.prsformusic.com:443/licences> accessed 8 March 2022.
[224] Universal Music Publishing for instance, has their own rules and contact detail of how to obtain a license, 'How to License Music | Universal Music Publishing Group UK' <http://www.umusicpub.com/uk/FilmAndTv/How-to-License-Music.aspx> accessed 8 March 2022.
[225] Chris Cooke, 'DISSECTING THE DIGITAL DOLLAR - Part Two' (Music Managers Forum 2016) 72.
[226] 'Copyright & Risk: Scoping the Wellcome Digital Library Project | CREATe' <https://www.create.ac.uk/publications/copyright-risk-scoping-the-wellcome-digital-library-project/> accessed 8 March 2022; Barbara Stratton, *Seeking New Landscapes: A Rights Clearance Study in the Context of Mass Digitisation of 140 Books Published Between 1870 and 2010* (British Library 2011); Mike Cave, Marilyn Deegan and Louise Heinink, 'Copyright Clearance in the Refugee Studies Centre Digital Library Project · Copyright Cortex' (2000) 4 OCLC, Research Libraries Group Inc. , Cornell University Library; Rumi Graham and

and how to deal with rights clearance issues associated with orphan works.[227] However, given the disparity between prosumers of music; who are often independent in their creative processes and reuse different levels of multimedia works, and libraries who operate as institutions, who typically seek licenses to reuse different aspects of literary works, their experiences of rights clearance processes cannot be compared.

Despite this lack of empirical studies with regards to music prosumption, two studies which examined documentary filmmaker's perceptions of their respective jurisdictional rights clearance process in the US and in South Africa found that filmmakers struggle in process of identifying right-holders.[228] Aufderheide and Jaszi used semi-structured interviews to interview 45 documentary filmmakers as a way of identifying their perceptions regarding the rights clearance process in the US.[229] Specifically, Aufderheide and Jaszi aimed to identify the implications of the rights clearance process on documentary filmmakers' creative process. [230] They found that filmmakers generally struggle in process of identifying rightsholders.[231] Given John's potential to struggle in identifying the respective right-holders, this is something which is likely to affect prosumers of music as well.

Their study also identified several other issues which filmmakers face in dealing with rights clearance processes, which may equally apply to prosumers of music. For instance, they found that filmmakers were sometimes refused access to reuse certain works directly by rightowners.[232] This, was also

Christina Winter, 'What Happened After the 2012 Shift in Canadian Copyright Law? An Updated Survey on How Copyright Is Managed across Canadian Universities' (2017) 12 Evidence Based Library and Information Practice 132; Dharma Akmon, 'Only with Your Permission: How Rights Holders Respond (or Don't Respond) to Requests to Display Archival Materials Online' (2010) 10 Archival Science 45; Victoria Stobo and others, '"I Should like You to See Them Some Time": An Empirical Study of Copyright Clearance Costs in the Digitisation of Edwin Morgan's Scrapbooks' (Zenodo 2018) <https://zenodo.org/record/1305167#.YA8Nlej7SUm> accessed 8 March 2022.

[227] Marcella Favale and others, 'Copyright, and the Regulation of Orphan Works: A Comparative Review of Seven Risdictions and a Rights Clearance Simulation' (2013) <https://www.gov.uk/government/publications/copyright-and-the-regulation-of-orphan-works> accessed 8 March 2022; Anna Vuopala, 'Assessment of the Orphan Works Issues and Costs for Rights Clearance · Copyright Cortex' (European Commission 2010) <https://copyrightcortex.org/research/assessment-of-the-orphan-works-issues-costs-for-rights-clearance> accessed 8 March 2022; V Stobo and others, 'Current Best Practices among Cultural Heritage Institutions When Dealing with Copyright Orphan Works and Analysis of Crowdsourcing Options' (Diligentsearch.eu 2018) Monograph <http://diligentsearch.eu/wp-content/uploads/2018/05/EnDOW-Report-3.pdf> accessed 8 March 2022.

[228] Patricia Aufderheide and Peter Jaszi, 'Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers' [2004] Center for Social Media, School of Communication, American University 6-7; Sean Flynn and Peter A Jaszi, 'Untold Stories in South Africa: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers' (2010) WCL Research Paper No. 2010-23 Program on Information Justice and Intellectual Property Public Impact Series.

[229] Aufderheide and Jaszi (n 238) 6-7.

[230] ibid.

[231] ibid.

[232] ibid 10.

evident amongst remix artists, in Fiesler *et.al.'s* web ethnography which looked at a range of discussion forums pertaining to a wide range of issues relating to copyright.[233] They found that in the event that remix artists sought permission to reuse certain works, they were simply disregarded.[234]

Additionally, Aufderheide and Jaszi found that the bargaining power of the filmmakers is negatively correlated with the difficulty of the rights clearance process.[235] Also, filmmakers stated that clearing recording rights for music could cost anywhere up to $3,500,[236] and that most of their budget goes towards clearing rights. [237] Furthermore, in the US "*typically, sample licences cost anywhere from US $1,000 to US $5,000 per sample but sampling from some popular recordings can cost several times that amount and/or involve signing away a percentage of the future profits in the new work*".[238] Consequently, it is argued that prosumers of music may face similar challenges to those evident amongst documentary filmmakers in terms of the costs associated with clearing the rights to reuse music.

As aforementioned, a very similar study was conducted in South Africa by Sean Flynn and Peter Jaszi.[239] They interviewed 41 South African filmmakers.[240] They found the same perceptions exhibited by filmmakers in the US existing in South Africa. i.e. the cost of rights clearance keeps rising, and that access to works is often near impossible.[241] This exemplifies the fact that Aufderheide's and Jaszi's aforementioned findings are not endemic to the US and are also exhibited elsewhere. Hence, it is likely that music prosumers may to a certain extent, face similar challenges irrespective of their geographical location.

1.3.1.3.4 Summary and resulting research question.

Above, it was established that without prior consent, works of music prosumption, would most likely be treated as infringing copyright and that exceptions would only apply in certain circumstances. Thus, in order for prosumers of music like John, to disseminate their work on YouTube legally, they would have to go through what is known as the "rights clearance process" prior to uploading their

[233] Casey Fiesler, Jessica Feuston and Amy S. Bruckman, 'Understanding Copyright Law in Online Creative Communities' (2015).
[234] ibid 121.
[235] Aufderheide and Jaszi (n 238) 13.
[236] ibid 17.
[237] Aufderheide and Jaszi (n 238).
[238] Théberge (n 27) 147.
[239] Flynn and Jaszi (n 238).
[240] ibid 1. The authors refer to their methods as being a survey design but nevertheless refer to the respondents as interviewees and refer to specific interview questions. It is thus unclear as to the specific methods used by the authors. It can however be deduced that the researchers conducted qualitative data collection methods for their research.
[241] Flynn and Jaszi (n 238).

works to YouTube. Hence, the regulatory framework which mandates the rights clearance process indicates that prosumers of music would most likely have to obtain rights clearance prior to uploading their works to YouTube, in order to do so legally. This involves identifying who the rightsholders are and which rights need to be cleared, which may in accordance with existing empirical research prove to be cumbersome for prosumers of music. Whilst existing research which shows that creators often struggle with obtaining rights clearance is insightful, the realm of music prosumption remains unexplored. This research thus asks, "*how do prosumers of music interact with traditional rights clearance processes?*"

1.3.2 Whilst Uploading.

After John has recorded his cover song, his next step would be to upload his work to YouTube. Whilst uploading, John would be presented with a number of choices which may be guided by copyright. However, as will emerge from the discussion that follows, the choices prosumers of music must make at the point at which they are uploading their works may be guided by non-legal determinants of behaviour such as social norms.

This section first outlines the process of uploading a work to YouTube, and using John's example, demonstrates what choices a typical prosumer must make whilst uploading their work to YouTube. Upon doing so, it provides an outline of the regulatory framework that may determine prosumers' behaviours at the point at which they are uploading their works to YouTube.

1.3.2.1 The process of uploading a work to YouTube.

Upon choosing to upload his work to YouTube, John will be faced with the prompt illustrated by Figure 4. He will then have to choose the file which he wants to upload, to begin the uploading process. As can be seen in Figure 3, in small font at the bottom of the prompt, John is asked to "*please be sure to not violate others' copyright*". Upon clicking on the learn more hyperlink, users are informed that their need to secure rights clearance before uploading their works to YouTube.

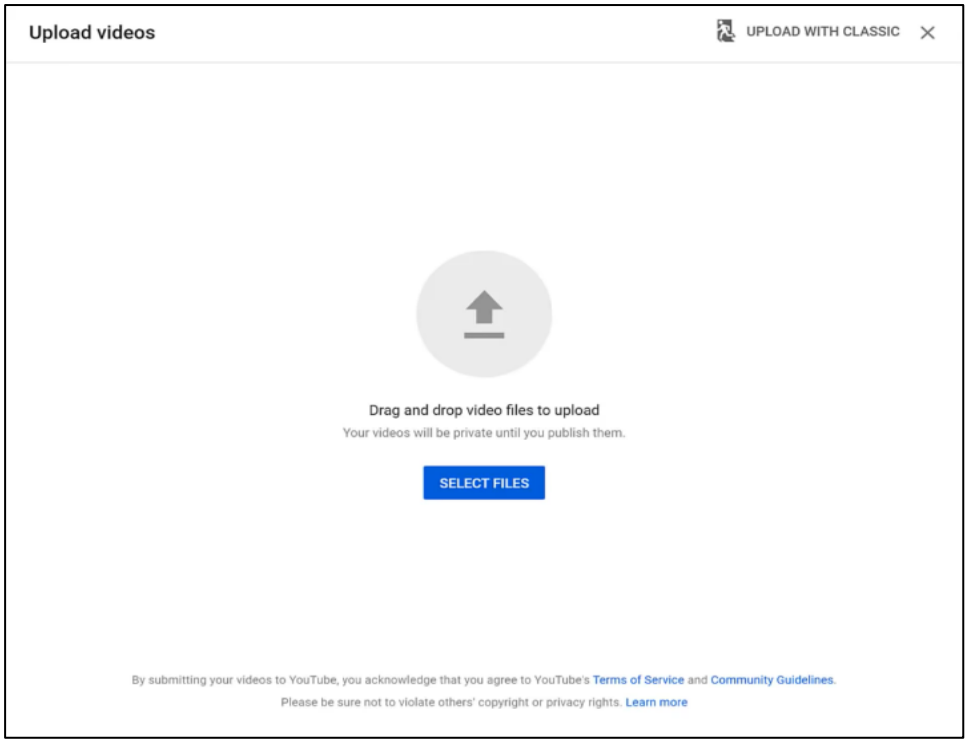


Figure 3: Illustration of the prompt a prosumer is faced with upon choosing to upload their work to YouTube.

Upon selecting the file, he wishes to upload to YouTube, John will be faced with a further prompt which depending on the content creator, consists of three or four sections which must be completed. Namely the sections John will have to complete are: “details”, “video elements”, “visibility”, and as will be discussed in greater detail below, provided the creator is part of what YouTube refers to as its “partner program”, they will have to complete a further section entitled “monetisation”. A new section entitled, “checks”, which will be discussed in greater detail below, was very recently introduced, but at the time this research took place, prosumers of music would not have been presented with this section.[242]

As illustrated by Figure 4, the details section first asks John to select a title and description for the work he wishes to upload. He is also asked to select a thumbnail for his video, from a series of samples which are taken from his video. Alternatively, John can choose to upload his own pre-made thumbnail.

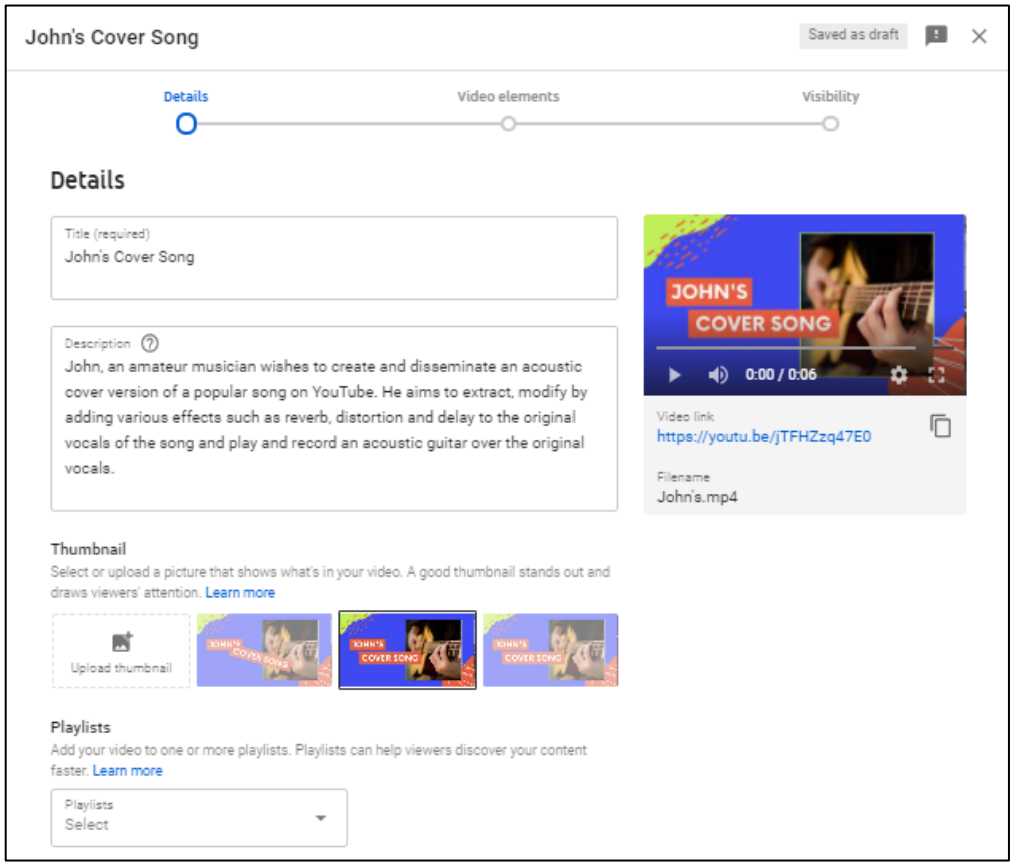


Figure 4: Illustration of the prompt John will be faced with upon selecting which file he wishes to upload to YouTube.

[242] ‘YouTube Rolls Out Copyright Checks Tool, Which Analyzes Your Video Prior to Upload, to More Users’ (*Social Media Today*) <https://www.socialmediatoday.com/news/youtube-rolls-out-copyright-checks-tool-which-analyzes-your-video-prior-to/596922/> accessed 8 March 2022.

Next, John is asked whether he would like to add his work to either a pre-existing or new playlist, which is essentially "*a collection of videos*" which will automatically play one after another, provided the selected video is viewed from within the playlist.[243] Moreover, in accordance with the US Children's Online Privacy Protection Act (COPPA), and as illustrated by Figure 5 below, YouTube asks content creators to indicate whether the content they are uploading is made for kids.[244] Depending on a creator's answer certain features, such as the ability to comment on videos may be restricted.[245]

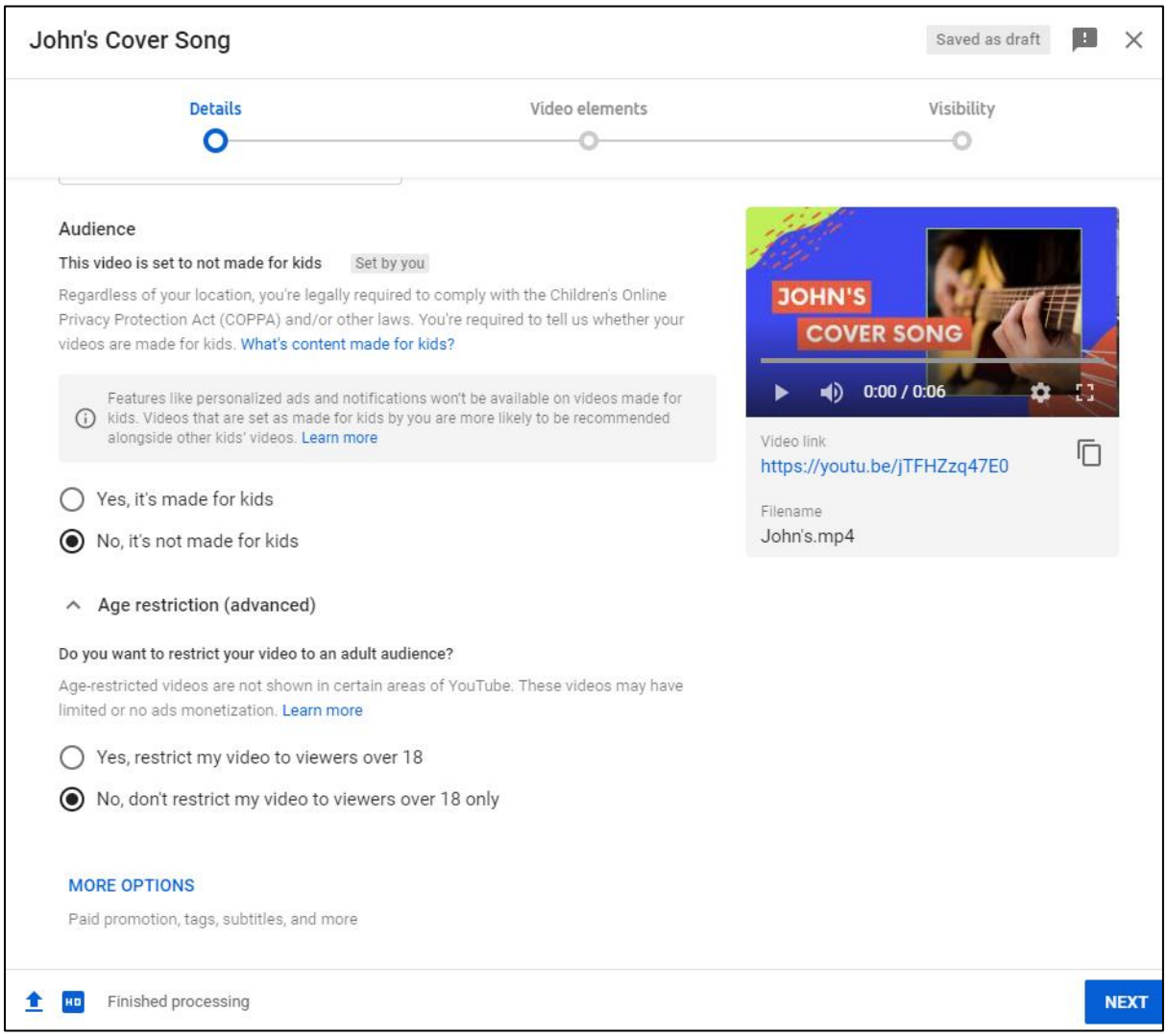


Figure 5: Illustration of YouTube's obligation to comply with the US Children's Online Privacy Protection Act (COPPA).

[243] 'Create & Manage Playlists - Computer - YouTube Help' <https://support.google.com/youtube/answer/57792?co=GENIE.Platform%3DDesktop&hl=en> accessed 8 March 2022.
[244] YouTube Creators, *Important Update for All Creators: Complying with COPPA* (2019) <https://www.youtube.com/watch?v=-JzXiSkoFKw> accessed 8 March 2022.
[245] Makena Kelly, 'YouTube's New Kids' Content System Has Creators Scrambling' (*The Verge*, 13 November 2019) <https://www.theverge.com/2019/11/13/20963459/youtube-google-coppa-ftc-fine-settlement-youtubers-new-rules> accessed 8 March 2022.

The second pre-publishing prompt section John would encounter entitled “video elements”, is entirely optional and asks him to choose whether he would like include any prompts within his video directing viewers to other content. These can be either in the form of an end screen, which prompts viewers to select to either watch another one of content creator’s video, or to subscribe to their channel, or in the form of a card, which appears in the top right-hand corner of the video at a specified time in the video directing viewers to another web page, selected by the content creator.

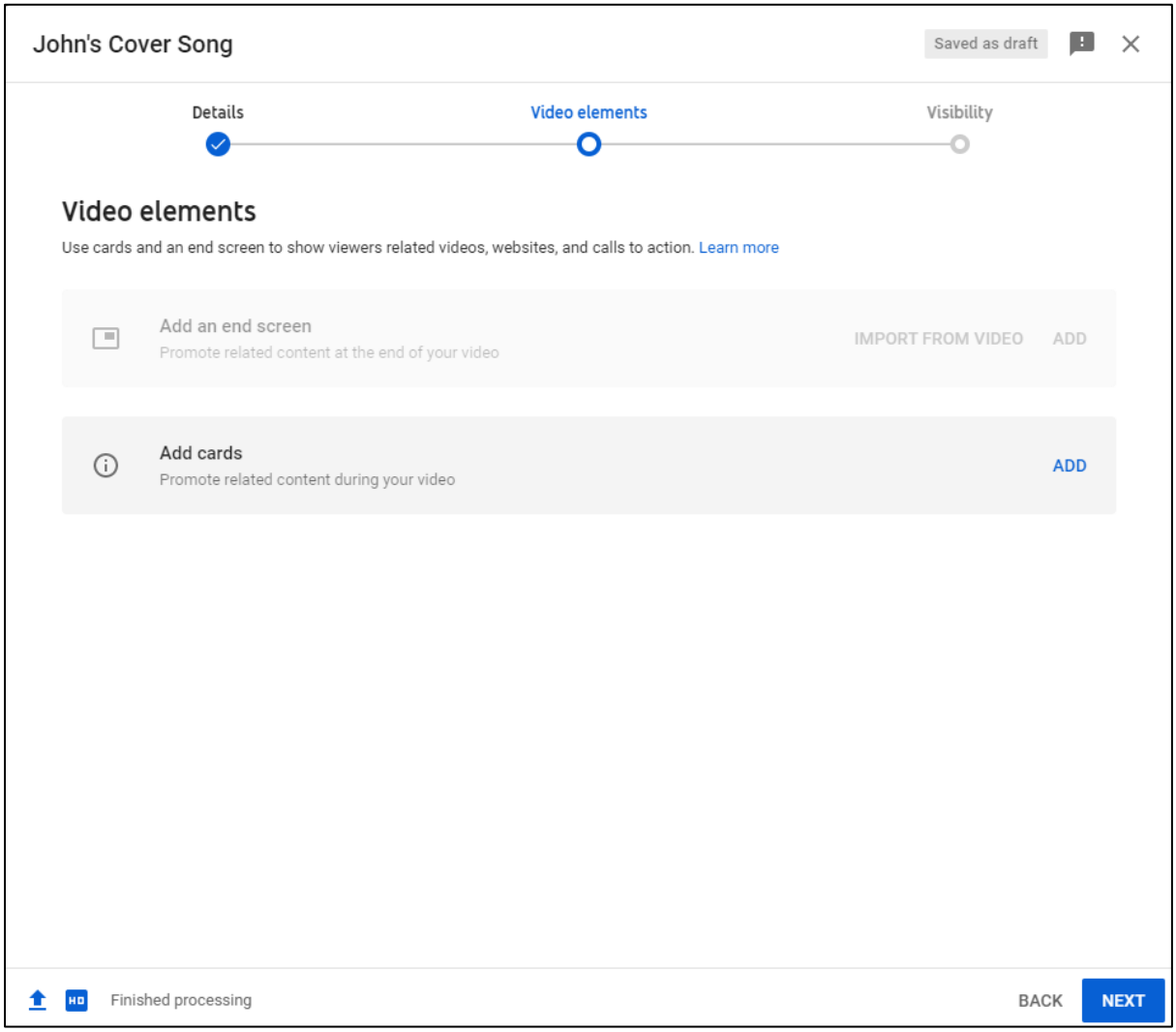


Figure 6: Illustration of the pre-publishing prompt entitled "video elements".

Finally, John is asked to choose when to publish his video and who will be able to view their video in the final pre-publishing prompt entitled “visibility”. As illustrated by Figure 7, John can either publish his cover song as either a “private” video, which means it is only viewable to him, as “unlisted”, meaning that only users who have a link to the video can view it, or “public” meaning that the work is published on YouTube and made available for everyone to see.

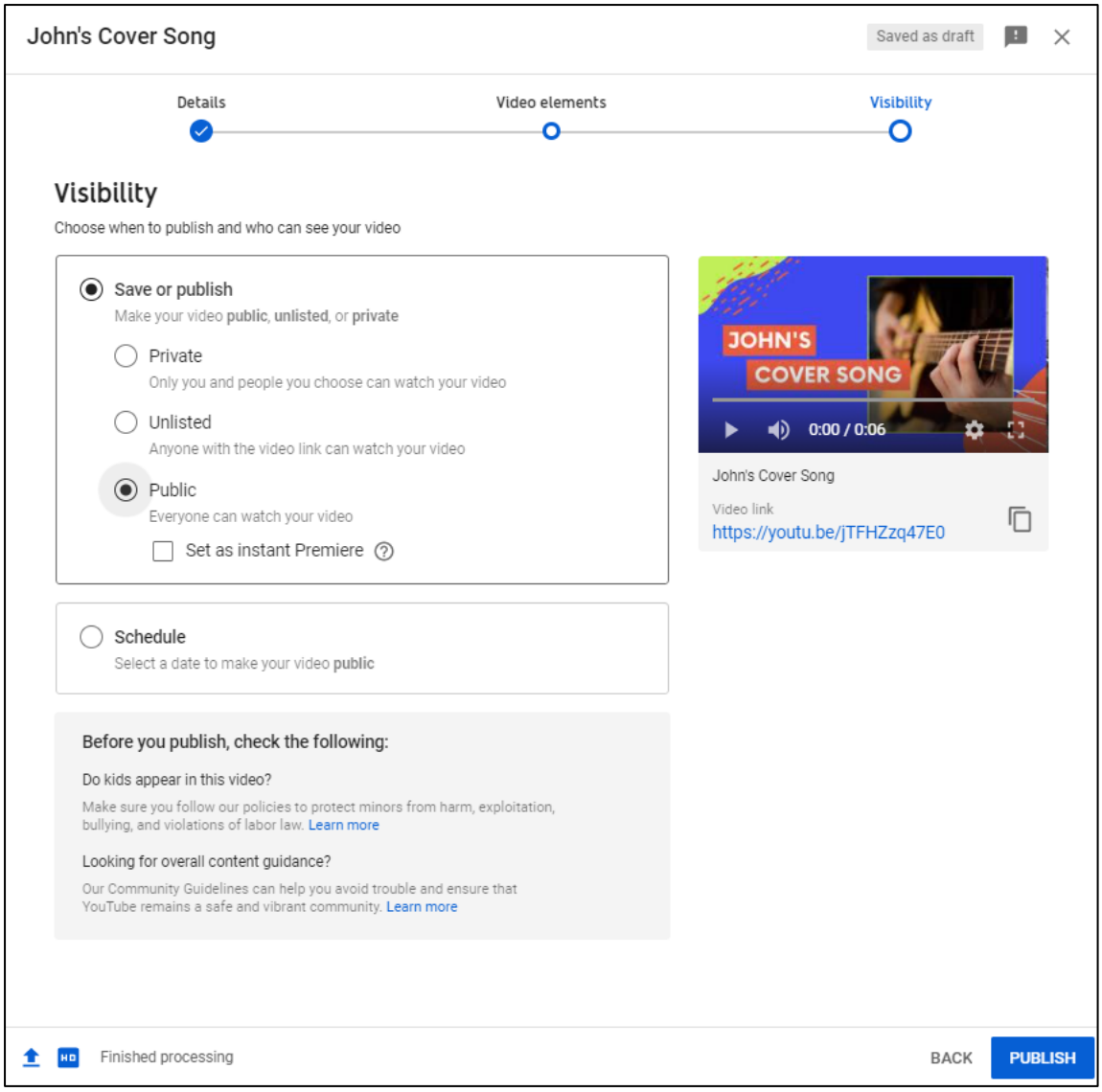


Figure 7: Illustration of the pre-publishing prompt entitled "visibility".

As aforementioned, if a content creator is part of what YouTube refers to as the “YouTube Partner Program”, after they have completed the pre-publishing prompt section entitled “details”, they will be faced with a further pre-publish prompt section entitled “monetisation”. Provided John meets certain criteria, he will be eligible to join “YouTube’s Partner Program” prompting him to select whether, as illustrated by Figure 9 below, he would like to monetise his work, and if so, how to monetise his works.

In order to be part of “YouTube’s Partner Programme”, a prosumer would need to have “*4,000 valid public watch hours in the last 12 months; more than 1000 subscribers; a linked AdSense account, agreeing to “YouTubes monetisation policies” which includes YouTubes terms of service and*

community guidelines, and live in a country or region where the partner programme is available".[246] As abovementioned, and as illustrated by Figure 8 below, a prosumer who fulfils these requirements will be presented with the option to monetise the work they are uploading through the placement of advertisements on their work, and if so, they will also have to choose how they would like advertisements to be displayed on their content i.e. they can for instance, choose to display skippable or non-skippable ads on their work.

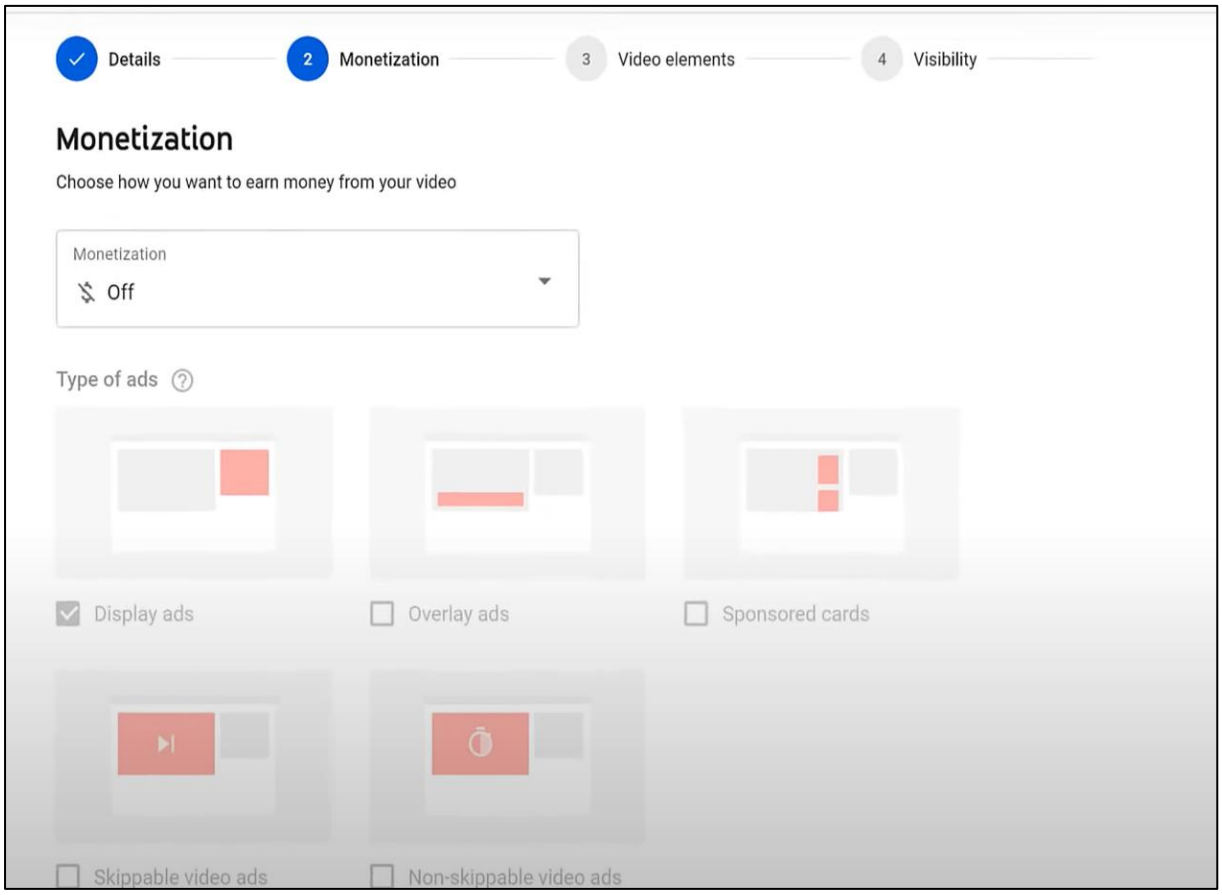


Figure 8: Illustration of the pre-publishing prompt entitled "monetisation".

Upon choosing to monetise their work, a prosumer will be presented with a further pre-publish section entitled "Ad suitability" where they must provide information regarding any aspect of the work potential advertisers might not want their products to be associated with (Figure 9). For instance, if the work of music prosumption contains inappropriate language, or violence, in any aspect of the work such as the title, description or the content itself, then this must be declared by

[246] 'YouTube Partner Programme Overview and Eligibility - YouTube Help' <https://support.google.com/youtube/answer/72851?hl=en-GB&ref_topic=9153826> accessed 8 March 2022.

the prosumer to allow for YouTube to only display appropriate advertisements on that specific work. YouTube also automatically detects content that may be inappropriate for advertisers.

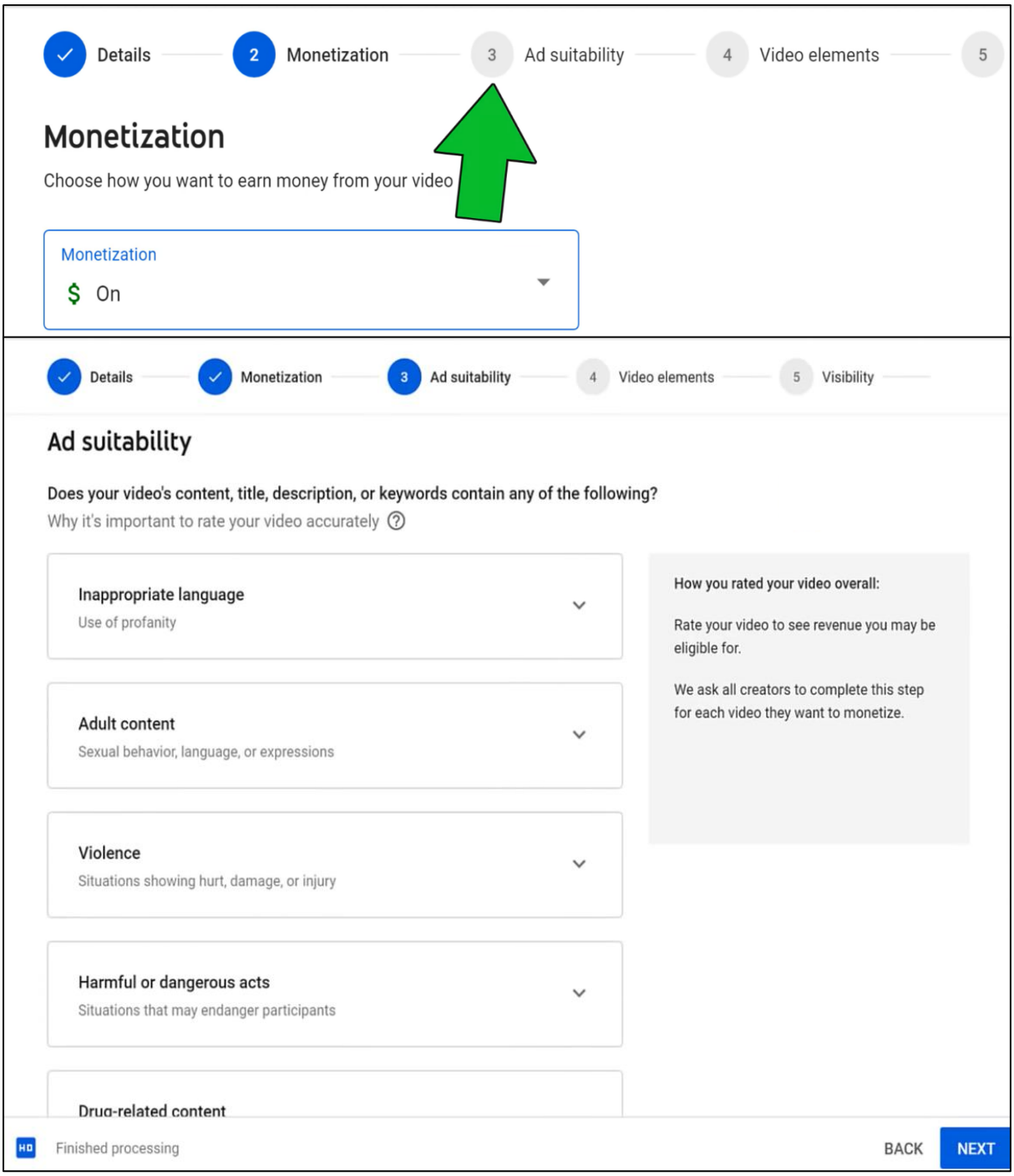


Figure 9: Illustration of the pre-publishing prompt entitled "Ad suitability".

Upon completing the “Monetisation” and depending on their response to the question asking whether they wish to monetise their content, the pre-publishing prompt section entitled “Ad suitability”, content creators who are members of “YouTube’s Partner Program”, are asked to complete the same “Video elements” and “Visibility” sections discussed above.

Hence, taking a synoptic view of the abovementioned, whilst uploading, John must choose how to title his work and what to include in his video description. He can choose whether to include his work in a playlist and must also, inform YouTube whether his content is “made for kids”. Provided John meets certain criteria, he is then asked whether, and if so, how he would like to monetise his works. Opting to monetise his work, prompts a further pre-publishing prompt section entitled “ad suitability”, where John must declare whether his work would fall under a specific category making his work less attractive to specific advertisers. Upon doing so, John must make decisions of whether he would like to direct viewers of his work to other content. Finally, John must make a decision of how to publicise his work.

As aforementioned, after this research took place, YouTube introduced a new pre-publishing prompt section entitled “checks”. This essentially makes the process of taking action against instances of alleged copyright infringement more streamlined for users. This process of taking action against instances of alleged copyright infringement is discussed in more detail in the section that follows, where music prosumers’ interaction with regulatory frameworks they encounter after they have uploaded their works to YouTube are discussed. As can be seen by Figure 10, this new pre-publishing prompt essentially waits for the work to be uploaded and then informs the content creator who is uploading his work to YouTube, whether YouTube’s digital fingerprinting mechanism – Content ID – discussed in brief above and in more detail, below, has found any instances of “plagiarism”, and allows for the prosumer in question to take action before publishing their work. However, as can also be seen in Figure 10 below, YouTube informs users to remember that “*check results aren’t final and that issues may come up in the future that impact* [their] *video*”. Why, that is will discussed in more detail in the next section of this chapter.

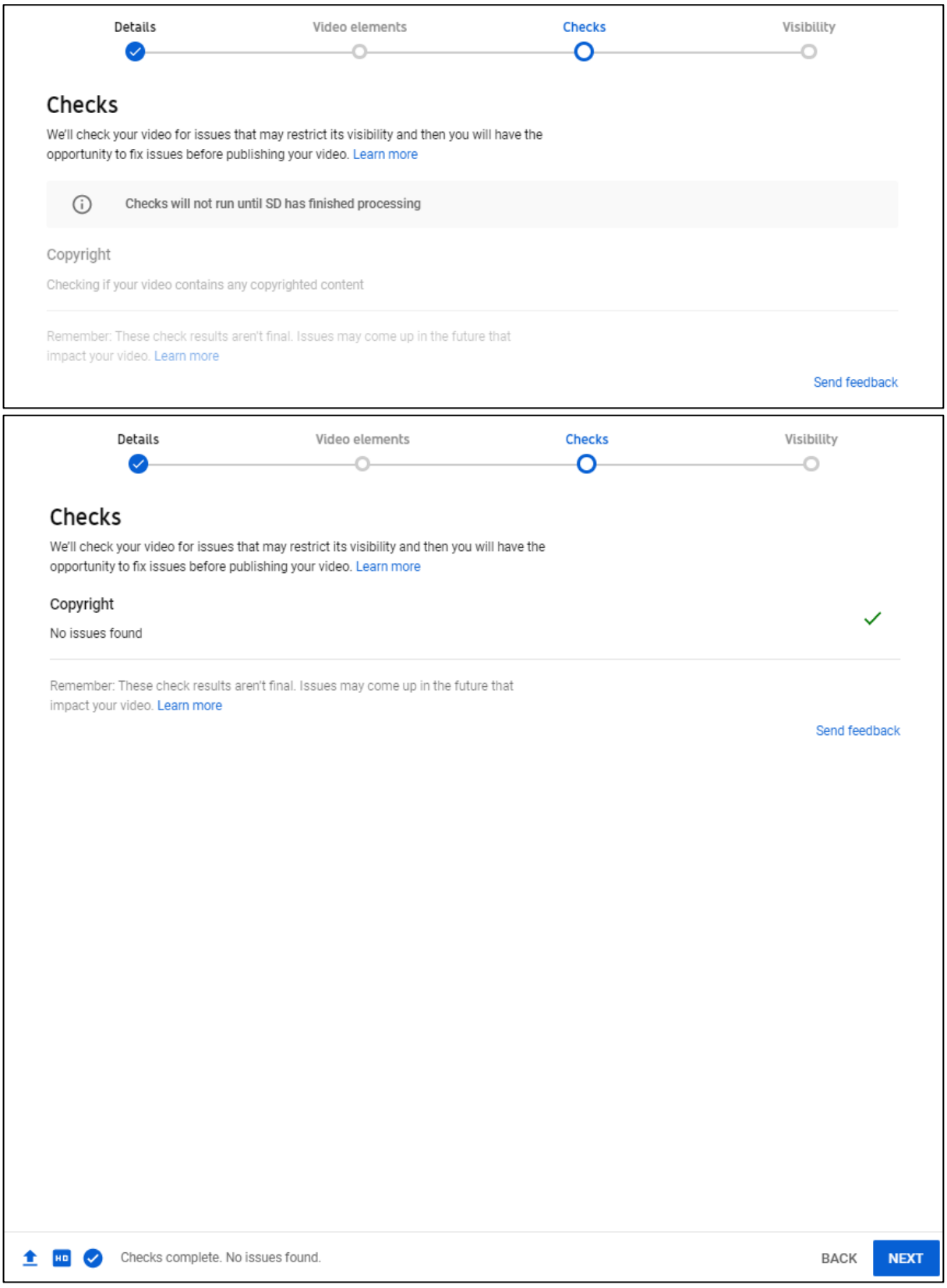


Figure 10: Illustration of the new pre-publishing prompt entitled "Checks".

1.3.2.2 What regulates the choices prosumers must make whilst uploading their works to YouTube?

Above it was shown that, whilst uploading, prosumers of music, like John, must make a number of decisions. Such decisions may be regulated by copyright law. Alternatively, existing doctrinal and empirical research suggests that non-legal determinants may have emerged regulating prosumers' decisions at the point at which they are uploading their works to YouTube. On the other hand, behavioural commonalities that may exist amongst prosumers of music at this stage of their dissemination process, may be attributed to mimicry. This section aims to analyse what might regulate the choices prosumers of music must make whilst uploading their works to YouTube.

1.3.2.2.1 Whilst uploading in the context of copyright law.

At the point of uploading, it was shown above, that John must decide how to title his work and what to include in the description of his work, but also provided he is a member of "YouTube's Partner Programme", he is given the choice of whether to monetise the cover song he is uploading to YouTube, via the placement of advertisements on his works. Above, it was shown that such decisions may be relevant in deciding whether a reuse would be regarded as falling under a copyright exception. Namely, in the UK, it was shown that whether an alleged infringer has credited the author of the original work which they reuse, is a factor, among others, that is considered in determining the applicability of the fair dealing exception for the for the purposes of "*criticism, review, quotation and news reporting*".[247] In the US, commerciality is a factor that courts consider when determining whether a reuse amounts to "fair use".[248] Hence, one could argue that the decisions John makes whilst uploading his cover song to YouTube may play a role in the determination of whether his work falls under a copyright exception. If John attributes the original artist whose work, he reuses in his cover song, in the title, or description of his work, and abstains from commercialising his cover song, it may tip the balance in his favour in the context of his reuse falling under a copyright exception. However, it was shown above, that ultimately copyright exceptions, in the context of works of music prosumption only apply in certain specific circumstances, thereby rendering the potential applicability of copyright exceptions to a certain extent, meaningless in the context of decisions prosumers must make whilst uploading their works to YouTube.

It was previously shown that copyright protection grants rightsholders a bundle of rights.[249] These are often referred to as "economic rights".[250] Copyright however also confers what are referred to as

[247] CDPA 1988 s30.
[248] U.S. Copyright Act, 17 U.S.C. § 107.
[249] See Chapter 1, section 1.3.1.1.
[250] Waelde and others (n 97) 123.

"moral rights" which include the right to be recognised as the author of the work, akin to an "attribution right". As such, prosumers may to a certain extent be legally required to attribute the original artists whose rights they reuse.

Moral rights have not yet been fully harmonised throughout the EU and beyond but have received a degree of harmonisation through Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works.[251] This article provides that:

". . . the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation".

Signatories to the Berne Convention will have similar protections in place. Civil law systems arguably provide more rigorous protections for moral rights, but common law systems, "*with their own historic regard for authors' natural rights, have established an effective, if less deeply rooted, body of doctrine protecting authors' reputational interests*".[252] For instance, in the UK moral rights are protected under Chapter IV of the CDPA. The right to "*claim authorship of the work*" often referred to as the "paternity right", is protected under s77 of the CDPA. s77(3)(b) stipulates that "*the author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever copies of a sound recording of the work are issued to the public".*[253] Furthermore, the moral right of attribution, has the same duration as the copyright in the relevant work.[254] As such, much like in civil law countries, in the UK, it is a legal requirement that the authors of works which are reused in works of music prosumption, are recognised in the works of music prosumption that are disseminated on YouTube.

However, a rightsholder is not awarded with the right to be recognised as the author of a work until that right has been asserted.[255] In accordance with s78(2) of the CDPA one's right "*may be asserted generally, or in relation to any specified act or description of acts".*[256] Finally, in accordance, with s78(5) of the CDPA "*in an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right*".[257]

[251] J Cabay and M Lambrecht, 'Remix Prohibited: How Rigid EU Copyright Laws Inhibit Creativity' (2015) 10 Journal of Intellectual Property Law & Practice 359, 366.
[252] Goldstein and Hugenholtz (n 25) 346.
[253] S77(3)(b) CDPA 1988.
[254] S86(1) CDPA 1988.
[255] S78 CDPA 1988.
[256] S78(2) CDPA 1988.
[257] S78(5) CDPA 1988.

Hence, provided a rightsholder whose work is reused in a work of music prosumption has asserted their right to be recognised as the author of the work in question, they will be able to take action against a prosumer of music who has infringed their right. According to s103(1) of the CDPA "*an infringement of a right conferred by Chapter IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right*".[258] As such, in the UK, a rightsholder may be entitled to damages for infringement of their right to be recognised as the author of the work.

However moral rights enforcement is uncommon; especially in Anglo-American copyright jurisdictions that *"sacrifice authors' rights at the altar of economic expediency"*.[259] Moreover, in accordance with s87(2) of the CDPA a rightsholder is able to waive their attribution right,[260] and, it is arguably common practice for music industry contracts to ask of artists to waive their paternity rights.[261] As such, in most cases the authors of works will not retain their ability to enforce an "attribution right". Consequently, prosumers of music may in theory and in accordance with black letter law, be legally required to attribute the original creators of the works they reuse. However, given a lack of enforcement of moral rights, and all-consuming music industry contracts, it is unlikely that this legal requirement have any real-world effect.

Hence taking a synoptic view of the abovementioned, it can be deduced that the decisions prosumers must make at the point at which they are uploading their works to YouTube, may to a certain degree be regulated by copyright law. Namely, whether a prosumer like John attributes the original artist whose song he reuses, but also whether he monetises that work, may determine the applicability of copyright exceptions. Nevertheless, it was previously concluded that works of music prosumption are only under certain circumstances going to be regarded as falling under a copyright exception. Alternatively, attribution at the point at which John is uploading his work may in theory

[258] S103(1) CDPA 1988.

[259] Patrick Masiyakurima, 'The Trouble with Moral Rights' (2005) 68 The Modern Law Review 411, 411; See Also: Waelde and others (n 85) 42, who argue that the Anglo-American copyright tradition is more cantered towards an entrepreneurial approach to copyright protection than that of Continental Europe whose focus is on protecting the author.

[260] See s87(2) CDPA 1988. The Berne Convention does not expressly mention whether or not waiving of moral rights is prohibited or alternatively, permitted and this is left as a matter of contract law. As a result, there are variations between signatories to the Berne Convention regarding the matter.

[261] The musicians' union page which provides copyright knowledge for primarily UK based musicians states "*the right to be identified as the author (or director) of the work* […] *must be asserted in writing and some contracts will try to ask you to waive this*". 'Copyright, Moral Rights and Performers' Rights Musicians Must Know About' <https://musiciansunion.org.uk/legal-money/rights-and-legislation/copyright-moral-rights-and-performers-rights> accessed 8 March 2022; Rajan Desai, 'Music Licensing, Performance Rights Societies, and Moral Rights for Music: A Need in the Current U.S. Music Licensing Scheme and a Way to Provide Moral Rights' (2001) 10 University of Baltimore Intellectual Property Law Journal 1, 8–9. Rajan states that musicians in general lack the bargaining power to retain ownership over any aspect of their works stating "*popular music contracts customarily assign all rights in copyright to the publisher*".

be legally required by the subsistence of moral rights. Nevertheless, a lack of moral rights enforcement, and all-consuming music industry contracts, make it unlikely that this legal requirement have any real-world effect. Thus, lack of clarity and unenforceability, mean that the copyright framework governing the decisions prosumers of music must make whilst uploading their works to YouTube, could be described as "soft law".

1.3.2.2.2 Non-legal regulatory frameworks governing prosumers' choices whilst uploading.

"In situations in which the law is unclear or largely unenforced, it is not uncommon for community constructions to become social norms that can carry more weight than written law".[262] As such, it is argued that informal norms, may have emerged so as to regulate prosumer behaviour, with regards to the decisions prosumers must make whilst uploading their works to YouTube.[263]

Social norms can be defined as the "*perception of where a social group is or where the social group ought to be on some dimension of attitude or behaviour*".[264] From this definition, two types of social norms can be derived. First is the descriptive norm which is the perception of where the social group is on some dimension of attitude or behaviour. Descriptive norms emerge from "*a person's perception or understanding of how most other people in a particular reference group actually behave*".[265] Descriptive norms suggest that one perceives that a given behaviour is typical.[266] For instance, if a music prosumer believes that other prosumers typically acknowledge original artists whose work is being reused, then this would be regarded as a descriptive attribution norm.

The second type of social norm, which emerges from the definition above, is the injunctive norm which is the perception of where the social group ought to be on some dimension of attitude or behaviour. "*Injunctive norms arise from a person's perception of how others—family, peers, voluntary associations, church, authority figures, the mass media, and the like—believe they should behave*."[267] Unlike descriptive norms, injunctive norms denote a perceived consensus regarding the acceptability of a given behaviour. For instance, if a music prosumer believes that it is unacceptable amongst their community to disregard the original artist whose work is being reused, then this

[262] Casey Fiesler and Amy S Bruckman, 'Remixers' Understandings of Fair Use Online', *Proceedings of the 17th ACM conference on Computer supported cooperative work & social computing* (Association for Computing Machinery 2014) <https://doi.org/10.1145/2531602.2531695> accessed 8 March 2022.
[263] Daniel J Gervais, 'The Tangled Web of UGC: Making Copyright Sense of User-Generated Content' (2009) 11 Vanderbilt Journal of Entertainment and Technology Law 841, 854. Gervais argues that the vagueness of the US fair use exceptions has led to the creation of informal norms amongst UGC creators.
[264] Elizabeth Paluck and Laurie Ball, 'Social Norms Marketing Aimed at Gender Based Violence: A Literature Review | Eldis' [2010] International Rescue Committee 9.
[265] Mark F Schultz, 'Copynorms: Copyright and Social Norms', *Intellectual Property and Information Wealth* (Praeger Publishers 2007) 11–12.
[266] Paluck and Ball (n 274) 9.
[267] Schultz (n 275) 11–12.

would be regarded as an injunctive attribution norm. Cialdini distinguishes between descriptive and injunctive norms as a way of identifying the source of where specific norms will have originated from.[268]

Studying norms alongside the law is extremely useful. This is due to the fact that norms are an integral part of social structure.[269] They contribute to an effective organisation of society through the proscription of behaviour without the complexities of formal black letter law.[270] Additionally, social norms govern human behaviour,[271] whilst bridging the gap between law and society.[272] As per Ellickson, social norms can promote more efficient results than law.[273] Hence, an understanding of the existence and function of social norms "*ought to be fundamental to the scientific study of law*".[274] Even more so with regards to copyright. Copyright is largely a private right. Hence, rightsholders have a choice of enforcement which is often influenced by social norms.[275] Furthermore, copyright infringement is difficult to detect. Thus, to a certain extent, users also have a choice of when to comply with owners' rights. This choice can be influenced by social norms.[276] Hence, as per Schultz in order "*to understand how the scope of copyright law affects society and creative expression, we must understand how and when copynorms (social norms in copyright) influence enforcement and compliance with copyright law*."[277]

There is a growing body of empirical research being carried out concerning the existence and function of social norms regulating copyright related behaviours, such as attribution and non-commercialisation, amongst "closed-knit" communities. Existing social norms research in this sphere, can be separated into three categories. First are those studies which examine the role of social norms in copyright's hegemony with regards to dealing with online piracy.[278] Such studies

[268] ibid 11. See Robert B. Cialdini *et.al*., A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior, 24 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 201 (1991).
[269] Matthias Baier, 'Introduction', *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (Ashgate 2013) 1.
[270] ibid.
[271] Håkan Hydén, 'Looking at the World through the Lenses of Norms' 140.
[272] Matthias Baier and M Svensson, *Om Normer* (2009) 15.
[273] Robert C Ellickson, *Order without Law : How Neighbors Settle Disputes* (Harvard University Press 1991).
[274] Baier (n 279) 1.
[275] Schultz (n 275) 2.
[276] ibid.
[277] ibid 3.
[278] Ben Depoorter and Sven Vanneste, 'Norms and Enforcement: The Case Against Copyright Litigation' (2006) 84 Oregon Law Review 1127; Jason R Ingram and Sameer Hinduja, 'Neutralizing Music Piracy: An Empirical Examination' (2008) 29 Deviant Behavior 334; Måns Svensson and Stefan Larsson, 'Social Norms and Intellectual Property. Online Norms and the European Legal Development' (Lund University) ID 1598288; Måns Svensson and Stefan Larsson, 'Intellectual Property Law Compliance in Europe: Illegal File Sharing and the Role of Social Norms' (2012) 14 New Media & Society 1147; Benjamin van Rooij and others, 'Piracy by Approval:

demonstrate that there are a lack social norms opposing illegal file-sharing,[279] and that the most effective way to change illegal file-sharers' behaviours would be to alter existing norms.[280]

Second are those studies which explore the existence and function of social norms in the "negative space" of intellectual property.[281] In essence such studies examine whether social norms exist in spaces where intellectual property does not operate and if so, what function such norms serve.

For instance, Oliar and Springman, using structured interviews with 19 comedians, analysed how comedians protect their jokes using social norms, since intellectual property offered little to no protection against joke theft.[282] They found norms regulating issues such as authorship, ownership, and the transfer of rights, all of which are enforced through the imposition of sanctions on offenders. Pham later showed that although a system of social norms may be effective for protecting stand-up comedians against joke theft within their community, it does little to protect them from joke theft occurring outside the "closed-knit" community primarily, through the use of social media.[283]

Fauchart and Hippel examined the existence and function of social norms amongst French chefs, in terms of protecting recipes that intellectual property does not protect.[284] Using grounded theory interviews as part of the first phase of their two-phase research to identify the existence of norms, they identified three norms related to the protection of recipes. Namely, they discovered an "anti-copy" norm, a secrecy norm and an attribution norm amongst chefs. They then used quantitative questionnaires to identify the function of such norms and found that established chefs enforce these norms as a way of enhancing their private economic returns from their recipes, thereby simulating a situation that would exist if their recipes were protected by intellectual property.

Social Norms, Deterrence, and Copyright Compliance in China Compared to the United States' (UC Irvine School of Law Research Paper No 2015-03 2014) ID 2539225.

[279] Svensson and Larsson, 'Social Norms and Intellectual Property. Online Norms and the European Legal Development' (n 288); Ingram and Hinduja (n 288).

[280] van Rooij and others (n 288); Depoorter and Vanneste (n 288).

[281] Jacob Loshin, 'Secrets Revealed: How Magicians Protect Intellectual Property without Law', *Law and Magic A Collection of Essays* (Carolina Academic Press 2010); Emmanuelle Fauchart and Eric von Hippel, 'Norms-Based Intellectual Property Systems: The Case of French Chefs' (2008) 19 Organization Science 187; Dotan Oliar and Christopher Jon Sprigman, 'Intellectual Property Norms in Stand-Up Comedy', *Making and Unmaking Intellectual Property Creative Production in Legal and Cultural Perspective* (University of Chicago Press 2011); Eden Sarid, 'Don't Be a Drag, Just Be a Queen – How Drag Queens Protect Their Intellectual Property Without Law' (2014) 10 FIU Law Review; Hannah Pham, 'Standing Up for Stand-Up Comedy: Joke Theft and the Relevance of Copyright Law and Social Norms in the Social Media Age' (2019) 30 Fordham Intellectual Property, Media and Entertainment Law Journal 55; Dave Fagundes and Aaron Perzanowski, 'Clown Eggs' (2019) 94 Notre Dame Law Review 1313..

[282] Oliar and Sprigman (n 291).

[283] Pham (n 291).

[284] Fauchart and von Hippel (n 291).

Loshin qualitatively analysed existing academic and industry literature for the identification of the existence and function of social norms simulating an intellectual property regime where no suitable intellectual property regime applied amongst performing magicians.[285] Loshin found that that magicians established their own informal norms which regulate behaviour. Namely "*the magic community developed a fairly effective informal, norm-based intellectual property regime which limits access, establishes use and exposure norms, and enforces violations—all outside the purview of the law*".[286] Loshin also found attribution norms to be prevalent amongst the magic community. Namely, magicians feel that "*derivative works should acknowledge and credit the original".*[287]

Sarid, explored how in the absence of an effective intellectual property regime, drag queens protect their intellectual creations.[288] Sarid found that a "code of conduct" made up of numerous informal norms regulate behaviour amongst drag queens, referred to by some interviewees as a "gentlewoman understanding".[289] Namely, the "code of conduct" consisted of the following norms: *never copy a persona or a name, never copy a number, never use a signature song or signature singer (unless permitted* [granted by the "owner"]*), refraining from using (non-signature) songs.*[290] Such norms are enforced through "*public on-stage shaming, badmouthing and gossip, and boycotts and professional isolation".*[291] The external community beyond the community of drag queens, such as the audience, DJs and venue owners, play an important role in helping detect and enforce social norms.[292]

Finally, Fagundes and Perzanowski, through interviews, examined how clowns in the UK and US protect their make-up creations using painted eggs, in the absence of copyright protection.[293] They found that social norms operate amongst clowns which regulate appropriation. Such norms are enforced through negative gossip, reputational harm, but also the threat of violence.[294] These community norms are supplemented by the existence of a "clown registry" where clowns register their "painted eggs" and operates like a registered copyright system.

[285] Loshin (n 291).
[286] ibid 26.
[287] ibid 29.
[288] Sarid (n 291).
[289] ibid 158.
[290] ibid.
[291] ibid 163.
[292] ibid 168–169.
[293] Fagundes and Perzanowski (n 291).
[294] ibid 1341–1342.

The final category of copyright related social norms research comprises of studies which explore the existence and function of social norms in the "positive space" of intellectual property.[295] Such studies examine whether social norms exist alongside the reliance upon and use of applicable intellectual property rights,[296] and if so, how they operate alongside each other.

For instance, Fagundes examined how roller derby skaters ensure the restricted use of their pseudonyms which they use to compete through informal norms, "*regardless of whether law provides a plausible governance option*", for instance, through trademark protection.[297] Fagundes found that a system of norms operate alongside formal laws. Namely, like the aforementioned study on clowns' make-up, roller derby girls have a formal registration system for their names - the "master roster", whose administrators circulate a list of rules which reflect pre-existing substantive norms, namely that skaters must not register a name that is already in use, and where two names are identical or excessively similar the name registered first chronologically, is given priority, and that written permission usually in the form of an email, should be sought and submitted to the master roster when registering a name which is similar to an already registered name. Such norms are enforced through "*personal contact and interaction that relies on skaters' strong incentives to maintain the uniqueness of their own names".*[298] Failure to comply is usually met with "ostracising".[299]

Perzanowski, through interviews with tattoo artists throughout the US, found that tattoo artists hardly ever assert legal rights granted through formal intellectual property regimes, but rather govern behaviour within their community through the enforcement of informal social norms, such as anti-copying norms.[300] Perzanowski found that, similar to drag queens, when DJs venue owners and the audience in general plays a vital role in infringement detection, the clients of tattoo artists play a vital role in identifying when a tattoo has been copied and bring it to the attention of the artists.[301] Some artists avoid confronting others who have "copied" their designs whilst others engage in

[295] Smita Kheria, 'Copyright in the Everyday Practice of Writers' in Janis Jefferies and Sarah Kember (eds), *Whose Book is it Anyway?* (Open Book Publishers 2019).
[296] For examples of empirical studies demonstrating the "positive space" of IP see: Casey Fiesler and Amy S Bruckman, 'Creativity, Copyright, and Close-Knit Communities: A Case Study of Social Norm Formation and Enforcement' (2019) 3 Proceedings of the ACM on Human-Computer Interaction 241:1; Guido Noto La Diega, 'Can the Law Fix the Problems of Fashion? An Empirical Study on Social Norms and Power Imbalance in the Fashion Industry' (2019) 14 Journal of Intellectual Property Law & Practice 18; Fagundes and Perzanowski (n 291); Iljadica (n 203).
[297] Dave Fagundes, 'Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms' (2011) 90 Texas Law Review.
[298] ibid 1124.
[299] ibid 1127.
[300] Aaron Perzanowski, 'Tattoos & IP Norms' (2013) 98 Minnesota Law Review 511.
[301] ibid 549–550.

conversation with artists who they deem to have copied their designs and such conversations "*range from the friendly to the overtly confrontational*".[302] In general the consequences of copying are "*public shaming and blacklisting"*.[303]

Iljadica, through interviews with 29 creators (consisting of 21 graffiti writers, 6 street artists and 3 others), discovered that graffiti writers' creativity is regulated by a set of informal norms which resemble a copyright system, rather than asserting their rights through formal legal systems, which proves to be inherently difficult due to the illegalities surrounding this form of art.[304] The set of norms identified substitute but also bear a resemblance to formal copyright regimes, with rules on what counts as graffiti resembling the protectable subject matter in certain copyright systems,[305] and anti-copying norms resembling the right to reproduce a work conferred by copyright protection.[306] Furthermore, artists' behaviours are governed by a set of informal norms resembling moral rights conferred by copyright protection, with rules dissuading artists from "going over" other art resembling the moral right of integrity,[307] and an expectation of their works being attributed when displayed in exhibitions or in any way communicated to the public.[308]

La Diega argues that in the fashion industry, formal laws are not the main mechanism for regulating behaviour, but that informal norms play a pivotal role in determining behaviours.[309] Namely, it is argued that unlike other sub-cultures discussed above, copying although legally prohibited, is not frowned upon within the fashion industry's "closed-knit" community, but much rather seen as an "*ordinary behaviour, which is neither punished nor encouraged",* which in turns facilitates a "fast-fashion" industry which allows for clothes to go out of fashion in quick cycles.[310]

Finally, Fiesler and Bruckman, study a sub-culture which is closely related to prosumers of music, namely, transformative fandom.[311] Through semi-structured interviews with creators recruited by platforms frequently used by fan creators, they find that strong social norms regulate behaviour within this community, beyond the regulatory role of copyright. Namely three consistent norms were found to exist amongst this community – attribution, commercialisation and secrecy.

[302] ibid 550.
[303] ibid 551.
[304] Iljadica (n 203).
[305] ibid 87–138.
[306] ibid 139–208.
[307] ibid 235–254.
[308] ibid 211–234.
[309] Noto La Diega (n 306).
[310] ibid 22–23.
[311] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306).

Hence taking a synoptic view of the abovementioned, it can be deduced that given the fact that the copyright related regulatory framework that governs the decisions prosumers of music must make at the point at which they are uploading their works to YouTube is unclear and largely unenforced, a growing body of empirical research supports the notion that other non-legal determinants of behaviour such as social norms, may have emerged to regulate prosumers' decisions whilst they are uploading their works to YouTube.

Alternatively, behavioural commonalities amongst prosumers of music at this stage of their dissemination process, if any, may be attributed to behavioural mimicry. "*Behavioural mimicry occurs when two or more people engage in the same behaviour at the same time. This includes mimicry of mannerisms, gestures, postures, and other motor movements"*.[312] As such it is argued that behavioural mimicry does not necessarily determine one's behaviour but provides a justification for why one acts the way they do. In other words, prosumers of music may look to others within their community to determine how to title their works and whether to monetise their works, copying the actions of others.

To date, there is no existing research determining whether music prosumers or YouTube creators in general mimic the actions of other YouTube creators. Early mimicry research predominantly focused on interactions between two people who knew each other.[313] However, more recently there has been a shift in studying the interactions between strangers and their propensity to mimic each other. For instance, Chartrand and Bargh, confirming the so called "perception-behaviour" link whereby, the "*mere perception of another's behaviour automatically increases the likelihood of engaging in that behaviour oneself",*[314] found that participants would mimic one another's behaviours despite not knowing each other, and would later be unable to recall any changes in their behaviours as well as what behaviours their counterparts exhibited.[315] This was referred to as the "chameleon effect".[316]

Tanya and Lakin argue that although "*behavioural mimicry is ubiquitous and engaged in automatically, various features of the social environment and the individuals involved render a*

[312] Tanya L Chartrand and Jessica L Lakin, 'The Antecedents and Consequences of Human Behavioral Mimicry' (2013) 64 Annual Review of Psychology 285, 286.
[313] See for instance, F Bernieri, J Reznick and Robert Rosenthal, 'Synchrony, Pseudosynchrony, and Dissynchrony: Measuring the Entrainment Process in Mother-Infant Interactions.' [1988] Journal of Personality and Social Psychology. This study looked at the interactions between children and parents where mimicry is referred to as synchronicity; or see Albert E Scheflen, 'The Significance of Posture in Communication Systems' (1964) 27 Psychiatry 316, which looks at the relationships between clients and therapists.
[314] TL Chartrand and JA Bargh, 'The Chameleon Effect: The Perception-Behavior Link and Social Interaction' (1999) 76 Journal of Personality and Social Psychology 893, 893.
[315] Chartrand and Bargh (n 324).
[316] ibid.

person even more susceptible to chameleon-like behaviours".[317] Specifically, they argue that "*pre-existing rapport, a desire or goal to affiliate or create rapport, exhibiting prosocial behaviours such as dispositional empathy, exhibiting similar opinions, and one's mood and emotional state*" all act as moderators of who, where and how much people mimic each other.[318] Consequently, if prosumers of music exhibit any of these features, it is argued that they may be more likely to mimic the actions of other users.

1.3.2.3 Summary and resulting research question.

Whilst uploading, John is faced with a number of choices some of which may be regulated by copyright. Namely John must choose how to title his work and what to include in his video description. He can choose whether to include his work in a playlist and must also, inform YouTube whether his content is "made for kids". Moreover, provided John meets certain criteria, he is then asked whether, and if so, how he would like to monetise his work. Finally, John must make decisions of whether he would like to direct viewers of his work to other content and how to publicise his work.

Attribution and non-commercialisation can tip the balance in favour of a reuse being regarded as falling under a copyright exception. Alternatively, attribution may in theory be legally required by the subsistence of moral rights. Hence, John's decision of how to title his work, what to include in his video description, but also whether to monetise his work may be regulated by copyright law. However, it was previously concluded that works of music prosumption are only under certain circumstances going to be regarded as falling under a copyright exception. Additionally, a lack of enforcement of moral rights enforcement, and all-consuming music industry contracts, make it unlikely that prosumers' legal requirement to attribute has any real-world effect.

As a result of unclear and largely unenforced copyright laws, one could argue that other non-legal determinants may have emerged operating alongside the current legal regime. A growing body of empirical research supports the notion that social norms may regulate copyright related behaviours, such as attribution and non-commercialisation. Alternatively, behavioural commonalities amongst prosumers of music at this stage of their dissemination process, if any, may be attributed to behavioural mimicry. Hence, this research asks, "what regulates prosumers decisions whilst uploading their works to YouTube? Do any social norms exist in the realm of music prosumption? Do prosumers of music mimic the actions of their peers?"

[317] Chartrand and Lakin (n 322) 288.
[318] ibid 288–290.

1.3.3 After Uploading.

Having analysed the regulatory framework a typical prosumer of music is likely to encounter before and whilst uploading their work to YouTube, this section now moves on to the final stage of a prosumer's dissemination journey; after their work has been uploaded to YouTube. After uploading his work to YouTube, it is likely that John will encounter copyright and related enforcement regimes as operationalised by YouTube.

As aforementioned, the author of an original song will be awarded a bundle of rights.[319] This includes the "reproduction right" discussed above,[320] but also the "right to communicate a work to the public".[321] The CJEU, has considered the meaning of and scope of this communication right on several occasions. For instance, it has held that the installation of television sets with broadcast signals in hotel rooms,[322] or the transmission of broadcasts showing football matches to customers in a pub,[323] interfered with this right. One could argue that YouTube interferes with rightsholders communication right when it allows for its users to share unauthorised works of music prosumption. This was recently considered by the CJEU in the joined case of *YouTube and Cyando*,[324] discussed in greater detail below. In this case it was held that under certain circumstances, users like John may interfere with a rightsholders communication right, provided "*they give other internet users access, via those platforms, to protected works which those other internet users would not have been able to enjoy without the intervention of those users".*[325] As such, given the fact that prosumers like John would be sharing derivative works on YouTube, where the originals can also be accessed on the same platform, it is unlikely that individual users would interfere with said rights.[326] The CJEU concluded that whilst YouTube's role is indispensable in interfering with a rightsholders communication right, it is not the only criterion and that YouTube does enough so as to escape liability for interfering with rightsholders' communication rights.[327] Hence, at the time this research

[319] See Chapter 1, section 1.3.1.1.
[320] Ibid.
[321] This right was introduced in the UK, under s20 of the CDPA 1988, which implemented Article 3 of InfoSoc, which in turn implemented Article 8 of the WIPO Copyright Treaty 1996.
[322] C-306/05 *SGAE v Rafael Hoteles SL* [2006] ECR I-11519.
[323] Cases C-403/08 and C-429/08 *Football Association Premier League Ltd v QC Leisure, Murphy v Media Protection Services Ltd* [2012] 1 CMLR 29.
[324] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503.
[325] Ibid, at 75.
[326] See C-466/12 *Svensson v Retriever Sverige AB* [2014] ECDR 9, where it was held that the provision of a hyperlink to news stories was not an infringement of the rightsholder's communication right since the content directed towards was already available "all internet users".
[327] Ibid, at 77-78.

took place, it is unlikely that prosumers of music or YouTube would be found to have interfered with a rightsholders communication right.[328]

Nevertheless, regulatory frameworks and operationalised mechanisms allow for a rightsholder to take action against alleged infringements which in turn, determine a prosumer's interactions with copyright online. This section provides a critical examination of the regulatory framework that applies after a work has been uploaded to YouTube. It begins by outlining the regulatory framework which governs prosumers' encounters with copyright and related enforcement regimes after they have uploaded their work to YouTube. Namely, it first, outlines the EU and US safe harbour provisions respectively, before presenting how YouTube operationalises such provisions and what existing research has been carried out in this regard, in an attempt to highlight the gaps which this research aims to fill, ultimately presenting the research questions which helped guide the empirical enquiry of this research.

1.3.3.1 Safe harbour provisions.

At the time this research took place, most UGC orientated platforms like YouTube, operated under specific regulatory frameworks referred to as safe harbour provisions in relation to liability for copyright infringement. Such provisions provide exemptions in relation to liability for copyright infringement for the platform itself with regards to any content uploaded on the platforms by the platform's users. Provided an online platform complies with these *lex specialis*, then they can avoid liability for copyright infringements committed on their platform by their users. The EU and US have their own "safe harbour" provisions. However, by their very nature, UGC platforms tend to be international and a number of them operate under the US safe harbour provisions.[329] As per Erickson and Kretschmer, the US approach "*has become the dominant paradigm for organizing liability of online intermediaries".*[330]

This is evident by the widespread operationalisation of counter notices, discussed in greater detail below, which are a direct requirement of the US safe harbour provisions, but not of the EU's counterpart. Nevertheless, at the time this research took place, by adhering to the US's approach to dealing with online copyright infringements, platforms like YouTube, were able to simultaneously

[328] This will inevitably change with the introduction and adoption of Article 17 of the DSM Directive discussed in Chapter 7.
[329] For instance, both YouTube and SoundCloud (prominent online platforms for UGC) operate under the US DMCA provisions.
[330] Kris Erickson and Martin Kretschmer, 'Empirical Approaches to Intermediary Liability', *Oxford Handbook of Online Intermediary Liability* (Oxford University Press 2020) 4.

comply with the EU's less formal regulatory framework. As will be discussed in more detail later, this could change with the recent introduction of the DSM Directive in the EU.

As discussed above, with the UK's departure from the EU, it is possible that they may opt to abstain from implementing the DSM Directive. In fact, the UK government made it clear that they have no intention of implementing the DSM Directive, in a response to a parliamentary question.[331] Hence, it is unlikely that the UK's approach to dealing with online copyright infringement will change.[332] Thus, the regulatory framework which applied when this research took place, will most likely remain in place remain in place in the UK.

This section will critically examine and compare both the EU and US safe harbour provisions, which applied when this research was carried out, in order to assess how they affect online platforms, and in turn highlighting the effect they may have on prosumers of music.

1.3.3.1.1 EU approach.

Until recently, and during the period of this research, the E-Commerce Directive (ECD) regulated UGC orientated platforms' liability in the EU, with regards to copyright infringements committed by the platform's users. The ECD, affects "*information society service providers"* (ISSPs),[333] also referred to as "*intermediary service providers"* (ISPs), in the title of section 4 of the ECD. The regime applies to a large number of online service providers including UGC orientated platforms.[334] However, in an attempt to modernise EU copyright law, on the 17th of May 2019, the DSM Directive was published.[335] This new directive, contains a number of provisions which may potentially alter the landscape for UGC orientated platforms like YouTube. This section aims to describe the legal status of online intermediaries like YouTube focusing on the regulatory frameworks applicable at the time this research took place but will also briefly comment on any changes the DSM is likely to bring

[331] 'Copyright: EU Action: Written Question - 4371' (*UK Parliament*) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-01-16/4371> accessed 8 March 2022.
[332] The "Digital, Culture, Media and Sport Committee", did however, in response to an open enquiry into the economics of music streaming, make a number of recommendations to the UK Government which, if taken up, may alter the landscape for platform regulation in the UK, somewhat resembling the DSM Directive (discussed in Chapter 7). See: Economics of Music Streaming - Committees - UK Parliament' <https://committees.parliament.uk/work/646/economics-of-music-streaming/publications/> accessed 22 March 2022.
[333] Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ 2 178/01 (ECD), Article 1(1).
[334] Lilian Edwards, 'Role and Responsibility of the Internet Intermediaries in the Field of Copyright and Related Rights' (WIPO 2011) Report <https://strathprints.strath.ac.uk/35492/> accessed 8 March 2022.
[335] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92.

about. However, a more detailed discussion of the DSM Directive and the effect it is likely to have on the realm of music prosumption is provided in Chapter 7.

The ECD, under Articles 12-14 contains certain scenarios, under which an ISP could avoid liability for copyright infringement. The provision most applicable to UGC orientated platforms is Article 14 which applies to host providers.[336] Hosting is the provision of a space to Internet users.[337] Article 14 only provides an exemption to host providers, in relation to any liability for copyright infringement in the content uploaded by the user, if "*the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent*" or if upon the acquisition of knowledge, the provider "*acts expeditiously to remove such content*".[338] In *Google France Sarl v Louis Vuitton Malletier SA*, the CJEU held that an ISP could rely on the hosting defence only if it "*has not played an active role of such a kind as to give it knowledge of, or control over, the data stored*".[339] When considering this issue further in *L'Oreal SA v eBay International AG*, the CJEU held that eBay would have played an active role if it provided assistance including "*optimising the presentation of the offers for sale… or promoting those offers*".[340] If so, eBay would not be able to rely on the hosting exemption. In the more recent joined case of *YouTube and Cyando*,[341] the CJEU stated that "*the mere fact that the operator knows, in a general sense, that protected content is made available illegally on its platform is not sufficient ground to conclude that it intervenes with the purpose of giving internet users access to that content".*[342] Thus, presuming John has uploaded his work to YouTube without having obtained rights clearance, YouTube would be exempt from liability, provided it was not aware of John's alleged infringement. This has led to some describing the wholly passive role of ISPs as being similar to that of the proverbial "three wise monkeys", i.e. web hosting services should "*hear no evil, see no evil, speak no evil*".[343]

Nevertheless, as per the CJEU in *YouTube and Cyando*, "*the situation is, however, different where that operator, despite having been warned by the rightholder that protected content is being communicated illegally to the public via its platform, refrains from expeditiously taking the measures*

[336] See for instance, Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503.
[337] ECD (n 284) Article 14(1).
[338] ECD (n284) Article 14.
[339] (C-236/08) [2011] Bus. L.R. 1.
[340] (C-324/09) [2012] Bus. L.R. 1369.
[341] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, at 84.
[342] Ibid, at 85.
[343] Christian Ahlert, Chris Marsden and Chester Yung, 'How "Liberty" Disappeared from Cyberspace: The Mystery Shopper Tests Internet Content Self-Regulation' 7.

necessary to make that content inaccessible".[344] This is in line with Article 14, of the ECD which states that a host provider is exempted from liability only if upon knowing that infringing content has been uploaded, it "*acts expeditiously to remove such content*". Hence, the ECD anticipates notice and takedowns to be taking place. It is envisaged that upon receipt of a notice from a copyright owner, claiming infringement in the cover song uploaded by John, YouTube will no longer be exempt from liability in relation to this infringement under the EU safe harbour provisions, unless it acts "expeditiously" to remove such content thereby simulating a notice and takedown procedure. Hence the knowledge, requirement is what essentially puts a notice and takedown procedure in place in the EU.

There are two types of knowledge which could give rise to ISP liability – actual and constructive knowledge. Regulation 22 of The Electronic Commerce (EC Directive) Regulations 2002 vaguely sets out what actual knowledge is; stating that a "*court should take into account all matters which appear to it in the particular circumstances to be relevant*",[345] including whether a notice has been received,[346] and whether the notice contains sufficient details,[347] such as identifying the allegedly infringing materials and providing details of why that material is unlawful.

However, in accordance with Article 14(a) even in the absence of actual knowledge an ISP cannot rely on the hosting defence if it is "*aware of facts or circumstances from which it would have been apparent*" that the activity was unlawful. Deemed or constructive knowledge was considered in L'Oréal v eBay where the CJEU held that deemed knowledge would have been acquired if the ISP was "*aware of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality in question*".[348] Above, it was discussed that in order to deal with the increasing volume of unauthorised UGC being disseminated through platforms like YouTube, YouTube and other similar platforms, implemented automated digital fingerprinting mechanisms. Hence, if YouTube's own digital fingerprinting mechanism were to pick up on John's alleged infringement, then one could argue that this would amount to the acquisition of constructive knowledge. Nonetheless, as per the CJEU in *YouTube and Cyando*, "*the fact* […] *that the operator of a video-sharing platform, such as YouTube, implements technological measures aimed at detecting, among the videos communicated to the public via its platform, content which may infringe copyright, does not mean that, by doing so, that operator plays an active role giving it knowledge of and control*

[344] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, at 85.
[345] The Electronic Commerce (EC Directive) Regulations 2002, Regulation 22.
[346] The Electronic Commerce (EC Directive) Regulations 2002, Regulation 22(a).
[347] The Electronic Commerce (EC Directive) Regulations 2002, Regulation 22(b).
[348] (C-324/09) [2012] Bus. L.R. 1369 at 120.

over the content of those videos". This is in line with previous CJEU decisions,[349] and the "Good Samaritan" approach enshrined in Article 6 of the draft Digital Services Act, whose purpose is to update and modernise the ECD.[350] Hence, the implementation of Content ID, does not preclude YouTube's ability to rely on the EU safe harbour provisions. In fact, the ECD provisions do not create an obligation for ISPs to constantly monitor user activity,[351] meaning that it is the website operators' choice if they are to implement such filtering mechanisms. How YouTube has operationalised these provisions will be discussed in greater detail below.

In the recent joined cases of *YouTube and Cyando*, the CJEU laid out a multifaceted approach for determining whether a platform could be deemed as having acquired constructive knowledge. Namely the CJEU stated that *"relevant factors include, inter alia, the circumstance that such an operator, despite the fact that it knows or ought to know, in a general sense, that users of its platform are making protected content available to the public illegally via its platform, refrains from putting in place the appropriate technological measures that can be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform, and the circumstance that that operator participates in selecting protected content illegally communicated to the public, that it provides tools on its platform specifically intended for the illegal sharing of such content or that it knowingly promotes such sharing, which may be attested by the fact that that operator has adopted a financial model that encourages users of its platform illegally to communicate protected content to the public via that platform".*[352] Hence, the CJEU essentially states that the determination of whether a platform has obtained knowledge precluding the applicability of a safe harbour defence in the EU is a balancing exercise. This balancing exercise to a certain extent resembles the recent policy developments brought about by Article 17 of the DSM discussed in Chapter 7. The CJEU ultimately concluded that YouTube's operationalisation of the provisions of the ECD allowed for it to rely on the safe harbour provisions of the ECD.[353]

Hence, it is argued that at the time this research took place, YouTube, through its operationalisation of the ECD, would have been able to avoid liability for any infringements committed by John, unless it had received an accurate notice from the relevant rightsholder informing them of the infringement and it did not "act expeditiously to remove" John's work. The landscape for YouTube is,

[349] Ibid, at 122.
[350] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM/2020/825 final, Article 6.
[351] C-70/10 *Scarlet Extended SA v SABAM* [2012] ECDR 4.
[352] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, at 84.
[353] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92, Article 17(4).

however, likely to change with the introduction of the DSM and in particular Article 17. Article 17 of the DSM now holds platforms which host "large amounts" of UGC responsible for their users' uploads.[354] It offers platform routes to avoiding liability, but such provisions go beyond what was required by the ECD. A more detailed discussion of the DSM Directive and the effect it is likely to have on the realm of music prosumption is provided in Chapter 7.

1.3.3.1.2 US approach.

As aforementioned, most UGC orientated websites tend to adhere to the US safe harbour provisions, which so far in a pre-DSM era, has allowed for platforms like YouTube to simultaneously adhere to both the EU and US safe harbour provisions. It is thus essential that these provisions are critically analysed and compared to those of the EU.

s512(c) of the DMCA provides a list of requirements that must be fulfilled in order for a notice to be taken seriously. For an ISP to be exempt from liability in the US, it must first not have actual knowledge,[355] it must not receive a financial benefit directly attributable to the infringing activity,[356] and upon receipt of knowledge, it must act expeditiously to remove infringing activity.[357] In the 2013 District Court ruling of *Viacom International, Inc v YouTube*, *Inc*, it was held that general awareness is not enough to bar the applicability of the safe harbour provisions and that actual knowledge of specific and identifiable infringements is needed.[358] This closely resembles the EU "safe harbour" provisions discussed above.

As a result of the absolute speech protection of the First Amendment, the US notice and takedown procedure is "*counter-balanced by a 'put back' procedure*".[359] This theoretically allows for a more balanced approach than that of the EU.[360] A notice and takedown procedure becomes a Notice, Takedown and "Put-Back" procedure. The aim of the counter notice is that the "*alleged infringers are to be protected from mistaken takedowns and misuse of this rather remarkable extra-judicial process principally through a counter notice procedure"*.[361] Following the takedown procedure, the ISP is then under an obligation to notify the alleged infringer.[362] If there is then a counter notification

[354] João Quintais, 'The New Copyright in the Digital Single Market Directive: A Critical Look' (2020) 42 European Intellectual Property Review 28, 37.
[355] s512(c)(1)(A)(i).
[356] s512(c)(1)(B).
[357] s512 (c)(1)(A)(iii).
[358] *Viacom International, Inc. v. YouTube, Inc*., No. 07 Civ. 2103.
[359] Ahlert, Marsden and Yung (n 353) 7.
[360] ibid 26.
[361] Jennifer Urban and Laura Quilter, 'Efficient Process or "Chilling Effects"? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act' [2005] Berkeley Law Scholarship Repository 622–623.
[362] Digital Millennium Copyright Act 1998 s 512 (g)(2)(A).

made by the alleged infringer, the ISP must then notify the claimant of this.[363] Then, if the rightsholder does not bring a lawsuit within 14-days, the ISP must restore the allegedly copyright infringing material.[364] Hence, John could potentially benefit for the availability of the counter-notice claim if he believes that the notice received is mistaken.

Upon receipt of a s512(c)(3)(A) notification, even if the material in question is not actually infringing, an ISP must comply or risk the loss of safe harbour and a lawsuit for contributory copyright infringement. It is argued that such provisions translate to ISPs sometimes taking down potentially non-infringing works so as to avoid liability.[365] The ISP's compliance is further encouraged by s512(g)(1), which exempts liability for mistaken, yet good faith removal of material.[366] Remedies are available to any of the three parties – rightsholder, alleged infringer, or ISP – for bad faith during either the notification or counter notification.[367] However, in *Io Group, Inc v Veoh Networks, Inc* it was held that there is no need for an ISP to suffer the entire burden of policing content online if it results in losing business.[368] It must merely take the appropriate steps necessary for adhering to the DMCA.[369] However, Urban *et.al.,* demonstrated that websites may nonetheless suffer the burden of implementing filtering mechanisms,[370] described as "DMCA PLUS" by Urban, Karaganis and Schofield.[371]

To sum up, EU and US rules on platform regulation, namely the so called "safe harbour" provisions, have been largely consistent,[372] with platforms avoiding liability so long as they have no knowledge of allegedly copyright infringing works on their website, and upon obtaining such knowledge, acting expeditiously to remove that content. The US's comparably more formal notice and takedown procedure, however, goes a step further, by enabling the ability to dispute a claim. Consequently, up

[363] Digital Millennium Copyright Act 1998 s 512 (g)(2)(B).
[364] Digital Millennium Copyright Act 1998 s 512 (g)(2)(C).
[365] Jennifer Urban, Joe Karaganis and Brianna Schofield, 'Notice and Takedown in Everyday Practice' (UC Berkeley Public Law Research Paper No 2755628 2017); Urban and Quilter (n 371).
[366] Digital Millennium Copyright Act 1998 s 512 (g)(1).
[367] Digital Millennium Copyright Act 1998 s 512 (f).
[368] *IO Group, Inc. v. Veoh Networks, Inc.*, 586 F. Supp. 2d 1132 (N.D. Cal. 2008).
[369] Ibid.
[370] Urban, Karaganis and Schofield (n 375) 66. It is argued that this pressure to enforce the use of digital fingerprinting may be the result of the principles for UGC Services, which are a set of guidelines agreed upon by various industry stakeholders which require UGC services to "*filter content actively and ensure that their filtering mechanisms are up to date*" see 'User Generated Content Principles' <https://ugcprinciples.com/> accessed 8 March 2022. To date, YouTube is not a signatory to the principles. However, it is contested that as using filtering mechanisms becomes the norm, copyright owners may ultimately force non-signatories to abide by the aforementioned principles. See 'The Principles for User Generated Content Services: A Middle-Ground Approach to Cyber-Governance' (2008) 121 Harvard Law Review 1387, 1404.
[371] Urban, Karaganis and Schofield (n 375) 53.
[372] Pamela Samuelson, 'Regulating Technology through Copyright Law: A Comparative Perspective' (2020) 42 EIPR: European Intellectual Property Review 214, 215.

until now, platforms like YouTube, have been able to comply with both EU and US safe harbour provisions through the implementation of their copyright policies and notice and takedown regimes.

1.3.3.2 YouTube's operationalisation of copyright and related enforcement regimes.

The regulatory framework that governs copyright infringement online was outlined above. However, YouTube's operationalisation of copyright and related enforcement regimes ultimately determines music prosumers' interactions with such regimes. This section demonstrates how YouTube has operationalised such regimes.

As aforementioned, YouTube's implementation of Content ID was born out of a need to comply with safe harbour provisions. As technology evolved and became more accessible, and as UGC orientated websites grew in popularity, so did the amount of UGC being uploaded to these websites. YouTube is currently the most prominent UGC orientated website, with 1.3 billion users worldwide and approximately 300 hours of UGC uploaded every minute, a lot of which would fall under the category of works of music prosumption.[373] Moreover, it has been demonstrated that the majority of works of music prosumption would be regarded as amounting to copyright infringement.[374] This would equally apply in the context of UGC beyond music prosumption. Consequently, new methods, namely digital fingerprinting mechanisms were developed, in order to deal with the increasing volume of unauthorised UGC being disseminated through platforms like YouTube.

YouTube's own digital fingerprinting mechanism – Content ID – began development in 2007, as a method for automatically detecting uploaded content that infringes copyright, and as per the then CEO, was a necessary step in order to avoid lawsuits such as the $1 billion suit that was filed against Google by Viacom, which was mentioned above.[375] At the time, YouTube was using an audio-fingerprinting technology owned and licensed by Audible Magic which is now the digital fingerprinting mechanism used by other UGC orientated platforms such as SoundCloud, Vimeo, Twitch and Facebook.[376] Nonetheless, YouTube developed its own mechanism initially referred to as "video identification",[377] but was later named "Content ID".[378]

---

[373] 'How User-Generated Content on YouTube Can Be Important for Your Brand?' (n 17).
[374] See Chapter 1, section 1.3.1.1.
[375] Kevin J Delaney, 'YouTube to Test Software To Ease Licensing Fights' *Wall Street Journal* (13 June 2007) <https://www.wsj.com/articles/SB118161295626932114> accessed 8 March 2022.
[376] 'Audible Magic - Automatic Content Recognition, Content Identification (ID) and Rights Administration' (*Audible Magic*) <https://www.audiblemagic.com/> accessed 8 March 2022.
[377] *Video Identification* (2008) <https://www.youtube.com/watch?v=xWizsV5Le7s&ab_channel=YouTubeAdvertisers> accessed 8 March 2022.
[378] 'Content ID Turns Three' (*blog.youtube*) <https://blog.youtube/news-and-events/content-id-turns-three/> accessed 8 March 2022.

Content ID is defined by YouTube as a "*system that allows copyright owners who meet specific criteria to easily identify and manage their content on YouTube. Owners submit files of their copyrighted work to YouTube and uploaded videos are scanned against a database. Copyright owners get to decide what happens when content matches a work that they own*".[379] Thus, Content ID utilises a database of copyright protected works which a rightsholder must first register with YouTube's Content ID, in order for Content ID to be able to detect alleged infringements of that specific work. In order to be eligible to register a work with Content ID a "rightsholder" must fulfil a multitude of criteria, such as providing evidence of their exclusive ownership over the work they wish to register and signing an agreement explicitly stating "*that only content with exclusive rights can be used for reference. Also, they'll need to give the geographic locations of exclusive ownership, if not worldwide"*.[380] YouTube's help page contains a non-exhaustive list of works which cannot be registered with YouTube's Content ID database which includes: "*mash-ups, 'best ofs', compilations and remixes of other works; video game play, software visuals, trailers; unlicensed music and video; music or video that was licensed, but without exclusivity; recordings of performances (including concerts, events, speeches, shows)*".[381] Hence, in theory, prosumers of music, most of the time, cannot register their work with YouTube's Content ID database.

Content ID's database registration system is currently under attack. A lawsuit was lodged against YouTube in 2020 which argued that "*while YouTube's Content ID system is pretty good at helping rights-owners find and deal with any videos on the site that contain their content without permission, too few creators and rights-owners have access to it*".[382] This has turned into a game of cat and mouse whereby YouTube has asked for the claimant (Maria Schneider) to provide evidence where her works have been uploaded to YouTube without a licence, and Schneider has countered by arguing that she would like to know that too, which is why she requires access to Content ID.[383] This case, although undecided, illustrates that it is potentially harder for independent artists, which often includes prosumers of music, to register their works with YouTube's Content ID database.

[379] 'Fighting Piracy' <https://fightingpiracy.withgoogle.com/#what-we-do> accessed 8 March 2022.
[380] 'Qualify for Content ID - YouTube Help' <https://support.google.com/youtube/answer/1311402?hl=en-GB&ref_topic=9282364> accessed 8 March 2022.
[381] ibid.
[382] Chris Cooke, 'Maria Schneider Criticises YouTube's Repeat Infringer Policies in Ongoing Content ID Litigation | Complete Music Update' (7 April 2021) <https://completemusicupdate.com/article/maria-schneider-criticises-youtubes-repeat-infringer-policies-in-ongoing-content-id-litigation/> accessed 8 March 2022.
[383] Chris Cooke, 'Maria Schneider Says She Can't Meet YouTube's Demands in Content ID Access Case without Access to Content ID | Complete Music Update' (21 April 2021) <https://completemusicupdate.com/article/maria-schneider-says-she-cant-meet-youtubes-demands-in-content-id-access-case-without-access-to-content-id/> accessed 8 March 2022.

Every individual work which is uploaded to YouTube is tracked against this database of registered works. If a match is found between any aspect of the work which is being uploaded, whether that be audio or video or a combination of audio-visual works, and a work which is registered on YouTube's Content ID database, the rightsholder who has registered their work with YouTube's Content ID database will be notified of this match.[384] Copyright owners are then given a choice of how to proceed, once a match is found.[385] As mentioned above, they can either, "*block a whole video from being viewed; monetise the video by running ads against it, sometimes sharing revenue with the uploader; or simply track the video's viewership statistics"*.[386] Rightsholders are also given the option of country specific restrictions on videos i.e. "*a video may be monetised in one country/region and blocked or tracked in another*".[387] Furthermore, once a match is found between a work which is being uploaded and a work registered on YouTube's Content ID database, that work receives what is known as a "Content ID claim".[388] This simply signifies that YouTube's Content ID, has found a match between the work which is being uploaded and a registered copyright protected work, and this should be distinguished from a takedown request utilising "notice and takedown" procedures discussed above, which YouTube refers to as a "Copyright Strike".[389]

If a rightsholder submits a complete and valid copyright takedown notice by for instance, utilising YouTube's integrated notice system,[390] this will result in the user's account whose video has been taken down, receiving what YouTube refers to as a "Copyright Strike". YouTube adopts a graduated response mechanism approach to Copyright Strikes,[391] which is often referred to as a "three-strikes and you're out" approach.[392] What this means is that a user's first strike acts as a "warning".[393] Removing the video for which a strike was received will not remove the strike from the users channel, as copyright strikes are attached to the user's account. If a user receives 3 strikes, "*their account, along with any associated channels, is subject to termination; all the videos uploaded to*

[384] 'How Content ID Works - YouTube Help' <https://support.google.com/youtube/answer/2797370?hl=en-GB&ref_topic=9282364> accessed 8 March 2022.
[385] ibid.
[386] ibid.
[387] ibid.
[388] ibid.
[389] 'What Is a Content ID Claim? - YouTube Help' <https://support.google.com/youtube/answer/6013276?hl=en-GB&ref_topic=9282678> accessed 8 March 2022.
[390] 'Submit a Copyright Takedown Request - YouTube Help' <https://support.google.com/youtube/answer/2807622?hl=en-GB> accessed 8 March 2022.
[391] 'Copyright Strike Basics - YouTube Help' <https://support.google.com/youtube/answer/2814000> accessed 8 March 2022.
[392] David W Quist, 'Three Strikes and You're Out: A Survey of Foreign Approaches to Preventing Copyright Infringement on the Internet' (2010) 66 The Business Lawyer 261.
[393] 'Copyright Strike Basics - YouTube Help' (n 402).

their account will be removed; and they cannot create new channels".[394] Upon receiving a strike, users are given the option to go through what YouTube refers to as "Copyright School", and if they do so, a copyright strike will be removed after 90 days.[395] Users are only required to go through copyright school once. All subsequent copyright strikes automatically expire after 90 days. YouTube's copyright school consists of a video, namely a cartoon featuring the "happy tree friends". The 4 minute and 38 second video praises the notion of "making one's own video" whilst emphasises the illegality of copying someone else's work.[396] The video also mentions that remixing and mashups may be illegal. It also touches upon the existence of "fair use" and other jurisdiction specific exceptions to copyright. Users are then asked to answer four, mostly true or false type questions, such as "*if you claim fair use in the video description, your video can't be considered copyright infringement*" or "*deleting a video that was removed for copyright will get rid of the associated copyright strike*".[397] Such questions are not explicitly answered by the copyright school video. As such, it can be argued that YouTube's copyright school would be better characterised as a "copyright test" rather than a school. Upon selecting their answers, users are presented with their result and reasoning for each of the answers. A user must categorise at least three of the questions correctly in order to pass copyright school and users are allowed to retake the test as many times as they wish.

If the user who has received 3 strikes, happens to be part of the aforementioned "YouTube Partner Programme" i.e. they are able monetise the content they upload to YouTube, then they are eligible to a "*7 day courtesy period after 3 copyright strikes before their channel is disabled. During this period, their copyright strikes won't expire, and they won't be able to upload new videos. Their channel will remain live and they will be able to access it to seek a resolution for their strikes. If their strikes are resolved through a retraction, or [YouTube] forwards [the user's] counter notifications and they are ultimately successful, [the user's] channel will not be disabled*".[398]

Consequently, upon uploading their works to YouTube, prosumers of music like John, may receive what YouTube refers to as, Content ID claims and/or Copyright Strikes, which are legal processes, mandated by the copyright and related enforcement regimes discussed above. Hence, prosumers of music experience copyright and related enforcement regimes through YouTube's operationalisation of those regimes, after they have uploaded their works to YouTube.

[394] ibid.
[395] ibid.
[396] 'YouTube Copyright School' <https://www.youtube.com/copyright_school> accessed 8 March 2022.
[397] ibid.
[398] 'Copyright Strike Basics - YouTube Help' (n 402).

1.3.3.3 Existing Research.

There is a growing body of literature examining the inner workings of processes mandated by copyright and related enforcement regimes, that are implemented on service providing platforms like YouTube, and tend to create what is often referred to as a "black box society".[399] Platforms which enable the distribution of UGC, like YouTube, are often secretive, and lack transparency with regards to their operationalisation of copyright and related enforcement regimes. Existing research aims to "*open* [the black box] *to let in some empirical air".*[400]

A literature review of existing empirical research in the field of notice and takedown regimes and practices was carried out by Erickson and Kretschmer.[401] They thematically categorised existing research into five key strands of empirical enquiry.[402] Namely they categorised research as relating to: "*volume of takedown requests, the accuracy of notices, the potential for over-enforcement or abuse, transparency of the takedown process, and the costs of enforcement borne by different parties*".[403] What all existing research has in common, across all categories identified by Erickson and Kretschmer is, that it tends to focus on the procedural aspects of notice and takedown regimes, rather than users' understanding, experiences or interactions with the regulatory frameworks. One study which has examined a subset of prosumers' knowledge and understanding of the regulatory frameworks they encounter after they have disseminated their works online is offered by Katz who qualitatively studied copyright knowledge amongst fan fiction writers via the use of interviews.[404] Katz found that some fan fiction creators were aware of a rightsholders ability to submit takedown notices, and creators' subsequent ability to submit counter claims.[405]

Empirical studies which focus on the procedural aspects of notice and takedown regimes in general show that rightsholders often overzealously enforce their rights,[406] and that counter notice

[399] Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Reprint edition, Harvard University Press 2016).
[400] Erickson and Kretschmer (n 340) 2.
[401] Erickson and Kretschmer (n 340).
[402] ibid.
[403] ibid 4.
[404] Rebecca Jennifer Katz, 'A Pilot Study of Fan Fiction Writer's Legal Information Behavior' (2019) 3 Journal of Copyright in Education & Librarianship <https://www.jcel-pub.org/article/view/7697> accessed 8 March 2022.
[405] ibid 11.
[406] Ahlert, Marsden and Yung (n 353); Urban, Karaganis and Schofield (n 375); Sharon Bar-Ziv and Niva Elkin-Koren, 'Behind the Scenes of Online Copyright Enforcement: Empirical Evidence on Notice & Takedown' (2017) 50 Connecticut Law Review.

procedures although available to users are under-utilised.[407] However, such studies do not focus exclusively on YouTube.

Certain studies have, however, shed light on the procedural aspects of YouTube's "black box" of operationalisation of copyright and related enforcement regimes. For instance, a recent longitudinal study by Erickson and Kretschmer examined "user generated parody videos" on YouTube, annually tracking them, to determine takedown rates and any potential patterns in rightsholder behaviour signifying motivations for filing claims.[408] They found that there are no statistically significant patterns of action between right-holders motivation to send a notice and the commercial popularity of the original work in question or the potential for reputational harm from parodic use.[409]

Jacques *et.al*. using the same dataset used by Erickson and Kretschmer, examined the procedural aspects of the takedown regime YouTube implements in terms of identifying the rate at which videos are taken down automatically as opposed to them being taken down manually.[410] They found that Content ID accounts for the majority of blocking when compared to manual copyright takedown notices being submitted.[411]

Heald's study suggested that the way in which YouTube has operationalised copyright and related enforcement regimes actually creates new markets for works which would otherwise have been unavailable.[412] This is an argument that rings true for a number of studies which advocate that despite its flaws, notice and takedown regimes operationalised by automated filtering mechanisms are the most efficient means for dealing with an increase volume of potentially copyright infringing content disseminated online.[413]

[407] Urban *et.al.,* noted that large ISPs handling thousands of NTD requests received no counter-notices, see Urban, Karaganis and Schofield (n 375) 44. Urban and Quilter found that only 7 counter notifications were included in their Chilling Effects project dataset, see Urban and Quilter (n 371) 679.
[408] Kristofer Erickson and Martin Kretschmer, '"This Video Is Unavailable": Analyzing Copyright Takedown of User-Generated Content on YouTube' (2018) 9 JIPITEC <https://www.jipitec.eu/issues/jipitec-9-1-2018/4680> accessed 8 March 2022.
[409] ibid.
[410] Sabine Jacques and others, 'An Empirical Study of the Use of Automated Anti-Piracy Systems and Their Consequences for Cultural Diversity' (2018) 15 SCRIPTed 277.
[411] ibid 299.
[412] Paul J Heald, 'How Notice-and-Takedown Regimes Create Markets for Music on YouTube: An Empirical Study' (2014) 83 UMKC Law Review 313.
[413] See for instance, Zoe Carpou, 'Robots, Pirates, and the Rise of the Automated Takedown Regime: Using the DMCA to Fight Piracy and Protect End-Users' (2016) 39 551.

1.3.3.4 Summary and resulting research question.

To maintain its position within the safe harbour provisions analysed above, YouTube developed its own regulatory process for dealing with alleged copyright infringements online i.e. Content ID claims and copyright strikes.

Given the fact that works of music prosumption typically amount to copyright infringements and exceptions will only apply under certain specific circumstances, prosumers of music like John, are consequently likely to encounter copyright and related enforcement regimes as operationalised by YouTube i.e. in the form of Content ID claims and copyright strikes.

Currently, no studies have examined YouTube user experiences, interactions with and understandings of takedown regimes and how they are implemented on YouTube, which is the gap which this research fills, by shedding light on YouTube's "black box" in the realm of music prosumption. This research thus asks, "what do music prosumers' encounters with online copyright enforcement procedures on YouTube resemble?"

1.3.4 Legal Consciousness.

So far it has been established that throughout their dissemination process – before, whilst, and after uploading – prosumers of music must make decisions, which may ultimately be guided and/or framed by copyright and related enforcement regimes, and in some instance potentially, non-legal determinants of behaviour such as social norms.

Specifically, given the fact that works of music prosumption typically amount to copyright infringement, exceptions will only apply under certain specific circumstances. Hence, in order for a prosumer of music like John to disseminate their work to YouTube "legally" they must obtain "rights clearance" before uploading their work using YouTube.[414] Whilst uploading, the decisions John must make may alter his legal status in the context of copyright law, but it is likely that informal norms regulate such decisions.[415] It is also highly likely that John's work will be caught by YouTube's Content ID, resulting in John's work receiving a Content ID claim. In the event that the relevant rightsholder choses to enforce their rights by submitting a formal copyright takedown notice, John will likely also receive a copyright strike, which he could dispute by filing a counterclaim.[416] Consequently, John will encounter copyright and related enforcement regimes, primarily through processes which operationalise such regulatory frameworks, throughout his dissemination process and arguably, John's knowledge and understanding of the regulatory framework that necessitates such legal processes but also his knowledge and understanding of the mandated processes themselves, will play a vital role in how he interacts with and experiences copyright and related enforcement regimes.

1.3.4.1 What is legal consciousness and why does it matter?

The study of the way in which the law is "*experienced and understood by ordinary citizens",*[417] is often referred to as the study of "legal consciousness".[418] Definitions of "legal consciousness" differ depending primarily on the methodological perspectives adopted.[419] Nevertheless, a common understanding seems to be the fact that law cannot be understood as being distinct from "everyday life".[420] As per Bumiller:

[414] See Chapter 1, section 1.3.1.
[415] See Chapter 1, section 1.3.2.
[416] See Chapter 1, section 1.3.3.
[417] Sally Merry, 'Concepts of Law and Justice among Working Class Americans: Ideology as Culture' (1985) 11 Legal Studies Forum 59.
[418] Susan S Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 326.
[419] Dave Cowan, 'Legal Consciousness: Some Observations' (2004) 67 The Modern Law Review 928, 931.
[420] ibid 930.

"The model of legal protection reinforces a view of law and society in which the social and political realm is distinct from, and subordinate to, the legal. This view of the primacy of the legal order creates the illusion that law is a source of power and authority disconnected from other power structures in society".[421]

The study of legal consciousness developed as a point of interest for both doctrinal and empirical researchers within the law and society movement, in the 1980's and 90s, particularly as a way to address what is referred to as "legal hegemony" i.e. how law sustains its ability to regulate behaviour despite a disparity between "*between the law on the books and the law in action"* and "*why people acquiesce to a legal system that, despite its promises of equal treatment, systematically reproduces inequality".*[422]

Hence, the study of legal consciousness is aimed at providing a holistic understanding of law and its role in the context of hegemony within everyday life. As per Susan Silbey, "*legal hegemony derives from long habituation to the legal authority that is almost imperceptibly infused into the material and social organization of ordinary life".*[423] As such, bearing in mind the fact that online users, including but not limited to prosumers of music, are forced to make subtle judgements on a day-to-day basis regarding copyright law,[424] it is argued that insights into prosumer's knowledge and understanding of copyright law, could provide insights into legal hegemony within the context of prosumers of music.

How "law's subordinates" understand the regulatory frameworks that apply to them is an integral part of the study of legal consciousness. As per Merry, "*the law consists of a complex repertoire of meanings and categories understood differently by people depending on their experience with and knowledge of the law. The law looks different, for example to law professors, tax evaders, welfare recipients, blue-collar homeowners, and burglars. The ways people understand and use law I term their legal consciousness. Consciousness, as I am using the term, is the way people conceive of the natural and normal way of doing things, their habitual patterns of talk and action, and their common sense understanding of the world".*[425] As such, how prosumers of music perceive and understand the laws that apply to them throughout their dissemination process is music prosumers' legal consciousness. Nielsen states that "*legal consciousness also refers to how people do not think about*

[421] Kristin Bumiller, *The Civil Rights Society: The Social Construction of Victims* (JHU Press 1992) 10.
[422] Silbey (n 429) 323.
[423] ibid 331.
[424] Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 272).
[425] Sally Engle Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans: Law, Power and Resistance Among Working-Class Americans* (2nd ed. Edition, University of Chicago Press 1990) 5.

the law; that is to say, it is the body of assumptions people have about the law that are simply".[426] Thus, music prosumers' lack of copyright knowledge is also an integral part of their legal consciousness.

An understanding of how "law's subordinates" understand and perceive the regulatory frameworks that apply to them can serve a multitude of purposes. For instance, in the context of tax processes mandated by tax law, it was shown that increasing taxpayers' knowledge and understanding of tax law translates to increased compliance.[427] Likewise, less complicated tax systems result in increased compliance.[428]

Bearing in mind the fact that prosumers like John will interact with copyright and related enforcement regimes throughout their dissemination process, it is argued that insights into prosumer's knowledge, understanding and potential assumptions they may have of copyright law, and in general, music prosumers' legal consciousness, could provide insights into legal hegemony within the context of prosumers of music. It can also provide justifications for music prosumers' behaviours thereby, providing a holistic understanding of prosumer interaction with and experiences of copyright and related enforcement regimes.

1.3.4.2 Existing research.

Existing empirical research on music prosumers' knowledge and understanding of copyright and related enforcement regimes is quite limited. However, numerous studies have examined copyright knowledge amongst different subsets of prosumption where already existing works are reused. For instance, Fiesler's work has examined copyright knowledge amongst creative communities where appropriation is common.[429] Fiesler shows that creators lack an understanding of when something amounts to infringement and consequently, do not understand why they are sanctioned.[430] Fiesler

[426] Laura Beth Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment' (2000) 34 Law and Society Review 1055, 1059.
[427] Ern Chen Loo, M Mckerchar and A Hansford, 'UNDERSTANDING THE COMPLIANCE BEHAVIOUR OF MALAYSIAN INDIVIDUAL TAXPAYERS USING A MIXED METHOD APPROACH' (2009) 4 Journal of the Australasian Tax Teachers Association 181.
[428] Sharon P Cox and R Eger, 'Procedural Complexity of Tax Administration: The Road Fund Case' (2006) 18 Journal of Public Budgeting, Accounting and Financial Management 259.
[429] Casey Fiesler, Jessica Feuston and Amy S Bruckman, '"I Am Not a Lawyer": Copyright in Online Creative Communities', *Proceedings of the 18th International Conference on Supporting Group Work* (Association for Computing Machinery 2014) <https://doi.org/10.1145/2660398.2663774> accessed 8 March 2022; Casey Fiesler, Jessica Feuston and Amy S. Bruckman, 'Understanding Copyright Law in Online Creative Communities' (2015); Casey Fiesler and Amy S Bruckman, 'Remixers' Understandings of Fair Use Online', *Proceedings of the 17th ACM conference on Computer supported cooperative work & social computing* (Association for Computing Machinery 2014) <https://doi.org/10.1145/2531602.2531695> accessed 8 March 2022.
[430] Fiesler, Feuston and S. Bruckman (n 243) 121.

also shows that creators often turn to each other for copyright knowledge.[431] Similarly, Thompson examined legal consciousness in terms of the social construction of legal communication amongst "*individuals who, while not currently facing legal problems, are engaged in activities which may present risk of violating copyright law*".[432] Thompson, like Fiesler, found that creators use heuristics to understand law.[433]

Freund examined user knowledge amongst a subcategory of remix artists known as "vidders".[434] Vidders are creatives who "*use footage from favourite media texts and edit them to music in order to share a particular interpretation of that televisual text*".[435] Fruend found that the extent of copyright knowledge possessed varies significantly from vidder to vidder, with some of those interviewed exhibiting extensive knowledge of copyright law and others lacking a general understanding of copyright law.[436] "*Those who were familiar with it generally gained their knowledge from their professional careers (in publishing or as librarians), rather than learning about it for vidding purposes".*[437]

In 2016 the Organisation for Transformative Works (OTW) surveyed almost 3000 fans' experience with and knowledge of copyright.[438] Participant recruitment for the OTW survey, took place through the OTW's fan-made works archive referred to as "Archive of Our Own".[439] Consequently, most respondents identified as fanfiction creators. The OTW tested fan creators' perceived knowledge of copyright by asking how participants would rate their knowledge of copyright compared to the average person. They also tested their actual knowledge of copyright, using a series of yes or no questions. Namely they asked if fanworks are copyright infringement, whether fan creators need permission from owners to create and share works, and whether they know what "fair use" means in US law.[440] The OTW found that fanfiction creators mostly have a self-proclaimed average level of

[431] Fiesler, Feuston and Bruckman (n 440); Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 440); Fiesler, Feuston and S. Bruckman (n 243).
[432] John Thomson, 'Social Construction of Copyright: The Popular Production of Communication-Based Legality' 107 <https://www.academia.edu/3709984/Social_Construction_of_Copyright_The_popular_production_of_communication_based_legality> accessed 8 March 2022.
[433] Thomson (n 443).
[434] Katharina Freund, '"Fair Use Is Legal Use": Copyright Negotiations and Strategies in the Fan-Vidding Community' (2014) 18 New Media & Society 1347.
[435] ibid 1346.
[436] ibid 1352.
[437] ibid.
[438] Janita Burgess, 'Fan Creation & Copyright Survey: Preliminary Results – Organization for Transformative Works' (2017) <https://www.transformativeworks.org/fan-creation-copyright-survey-preliminary-results/> accessed 8 March 2022.
[439] 'Home | Archive of Our Own' <https://archiveofourown.org/> accessed 8 March 2022.
[440] Burgess (n 449).

copyright knowledge. They also found that fanfiction creators consider fanworks as non-infringing and thus do not need to interact with rights clearance processes. Finally, they found that fan creators are to great extent aware of copyright exceptions, and most could explain what they are.

Katz qualitatively studied copyright knowledge amongst fan fiction writers via the use of interviews.[441] Fan fiction writers, like vidders, exhibited varying levels of copyright knowledge.[442] Some knew very little about copyright and the role it serves.[443] Some were aware of the fact that their works often amount to copyright infringement,[444] whilst others exhibited a high level of understanding of copyright and the potential applicability of exceptions, whilst also being aware of a rightsholders ability to submit takedown notices, and creators' subsequent ability to submit counter claims.[445]

Palfrey, Gasser, Simun and Barnes examined copyright knowledge amongst youth, which they describe as destined to become prosumers of the future.[446] They found that "future prosumers" are largely unaware of when something amounts to infringement.[447] Their respondents did however exhibit a high perceived knowledge of copyright law.[448]

1.3.4.3 Summary and resulting research question.

The decisions prosumers of music make throughout their dissemination process are to a certain extent guided by their knowledge, understanding and perceptions of those regulatory frameworks. The study of how "law's subordinates" understand the regulatory frameworks they encounter is commonly referred to as the study of legal consciousness. Existing research has examined other subsets of prosumers and there seem to be commonalities in legal consciousness across different communities of prosumption. However, to date, music prosumer's legal consciousness remains unknown. This research thus asks, "what are music prosumers' understandings and perceptions of the aspects of copyright law they are likely to encounter throughout their dissemination process?"

[441] Katz (n 415).
[442] ibid 9.
[443] ibid.
[444] ibid 10.
[445] ibid 11.
[446] John Palfrey and others, 'Youth, Creativity, and Copyright in the Digital Age' [2009] International Journal of Learning and Media <https://dash.harvard.edu/handle/1/3128762> accessed 8 March 2022.
[447] ibid 80.
[448] ibid 85.

1.4 Summary.

Through the advancement of technology in music, the popularisation and ease of access to home recording software/hardware and the creation of UGC orientated websites, and their subsequent proliferation, we have witnessed a move from users exhibiting a mere passive role towards having a more active role in the creation and dissemination of music and as such, have witnessed the rise of prosumers of music,[449] i.e. users who recreate versions songs they have listened to and share those recreations online. YouTube's proliferation has led to it being the one of the most prominent dissemination platforms for prosumers of music.

Two distinct but prominent areas of music prosumption are cover songs and remixes. This research makes a distinction between two different forms of remixing – sampling and mashups. Sampling is defined as the copying of sounds from existing recordings which are used in the sonic fabric of a new musical work and mashups as the musical practice which resembles an audio collage, whereby solely existing works are reused so as to create a new work. Cover songs are defined simply as a performance/recording of an already existing song by another artist. However, there are varying degrees of cover songs, such as instrumental covers and cover records. This research considers all forms of covers as falling under the umbrella term – "cover song".

The legal analysis conducted above shows that both copyright,[450] and other enforcement regimes,[451] not specifically attuned towards regulating prosumers' activities, apply concurrently. Thus, prosumers, encounter copyright and related regulatory frameworks, sometimes through different regulatory processes, at different stages of their dissemination process – before, whilst and after uploading and their knowledge of such processes and regulatory frameworks is likely to have an effect on how they experience and interact with the regulatory frameworks they encounter. Through a chronological portrayal of a music prosumer's encounters with copyright and related enforcement regimes, drawing insights from what existing research has to say with regards to such encounters, this thesis identified four research questions:

Namely this research aims to:

- Empirically identify music prosumers' understanding and perceptions of the aspects of copyright law they are likely to encounter throughout their dissemination process.

[449] Alvin Toffler, *The Third Wave* (Morrow 1980).
[450] Copyright, Designs and Patents Act (CDPA) 1988.
[451] Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ 2 178/1/01.

- Empirically identify music prosumers' understanding, perceptions, interactions with and experiences of, with the rights clearance process.
- Empirically identify what understandings, perceptions, experiences, and interactions, if any, prosumers have with notice and takedown procedures and how YouTube has operationalised such procedures.
- Empirically identify whether, any social norms or other non-legal determinants of behaviour exist in the realm of music prosumption.

Chapter 2 - Methods and methodology.

This chapter outlines and critically analyses the methodology and methods employed in achieving the abovementioned aims. This chapter begins by outlining the methodology of this research, determining its theoretical foundations but also categorising this type of research. Subsequently, the research methods employed, ethical considerations, analysis techniques, participant selection and make-up of research participants are critically analysed and described, respectively. Finally, this research's limitations are critically discussed.

2.1 Categorising this research.

Studying the interplay and relationship between two social phenomena, namely those classed as legal and those classed as non-legal translates to this research falling under the category of sociolegal research.[452] Sociolegal research uses "*scientific method; but what it studies is loose, wriggling, changing subject matter, shot through and through with normative ideas. It is a science (or would-be science) about something thoroughly not scientific*".[453] Sociolegal researchers vary in methods and outlook. However, they share a "*general commitment to approach law with a vision and methods that come from outside the discipline itself and explain legal phenomena in terms of their social setting*".[454]

It is a relatively new area of research which began in the nineteenth century with figures like Sir Henry Maine and Max Weber.[455] Sociolegal research in the field of intellectual property law is an even newer area of research.[456] As per Gallagher "*somewhat surprisingly, even though intellectual property is a subject that has attracted an increasing amount of scholarly attention worldwide, relatively little of this academic work focuses on themes or approaches that are at the core of 'law and society' scholarship"*.[457]

Friedman identifies certain general themes that might guide sociolegal research. First, there are studies dealing with the production or shaping of law. Second, studies deal with the operation of the law itself i.e. the internal workings of the law and the transformation process. Third there are studies which deal with the impact of law. This form of study deals with how society views the law e.g. if it is

[452] Lawrence M Friedman, 'The Law and Society Movement' (1986) 38 Stanford Law Review 763, 763.
[453] ibid 766.
[454] ibid 763.
[455] ibid 764.
[456] William Gallagher, 'What Is a "Law and Society" Perspective on Intellectual Property?' (Center for the Study of Law and Society/Jurisprudence and Social Policy Faculty Working Paper 2008) No. 63 xii.
[457] ibid xi.

actually a deterrent and if so, why and how. Finally, there is the study of feedback. This is the way responses and behaviours curve back and affect the system itself.[458] It is argued that this research falls primarily under the third theme identified by Friedman.

Multiple case study design was used, to carry out the abovementioned aims.[459] Case study design is "*an empirical inquiry that investigates a contemporary phenomenon within its real-life context"*.[460] In this case, works of music prosumption being the contemporary phenomenon. Case study research has been categorised as (a) exploratory,[461] (b) descriptive,[462] and (c) explanatory.[463] Yin warns researchers not to attempt to separate these categories.[464] Bearing in mind the nature and questions of this research, it is argued that it falls under all three of Yin's categories.

How one goes about case study selection is vital.[465] Random selection of case studies allows for the avoidance of selection bias, but runs the risk of being unrepresentative of the broader population.[466] Purposive selection of cases enables "*researchers to choose the most appropriate cases for a given research strategy".*[467] As aforementioned, the cases selected for this research are cover songs and remixes which, as discussed in Chapter 1 of this thesis, are two distinct, but prominent areas of music prosumption.

Case study design has been criticised for not allowing for generalisations.[468] Nevertheless, it is argued that the use of cross-case analysis in multiple case study design, facilitates external validity and provisional generalisations.[469] Nonetheless, multiple-case study design often runs the risk of "*premature and even false conclusions*".[470] To circumvent this, thereby allowing for internal validity, one must use a variety of tactics such as "*pattern matching, explanation building or time series analysis*".[471] As will be discussed in greater detail below, a grounded theory approach to data

[458] Friedman (n 463) 772–773.
[459] Alan Bryman, *Social Research Methods* (5 edition, OUP Oxford 2015) 67. Bryman defines multiple case study design as occurring "*whenever the number of cases exceeds one*".
[460] Robert K. Yin, *Case Study Research: Design and Methods* (Sage Publications 1984) 23; Zaidah Zainal, 'Case Study as a Research Method' (2007) 9 Jurnal Kemanusiaan 4.
[461] Exploratory case studies explore a chosen phenomenon in the data which is of interest to the researcher. Ibid.
[462] Descriptive case studies describe naturally occurring phenomena from within the data, Ibid.
[463] Explanatory case studies which set to explain phenomena which emerge out of the data, Ibid.
[464] Robert K. Yin (n 471) 15.
[465] Jason Seawright and John Gerring, 'Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options' (2008) 61 Political Research Quarterly 294, 295.
[466] ibid.
[467] ibid 295–296.
[468] Bryman, *Social Research Methods* (n 470) 62.
[469] Charles Schell, 'The Value of the Case Study as a Research Strategy' [1992] Manchester Business School 13.
[470] Kathleen M Eisenhardt, 'Building Theories from Case Study Research' (1989) 14 The Academy of Management Review 532, 540.
[471] Schell (n 480) 13.

analysis was used whereby emerging themes and patterns were used to allow for explanation building.

This study uses a mixed method approach to each case, deploying a combination of quantitative and qualitative research methods.[472] The exact methods deployed will be discussed in more detail below. There are several criticisms of mixed method research. However, the most prominent of those is that research methods carry with them certain epistemological commitments meaning that qualitative and quantitative methods cannot be combined. For instance, Smith argues that quantitative and qualitative research strategies "*sponsor different procedures and have different epistemological implications*" and thus, concludes that researchers should not "*accept the unfounded assumption that the methods are complementary*".[473] Furthermore, Smith and Heshusius argue that mixed method researchers tend to ignore these epistemological commitments and simply transform "*qualitative inquiry into little more than a procedural variation of, within the same conceptual framework as, quantitative inquiry*".[474]

Nonetheless, as per Bryman, there is another view regarding how one should approach a research strategy. This is what he refers to as the technical version, whereby more emphasis is placed on the strengths of data collection and analysis techniques as opposed to epistemological commitments.[475] This approach does not disregard the importance of "*epistemological and ontological assumptions, but the connections are not viewed as fixed an inevitable*" thereby allowing for the carrying out of mixed method research.[476]

Morgan has created a way of classifying mixed method research in terms of two criteria referred to as the priority-sequence model.[477] This model asks researchers to first think of which method, quantitative or qualitative, is to be regarded as their "principal data gathering tool".[478] As per Bauer *et.al.* "*one needs to have a notion of qualitative distinctions between social categories before one can measure how many people belong to one or the other category. If one wants to know the colour distribution in a field of flowers, one first needs to establish the set of colours that are in the field;*

[472] Ibid 635.
[473] John K Smith, 'Quantitative Versus Qualitative Research: An Attempt to Clarify the Issue' (1983) 12 Educational Researcher 6, 12–13.
[474] JK Smith and L Heshusius, 'CLOSING DOWN THE CONVERSATION: THE END OF THE QUANTITATIVE-QUALITATIVE DEBATE AMONG EDUCATIONAL INQUIRERS' (1986) 15 Educational Researcher 16.
[475] Bryman, *Social Research Methods* (n 470) 637.
[476] ibid.
[477] DL Morgan, 'Practical Strategies for Combining Qualitative and Quantitative Methods: Applications to Health Research' (1998) 8 Qualitative Health Research 362.
[478] ibid 366.

then one can start counting the flowers of a particular colour. The same is true for social facts".[479] Hence, given the lack of existing research with regards to music prosumers' interactions with and perceptions of copyright law, in their pursuit of disseminating their works online, this research employed a combination of qualitative and quantitative research methods. The results from the first phase of this research laid the foundation for what was further explored in phase two. Morgan then asks of researchers to think of which method precedes the other in terms of chronology, referred to as "the sequence decision".[480] Once again, for this research, qualitative methods would precede quantitative in terms of chronology.

There are also further classifications for mixed method research and "*several different ways have been put forward by various writers but the one put forward by Creswell and Piano Clark seems to be the most commonly employed*".[481] The authors argue that there are six types of mixed methods designs, four of which are the most commonly employed, namely: convergent parallel design, exploratory sequential design, explanatory sequential design and embedded design.[482] The convergent parallel design involves the concurrent collection of both qualitative and quantitative data, both of which have equal priority in terms of the "principal gathering tool". The resulting data is then analysed comparatively or "*merged to form an integrated whole".*[483] An exploratory sequential design involves the initial qualitative collection of data followed by the quantitative collection of data whereby qualitative data is considered the "principal gathering tool". On the other hand, explanatory sequential design entails the initial quantitative collection of data followed by qualitative collection in order to further elaborate those initial quantitative findings. Finally, embedded design involves the adoption of both quantitative and qualitative data collection methods either sequentially or simultaneously whereby either of the two acts as the "principal gathering tool". This design is commonly employed in studies where a researcher feels the adoption of solely quantitative (or qualitative) data collection methods alone would be insufficient as a tool to examine their area of interest.[484]

As aforementioned, this research comprises of two phases of empirical research, the first of which is qualitative and lays the foundation for what was further explored in phase two. Phase two of this

[479] 'Quality, Quantity and Knowledge Interests: Avoiding Confusions', in Martin Bauer and George Gaskell, *Qualitative Researching with Text, Image and Sound* (SAGE Publications Ltd 2000) 8 <http://methods.sagepub.com/book/qualitative-researching-with-text-image-and-sound/n1.xml> accessed 8 March 2022.
[480] Morgan (n 488) 366–367.
[481] Bryman, *Social Research Methods* (n 470) 368.
[482] ibid 638.
[483] ibid.
[484] ibid 640.

research comprised of both quantitative and qualitative research methods. As will emerge from the discussion bellow, the qualitative aspect of phase two further elaborates on the quantitative findings of phase two. Consequently, it is argued that this research falls under an exploratory/explanatory sequential design, illustrated by Figure 11 below. The initial data gathering tool, which is referred to as phase one, comprised of qualitative research methods, which helped guide and frame the quantitative methods employed in phase two. Phase two was complemented by the employment of further qualitative methods in an attempt to further elaborate on those initial quantitative findings.

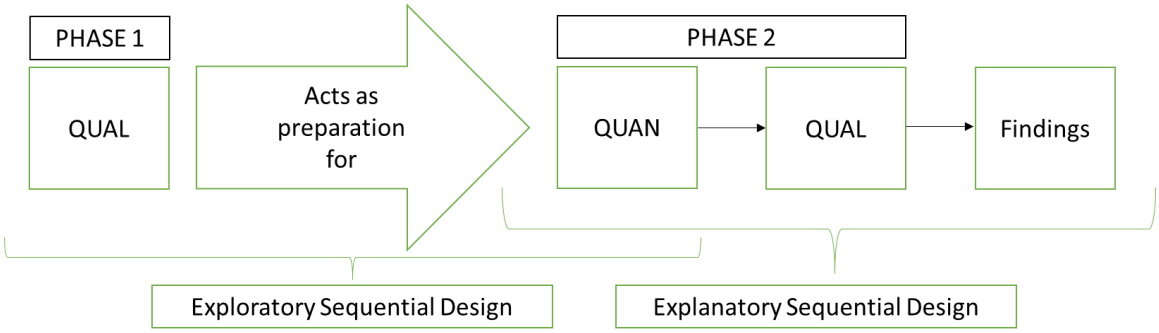


Figure 11: Combination of Creswell and Piano Clark's mixed methods research design (exploratory/explanatory sequential design).

Mixed method research is employed for a number of reasons. Namely a content analysis of 232 journal articles that had employed mixed method research between 1994 and 2003 showed that, 16 reasons for employing mixed methods are commonly stated.[485] Four of the reasons mentioned which this research utilises are: triangulation/greater validity, completeness, illustration, and confirming or discovering.

Triangulation refers to the employment of multiple research methods associated with different research strategies, as a way to cross-check one's results and is an adaptation of Webb *et.al.'s* "unobtrusive method" who suggested, "*once a proposition has been confirmed by two or more independent measurement processes, the uncertainty of its interpretation is greatly reduced*".[486] Phase two of this research, which is quantitative, is aimed at cross-checking phase one's qualitative results, but also adding to them, which are then once again cross checked via the subsequent employment of further qualitative research methods in phase two. Consequently, the employment of both quantitative and qualitative research methods not only triangulates results, but also provides a more "complete" representation of prosumers' understanding, perceptions, experiences

[485] Alan Bryman, 'Integrating Quantitative and Qualitative Research: How Is It Done?': [2006] Qualitative Research <https://journals.sagepub.com/doi/10.1177/1468794106058877> accessed 8 March 2022.
[486] Eugene J Webb and others, *Unobtrusive Measures: Nonreactive Research in the Social Sciences* (Rand Mcnally 1966).

and interactions with copyright and related enforcement regimes, in their pursuit of disseminating their works on YouTube.

Completeness suggests that potential gaps left by the employment of one method (e.g. a quantitative research method) may be filled by another (e.g. a qualitative research method). As aforementioned, phase two of this research is made up of both quantitative and qualitative research methods. This is utilised so as to provide a more "complete" and accurate depiction of prosumers' encounters with copyright and related enforcement regimes. As such, the utilisation of qualitative methods in phase two of this research, provide an "illustration" of some of the quantitative findings and it is aimed at "*putting meat on the bones of dry quantitative findings*".[487]

Finally, what Bryman refers to as "confirming or discovering" as a rationale for employing mixed method research, refers to the subsequent adoption of quantitative research following the collection of data using qualitative research methods so as to test or add to the qualitative data already collected.[488] As abovementioned, this is the purpose phase two of this research serves.

[487] Bryman, *Social Research Methods* (n 470) 641. This is how Bryman describes "illustration" as a way in which methods are mixed.
[488] ibid 641, 654.

2.2 Research Methods.

Having categorised this research, this section outlines the methods employed to achieve this research's aims. This research comprised of two phases of research. The following two sub-sections, describe each phase, and offer a critical analysis of the methods employed.

2.2.1 Phase one: A web ethnography.

Phase one of this research's empirical enquiry, consisted of qualitative research methods and analysis. Namely, it comprised of ethnographic methods. Specifically, a web ethnography was conducted of online discussion forums used by prosumers of music who disseminate cover songs and/or remixes on YouTube, qualitatively assessing themes of knowledge and interactions with copyright and related enforcement regimes.

Ethnography, does not have a formal definition, but it is "*associated with the study of people, not ourselves, and with the use of methods other than those of experimental design and quantitative measurement*".[489] Ethnographic methods are often associated with participant observation which involves the immersion of the researcher within a group for a prolonged period of time.[490] Bearing in mind that this research examined an online environment, traditional ethnographic methods would not have been an obvious choice. Nevertheless, Hine argues that the internet can be interpreted as amounting to a place – cyberspace – where ethnographic methods can apply.[491] Thereby, discussion forums of websites like YouTube offer a "cyberspace" whereby ethnographic methods could be employed to determine prosumers' perceptions and interactions with copyright and other related enforcement regimes.[492]

Given that traditional ethnographic methods involve certain levels of participant observation – something which is typically impossible in an online environment – scholars have argued that for web ethnography as a distinct research method to be successful, a researcher must also take into account research participants' offline activities to complement research conducted in an online environment.[493] As aforementioned, this study also comprises of a second phase of research. This phase was guided and complemented by phase one, but also to a certain extent tries to provide a portrayal of music prosumers' offline activities, by capturing primary data, albeit of a different part of the same broad prosumer group, as opposed to posts they had made in the past thereby circumventing some of the concerns associated with web ethnographies.

[489] Dell H Hymes, 'What Is Ethnography?' [1977] ERIC.
[490] Bryman, *Social Research Methods* (n 470) 423.
[491] Christine. Hine, *Virtual Ethnography* (SAGE 2000) 21.
[492] '(99+) YouTube Help Forum - Google Product Forums' <https://productforums.google.com/forum/#!forum/youtube> accessed 8 March 2022.
[493] Christine Hine, 'Virtual Ethnography: Modes, Varieties, Affordances', *The SAGE Handbook of Online Research Methods* (SAGE Publications, Ltd 2008). Angela Cora Garcia and others, 'Ethnographic Approaches to the Internet and Computer-Mediated Communication' (2009) 38 Journal of Contemporary Ethnography 52.

2.2.1.1 Phase one: Data collection.

As mentioned above, this phase of research comprised of a web ethnography of online discussion forums used by prosumers of music who disseminate cover songs and/or remixes on YouTube. In deciding which online discussion forums to use, Alexa search engine rankings were used as a way of identifying the most popular, YouTube specific, online discussion forums in terms of traffic.[494] These were, in order of most to least traffic; YouTube's own discussion forum, Tubebuddy and YTTalk. All these discussion forums are publicly available and do not require an account to search for discussions. An account is only required when you wish to interact with other forum users. YTtalk is the only online discussion forum of the three, that has a category specifically directed towards discussing issues relating to copyright.[495] Keyword searches were used in order to collect data from each of these discussion forums. Different search terms were used for each of the cases i.e. cover songs and remixes. Specifically, for cover songs the keyword search used was:

("cover song") OR (cover* AND song*) OR (cover* AND music)

This keyword search was generated after searching for the term "cover*" on its own on each of the three discussion forums, which is the broadest search term that could be used, since prosumers will not refer to a cover song using any other terminology.[496] The first 100 results for each of the discussion forums were analysed in order to determine the definitive search parameters pertaining to cover songs. An examination of how prosumers and others participating in the discussions referred to cover songs was carried out indicating that this search term would allow for the capturing of all relevant data whilst disregarding some, but not all of the false positives caught by the broader search term "cover*".

The top 100 results for the search terms, remix*, mash* and for sampl* on each of the discussion forums were analysed to identify how prosumers and others participating in the discussion forums referred to any of the terms; remix, mashups, and sampling.[497] This resulted in a string of search terms:

---

[494] 'Alexa - Website Traffic, Demographics, and Competitors - Alexa' <https://www.alexa.com/siteinfo> accessed 8 March 2022.
[495] 'Copyright, Claims, Strikes & Legal Discussion' (*YouTube Forum | The #1 YouTube Community | Video Editing, Branding & YouTube Help*) <http://yttalk.com/forums/copyright-claims-strikes-legal-discussion.79/> accessed 8 March 2022.
[496] This can be deduced from the music literature used to define cover songs in the literature review chapter of this thesis. Although legal scholars could for instance, use the term "derivative music", such a term is too broad and, it is unlikely that it would be used by prosumers of music to refer to cover songs.
[497] These were the terms identified through analysing music literature in the literature review chapter of this thesis.

(remix* OR (mashup OR mash-up OR “mash up”) OR sampl*) AND (song* OR music OR mix)

However, this string search did not yield any results on YTTalk or Tubebuddy. Hence, I used:

Remix* AND (music OR song*) on YTTalk which gave 195 results.

However, this gave less than a page of results on Tubebuddy. Hence, I used the search term “remix*” on Tubebuddy which yielded 3 pages of results.

Once the new keyword searches had been developed, a data scrape was conducted, using “webscraper” which is an open developer tool that is added to your chrome browser.[498] In deciding which data scraping method to use, a variety of different options were tested such as octoparse,[499] and NVivo’s Ncapture.[500] However, such software was not compatible with the discussion forums intended to be studied in this research.

Using the data scraper allowed for all the discussion threads generated through the keyword searches mentioned above, to be collected in csv. format automatically, which were later converted to word document format and then pdf. so that they could be imported to NVivo. Thus, three documents were generated for each of the keyword searches, one pertaining to each of the discussion forums with a total of six documents of data. When opening the scraped csv. files in Microsoft word, specifically, the one pertaining to cover songs and the one pertaining to remixes on YouTube’s own discussion forum, they generated approximately 6500 pages of data each, most of which were blank spaces. This is attributed to the fact that the data scraping software would also scrape the advertisements attached at the bottom of each discussion feed and save them as blank spaces. This meant that the data would have to be narrowed down further. After all documents were imported to NVivo, NVivo’s text search query function was used to narrow down the results that were to be coded.

For the three documents pertaining to cover song discussions i.e. one document for YouTube’s own discussion forum, one for YTTalk’s, and one for Tubebuddy, the term cover* was used as the search term which is the broadest term that could be used,[501] thereby encapsulating all instances where the word cover was used in a discussion. NVivo’s “spread to: broad context” function was then used, which presents results in the paragraph the text search results pertain to, thereby giving more

[498] ‘Web Scraper’ <https://www.webscraper.io/> accessed 8 March 2022.
[499] ‘Web Scraping Tool & Free Web Crawlers for Data Extraction | Octoparse’ <https://www.octoparse.com/> accessed 8 March 2022.
[500] ‘What Is NCapture? | NVivo FAQ’ <https://www.qsrinternational.com/nvivo/support-overview/faqs/what-is-ncapture> accessed 8 March 2022.
[501] This was deduced from the initial search term carried out on each of the discussion forums. See, above.

context to the query results. For the three documents pertaining to remix discussions, the search term; remix* OR mash* OR sampl*,[502] was used and once again NVivo's "spread to: broad context" function was utilised so as to give more context to the query results. Each of the query results was then saved by adding them to the project, and coding began using those query results. Table 1 below, illustrates the number of results generated for each of the text search queries for each of the documents.

Table 1: Number of results from text query results for each of the documents.

Platform	Cover/Remix	Number of Text Query Results
YouTube	Cover	1057
YTTalk	Cover	395
Tubebuddy	Cover	249
YouTube	Remix	1596
YTTalk	Remix	244
Tubebuddy	Remix	68

2.2.1.2 Phase one: Data analysis.

A total of 1762 posts were analysed in this phase of the research. However, a number of posts were made by the same usernames. Figure 12 below demonstrates this by showing the frequency of posting made by the same usernames i.e. 833 users whose posts were analysed in this research, only made one post, and one user had made more than 100 posts, namely 111. Table 1 in the Appendix provides a more in-depth account of the number of posts that were analysed and how they relate to individual usernames.

[502] This was once again seen as the broadest search term I could use, and this was deduced from the initial search term carried out on each of the discussion forums. See, above.

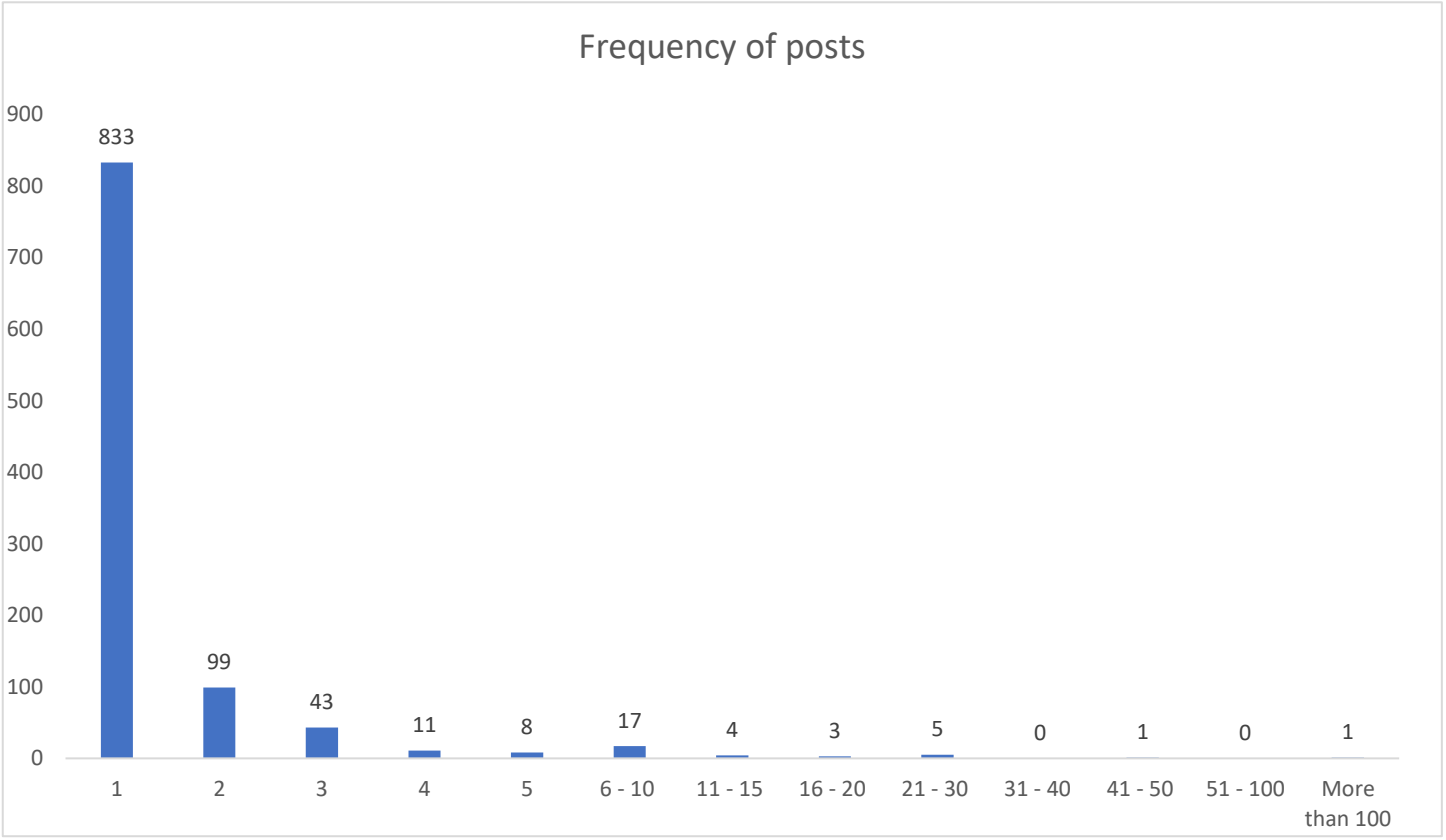


Figure 12: Frequency of posts made by the same usernames.

A grounded theory approach to coding was used and I created codes as I went through all of the text search query results individually where necessary or added data to pre-existing codes that were created along the way. This method for coding was used so as to be able to understand the current state of the landscape thereby allowing for interview schedules and/or questionnaires to be created for the second phase of research. As per Charmaz "*we grounded theorists code our emerging data as we collect it… Unlike quantitative research that requires data to fit into preconceived standardised codes, the researcher's interpretations of data shape his or her emergent codes in grounded theory*".[503]

Charmaz's approach to coding was used which allows for the formulation of new and foundational results in an underexplored area.[504] Charmaz argues that there are three stages to coding moving from narrow to broader themes thereby encapsulating those narrow initial codes.[505] Following

[503] K Charmaz, *Grounded Theory: Objectivist and Constructivist Methods. in Denzin NK, Lincoln Ys (Eds) Handbook of Qualitative Research. Second Edition. Sage Publications* (2000) 515.
[504] Kathy C Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (1 edition, SAGE Publications Ltd 2006).
[505] ibid 45–72.

Charmaz's approach to coding, my initial codes shown in Table 2 in the Appendix, were narrow meaning that they were also great in number (N=59) i.e. there were a greater number of narrow/specific codes rather than less codes which are wider/more encapsulating.

After the first round of initial coding was completed, I then created focused codes which would allow for more in-depth analysis of specific phenomena which emerged from an understanding of "*the most significant and/or frequent initial codes that made the most analytical sense*".[506] For instance, given that the most data heavy code was that of "copyright knowledge or lack thereof", I decided to create lower level codes for this in the form of "lack of knowledge" and "knowledge" and coded these with their relevant counter parts e.g. if a prosumer lacked knowledge regarding the rights clearance process, this specific data was coded under both "lack of knowledge" and "rights clearance".

Subsequently, I created theoretical codes i.e. top-level codes which would allow for the conceptualisation of general themes.[507] Table 3 in the Appendix indicates the seven top level codes (in bold) that were created.

2.2.1.3 Phase one: Ethics.

Prior to commencing with data collection, ethical approval was sought and obtained from the University of Edinburgh Law School. Separate ethics approval was sought for phase one and two of this research.

As demonstrated in Chapter 1 of this thesis, prosumers of music who disseminate their work without obtaining permission to reuse an original copyright protected work, are ultimately infringing copyright.[508] Hence, one concern was that this phase of research may bring to light, online discussion forum users who fit the aforementioned description. However, this is information that is already publicly available since, as will be discussed in greater detail below, all discussion forums used in this research are publicly available and do not require an account to search for discussions. Nevertheless, in order to ensure anonymity of research participants, the usernames of discussion forum users will not be disclosed at any point throughout the discussion below.

Other ethical considerations which arose, were due to the inherent nature of the data collected. As a result of data collected being secondary by nature, prior consent could not be obtained from research participants. Additionally, it was impossible to know with certainty whether any of the

[506] ibid 57.
[507] ibid 63.
[508] See Chapter 1, section 1.3.1.1.

participants would be regarded as “vulnerable”. i.e. under the age of 16. However, the data used is publicly available in that you do not need to have an account in order to access the online discussions. Moreover, under the terms and conditions of all three of the forums used, users are informed that they should not post any information which they themselves regard as private or confidential. Additionally, the usernames of individual prosumers who participated within this phase of this study were not used in the analysis of this research for any purposes other than determining the number of participants and will not be disclosed in the presentation of any data.

2.2.2 Phase two: Questionnaire and Email Interviews.

Phase two of this research comprised of an online questionnaire completed by prosumers of music who had uploaded specific cover songs and/or remixes to YouTube, so as to provide quantitative insights into the findings from phase one. This was followed up by email interviews for questionnaire participants who were interested in providing further qualitative insights into their experiences with, interactions with, and perceptions and understandings of copyright in their process of disseminating cover songs and/or remixes via YouTube.

An online questionnaire was chosen as a result of the global reach of phase one of this research. Initially, semi-structured interviews were going to be conducted with prosumers of music. However, prosumers who participate in the online discussion forums are from all around the globe and may thus have had different interactions with corresponding jurisdictional regulatory frameworks. Consequently, their respective knowledge of copyright law or lack thereof and their respective experiences would most likely differ e.g. someone based in the US may have interacted with exceptions to copyright or notice and takedown procedures differently versus someone who was based in the UK. Hence, although conducting semi-structured interviews could benefit this research by providing more in-depth accounts of the findings from phase one, the data collected would not be comparable with data collected in phase one. Hence, as previously mentioned, using an online questionnaire, allows for increased data validity through triangulation.

There are also other advantages to using an online questionnaire. For instance, a study which compared telephone interviews to online surveys found a greater propensity for participants to report sensitive information in the web-administered questionnaires, implying that participants may be less prone to social desirability bias when compared to interviews.[509] Furthermore, unlike interviews, there is no interviewer variability in online questionnaires.[510] The order of, and manner in which questions are asked, is fixed. Moreover, other than it being cheaper to administer, when compared to other research methods, online questionnaires are also more convenient for respondents, since it can be completed at a time that best suits a respondent and at their own pace.[511]

[509] Roger Tourangeau, Frederick G Conrad and Mick P Couper, *The Science of Web Surveys* (1 edition, Oxford University Press, Usa 2013).
[510] Bryman, *Social Research Methods* (n 470) 222.
[511] ibid.

One of the main disadvantages of questionnaires, however, is the inability to probe and collect additional data.[512] However, by following up the questionnaire with email interviews based on participants' responses to a certain extent, counteracts this.

Email interviews are similar to traditional face-to-face interviews but are often distinguished from the latter since email interviews are asynchronous. *"Asynchronous communication allows both the researcher and participants to respond at a time of their choosing rather than in "real time" and they can also respond in a setting of their choice".*[513] Hence, as aforementioned, email interviews counteract some of the disadvantages associated with online questionnaires that were outlined above. However, unlike face-to-face interviews, and like online questionnaires, e-mail interviews do not allow for direct probing. "*The lack of direct probing in e-mail interviews may result in missing some important pieces of data, especially given that not all participants respond to follow-up questions, even if they were told to expect them".*[514] Probing can only be done via follow-up emails, something which was implemented in this research. Email exchanges are, however, growing in popularity in terms of an alternative to face-to-face interviews in qualitative research.[515]

2.2.2.1 Phase two: Questionnaire data collection.

On the 25th of November 2019 I looked at Spotify's Global Weekly Charts in order to identify 3 songs to search for respective covers and remixes of on YouTube.[516] I used Spotify's global charts as it was number one in terms of traffic on Alexas's search engine.[517] I did not want to search further than one month back on the charts i.e. 24th of October, in order to increase the chances of the YouTube channels that had uploaded the cover and/or remix still being active, thereby increasing the potential response rates. Below, table 2 illustrates the respective top three songs of the Spotify charts and their corresponding number of cover songs and remixes that were uploaded to YouTube. The number of covers and remixes were searched for on YouTube all on the same day, on the 25th of

[512] ibid 223–224.
[513] 'Email Interview', in Lisa Given, *The SAGE Encyclopedia of Qualitative Research Methods* (SAGE Publications, Inc 2008) <http://methods.sagepub.com/reference/sage-encyc-qualitative-research-methods/n126.xml> accessed 8 March 2022.
[514] Lokman I Meho, 'E-Mail Interviewing in Qualitative Research: A Methodological Discussion' (2006) 57 Journal of the American Society for Information Science and Technology 1284, 1290.
[515] Alan Bryman, *Social Research Methods* (4 edition, OUP Oxford 2012) 668. Also due to the outbreak of the COVID-19 pandemic, email interviews may further grow in popularity.
[516] 'Spotify Charts' <https://www.spotifycharts.com/> accessed 8 March 2022.
[517] 'Spotifycharts.Com Competitive Analysis, Marketing Mix and Traffic - Alexa' <https://www.alexa.com/siteinfo/spotifycharts.com> accessed 8 March 2022. I could have used YouTube's global music charts to allow for continuity. However, YouTube's global music charts are based on the number of views of a YouTube video that has been categorised as music. As such a parody could be in the charts, but also music that is not in English, meaning that it would have less reach with regards to it being reused by prosumers of music. This could also potentially created language barriers for potential questionnaire participants.

November 2019. This was done in order to ensure that no new prosumer works were uploaded in between searching for covers and remixes of specific songs.

Table 2: Top 3 songs on Spotify Global Charts and the Corresponding Covers/Remixes of those songs on YouTube on the 25/11/2019.

Date	Top 3 - Spotify Global Charts Artist/Song Title	Number of Covers/Remixes on YouTube on 25/11/2019
24/10/2019	1. Tones and I/Dance Monkey	610/547
	2. Travis Scott/Highest in the Room	617/554
	3. Post Malone/Circles	655/546
31/10/2019	1. Selena Gomez/Lose you to love me	580/538
	2. Tones and I/Dance Monkey	610/547
	3. Maroon 5/Memories	649/529
07/11/2019	1. Tones and I/Dance Monkey	610/547
	2. Selena Gomez/Lose you to love me	580/538
	3. Maroon 5/Memories	649/529
14/11/2019	1. Tones and I/Dance Monkey	610/547
	2. Maroon 5/Memories	649/529
	3. Selena Gomez/Lose you to love me	580/538
21/11/2019	1. Tones and I/Dance Monkey	610/547
	2. Billie Eilish/Everything I wanted	569/466
	3. Maroon 5/Memories	649/529

I decided to choose the top three songs for the 7th of November since the same three songs had remained in the top three positions for two consecutive weeks. I then searched for corresponding cover songs and remixes of those top three songs that had been uploaded to YouTube and scraped all the relevant URLs using the data scraping software that was used in phase one of this research. I searched for the songs on YouTube by searching for the name of the artist followed by the name of the song and then cover or remix respectively e.g. Tones and I Dance Monkey Cover. The total number of URLS scraped for corresponding cover songs and remixes was 3453 (610+547+580+538+649+529).

I then manually accessed each of the URLs and went onto each of the YouTube channel pages that had uploaded the corresponding cover or remix in order to create a list of email addresses. To do so, I had to circumvent Google's reCaptcha technology, which proved to be time consuming. I began collecting email addresses in the 26th of November and finished on the 16th of December. Only some of the channels had made their email addresses available. Out of the 3453 URLs accessed 1478 emails were made available. Table 3 below, illustrates the number of email addresses that were collected and how they correspond to each of the songs and their respective prosumer works.

Table 3: The number of email addresses attached to each of the channels that had uploaded a cover and/or remix to YouTube

Artist – Song Title	Number of Emails for Cover Songs on YouTube	Number of Emails Remixes on YouTube	Totals
Tones And I – Dance Monkey	226	231	457
Selena Gomez – Lose You To Love Me	302	242	544
Maroon 5 - Memories	263	214	477
			1478

After compiling a list of all the emails in excel and removing all duplicate emails, which could be due to the uploading of two or more of the songs involved in this research, or the video collected appearing multiple times in the YouTube search results, I was left with 1193 emails who were ultimately contacted to take part in this questionnaire.

2.2.2.2 The questionnaire itself – what was tested and how were certain variables measured?

The questionnaire was developed and circulated using Qualtrics for which the University of Edinburgh's College of Arts, Humanities and Social Sciences has a license.

The first draft of the questionnaire was developed and tested on the 30th of October 2019, through a focus group made up of 4 participants. 2 of the focus group participants were musicians themselves and the other 2 have a close relationship to music. They were each asked to imagine that they upload either cover songs, remixes or both cover songs and remixes, accordingly, to YouTube. Namely, 1 was asked to imagine that they upload cover songs to YouTube, 1 was asked to imagine that they upload remixes to YouTube and the remaining 2 participants were asked to imagine that they upload both cover songs and remixes to YouTube. They were asked to complete the questionnaire and take notes of any question they found confusing or misleading. Questions from

Willis and Lessler's questionnaire appraisal form were used in order to test the questionnaire, but in the form of a focus group.[518]

The comments of the focus group were compiled and adopted, and the questions were further refined to create the final questionnaire which can be found in the Appendix.

The questionnaire was administered to 1193 email addresses, as identified above, using a set email which can be found in the Appendix. Upon clicking the questionnaire link, participants would be first presented with an information sheet and consent form, and participants could only progress if they agreed to take part. The information sheet and consent forms can also be found in the appendix. Participants were presented with a unique random ID number which they were asked to take note of and quote, in the event that they filled out the questionnaire and the subsequently wished to withdraw their responses. Participants were told that they only had 30 days from the date of submitting their responses to withdraw from the study. This is due to the fact that, thereafter their submissions may have been analysed or archived.

The first section of the questionnaire aimed to identify what type of prosumers respondents were. The first question participants were presented with asked what type of content they upload to YouTube – Cover songs, Remixes, Both, or Neither. The questionnaire would branch out depending on a participant's response to this question. Answering either cover songs or remixes meant that respondents would be presented with more targeted questions such as "when approximately did you start uploading cover songs to YouTube" and "when approximately did you start uploading remixes to YouTube" respectively. If a participant selected the "both" option in the branching question, they would be presented with both sets of questions. If a participant did not consider themselves as uploading either a cover song or remix to YouTube and selected the neither option, they were presented with two open-ended questions asking them to describe the type of content they upload to YouTube and how it differs from cover songs and/or remixes. They were then taken to the end page of the questionnaire. This was done, as opposed to having an open ended, "other, please specify" option, in order to avoid having to retrofit participants into specific categories.

Once participants selected which category they considered themselves to fall under, (cover songs, remixes, or both) they were presented with a category to further subcategorise the types of cover songs and remixes they upload to YouTube respectively, in accordance with the definitions of works of music prosumption presented in Chapter 1.[519] For instance, respondents who stated that they upload remixes to YouTube, were presented with a question asking them to describe the type of

[518] G Willis and J Lessler, 'Question Appraisal System QAS-99' (1999).
[519] See Chapter 1, section 1.1.

remixes they upload to YouTube. The following options (with descriptions) were presented and participants could choose more than one of the options: **Mashups** i.e. the mixing of two or more already existing songs together; **Sampling** i.e. the copying of sounds recordings from existing recordings (such as the vocals or drum beat) in order to create a new sound recording or musical work; None of the above. The "none of the above" option was once again used, as opposed to having an open ended, "other, please specify" option, in order to avoid having to retrofit participants into specific categories. Participants who selected the "none of the above" option were, as above, presented with two open-ended questions asking them to describe the type of covers and/or remixes, respectively that they upload to YouTube, and how these differ from the corresponding lists provided.

Once participants had selected the categories, they felt best described them, they were asked various questions regarding their uploading habits and viewership. This marked the end of section one of the questionnaire. At the end of every section, participants were presented with a "save and continue page" notifying them that this marked the end of the preceding section and that they were about to move onto the next section. They were reminded that they could save their current responses and return to them within 7 days of the date they initially started the questionnaire, or simply continue to the next section. They were also given information on how to pause and return to the questionnaire.

Section two of the questionnaire was aimed at testing how prosumers interact with the rights clearance process and YouTube's copyright policies, namely its content ID claims and copyright strikes. I used extracts from YouTube's terms of service in order to define the terms being tested. Figure 13 below provides an example of how questions were presented.

YouTube's Terms of Service states that:

"If you upload a video that contains copyright-protected material, you could end up with a Content ID claim. Companies that own music, movies, TV shows, video games or other copyright-protected material issue these claims. Content owners can set to block material from YouTube when a claim is made. They can also allow the video to remain live on YouTube with ads. In those cases, the advertising revenue goes to the copyright owners of the claimed content."

Have you ever received a Content ID claim?

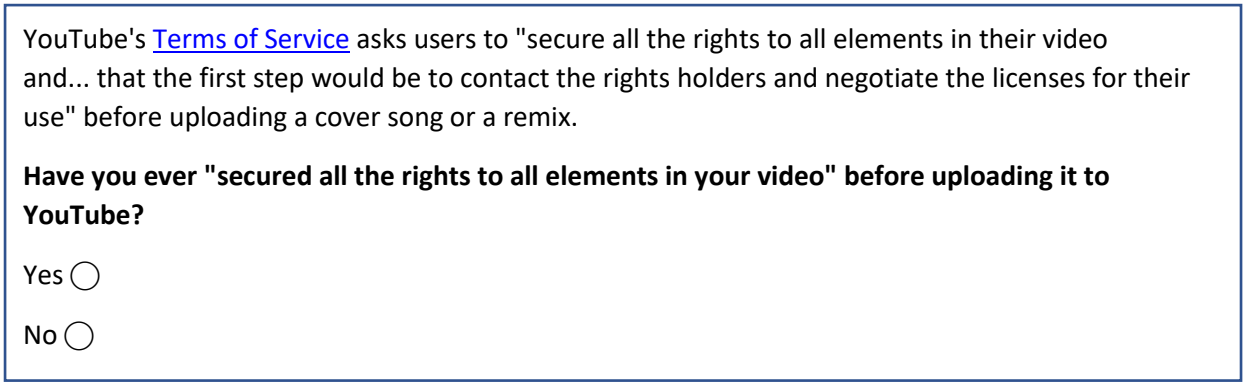
Yes ◯

No ◯

Figure 13: Illustration of how questions in the questionnaire were presented.

The same format was used for the rest of the questions of this section asking whether a respondent has received a copyright strike or has ever attempted to go through the rights clearance process. Hyperlinks were used to direct respondents to YouTube's terms of service where the relevant extracts were taken from. Users were redirected to YouTube's terms of service, in a new tab to increase the likelihood of them continuing with the questionnaire. Provided a respondent stated that they did receive either a Content ID claim or copyright strike, they were asked how many they received. Subsequently, they were asked to describe how they reacted upon receiving a content ID claim or copyright strike. They were presented with the following options to choose from, stating the frequency of those reactions (Rarely, Sometimes, Most of the times, Always): I removed the video, I filed a counter claim/dispute, I asked for advice from a legal professional, I asked a question on an online discussion forum, I did nothing, Other, please specify. The frequency of those reactions (Rarely, Sometimes, Most of the times, Always) was accompanied with number ranges depending on respondents' previous response, to ease understanding and allow for continuity. For instance, if a prosumer stated that they received 6-10 Content ID claims, their frequency options were as follows: Rarely (e.g. 1-3 times), Sometimes (e.g. 4-6 times), Most of the times (e.g. 7-9 times), Always (e.g. 10 times). If a respondent stated that they had not received either a Content ID claim or copyright strike they were asked, in an open-ended, question to describe why they thought they had not received one.

The question testing whether prosumers have ever attempted to go through the rights clearance process was once again in the same format as above (Figure 14).


YouTube's Terms of Service asks users to "secure all the rights to all elements in their video and... that the first step would be to contact the rights holders and negotiate the licenses for their use" before uploading a cover song or a remix.

Have you ever "secured all the rights to all elements in your video" before uploading it to YouTube?

Yes ◯

No ◯

Figure 14: Illustration of how questions in the questionnaire were presented.

Upon selecting their response, this time, instead of testing frequency, participants were asked to select from a list of options, developed from existing research and the results from phase one, why they either did or did not seek to "secure all he rights to all elements in their video" respectively. This marked the end of section two of the questionnaire.

Section three examined music prosumers' interactions with non-legal determinants of behaviour. As discussed in Chapter 1,[520] the choices prosumers make whilst uploading their works may be guided by social norms. Alternatively, commonalities in prosumers' behaviours at the point at which they are uploading their works to YouTube, may be the result of mimicry.[521] Hence, this section of the questionnaire tested for the existence of norms and mimicking behaviours in the context of the choices prosumers of music must make whilst uploading their works to YouTube.

The study of social norms is cumulative in that it builds on research from various disciplines such as economics, psychology and law. Each of these disciplines has their own terminologies and methods of research, however they all agree on certain aspects of how to research norms. For instance, they all agree that to test for the existence of social norms one must first identify the relevant reference group and a party's understanding of the reference group's beliefs regarding a specific behaviour.[522]

At early stages of researching social norms, "*scholars employed the tools of rational choice theory to yield many useful explanations for how social norms influence behaviour*".[523] This method of research is useful for small, close-knit groups who interact repeatedly.[524] For instance, rational choice theory has been employed in order to examine social norms in the realm of fanfiction.[525]

Another theoretical framework which has been used in examining social norms, is Ajzen's "Theory of Planned Behaviour" (TPB),[526] which is derived from Ajzen and Fishbein's "Theory of Reasoned Action".[527] The TPB describes "*the main determinants that drive the decision of an individual to engage in a certain behaviour*".[528] As illustrated in Figure 15, there are three determinants towards the existence of a behaviour. "*Attitudes are a function of an individuals' behavioural beliefs about the outcomes of an action and about their evaluation of those various outcomes. "Subjective norms" are a function of normative beliefs, that is, how much one believes others want one to perform the*

[520] See Chapter 1, section 1.3.2.2.2.
[521] Ibid.
[522] Gerry Mackie and others, *What Are Social Norms? How Are They Measured?* (2015) 8.
[523] Schultz (n 275) 9.
[524] ibid. The leading work in this regard is Eric POSNER, Law and Social Norms, 342 (2000). Posner postulates that norm compliance signals that one is a "good type" with a "low discount rate," thereby, indicating that he/she who complies with norms is a reliable and desirable person with whom to cooperate and transact. See id. at 19-27. However, for such signalling to function properly, people need to know or be aware of others amongst their reference group. Such conditions are most likely to exist amongst small close-knit groups.
[525] Steven Hetcher, 'Using Social Norms to Regulate Fan Fiction and Remix Culture' (2009) 157 University of Pennsylvania Law Review 1869.Casey Fiesler, 'Everything I Need to Know I Learned from Fandom: How Existing Social Norms Can Help Shape the Next Generation of User-Generated Content' (2007) 10 Vanderbilt Journal of Entertainment and Technology Law 729.
[526] Icek Ajzen, 'The Theory of Planned Behavior' (1991) 50 Organizational Behavior and Human Decision Processes 179.
[527] Icek. Ajzen, *Understanding Attitudes and Predicting Social Behavior* (Paperback edition., Prentice-Hall 1980).
[528] Mackie and others (n 533) 63.

action (injunctive norm) and how much one believes others do the action (descriptive norm). Perceived behavioural control in turn is the result of control beliefs".[529]

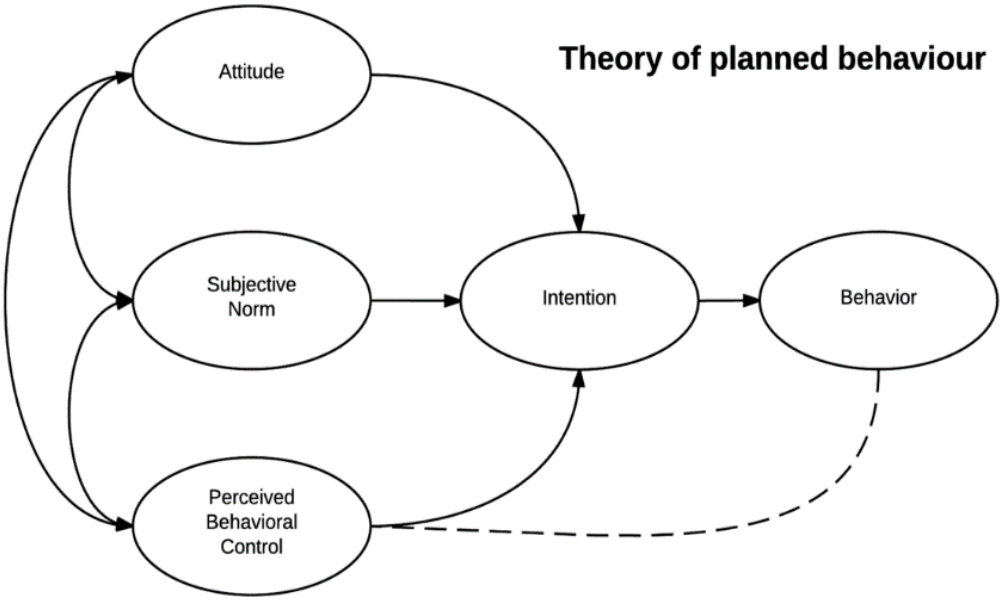


Figure 15: Illustration of the TPB.

The aim of this model is to be able to predict behaviours through measurements of behaviour's determinants. Nevertheless, it has been criticised for failing to provide a holistic understanding regarding the formation of behaviours and due to the fact that it does not have a uniform understanding of what subjective norms and attitudes should include.[530] Also, given the fact that its aim is not to provide a guide to measuring social norms, but rather a model for determining behaviours the TPB is not a good fit for this research.

An alternative to the TPB model, is the Norm Activation Model (NAM) developed by Schwartz.[531] Nevertheless, this model overlooks social influences on people's behaviours,[532] and given the fact that this research aims to identify whether social norms exist amongst prosumers of music,

[529] ibid 64.
[530] Trisha TC Lin, Jung Younbo and Clarice Sim, 'Towards an Understanding of Intention to Use Mobile Videos: Impression Management, Perceived Facilitation, and Social Norms' (2015) 3 Mobile Media & Communication 106, 108.
[531] Shalom H Schwartz, 'Normative Influences on Altruism' in Leonard Berkowitz (ed), *Advances in Experimental Social Psychology*, vol 10 (Academic Press 1977) <http://www.sciencedirect.com/science/article/pii/S0065260108603585> accessed 8 March 2022.
[532] Wei Han and others, 'Evaluating User-Generated Content in Social Media: An Effective Approach to Encourage Greater pro-Environmental Behavior in Tourism?' (2017) 0 Journal of Sustainable Tourism 1, 2.

governing the decisions they make whilst uploading works to YouTube it would once again not be suitable.

Instead, this research adopted Bicchieri's method for measuring norms.[533] As aforementioned, the study of social norms is multidisciplinary with each discipline having its own terminologies and methods for measuring norms. It is argued that Bicchieri's method for measuring norms successfully amalgamates various studies' approaches. For instance, in Chapter 1,[534] it was shown that there are two different types of social norms, injunctive and descriptive norms.[535] Biccheri's method differentiates between the two.[536] Moreover, existing research supports the notion that for a social norm to be categorised as a social norm, it must be a commonly exhibited behaviour enforced through the imposition of social sanctions.[537] Bicchieri states that when examining the existence of social norms that one "*could ask the actors whether they are willing to directly punish certain actions or denounce them, and how many other respondents they believe would be willing to punish or denounce"*.[538] Hence, as will be elucidated in more detail in Chapter 5,[539] section three of the questionnaire used Bicchieri's method for measuring norms.

Section four of the questionnaire tested prosumers' knowledge of copyright and YouTube's copyright enforcement mechanism. Prosumers were first asked to rate the copyright knowledge they believe they possess using a slider, 0 being no copyright knowledge and 100 being an expert in the field. As will be discussed in more detail in Chapter 3,[540] respondents' copyright knowledge was then tested using the UK Intellectual Property Office's question for testing copyright knowledge as a template.[541] This was repeated in order to test for prosumer's perceived and actual knowledge of the regulatory processes prosumers of music encounter throughout their dissemination journey. As will be seen in the subsequent section of this chapter, questionnaire respondents varied in geographical location. To deal with this geographical spread of participants, which may have resulted in a spread in knowledge based on the applicable jurisdiction, questions asked were not

[533] Cristina Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms* (Oxford University Press 2017).
[534] See Chapter 1, section 1.3.2.2.2.
[535] Schultz (n 275) 11. See Robert B. Cialdini *et.al.*, A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior, 24 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 201 (1991).
[536] Bicchieri (n 544) 69–70.
[537] Eric A Posner, *Law and Social Norms* (Harvard University Press 2009); Jonathan Bendor and Piotr Swistak, 'The Evolution of Norms' (2001) 106 American Journal of Sociology 1493.
[538] Bicchieri (n 544) 97.
[539] See Chapter 5, sections 5.2.1.1 and 5.2.2.1.
[540] See Chapter 3. Section 3.1.
[541] 'IP Awareness Survey 2015 Results - GOV.UK' <https://www.gov.uk/government/publications/ip-awareness-survey-2015-results> accessed 8 March 2022.

exclusive to one jurisdiction. For instance, participants were asked questions which relate to YouTube's operationalisation of copyright frameworks to ensure that their encounters would be the same irrespective of geographical location.[542] This will be discussed in more detail in Chapter 3.[543]

The final section of the questionnaire asked demographic questions such as gender, age and place where the majority of respondents' cover songs and/or remixes are uploaded to YouTube from. The final two questions asked respondents to indicate, using their email address, whether they would like to receive a summary of the questionnaire's results and take part in the email interviews respectively.

2.2.2.3 Phase Two: Questionnaire demographics and response rates.

The questionnaire was sent to 1193 prosumers via email. Upon sending the emails, 3 of them failed to send, and 29 bounced. This means that a total of 1161 potential prosumers made up the population sample (1193 – (3+29)). From those, a total of 238 prosumers started the questionnaire. What this means is that they clicked on the link that was sent them via email. The emails sent to participants, including all the reminder emails can be found in the Appendix. Upon clicking the link sent in the initial email, participants were presented with an information sheet, which can also be found in the Appendix. 128 responses were recorded. What this means, is that 128 participants continued beyond the information sheet. 12 participants dropped out after being presented with the terms and conditions of the questionnaire which was the question appearing after the information sheet. A further 6 dropped out after being asked to take note of their unique random ID number mentioned above. Hence, the total number of prosumers that reached the first question asking them what type of content they upload to YouTube was 109. Only open-ended questions were skippable so as to increase the likelihood of having more completed questionnaires, and therefore a more accurate portrayal of respondents' views. The total number of respondents that reached the end of the questionnaire were 90.

There are several ways of calculating a response rate. However, *"the response rate, in its most basic form, refers to the proportion of people eligible for a study who actually enrol and participate".*[544] As such, adopting this definition of a response rate translates to this questionnaire having a response rate of 7.75%.

[542] See Chapter 3, section 3.1.1.
[543] Ibid.
[544] 'Response Rate', in Sarah Boslaugh, *Encyclopedia of Epidemiology* (SAGE Publications, Inc 2008) <http://methods.sagepub.com/reference/encyc-of-epidemiology/n400.xml> accessed 8 March 2022.

$$\frac{90 \times 100}{1161} = 7.75\%$$

Comparing this to average response rates which were found in metanalyses (34% for web surveys) might at first glance indicate that this response rate is quite low.[545] However, "*although the concept is simple, the computation of response rates can be complex, and the use of multiple formulas diminishes the ability to compare studies by degree of nonresponse".*[546] This is also true with regards to response rates in sociolegal research in the field of copyright law. For instance, in Di Cola's "Money from Music" survey, response rates were calculated based on the number of musicians signed up to the organisations which were studied.[547] Others focus on the number of responses rather than on the response rates.[548] Others focus on "completion rates" i.e. of those who started a questionnaire, how many completed it.[549] The few who do calculate response rates using the definition provided above, indicate response rates of 4-7% and regard these as sufficient.[550]

Figure 17 below shows the number of participants that started and completed the questionnaire and for which days.

As recommended by Dillman *et.al.*, in order to increase response rates, four reminder emails were be sent out to respondents periodically.[551] Reminders were sent out on the 28/02/2020, 4/03/2020, 16/03/2020, and finally on 20/03/2020. Each of these emails can be found in the Appendix. As can be seen in Figure 16 below, there were spikes both with regards to starting the questionnaire but also completing the questionnaire on each of the dates a reminder was sent.

[545] Tse-Hua Shih and Xitao Fan, 'Comparing Response Rates from Web and Mail Surveys: A Meta-Analysis' (2008) 20 Field Methods 249.
[546] '*Encyclopedia of Epidemiology*' (n 493).
[547] Peter C DiCola, 'Money from Music: Survey Evidence on Musicians' Revenue and Lessons About Copyright Incentives' (2013) 55 Arizona Law Review 301, 17.
[548] Dominik Papies and Michel Clement, 'Adoption of New Movie Distribution Services on the Internet' (2008) 21 Journal of Media Economics 131, 143.
[549] Theodore Giletti, 'Why Pay If It's Free? Streaming, Downloading, and Digital Music Consumption in the "ITunes Era"' (2012) 18.
[550] Martin Kretschmer and Philip Hardwick, 'Authors' Earnings from Copyright and Non-Copyright Sources: A Survey of 25,000 British and German Writers' (Bournemouth University, UK; Centre for Intellectual Property Policy & Management (CIPPM) 2007) ID 2619649 74.
[551] Michelle L Edwards, Don A Dillman and Jolene D Smyth, 'An Experimental Test of the Effects of Survey Sponsorship on Internet and Mail Survey Response' (2014) 78 Public Opinion Quarterly 734.

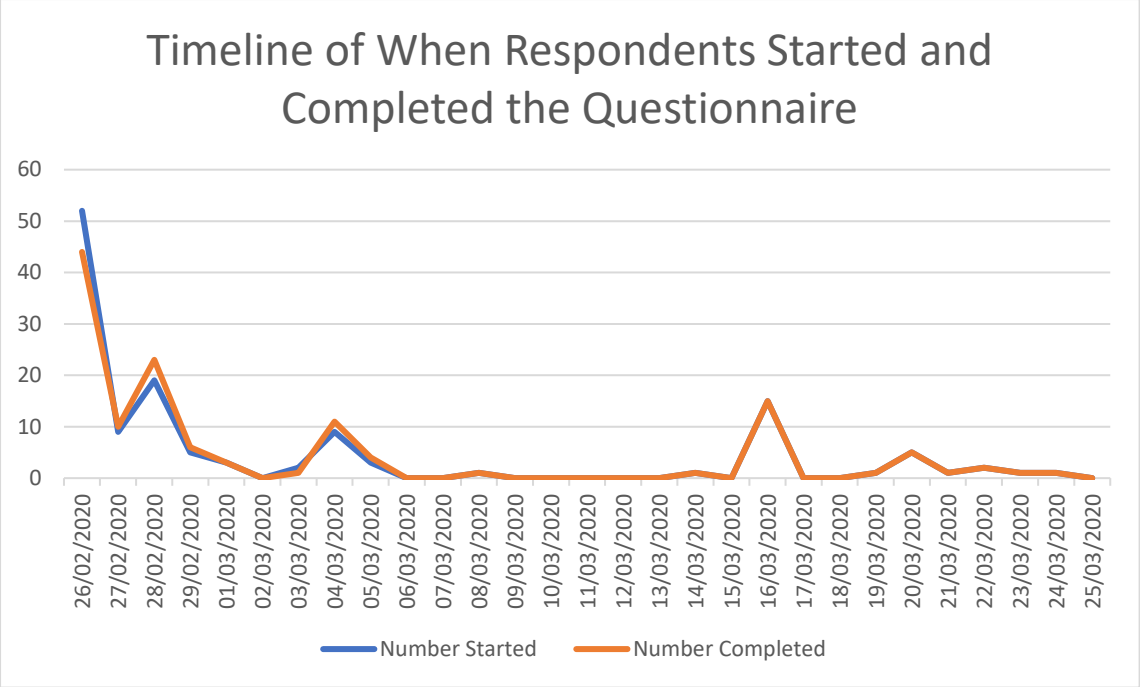


Figure 16: Line chart showing the number of participants that started and competed the questionnaire and on which dates.

Survey demographics serve two major purposes. They first "*allow the researcher to obtain a clear picture of who participated in the study"* and second, they can allow the researcher to make sure the sample is "representative".[552]

Given the lack of existing research on prosumers of music, there are no existing demographics to compare my results to, thereby assessing "representativeness". There are some demographic statistics available for YouTube users in general, but none, specific to prosumers of music who disseminate their work on YouTube. Nonetheless, demographic statistics in this research still play a vital role, especially geographical locations, which will be discussed in greater detail below.

68.92% of respondents identified themselves as males, 29.73% as females and 1.35% preferred not to say (Table 4).

Table 4: Gender demographics.

Gender	**Frequency**	**Percent**
Male	51	68.92%
Female	22	29.73%
Prefer not to say	1	1.35%
Totals	74	100%

[552] 'Survey: Demographic Questions', in Mike Allen, *The SAGE Encyclopedia of Communication Research Methods* (SAGE Publications, Inc 2017).

48.65% of participants fell within the age group of 18-24, and 93.24% of participants were between the ages of 16-34 (Table 5).

Table 5: Age demographics.

Age	Frequency	Percent
16 - 18	13	17.56
18 - 24	36	48.65
25 - 34	20	27.03
35 - 44	3	4.05
45 - 54	1	1.35
55 - 64	1	1.35
Total	74	100%

Participants were asked where, geographically, they upload most of their works from. Participants ranged from several countries, namely 33 countries. 31.06% respondents from EU, 9.46% from the UK and 18.92% from the US. 98.6% of respondents are from countries which are signatories of TRIPS. Also, 98.6% of respondents are from countries which are signatories to the Berne Convention.

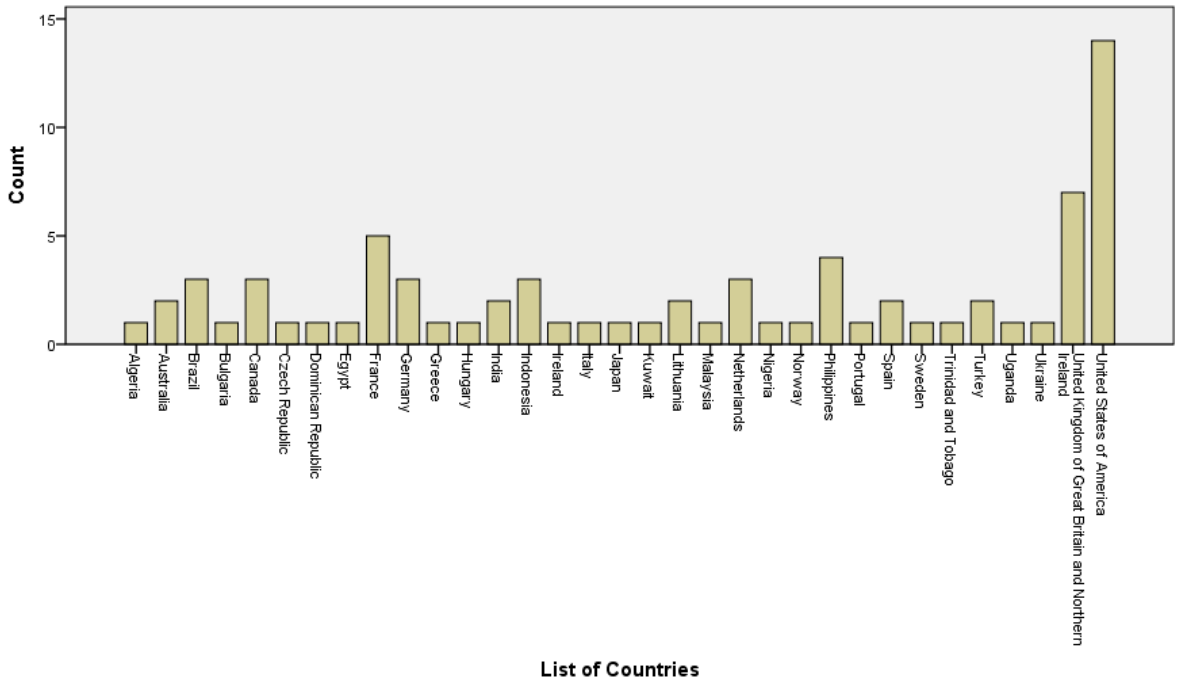


Figure 17: Bar chart of respondents reported geographical locations.

The heatmap below, provides an illustration of just how diverse respondents were in terms of geographical locations where they upload the majority of their works from (Figure 18).

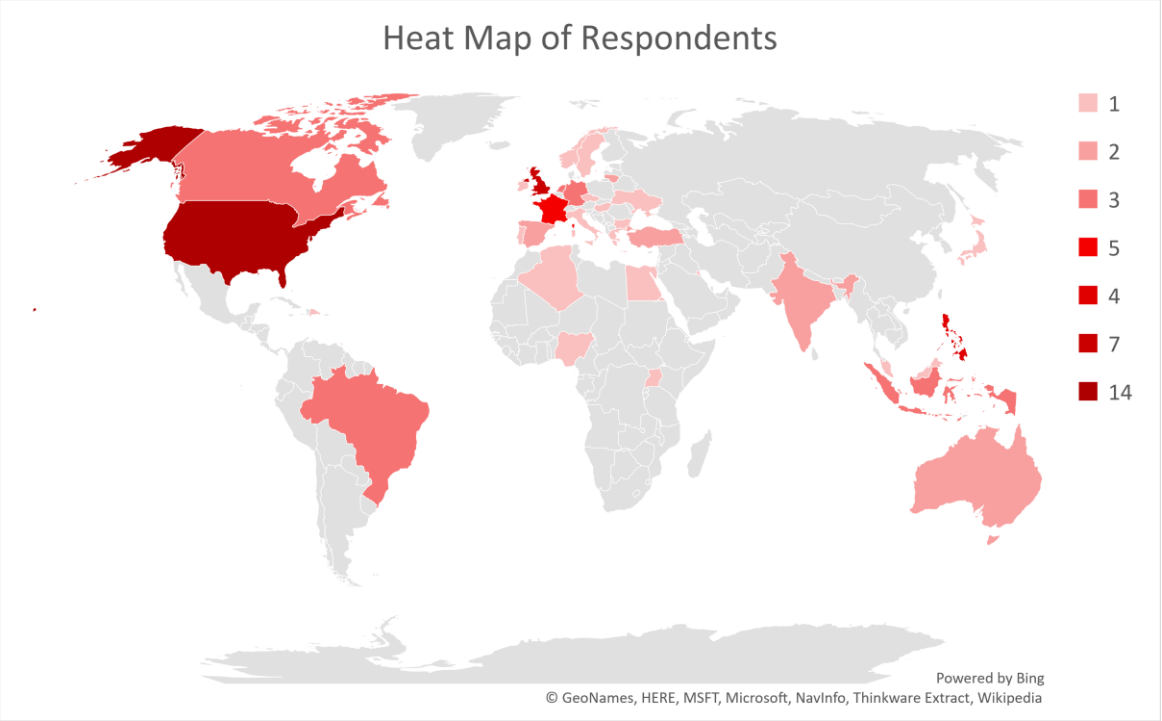


Figure 18: Heatmap illustrating respondents reported geographical locations.

Most respondents began uploading works of music prosumption to YouTube quite recently (Tables 6 and 7).

Table 6: Demographics regarding when approximately those who upload cover songs to YouTube began uploading cover songs.

Year began uploading cover songs	Frequency	Percent
2008	1	1.54%
2009	3	4.62%
2011	1	1.54%
2012	3	4.62%
2013	3	4.62%
2014	5	7.69%
2015	6	9.23%
2016	6	9.23%
2017	6	9.23%
2018	12	18.46%
2019	19	29.23%
Total	65	100.00%

Table 7: Demographics regarding when approximately those who upload remixes to YouTube began uploading remixes.

Year began uploading remixes	Frequency	Percent
2010	1	2.70%
2013	3	8.11%
2014	1	2.70%
2015	1	2.70%
2016	5	13.51%
2017	7	18.92%
2018	11	29.73%
2019	8	21.62%
Total	37	100.00%

Additionally, most respondents, albeit with a few exceptions reported attracting low view numbers (Tables 8 and 9). However, this study's respondents also included what Jean Burgess and Joshua Green refer to as "A-list YouTubers".[553] According to Tubular, a "*world-leader in social video analytics and sponsored video intelligence*", in 2015 music, as a category on YouTube, seemed to be the most popular category in terms of viewership on YouTube.[554] However, this metric includes, official music releases and it is expected that works of music prosumption, subject to a few exceptions, will typically receive fewer views.

Table 8: Demographics regarding how many views respondents' cover songs attract.

Cover song views	Frequency	Percent
Less than 300	22	34.92
301-1000	9	14.29
1001-5000	9	14.29
5001-10,000	5	7.94
10,001-50,000	8	12.70
50,001-100,000	4	6.35
More than 100,000	6	9.52
Total	63	100.00

[553] Burgess and Green (n 67) 89, 93.
[554] 'How Many Views Does a YouTube Video Get on Average?' (*Tubular Labs*, 2 February 2015) <https://tubularlabs.com/blog/average-youtube-views/> accessed 8 March 2022.

Table 9: Demographics regarding how many views respondents' remixes attract.

Remix views	Frequency	Percent
Less than 300	4	11.76
301-1000	12	35.29
1001-5000	4	11.76
5001-10,000	2	5.88
10,001-50,000	6	17.65
50,001-100,000	2	5.88
More than 100,000	4	11.76
Total	34	100.00

2.2.2.4 Phase Two: Email interview data collection.

As aforementioned, the questionnaire administered as part of phase two of this research was complemented by follow-up email interviews. The final question of the questionnaire asked participants to submit their email address if they would like to provide further insights into their experiences with disseminating their works on YouTube via an email interview. They were informed of the fact that email interviews would consist of them answering a few questions via email in their own time and at a time that suits them best.

Prior to the interview taking place, prosumers were presented with an information sheet similar to the information sheet they had been presented with before the questionnaire, but this time outlining information specifically relevant to the email interviews. Furthermore, participants were asked to sign and return a consent form in order to take part. The information sheet and consent form can be found in the Appendix.

Moreover, in order to allow for an exchange of back-and-forth emails and the ability to potentially probe participants on specific aspects of their responses, thereby, to a certain extent, replicating a face-to-face interview, participants were asked to earmark a specific date where the interview via email could take place. Most participants, namely 5 out of 7 did so. The remaining 2 preferred that I send out a list of questions which they could answer in their own time. Nonetheless, I was still able to probe participants on their responses albeit asynchronously.

The email interviews asked questions on the themes of users' experiences with YouTube's Content ID claims, Copyright Strikes, the rights clearance process, and their experience with crediting the

original authors of the works they reuse. Nonetheless, the interviews albeit in electronic format, were semi-structured. An interview schedule which acted as the scaffolding for the interviews can be found in the Appendix.

Semi-structured interviews have a certain degree of flexibility which other forms of interviewing cannot meet. For instance, structured interviews often tend to pigeonhole responses imitating a questionnaire survey,[555] which had already been carried out. Furthermore, unstructured interviewing tends to be similar to conversations and thus runs the risk of going off on a tangent.[556] Hence, where a respondent nodded towards another issue, such as the monetisation of their content, they were asked more information about that. Also, where a respondent showed signs of feeling uncomfortable with the questions being asked, the topic was changed.

A total of 26 participants submitted their emails indicating that they were interested in taking part in this stage of this phase of research. Of those 26, a total of 7 prosumers, submitted signed consent forms and ultimately took part in the email interviews.

2.2.2.5 Make-up of interview participants.

Of the 7 participants who took part in the email interviews, 4 categorised themselves as uploading remixes, 2 as uploading cover songs, and 1 as uploading both cover songs and remixes. 2 of the participants reported uploading their works from European countries, 3 from North America and 2 from Asia. Furthermore, in terms of volume of traffic respondents' works attracted, respondents ranged from prosumers whose works received "low" traction and what Jean Burgess and Joshua Green refer to as "A-list YouTubers".[557] Furthermore, in terms of the volume of works participants uploaded to YouTube, they ranged from 3 to more than 100. Table 10 below, provides a detailed breakdown of the make-up of email interview participants.

[555] Bryman, *Social Research Methods* (n 470) 467.
[556] ibid 468.
[557] Burgess and Green (n 67) 89, 93.

Table 10: Make-up of interviewees.

Countries	Type of content	How many uploads	Popularity
Spain	Remixing (Sampling)	3	>100,000
India	Remixing (Sampling)	36	301-1000
Indonesia	Both (Instrumental Covers (instrument on its own) & Sampling)	3	301-1000
Canada	Instrumental Covers (instrument on its own & over the sound recording)	83	<300
Hungary	Instrumental Covers (instrument on its own & over the sound recording)	>100	>100,000
United States	Remixing (Sampling)	92	<300
United States	Remixing (Mashups & Sampling)	>100	5001-10,000

2.2.2.6 Phase two analysis.

Questionnaire results were analysed descriptively. For open ended questions and email interviews, as was done for phase one of this research, a grounded theory approach to coding was utilised and codes were created as I went through all the transcripts of participant responses or added data to pre-existing codes that were created along the way. Moreover, Charmaz's approach to coding, was once again used, which allows for the formulation of new and foundational results in an underexplored area.[558] A total of 9 top level codes each of which contained numerous sublevel codes were created, for the analysis of the email interviews. The codes created are indicated in table 5 in the Appendix.

2.2.2.7 Phase two: Ethics.

Separate ethics approval was sought for phase one and two of this research. Hence, prior to commencing with phase two of data collection, ethical approval was sought and obtained from the University of Edinburgh Law School, as per the School's research ethics policy.

As demonstrated in the Chapter 1 of this thesis, the unauthorised dissemination of cover songs and remixes will typically amount to copyright infringement.[559] Hence, similar to phase one, one concern was that this phase of research may also bring to light prosumers of music whose works may ultimately amount to copyright infringement. However, this is information that is already publicly available since, the works from which the emails were collected, the respective YouTube usernames,

[558] Charmaz (n 515).
[559] See Chapter 1, section 1.3.1.1.

are publicly available on YouTube. Furthermore, bearing in mind the analysis of YouTube's digital fingerprinting mechanism provided in the literature review chapter, it is highly likely that the alleged infringement will have already been brought to the attention of the relevant rightsholders.

Nonetheless, in order to ensure the anonymity of research participants, the YouTube usernames of individual prosumers were not used for any purposes other than contacting potential questionnaire and subsequently emailing interview participants. Consequently, usernames are untraceable by anyone other than the researcher. Furthermore, individual prosumer YouTube usernames are not used in the presentation of data. Moreover, email conversations are completely anonymised, and the email addresses of interviewees are untraceable by anyone other than the researcher.

Another ethical consideration was age. As per the University of Edinburgh's ethical approval process, alternative ethical considerations such as obtaining parental consent would be required if participants were below the age of 16. Furthermore, YouTube's terms of service states that if someone is under the age of 18, then they must always have their parent's or guardian's permission before using the Service. Thus, there may have been users who were under the age of 16 participating in this research. As such, a clause was included in the questionnaire consent forms stating that respondents must be 16 years of age or older in order to take part in this study thereby alleviating any concerns that could have arisen.

2.3 Limitations.

Although as explained above, the methods employed aim to as far as possible reduce limitations, this research is subject to certain limitations which this section aims to critically discuss.

To begin with, the sample size of phase two although within an acceptable response rate, is small. This means that although this research's findings can provide a useful starting point for future research, generalisations cannot be made. One way in which the sample size could have been increased, which may prove useful for future research, would have been through the adoption of snowball sampling, allowing for any user with a YouTube account to take part in this study, filtering those who would not fall under the category of prosumers of music using an opening question. Nonetheless, this approach would have not allowed for the calculation of a reliable response rate.

Another limitation of this study is the lack of a rightsholders' perspective. In the initial stages of this PhD research's design, it was expected that holistic insights into the realm of music prosumption would be provided. This included insights into rightsholders' understanding of, and interactions with copyright within the context of works of music prosumption. This would have allowed for more explanation building. For instance, one resulting limitation of this research which stems from a lack of a rightsholder's perspective, is the fact that it did not distinguish between the types of Content I.D. claims that prosumers of music received. This research distinguishes between Content I.D. claims and copyright strikes, but not between the types of Content I.D. claims made. As discussed, YouTube presents rightsholders with a multitude of ways to enforce their rights and a rightsholder's perspective would have allowed for granular data on the types of enforcement strategies and the motivations behind such strategies. However, due to time constraints this was not possible. This is something which could potentially be explored in future research.

2.4 Conclusion.

This sociolegal research comprised of two phases of empirical research in order to understand and provide insights into music prosumers' understanding, perceptions, experiences and interaction with copyright and related enforcement regimes in their pursuit of disseminating works of music prosumption online. It employed mixed methods to do so. However, *"one needs to have a notion of qualitative distinctions between social categories before one can measure how many people belong to one or the other category".*[560] Consequently, qualitative methods, namely a web ethnography was used as a first method, chronologically, in order to shed light on an under-researched area.

Phase one brought to light a number of issues relating to prosumers' copyright knowledge or lack thereof and their experiences with copyright law and related enforcement regimes, their interactions with YouTube's enforcement regimes, and the potential existence of social norms in the form of attribution and non-commercialisation norms. These results were further explored in phase two of this research which comprised of an online questionnaire followed by email interviews with questionnaire respondents that had indicated they would like to take part.

[560] 'Quality, Quantity and Knowledge Interests: Avoiding Confusions' (n 490) 8.

PART TWO.

Chapter 3 – Music Prosumers' Legal Consciousness.

As outlined in Chapter 1,[561] throughout their dissemination process – before, whilst, and after uploading – prosumers of music encounter copyright and related enforcement regimes. Hence, like most online users, prosumers of music, are forced to make subtle judgements regarding copyright law. [562] Such decisions may ultimately be guided and/or framed by one's legal knowledge.

In Chapter 1, it was demonstrated that having an understanding of how "law's subordinates", in this case prosumers of music, perceive and understand the regulatory frameworks they encounter, is valuable in terms of providing a holistic understanding of law and its role in the context of hegemony within everyday life and can serve a multitude of purposes for instance, by determining compliance or a lack thereof.[563]

Consequently, as demonstrated in Chapter 1, prosumers' knowledge and understanding of copyright and related enforcement regimes may arguably influence how they experience and interact with such processes.[564] As also outlined in Chapter 1, existing research has examined other subsets of prosumers and there seem to be commonalities in legal consciousness in the context of copyright law across different communities where appropriation is common.[565] However, to date, music prosumer's legal consciousness remains unknown. Hence, this research asks:

What are music prosumers' understandings and perceptions of the aspects of copyright law they are likely to encounter throughout their dissemination process?

Music prosumers' knowledge and understanding of the legal processes mandated by copyright and related enforcement regimes they encounter throughout their dissemination processes, are presented in subsequent chapters, which present music prosumers' knowledge, understanding, experiences and interactions with the processes they encounter at different stages of their dissemination process, respectively. This chapter, using data from both phases of this research's empirical enquiry, answers the question presented above, by first presenting music prosumers' knowledge and understanding of copyright law, generally, before presenting music prosumers knowledge and understanding of two specific areas of copyright law, which as discussed in Chapter

[561] See Chapter 1, section 1.3.
[562] Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 272).
[563] See Chapter 1, section 1.3.4.1.
[564] See Chapter 1, section 1.3.4.
[565] See Chapter 1, section 1.3.4.2.

1, are prominent in a music prosumer's dissemination journey – copyright infringement and the applicability of exceptions.[566] Section 1 of this chapter shows that the extent of knowledge prosumers of music have varies from prosumer to prosumer. However, prosumers of music seem to lack knowledge of what amounts to copyright infringement and what could fall under a copyright exception.

Furthermore, existing research suggests that certain communities often turn to each other for gaining and imparting legal knowledge and that this may often be the source of misinformation amongst those communities.[567] Hence, this research also sought to examine the source of music prosumers' copyright knowledge and results are presented in the final section of this chapter. Most prosumers of music seem to obtain their copyright knowledge from lived experiences on YouTube.

[566] See Chapter 1, sections 1.3.1.1 and 1.3.1.2.
[567] Fiesler, Feuston and Bruckman (n 440); Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 440); Fiesler, Feuston and S. Bruckman (n 243).

3.1 Music prosumers' knowledge and understanding of copyright law.

This section, using data from both phases of empirical research, presents music prosumers' knowledge and understanding of copyright law. It consists of three subsections and begins by presenting music prosumers' general knowledge and understanding of copyright law. This section then presents music prosumers' level of understanding of two specific areas of copyright law, which as discussed in Chapter 1, are prominent in a music prosumer's dissemination journey – copyright infringement and the applicability of exceptions respectively.[568]

Music prosumers' knowledge and understanding of processes mandated by copyright and related enforcement regimes, such as rights clearance processes and notice and takedown regimes, are presented in subsequent chapters, which reveal how prosumers of music understand and experience copyright and related enforcement regimes before and after they have uploaded their works to YouTube, respectively.

This section demonstrates that copyright knowledge varies amongst prosumers of music. Nevertheless, prosumers of music, who took part in this research, seem to lack knowledge of what amounts to copyright infringement and what could fall under a copyright exception.

[568] See Chapter 1, sections 1.3.1.1 and 1.3.1.2.

3.1.1 Music prosumers general knowledge and understanding of copyright law.

There was an overarching theme, which emerged in phase one of this research which qualitatively assessed, themes of knowledge, and misunderstandings or incomplete knowledge of copyright law, apparent on discussion forums used by prosumers of music. The theme which emerged is that users of such platforms, seem to lack a general understanding of what copyright is, resulting in forum posters not knowing where to begin and asking questions such as:

"*How do I legally produce cover songs?*", "s*o I just wanted to know if there are any legal issues to uploading song covers*" and "*can I get sued for making a remix to a song on Youtube?*".

Such posts indicate a lack of general knowledge and understanding regarding the legalities surrounding the dissemination of cover songs and remixes. This coincides with what Fiesler *et.al.* found in the context of online communities where appropriation is common.[569] Fiesler *et.al.* found that "*frequently the posters do not understand why they were sanctioned, either because of confusion about copyright law or confusion about site policies*".[570] They also found that users often cite platform policies as representing the law.[571] As will emerge from the discussion below, this was also evident amongst prosumers of music.

A general lack of copyright knowledge amongst forum posters is also indicated by Table 3 in the Appendix, where all codes created in phase one are presented and shows that the lack of knowledge code outweighs the copyright knowledge code (428 and 312 references respectively). Nevertheless, in Chapter 1 it was shown that existing research indicated that copyright knowledge may vary from prosumer to prosumer.[572] Similarly, this may also ring true for prosumers of music, with certain forum posters exhibiting evidence of copyright knowledge with posts such as:

"Uploading a cover song video without permission or a license is copyright infringement. Luckily, MOST owners of song composition copyrights are willing to allow cover versions of their songs on YouTube.".

However, when looking at the usernames pertaining to those who made posts, it is evident that forum users considered as having knowledge of copyright law are frequent posters i.e. some forum users repeatedly came back to post on discussion forums. For instance, for the copyright knowledge code (312 references) a single user accounted for more than 25% of all references i.e. 81 references,

[569] Fiesler, Feuston and S. Bruckman (n 243) 121.
[570] ibid.
[571] ibid.
[572] See Chapter 1, section 1.3.4.2.

and 4 users accounted for almost 50% of all references i.e. 152 references. Whereas, for the lack of knowledge code, users are not returning to post as frequently. Only one user came back to post 6 times meaning that they only accounted for less than 1.5% of all references. These numbers could, however, be higher if users return to the platforms using different usernames.

One inherent limitation of phase one of this research, is the inability to know for certain whether forum posters would be categorised as "prosumers of music". For instance, those 4 users accounting for almost 50% of references to knowledge of copyright law would not be classed as prosumers of music. This was determined by looking at the YouTube accounts linked to those forum posters' usernames and the contents of what they posted on YouTube. For instance, the user accounting for more than 25% of all references in the copyright knowledge code, runs a YouTube channel which features original "royalty-free" instrumental music, meaning that their musical works do not fall under any of the definitions of music prosumption identified in Chapter 1 of this thesis.[573] This, however, was not done for all forum posters taking part in this phase of this research since, phase one of this research was aimed at providing insights into themes of knowledge of copyright and related enforcement regimes or a lack thereof, present on discussion forums which are used by prosumers of music, in an exploratory manner. These themes were further examined in phase two of this research which allowed for respondents to self-identify as a prosumer.

Like the OTW's survey discussed in Chapter 1,[574] phase two of this research sought to first quantitatively examine music prosumers' perceived knowledge of copyright law. The level of copyright knowledge one believes they possess may in turn influence how they react if and when they are sanctioned. For instance, Palfrey *et.al.* who examined "future prosumers'" perceived copyright knowledge by asking respondents if they know what copyright means, found that 84% responded "yes".[575] However, most respondents who took part in that research, in fact, lacked knowledge of what amounts to copyright infringement and when a reuse would be permitted under an exception.[576] This in turn, created an impression amongst "future prosumers" that copyright is negative.[577] Furthermore, in Fiesler's study, prosumers were confused when they were sanctioned.[578] Similarly, prosumers of music who claim to have a high level of perceived copyright knowledge, but in fact lack a general understanding of when a work amounts to infringement, may be confused if and when they are sanctioned.

[573] See Chapter 1, section 1.1.
[574] See Chapter 1, section 1.3.4.2.
[575] Palfrey and others (n 457) 84.
[576] ibid.
[577] ibid.
[578] Fiesler, Feuston and S. Bruckman (n 243) 121.

Questionnaire respondents were first asked to rate their level of copyright knowledge on a scale from 0 to 100 with 0 representing no knowledge and 100 being an expert in the field. The mean of respondents perceived knowledge was 57.46, mirroring the OTWs results, who found that most respondents characterised themselves as having an average knowledge of copyright law (Table 11).

Table 11: Respondents' perceived copyright knowledge.

How would you rate your level of copyright knowledge?	
N	78
Mean	57.46
Median	58.00
Std. Deviation	24.77
Range	99.00
Minimum	1.00
Maximum	100.00

Questionnaire respondents were then asked to demonstrate copyright knowledge by marking a series of copyright statements as true or false. The statements were adapted from the UK Intellectual Property Office (IPO) "Intellectual Property Awareness Survey", from 2015, which sought to establish a sense of understanding of intellectual property within UK-based businesses.[579] The IPO's survey had three sections, testing UK-based businesses' familiarity with intellectual property, how respondents were using intellectual property within their organisations and finally, where they obtained their information and advice on intellectual property from respectively. The "*survey was completed by 502 people representing firms of all sizes and from sectors across UK industry*".[580] The survey's section on intellectual property knowledge, tested respondents' general knowledge of intellectual property as a whole before asking more focused questions namely on trademarks, patents, designs and copyright using statements, which respondents would have to categorise as "true", "false" or "I don't know". Given the fact that this survey tested UK-based businesses' knowledge of copyright, it is argued that its results cannot be compared to prosumers of music who as stated in Chapter 2 vary in terms of geographical location. However, the type of questions asked, in combination with the OTW's questions, were modified, and employed to quantitatively test music prosumer knowledge of copyright law. Namely question number five of the IPO's survey had four

[579] UK IPO, 'IP Awareness Survey 2015 Results' (2015) <https://www.gov.uk/government/publications/ip-awareness-survey-2015-results> accessed 8 March 2022.
[580] ibid 7.

statements on copyright testing businesses' knowledge of duration, protection, and ownership. These were:

"Copyright protection does not last forever; To protect a piece of work with copyright it should be registered with the government; When a sub-contractor creates a website for a business, that business automatically owns the copyright on the website; Shops can legally play music to their customers without a licence".[581]

The first two statements were reused in this survey whilst the third and fourth were modified in order to match the audience of prosumers of music. A number of other areas of copyright knowledge were also tested, based on the results from the first phase of research, but also the findings of existing research on prosumers' knowledge presented in Chapter 1.[582] Questions asked were not exclusive to one jurisdiction. In testing respondents' copyright knowledge, participants were asked jurisprudential copyright questions, for instance relating to the need to obtain a license to reuse a copyright protected work, which would be the same irrespective of one's geographical location. Similarly, participants were asked questions which relate to YouTube's operationalisation of copyright frameworks to ensure that their encounters would be the same irrespective of geographical location.

The model used by OTW was not used as they used a combination of yes or no and open-ended questions which they then retrofitted in order to determine the accuracy of respondents' answers. Retrofitting responses as either representing a correct or false understanding of a complex legal concept is often subjective and increases the risk of human error, which as will be discussed in greater detail below, is the reason why prosumers were not asked about whether works of music prosumption amount to infringement. As such, this research adopted the UK IPO approach to testing one's copyright knowledge, which resembles a standardised test approach to testing knowledge.

Table 12 below contains all the statements from this survey their correct categorisation and how participants responded.

[581] ibid 46.
[582] See Chapter 1, section 1.3.4.2.

Table 12: All copyright law statements presented to questionnaire participants, their correct categorisation and how participants responded.

Question	Correct Response	TRUE		FALSE		I DON'T KNOW		Total
		%	N	%	N	%	N	
Copyright protection does not last forever.	True	47.44%	37	34.62%	27	17.95%	14	78
To protect a piece of work with copyright it should be registered with the government.	False	26.92%	21	46.15%	36	26.92%	21	78
YouTube owns the copyright attached to all cover songs and remixes on the platform.	False	19.23%	15	61.54%	48	19.23%	15	78
The creator of a cover song or remix owns all the rights attached to the cover song or remix created.	False	16.67%	13	67.95%	53	15.38%	12	78
Under certain conditions, copyright protected material may be legally copied or reused without the need for prior permission.	True	58.97%	46	26.92%	21	14.10%	11	78
As long as a creator of a cover song does not include the original sound recording in the video they upload to YouTube they are not infringing copyright.	False	34.62%	27	50.00%	39	15.38%	12	78
There are mechanisms in place for copyright owners to take works they regard as infringing their copyright down from YouTube.	True	75.64%	59	2.56%	2	21.79%	17	78
Creators who have received a claim which resulted in their work being taken down from YouTube, have the option to dispute that claim.	True	89.74%	70	1.28%	1	8.97%	7	78
Shops can legally play music to their customers without previously obtaining permission to do so.	False	30.77%	24	48.72%	38	20.51%	16	78
Content uploaded to YouTube must not include third-party intellectual property (such as copyrighted material) unless the uploader has permission from that party or is otherwise legally entitled to do so.	True	57.69%	45	16.67%	13	25.64%	20	78

The IPO presented results using the number of correct responses. For instance, correct responses for all of the statements in the IPOs survey (n=4) indicated "a good level" of knowledge. As indicated by Table 13 below, for this research, those who responded incorrectly to all statements are categorised as having "no knowledge" of copyright, those who responded correctly to 1-3 of the statements as having "low knowledge", those who responded correctly to 4-6 of the statements as having "average

knowledge", those who responded correctly to 7-9 of the statements as having "above average knowledge", and those who responded correctly all of the statements (n=10) as having "good knowledge".

Table 13: Categorisation of knowledge in relation to the correct number of responses.

0	No Knowledge
1-3	Low Knowledge
4-6	Average Knowledge
7-9	Above Average Knowledge
10	Good Knowledge

As illustrated by Figure 19 below, most prosumers indicated an above average general knowledge of copyright law, with 35 (45.45%) respondents categorising between 7 and 9 of the statements correctly. The total number from the figure below is 77 as opposed to the 78 of the totals indicated above. This is due to the fact that one respondent selected "I don't know" for all statements.

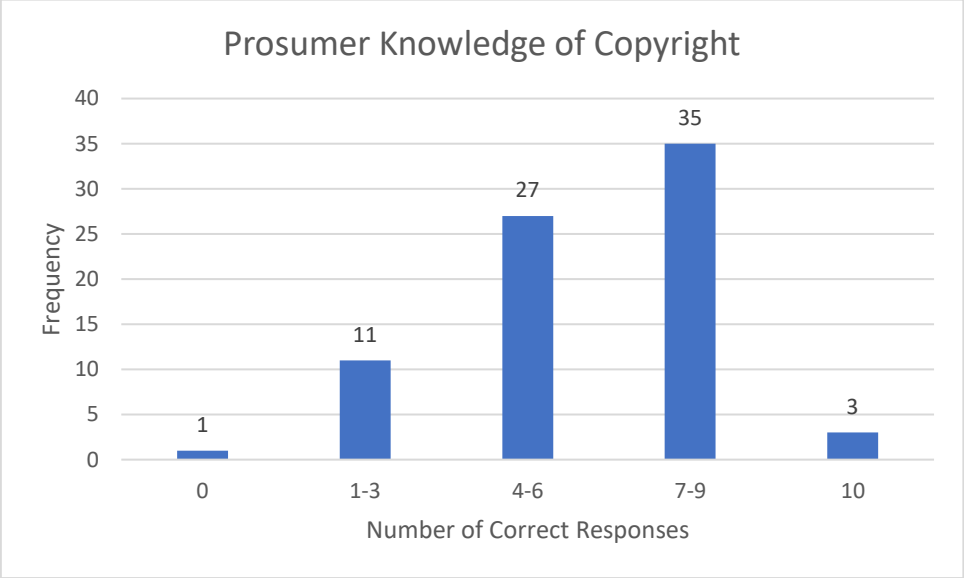


Figure 19: Illustration of number of respondents and their corresponding number of correct categorisations.

As will emerge from the discussion below, although prosumers demonstrated an above average general knowledge of copyright law, prosumers of music who took part in this research exhibited a lack knowledge of specific areas of copyright law that they are likely to encounter throughout their dissemination process. This often negatively impacts how such music prosumers interact with copyright and related enforcement regimes throughout their dissemination journey.

3.1.2 Music prosumers' knowledge and understanding of copyright infringement.

In Chapter 1, it was demonstrated that works of music prosumption typically amount to copyright infringement.[583] Moreover as previously demonstrated, although there may be jurisdictional variations in the way in which infringement proceedings are carried out, they are generally based upon the "*idea/expression dichotomy",* and the right to reproduce a work conferred by copyright ownership is multijurisdictional.[584] Hence, it is argued that prosumers of music may be infringing copyright irrespective of their geographical locations. This is important as forum posters and prosumers of music which make up the sample population in this research, vary in geographical locations.

Forum posters seem to lack a general understanding of why the works they upload to YouTube amount to infringement and as was the case in Fiesler *et.al.*'s study, forum posters did not understand why they were sanctioned. [585] Similarly, forum posters who claimed to upload cover songs or remixes to YouTube could not comprehend why their work amounts to infringement when similar works exist on YouTube:

"Why is it that millions of other people have uploaded themselves covering the same song and they have been on youtube for years without a problem? […] I played along to a free backing that had no guitar in it. So how is that infringement?".

"I posted a remix to a song on youtube that I made and recorded and it got deleted due to a copyright infringement claim from Warner Music Group. I went in the search bar and typed the same song and searched for remixes and there are literally thousands of videos like mine that are still intact and remain on the webpage.".

As indicated in Chapter 1, although typically the case, the question of whether works of music prosumption amount to infringement is somewhat of a grey area, in that it is not a case of clear-cut copyright infringement, and very much fact dependent.[586] As such, questionnaire respondents were not asked to categorise statements correctly relating to what amounts to infringement. Nevertheless, questionnaire respondents did show signs of a lacking the knowledge that works of music prosumption may amount to infringement. For instance, one participant, in response to the open-ended question which asked participants who claimed to have never received a copyright

[583] See Chapter 1, section 1.3.1.1.
[584] See Chapter 1, section 1.3.1.1.
[585] Fiesler, Feuston and S. Bruckman (n 243) 121.
[586] See Chapter 1, section 1.3.1.1.

strike, why they thought that was stated: "*Bcs there is No Reason to receive a CPRight Strike on a Remix*".

It is argued that prosumers' lack of knowledge with regards to copyright infringement may be attributed to the inherent nature of YouTube as a user-centric platform where UGC sits alongside official releases which are fully licensed. Palfrey *et.al.* attribute "future prosumers'" lack of knowledge to the ease of access to and increased availability of sharing content illegally.[587] Similarly, YouTube is a platform where amateur and professional content coexist and allows anyone with an account to upload multimedia content. This ease of access, coupled with vast amounts of creators pursuing similar outputs, creates an impression that content that is uploaded to the platform is legal. This is evidenced by some of the responses to the question which asked participants who claimed to have never received a copyright strike, why they thought that was. For instance, one respondent stated "*you can still upload covers of copyrighted content in most cases. They just notify you that the content is copyrighted."* Another stated: "*I do not re-upload. As much as possible, I make a cover which the owner allow me to use as long as either the revenue goes to them, I won't have any revenue or the revenue will be shared between them and myself".* Such responses indicate a lack of knowledge with regards to the fact that works of music prosumption may under certain circumstances amount to infringement. This lack of knowledge may be vested in YouTube's operationalisation of copyright and related enforcement regimes. This institutional "law-making" power of YouTube is discussed in greater detail below.

It is however argued that apart from feelings of frustration, it is unlikely that prosumers' lack of knowledge with regards to copyright infringement, would have any knock-on effects on their dissemination process. For instance, if John possessed knowledge of the fact that the work, he uploaded to YouTube amounted to infringement, he would most likely expect to receive a notice or he would seek to obtain a license for the part he has reused prior to uploading his work to YouTube. He may, however, have been discouraged from uploading his work in the first place. Nevertheless, testing for such deterrent effects of copyright is inherently challenging. Pinpointing prosumers who have avoided uploading works due to a fear of infringement would be difficult. Forum posters did however show signs of being dissuaded from uploading their works to YouTube upon obtaining knowledge of the fact that their works may amount to infringement. For instance, one user who wanted to upload a remix asked:

"Now what is allowed regarding Copyright. Can i use sampled material? if not, can i use it when i heavily transform it with effects and such. Is it allowed when i don't use sampled content at all in the

[587] Palfrey and others (n 457) 84.

music? I would like to know this because i want to upload my song to youtube but i don't want to have it removed due to WMG or other copyright infringment. I readed the copyright pages on youtube but it's a bit confusing about what exactly is allowed and what not. I hope the community or youtube itself can help me out with this one.".

When informed that their work may be regarded as amounting to infringement, the user responded by saying:

"Ok thanks, i think i know enough now.. i could post my song without sampled part, but could still risk copyright issues.. so i think i'll pass.".

This was also echoed, in phase two of this research, in an interview with a prosumer who uploads remixes to YouTube who, at the end of the interview, when asked if there was anything else they would like to add, stated:

"We do mashups/remixes for fun and mostly because this is our passion. It's just sad that what we do is still not protected by fair use and/or we can't make some money from doing what we love and thinking of earning from these kind of videos makes you feel like you are doing something illegal. I do wish we can have a better environment for mashups/remixes - away from constant content ID claims and fear of getting strikes. Some artists are even scared to start their own mashup channels because of that said fact. YouTube should be a place to nurture such creativity not hinder them.".

Hence, as aforementioned, it is argued that there are signs that knowledge of the fact that works of music prosumption may amount to copyright infringement, may result in prosumers being dissuaded from uploading the works they create due to a fear of infringement. However, testing for such deterrent effects of copyright is challenging due to the inherent difficulties associated with identifying users who have not uploaded works to YouTube. Nevertheless, care must be taken when imparting prosumers with copyright knowledge so as to not stifle creativity in the process.

3.1.3 Music prosumers' knowledge and understanding of copyright exceptions.

As demonstrated in the literature review chapter of this thesis, there are certain exceptions to copyright whereby, if applicable could exempt a reuse from amounting to copyright infringement. Namely, in the UK (fair dealing exceptions) these exceptions are limited in scope whereby the alleged infringer must prove that their work falls under one of the categories found under sections 29 and 30 of the CDPA 1988. Nevertheless, in the literature review chapter, it was demonstrated that in the UK the only potential exceptions which could apply to cover songs and/or remixes would be the fair dealing exceptions of quotation and parody which are protected under s30(1ZA) and s30A of the CDPA 1988 respectively.[588] In the US, works of music prosumption may be regarded as "fair use" provided they meet the set of four cumulative factors laid out in section 107 of the US Copyright Act 1976. However, it was concluded that although works of music prosumption could potentially fall under certain circumstance, fall under an exception, these circumstances are limited.

Nonetheless, knowledge of such exceptions could help prosumers avoid and/or challenge infringement claims against the works they upload to YouTube. Several forum posters, in phase one of this research, presented themselves as having knowledge of copyright exceptions. Specifically, running a coding matrix query in NVivo, which allows for the identification of an intersection between two or more codes revealed that users who claimed to have knowledge of copyright exceptions outnumbered those who did not. Table 14 below, shows that knowledge of copyright exceptions references outweighed lack of knowledge thereof by 21 references.

Table 14: Coding matrix query for knowledge of copyright exceptions or lack thereof.

	Exceptions
Knowledge	49
Lack of knowledge	28
Total	77

A lack of knowledge with regards to the applicability of copyright exceptions was exhibited by forum posters who either did not fully understand what would fall under an exception with statements such as: "*shouldn't live performances be covered under fair usage?*" or forum posters simply not knowing of the existence of exceptions, with posts such as: "*I am kinda curious though as to how it works, since the song is essentially a cover of 4 non blondes' What's Up. It is taken to a comedic*

[588] Cabay and Lambrecht (n 11); Jacques, 'Mash-Ups and Mixes: What Impact Have the Recent Copyright Reforms Had on the Legality of Sampling?' (n 27).

extreme to the point of being almost completely unrecognizable so maybe it's just considered to be something totally different then."

Forum posters who exhibited knowledge of copyright exceptions understood that although covers and/or remixes could fall under certain exceptions such as parody, they are unlikely to do so. For instance, a user who was seeking advice on whether to upload a techno remix which they claimed, could be classified as a parody received this reply:

"Generally speaking, you need permission for any audio you use in a remix, since a remix does not qualify as fair use. Calling it a parody isn't likely to work.".

As can be seen from the extracts above, forum users tend to refer to US fair use copyright exceptions. This could be attributed to the fact that the majority of forum posters live in the US, or as will be discussed in greater detail below, this could be the result of YouTube's "law-setting" power.

Conducting a text search on NVivo, for all forum posts analysed, for the term "fair dealing", revealed no results whereas a text search for the term "fair use" yielded 101 results. Fair use exceptions have been characterised as wider in scope when compared to their UK counterpart.[589] As previously indicated in Chapter 1,[590] under section 107 of the US Copyright Act 1976, four factors are laid out, upon which the application of a fair use defence is determined.

When determining whether a cover song and/or remix would be regarded as amounting to fair use, courts would have to balance these four factors against each other.[591] However, it has been implied that the first factor, is the most important determinant, consequently meaning that surpassing the first factor will most likely lead to the finding of a fair use defence.[592] The first factor looks at whether the use is "transformative" and allows for the identification of how much the original work has been altered. In doing so, courts try and identify whether a secondary work *"adds something new, with a further purpose or different character, altering the first with new expression meaning, or message"*.[593]

In the context of vidders, Freund found that the "*extent of knowledge on copyright laws in their respective countries varied a great deal from vidder to vidder*", however many of their participants

[589] Gowers (n 131).Ian Hargreaves, 'Digital Opportunity A Review of Intellectual Property and Growth An Independent Report'.
[590] See Chapter 1, section 1.3.1.2.2.
[591] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, at 576-578.
[592] Harper (n 189).
[593] *Campbell v Acuff-Rose Music Inc.,* 510 U.S. 569, at 579.

shared a baseline understanding of fair use, in that "*many had a general understanding of fair use as providing a legal defense"*.[594] Moreover, in Aufderheide's and Sinnreich's study, which examined documentary filmmakers use of "fair use" throughout their creative process, found that 93% of 489 documentary filmmakers which took part in their survey had heard of the term "fair use".[595] Similarly, forum posters examined in phase one of this research exhibited knowledge of "fair use" as a concept but some also displayed knowledge specifically regarding the four criteria mentioned above. For instance, one user who was contemplating filing a counter notice for a guitar cover of an Iron Maiden song they had uploaded to YouTube, received this reply:

"You may be right that it doesn't affect the owners' ability to make money from the original, but that's only one of the four criteria that a court would take into account if you raise the "fair use" defence.".

Furthermore, forum users seem to be aware of the emphasis a court would place on whether the use would be regarded as amounting to transformative. The same user as above received this reply:

"I doubt your covers would qualify as fair use. It may be your interpretation of the original, but unless this new version of yours is so radically different that a court would call it "transformative".

Another user who wanted to find out whether copyright would protect their remix received this reply:

"Basically, you must change the original so radically, that you completely change the impact and meaning of the original -- your work may then be regarded as "transformative".".

However, as abovementioned, there were also users who lack a general understanding of what copyright exceptions are and when they may be applicable. This lack of knowledge amongst forum users, seems to be influenced by the way in which YouTube implements takedown notices through its digital fingerprinting mechanism – Content ID. For instance, users' idea of what would fall under an exception is influenced by what would not be caught by YouTube's Content ID. For example, one user in the context of monetising cover songs said:

"For a cover video to be eligible, there can't be a recording of the backing track".

Another user who had received a notice and later filed a dispute said:

[594] Freund (n 445) 1352–1353.
[595] Patricia Aufderheide and Aram Sinnreich, 'Documentarians, Fair Use and Free Expression: Changes in Copyright Attitudes and Actions with Access to Best Practices' (2016) 19 Information, Communication & Society 5.

"But i made a cover that i recreated the instrumental by using a guitar cover and vocals by me and youtube says we are allowed to upload covers as long as the background music is recreated.".

What these forum users have in common is the idea that if something is not caught by YouTube's Content ID i.e., by not using a backing track, then it must be legal, when in fact, as demonstrated in the literature review chapter of this thesis, copyright is multifaceted and as such they may still be infringing a number of different rights such as the literary copyright attached to the lyrics of the song. Hence, it can be deduced that, the way in which YouTube's digital fingerprinting mechanism – Content ID – operates, may influence users' understanding of what falls under copyright exceptions. As aforementioned, this is something which was also evident in Fiesler *et.al.*'s study.[596] YouTube's "law setting" role on behalf of prosumers of music is discussed in greater detail below.

Taking a synoptic view of the abovementioned, forum posters examined in phase one of this research share a baseline understanding of copyright exceptions in that they are mostly aware of the existence of them and their potential applicability or lack thereof to works of music prosumption. This coincides with what existing research has shown for prosumers in the broader sense.[597] However, as aforementioned, one limitation of phase one, is the inability to categorise forum posters as prosumers of music, but can merely indicate what perceptions, understandings, experiences and interactions prosumers of music may have. Consequently, music prosumers' knowledge and understanding of copyright exceptions were tested quantitatively in phase two of this research.

Similar to what OTW found in the context of fan creators, and Freund in the context of vidders, and Aufderheide and Sinnreich in the context of documentary filmmakers, results illustrated that prosumers of music share a baseline understanding of copyright exceptions in that they are aware of their existence. Namely, 46 respondents (58.97%) were aware of the existence of copyright exceptions, categorising the statement "under certain conditions, copyright protected material may be legally copied or reused without the need for prior permission" as true. 21 respondents (26.92%) incorrectly characterised the statement as false and 11 (14.11%) did not know (Table 12).

This baseline knowledge of copyright exceptions was also evident amongst prosumers who participated in email interviews. For instance, one prosumer who uploads both cover songs and remixes, had, in the questionnaire reported that they have never "secured all the rights to all elements in your video" before uploading it to YouTube because it is too complicated and that they do not necessarily do so as long "*as it's for, let's say "educational purpose". But obviously*

[596] Fiesler, Feuston and S. Bruckman (n 243) 121.
[597] Burgess (n 449); Freund (n 445); Aufderheide and Sinnreich (n 606).

"educational purpose" means no monetization." When asked about this in the interview, they stated that:

"Educational Purpose. Well for me educational purpose means you don't really intend to make a profit from it. You just do it for some sort of exercise for yourself. […] From my own perspective, as long as they don't try to commercialize the remix and covers, it's an educational purpose.".

Hence, it can be deduced that, like prosumers in the broader sense, prosumers of music share a baseline understanding of copyright exceptions, in that they are aware of the existence of copyright exceptions, but not necessarily with regards to how such exceptions might apply. Some prosumers go a step further and are aware of the potential applicability of such exceptions to works of music prosumption. Hence, as was demonstrated by Freund in the case of vidders,[598] the extent of knowledge held will vary from prosumer to prosumer.

Above it was shown that a common misunderstanding amongst forum posters was that if something is not caught by Content ID, then it falls under a copyright exception, and that this misconception may be fuelled YouTube's "law setting" role on behalf of prosumers, which is discussed in greater detail below. The subsistence of this misconception amongst prosumers of music was examined in phase two of this research. 39 respondents (50.00%) categorised the statement "as long as a creator of a cover song does not include the original sound recording in the video they upload to YouTube they are not infringing copyright" as false, whilst 27 (34.62%) characterised it as true and 12 (15.38%) did not know (Table 12). Hence, it can be deduced that some prosumers share a common misconception that as long as the original sound recording is not used in the work, which is uploaded to YouTube, then this does not amount to infringement.

In conclusion, prosumers of music are to a certain extent aware of the existence of copyright exceptions, but not necessarily with regards to how such exceptions might apply. One common misconception amongst prosumers of music is that if the original sound recording is not used in the work uploaded to YouTube, then it must fall under an exception. This misconception may be the result of YouTube's role as a "law setter" on behalf of prosumers of music, which is discussed in greater detail below.

The extent, of knowledge held, will vary from prosumer to prosumer, with some being aware of the potential applicability of exceptions to the works they upload to YouTube. Being aware of how such exceptions apply could support prosumers of music throughout their creative process in terms of

[598] Freund (n 445) 1352.

being able to create within the remits what copyright law considers as fair dealing or fair use depending on the geographical location of a prosumers. One could argue that the mere restriction on one's creative choice by having to create works which would be considered exempt from infringement in fact stifles creativity for prosumers of music. However, does knowledge of what falls under a copyright exception translate to the sole creation of such works? If so, those who are unaware of the applicability or the boundaries of applicability of copyright exceptions, would not be restricted by creating solely copyright exempt works. In fact, this is not the case. Prosumers of music do not set out to create works which fall under an exception. One interviewee, who uploads remixes to YouTube, when asked about their experience of seeking to secure rights prior to uploading stated:

"we are technically not protected by "fair use" so we just accept and work around with the content ID claims.".

The creative process is often messy and identifying the applicability of an exception is a retroactive exercise, and unless a case reaches a court, one can predict but, can never know with certainty whether a copyright exception truly applies. Hence, knowledge of the applicability of an exception would not necessarily restrict a music prosumer's creative processes. Prosumers of music could, however, utilise their knowledge of the applicability of exceptions in the filing of counter claims. For instance, one forum poster stated:

"Fair use is a use permitted by copyright statute that might otherwise be infringing. Non-profit, educational or personal use tips the balance in favor of fair use. I have put in a dispute for this video as it is blocked internationally, does anyone have any idea how long this will take?".

The applicability of counter claims and music prosumers' knowledge, understanding, experiences and interactions of counter claims is presented in Chapter 6.[599]

[599] See Chapter 6, sections 6.1 and 6.2.

3.2 Sources of Knowledge.

Fielser's work suggests that prosumers in the broader sense often turn to one another in online spaces to share and also obtain legal knowledge.[600] The information often found on discussion forums studied by Fiesler *et.al.* is incomplete, in the sense that forum posters will have varying degrees of knowledge and understanding.[601] As indicated above, this seems to be the case for forum posters studied in phase one of this research, who exhibited varying degrees of knowledge on what amounts to copyright infringement, but also the potential applicability of copyright exceptions.

Forum posters studied by Fiesler *et.al.* responded to questions on discussion forums, presenting their answers as facts rather than opinions, which often raises concerns when the person is responding to a rather complex legal issue such as when a copyright exception might apply.[602] Feisler *et.al.* judged this by the lack of disclaimers and use of "*citations or indicators of expertise".*[603] This was also evident amongst forum posters examined in phase one with forum posters offering advice such as:

"You yourself have even said it "40 second clip of my rendition of their song" It is their song your playing. So now they get to decide what to do about it. If you do not want to have issues. Do not take or copy other peoples works.".

However, some posters did sometimes accompany their advice with disclaimers that they were not in fact a copyright lawyer. For instance, one user, in response to the question "*I'm a DJ, if I remix Celine Dion's "A New Day" will it be copyright infringement?"* stated:

"*There may be exceptions according to the end result of your project. But I'm not a copyright lawyer so I can't offer you a legal advice.".*

Hence, although not common, forum posters did sometimes accompany their advice with disclaimers. However, the issue of whether or not advice is presented as a fact, only becomes problematic for those seeking advice, if they actually follow the misinformed advice presented to them as facts. Fiesler *et.al.,* "*infer that posters take the advice offered at least some of the time* [and in] *cases of incorrect information, this could be potentially troubling".*[604] Similar patterns could not be inferred by forum posters examined in phase one of this research, but were echoed by prosumers

[600] Fiesler, Feuston and Bruckman (n 440); Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 440); Fiesler, Feuston and S. Bruckman (n 243).
[601] Fiesler, Feuston and Bruckman (n 440) 293.
[602] ibid.
[603] ibid.
[604] ibid.

of music who took part in the interviews via email in phase two of this research, who although did not explicitly state that they had followed advice they had obtained from a discussion forum, indicated that they look for advice on discussion forums when faced with questions surrounding copyright law. A prosumer who uploads cover songs to YouTube stated:

"*When my cover got blocked for the first few times I went to a forum (Reddit to be specific) to ask some questions because I didn't know what is this and I felt in danger my channel. After I learnt what is this I always delete mye blocked videos, because I know that I can't make anything about that".*

Another, who uploads remixes to YouTube stated:

"When I received my first strike it was scary so I turned to forums.".

One prosumer, however, did not know where to turn to in their quest to obtain legal knowledge:

"*I wouldn't exactly know who to reach out to about all my questions about copyright policies.*".

Hence, prosumers of music, like prosumers in the broader sense will often turn to each other in their quest for copyright knowledge. As aforementioned, Freund found that vidders obtained their knowledge from their "*professional careers in publishing or as librarians*".[605] Such experience was not evident amongst forums posters examined in phase one of this research.

Given the importance of the source from which prosumers obtain their legal knowledge outlined above, survey respondents who indicated that they had more than 0 knowledge of copyright in the question testing prosumers perceived knowledge of copyright, in phase two of this research, were asked where they had obtained their knowledge from. Respondents could choose more than one option as their response. As indicated in Table 15 below, most prosumers indicated that they had either obtained the knowledge they possess through lived experiences they had on YouTube, or by reading about it online. This, to a certain extent, confirms Fiesler's qualitative findings that prosumers in the broader sense look to each other to for legal knowledge, but could also indicate that the way in which YouTube operationalises legal regimes has an impact on prosumers' knowledge and subsequent experience of the law.

[605] Freund (n 445) 1352.

Table 15: Respondents' sources of knowledge.

Where did you obtain the knowledge you possess?		
Selected Choice	Freq.	%
From a course I attended at university or college	13	10.00%
From discussion forums	15	11.54%
By reading about it online	46	35.38%
From lived experiences I have had on YouTube	52	40.00%
Other, please specify	4	3.08%
Total	130	100%

Above it was shown that a common misconception amongst prosumers of music is that not reusing an original sound recording in the work uploaded to YouTube, translates to that work not amounting to infringement. Moreover, as will be discussed in greater detail below,[606] YouTubes digital fingerprinting mechanism – Content ID – often struggles to detect a match in cases which are not directly infringing an original work i.e., reuploaded works are easier to track when compared to reworked derivative works. This coupled with the fact that most prosumers indicated that they primarily obtain their copyright knowledge from lived experiences on YouTube, points towards YouTube's aforementioned "law-setting" role for prosumers. YouTube's power of shaping ordinary citizen's political views and understandings have in the past, been at the forefront of political parties' agendas.[607] Moreover, pressure applied from various parties, resulted in YouTube making changes to their algorithms which recommend content to users, in order to avoid the spread of misinformation.[608] However, YouTube's law setting powers for prosumers of music, have never been brought to light. As such, YouTube, must not only dance to the rhythms of multijurisdictional copyright regimes, safe harbour provisions and rights clearance processes, but the way in which such regulatory frameworks are operationalised must be in a manner in which is understandable for its users. Especially for a user-centric platform like YouTube, whose business model relies on the dissemination of UGC.

[606] See Chapter 4, section 4.2.1.
[607] 'Senator Warns YouTube Algorithm May Be Open to Manipulation by "Bad Actors"' (*the Guardian*, 5 February 2018) <http://www.theguardian.com/technology/2018/feb/05/senator-warns-youtube-algorithm-may-be-open-to-manipulation-by-bad-actors> accessed 8 March 2022.
[608] Marc Faddoul, Guillaume Chaslot and Hany Farid, 'A Longitudinal Analysis of YouTube's Promotion of Conspiracy Videos' [2020] arXiv:2003.03318 [cs] <http://arxiv.org/abs/2003.03318> accessed 8 March 2022.

3.3 Interim Conclusion.

The study of legal consciousness, which encompasses how "law's subordinates" perceive law in everyday life, has an influential role in understanding how "law's subordinates" interact with and experience regulatory frameworks and processes mandated by such frameworks. Prosumers of music will interact with legal processes mandated by copyright law throughout their dissemination processes, and like most online users, are forced to make subtle judgements regarding copyright law. [609] Consequently, such decisions are to a certain extent guided and/or framed by the legal knowledge one possesses.

This chapter shows that the extent of knowledge prosumers of music have will vary from prosumer to prosumer. However, prosumers of music seem to lack knowledge of what amounts to copyright infringement and what could fall under a copyright exception.

This research indicates that there are signs that a music prosumer's knowledge of what amounts to infringement may influence their propensity to upload works to YouTube, however the inherent difficulties associated with definitively being able to identify correlations between one's knowledge and their propensity to upload, do not allow for any conclusions to be made. Alternatively, one's knowledge and understanding of how and when copyright exceptions apply could, in theory, potentially restrict one's creative choices. However, there are no signs that this is actually the case.

As will emerge from discussions in subsequent chapters, music prosumers' lack of copyright knowledge often results in a sense of confusion and frustration. Hence, increasing music prosumers' knowledge with regards to the boundaries of copyright law, would arguably help them navigate the complex web of legal rules they encounter throughout their dissemination process.

Music prosumers' knowledge and understanding of the aforementioned processes mandated by copyright and related enforcement regimes are presented in Chapters 4 and 6 which present music prosumers' knowledge, understanding, experiences and interactions with the processes they encounter before and after they have uploaded their works to YouTube, respectively.

[609] Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 272).

Chapter 4 – Before Uploading.

In Chapter 1 it was shown that for a prosumer of music to legally disseminate their work on YouTube they would have to go through what is known as the "rights clearance process", before they upload their work to YouTube. Existing research has examined different subsets of creators, such as documentary filmmakers, who often exhibit a struggle in their attempt to secure rights clearance.[610] However, the realm of music prosumption remains unexplored. This research thus asks, "how do prosumers of music experience rights clearance processes?"

Additionally, it was previously demonstrated that how "law's subordinates" perceive and understand the regulatory frameworks, that apply to them may influence how they experience and interact with the law which ultimately impacts law's hegemony.[611] This also applies to legal processes mandated by legal regimes. The OTWs study, which surveyed almost 3000 fans to determine their experiences with and knowledge of copyright, discussed in Chapter 1,[612] found that fanfiction creators consider fanworks as non-infringing and thus do not need to interact with rights clearance processes.[613] This is indicative of the role that users' knowledge plays in determining their experiences or a lack thereof with a given legal process. Consequently, in order to provide a holistic understanding of prosumers' encounters with rights clearance, this research asks:

"How do prosumers of music understand, perceive, interact with and experience, the rights clearance process?"

This chapter answers this question by using data from both phases of empirical research. It begins by shedding light on how prosumers of music perceive and understand the regulatory frameworks that apply to them before they upload their works to YouTube. Knowledge of the need to secure rights clearance varies from prosumer to prosumer. Moreover, forum posters examined as part of phase one of this research, who are aware of the need to obtain rights clearance, exhibit a struggle in the identification of rightsholders, and which rights need to be cleared, which is vested in a lack of knowledge of the process itself.

Section 2 of this chapter provides insights into how prosumers of music experience and interact with rights clearance processes. This section reveals that a lack of awareness of the need to do so, coupled with YouTube's operationalisation of copyright and related enforcement regimes, translates

[610] See Chapter 1, section 1.3.1.3.3.
[611] See Chapter 1, section 1.3.4.1.
[612] See Chapter 1, section 1.3.4.2.
[613] Burgess (n 449).

to prosumers of music typically circumventing traditional rights clearance processes. Prosumers who attempt to secure rights clearance, describe the process as time consuming, confusing, and expensive.

4.1 What do prosumers of music know about the legal processes they encounter before they upload their works to YouTube?

In Chapter 1, it was established that prosumers' understanding of the regulatory frameworks they encounter throughout their dissemination process, may have an influential role in how they interact with and experience regulatory frameworks, and may ultimately determine law's hegemony.[614] Using data from both phases of this research's empirical enquiry, this section presents music prosumers' knowledge and understanding of the legal process they encounter before they upload their work to YouTube, but also the implications their level of knowledge and understanding of such processes has on their interactions and experiences with the legal processes they encounter.

As already outlined in Chapter 1, the subsistence of copyright, mandates rights clearance processes, which prosumers are asked to go through by YouTube, prior to uploading their works to YouTube.[615] Some of the forum posters examined in phase one of this research lacked knowledge of their need to obtain permission indicated by posts such as:

"*Do i need permission or can i just credit the original artist*???".

Some forum posters, however, were aware of the need to obtain rights clearance prior to uploading works of music prosumption to YouTube. Such forum posts were often responses to questions regarding the legalities surrounding the uploading of works of music prosumption to YouTube, such as:

"Uploading a cover song video without permission or a license is copyright infringement.".

Nevertheless, there seems to be a disparity between forum posters surrounding knowledge of the need to obtain rights clearance prior to uploading works of music prosumption to YouTube. As a result, prosumers of music may avoid seeking rights clearance prior to uploading their works to YouTube.

If a prosumer of music were aware of their need to obtain rights clearance, doing so would be a twostep process. In Chapter 1, it was shown that John (a hypothetical prosumer), would have to (1) identify who the rightsholders are and (2) which rights need to be cleared.[616]

As previously mentioned, existing empirical research which examined documentary filmmakers' experiences of their respective jurisdictional rights clearance process in the US and in South Africa

[614] See Chapter 1, section 1.3.4.1.
[615] See Chapter 1, section 1.3.1.
[616] See Chapter 1, section 1.3.1.3.

found that filmmakers struggle in the process of identifying right-holders.[617] Forum posters examined in phase one of this research, showed signs of exhibiting a similar struggle in the identification of rightsholders. However, for forum posters, this struggle is vested in a lack of knowledge. For instance, one forum user who wanted to disseminate drum covers on YouTube and was advised that they would have to seek permission prior to doing so stated:

"Ok how do I go about doing that? Do I need to contact the artist? The band? The producer or company that published/mixes the original cd?".

Moreover, if a prosumer reuses an already existing sound recording in their work, the source from which that prosumer obtains the underlying music they reuse in their recreation may further fuel confusion amongst prosumers of music. For instance, a number of prosumers post cover songs to YouTube which use "karaoke tracks" uploaded to YouTube, by channels whose sole focus is the uploading of instrumental "karaoke" versions of songs, whereby the vocal track is removed, or a new instrumental track is built from the ground up. This further complicates the rights clearance process for forum posters who resort to asking questions such as:

"Hello, If I want to create a YouTube channel to cover songs and I use karaoke versions from YouTube, do I have to get permission and from whom? Do I have to contact the actual writer of the song or the person that created the karaoke version?".

These are genuine questions which shed light on some of the complications associated with the rights clearance process. In the eyes of copyright, it is likely that creators of those instrumental "karaoke" versions, built from the ground up, own rights in the resulting sound recording. Consequently, depending on the resulting work of music prosumption, prosumers of music who reuse that karaoke track, would likely need to secure the necessary rights from multiple sources.

As aforementioned, upon identifying the relevant rightsholders, a prosumer of music, would need to determine which rights they would need to clear. Forum posters examined in phase one of this research, exhibited a lack of knowledge with regards to which rights they would need to clear. For instance, one user who wanted to upload cover songs thought that a synchronisation licence would be sufficient:

"My question is: do I need to obtain a sync license for every song I post?".

[617] Patricia Aufderheide and Peter Jaszi, 'Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers' [2004] Center for Social Media, School of Communication, American University 6-7; Flynn and Jaszi (n 238).

However, as demonstrated in Chapter 1, a synchronisation licence only allows for a user to synchronise the music with a visual media output.[618] For a cover song, a prosumer would need to secure licenses to reuse the lyrics and the musical composition of the original song, and a synchronisation license would have to be obtained if the user in question wanted to pair their work with a video.[619]

Another forum poster who had received a copyright strike for a remix they had uploaded to YouTube and was seeking advice on how to proceed had stated:

"I was reading online something about a "mechanical license", would that do anything? Thanks!!".

Hence taking a synoptic view of the abovementioned, it can be deduced that, in general forum posters struggle in both steps of the rights clearance process, and this struggle is likely vested in a lack of knowledge. However, knowledge surrounding the rights clearance process, varied from forum poster to forum poster. For instance, some forum posters were aware of the need to secure rights clearance, for which rights, but also where to start in terms of identifying the relevant rightsholders.

"You will need a license to be able to upload the covers of the song. Musical copyright comes in two flavors: the recording (what the artist created) and the composition (the underlying content created by the writers). In order to create cover music, you will need to have permission to use the composition. Typically those are owned by the record label so they would be the best place to start.".

Phase two of this research, sought to provide greater insights into music prosumers' knowledge of the legal processes, mandated by copyright frameworks, they encounter before they upload their works to YouTube, namely the rights clearance process.

In the questionnaire administered as part of phase two of this research, prosumers of music were asked if they knew of their need to obtain rights clearance. 45 respondents (57.69%) were aware of the fact that "*content uploaded to YouTube must not include third-party intellectual property (such as copyrighted material) unless the uploader has permission from that party or is otherwise legally entitled to do so*". 13 respondents (16.67%) categorised this statement as false whilst 20 (25.64%) did not know (Table 12). Hence, the disparity between music prosumers' knowledge exhibited in phase one of this research was also evident amongst prosumers of music who completed the questionnaire administered as part of phase two.

[618] See Chapter 1, section 1.3.1.3.2.
[619] Ibid.

This disparity was also evident amongst interviewees who took part in this research. For instance, in an interview with a prosumer who uploads both cover songs and remixes to YouTube, when asked to elaborate on their response to the question in the questionnaire regarding users' experiences with and reactions to receiving content ID claims stated that:

"Yes i always did nothing because i acknowledge that i use someone else's music without asking their permission first, so if it got claimed then yes they have all the right for claiming it. it's their own music. This doesn't really affects what content i'm uploading.".

This indicates an awareness of the need to obtain rights clearance. On the other hand, one interviewee who categorised themselves as uploading instrumental covers to YouTube, when asked about their experiences with seeking to secure rights clearance stated, "*I'm not sure what you mean by securing the right to elements*". It is thus posited, that prosumers' knowledge of their need to obtain rights clearance will vary from prosumer to prosumer.

Moreover, as indicated by forum posters examined in phase one of this research, prosumers of music seem to lack knowledge with regards to the process itself, namely, where to obtain the rights and which rights to seek licenses for. As per one interviewee who categorised themselves as uploading remixes to YouTube:

"Reaching out to the owners is quite the mission in on its own. Figuring out who it is, what you need and waiting for them to usually not answer. The owner xan charge you as they please or you could fine someone who could recreate the instrumental which still costs and you can still get striked with copyright.".

Taking a synoptic view of the abovementioned, it can be concluded that knowledge of the need to secure rights clearance varies from prosumer to prosumer. This, as will be discussed in the section that follows, may result in certain prosumers of music inadvertently avoiding the rights clearance process. Moreover, forum posters examined as part of phase one of this research, who are aware of the need to obtain rights clearance, exhibit a struggle in the identification of rightsholders, and which rights need to be cleared, which is vested in a lack of knowledge of the process itself.

4.2 What are music prosumers' experiences of rights clearance processes?

It has already been established that there is a disparity between prosumers of music, with regards to knowledge of the need to obtain rights clearance prior to uploading works of music prosumption to YouTube. Also, prosumers' lack of knowledge often results in a struggle in the identification of which rightsholders to reach out to, how to do so, and which rights they need to obtain permission to reuse. This section, drawing on data from both phases of empirical research, presents further insights into music prosumers' experiences and interactions with the legal processes they encounter before they upload their works to YouTube, namely, the rights clearance process. It does so in four sections.

Section one provides insights as to whether prosumers of music actually seek to obtain rights clearance. It sheds light on a new pathway to rights clearance that is created by YouTube's operationalisation of copyright and related enforcement regimes. Section two provides insights into the experiences of prosumers who have sought to obtain rights clearance that go beyond their knowledge of the process itself. Section three then reveals the ways in which prosumers of music try to avoid rights clearance all together, namely on music prosumers' use of "royalty free" music. Finally, section four provides insights into what influences prosumers' decision to either seek or not seek permission to reuse works included in their resulting works of music prosumption.

4.2.1 Do prosumers seek to obtain rights clearance?

Aufderheide and Jaszi found that a "clearance culture" exists amongst documentary filmmakers, but that this "clearance culture" is created and overly-enforced by broadcasters who require that all films are cleared before they are aired.[620] As such, filmmakers "*are responsible for doing rights clearance*".[621] Similarly, Heins and Beckles argue that in the film industry, stringent and over - enforced rights clearance requirements and the requirements of errors and omissions insurance stifle creativity.[622] Nevertheless, prosumers of music arguably do not encounter such stringent expectations of obtaining rights clearance.

In Chapter 1, it was shown that prosumers of music like John, are asked by YouTube, to secure rights clearance prior to uploading, and, using the UK as an example from which interactions can be extrapolated beyond the UK, that they would need to secure rights clearance through collecting societies, or record labels, or music publishers, or individual artists or a combination of such sources.[623] However, it is argued that YouTube's operationalisation of copyright and related enforcement regimes which help maintain its position within the so called safe-harbour provisions, also outlined in Chapter 1,[624] create another avenue for John to disseminate his work without prior permission – the "pseudo-pathway" to rights clearance. This pathway is not traditionally thought of as acting as a "pathway" to rights clearance since there is no pursuit for obtainment of authorisation. However, from the discussion below it can be deduced that YouTube's operationalisation of safe harbour provisions ultimately act as a "pseudo-pathway" to rights clearance for works of music prosumption.

How exactly the pseudo-pathway to rights clearance operates is directly determined by YouTube's enforcement strategies. YouTube's digital fingerprinting technology entitled "Content ID", which enables the automatic detection of plagiarised works, would most likely pick up on John's alleged infringement of copyright.[625] YouTube would then inform the respective copyright owner who can then "*1) Take the video down; 2) Leave the video up and monetise it via advertisement; or 3) Leave*

[620] Aufderheide and Jaszi (n 238) 18–20.
[621] ibid 5.
[622] Marjorie Heins and Tricia Beckles, 'Will Fair Use Survive? Free Expression in the Age of Copyright Control - Intro' (*National Coalition Against Censorship*, 1 December 2005) 54 <https://ncac.org/fepp-articles/will-fair-use-survive-free-expression-in-the-age-of-copyright-control> accessed 8 March 2022.
[623] See Chapter 1, section 1.3.1.3.
[624] See Chapter 1, section 1.3.3.2.
[625] This is due to the fact that, as will be discussed in greater detail later in this thesis, YouTube's technology pick up on direct copying with greater ease. Therefore, since John will be reusing the original vocals of the song, it can be deduced that YouTube's Content ID would easily pick up the alleged infringement.

the video up without an advertisement".[626] Hence, website operators arguably act as mediators in detecting infringement, but also allow for rightsholders to choose how, and to what extent their works are reused. This arguably shifts the burden of rights clearance from prosumers of music to website operators.[627] This alternative form of licensing gives the rightsowners the option of how to proceed when a cover song and/or remix is deemed as infringing their copyright. In this way the respective right-holders are given the option to share in the revenue generated through John's reuse of their work, ultimately mirroring a license. Thus, it is argued that this form of utilisation of safe harbour provisions has opened up new markets for UGC, by allowing for content creators including prosumers of music to circumvent traditional rights clearance processes.[628]

Taking into account a music prosumer's ability to circumvent traditional rights clearance processes utilising the so called "pseudo-pathway" to rights clearance, Figure 20 below provides an illustration of what John's rights clearance journey could resemble.

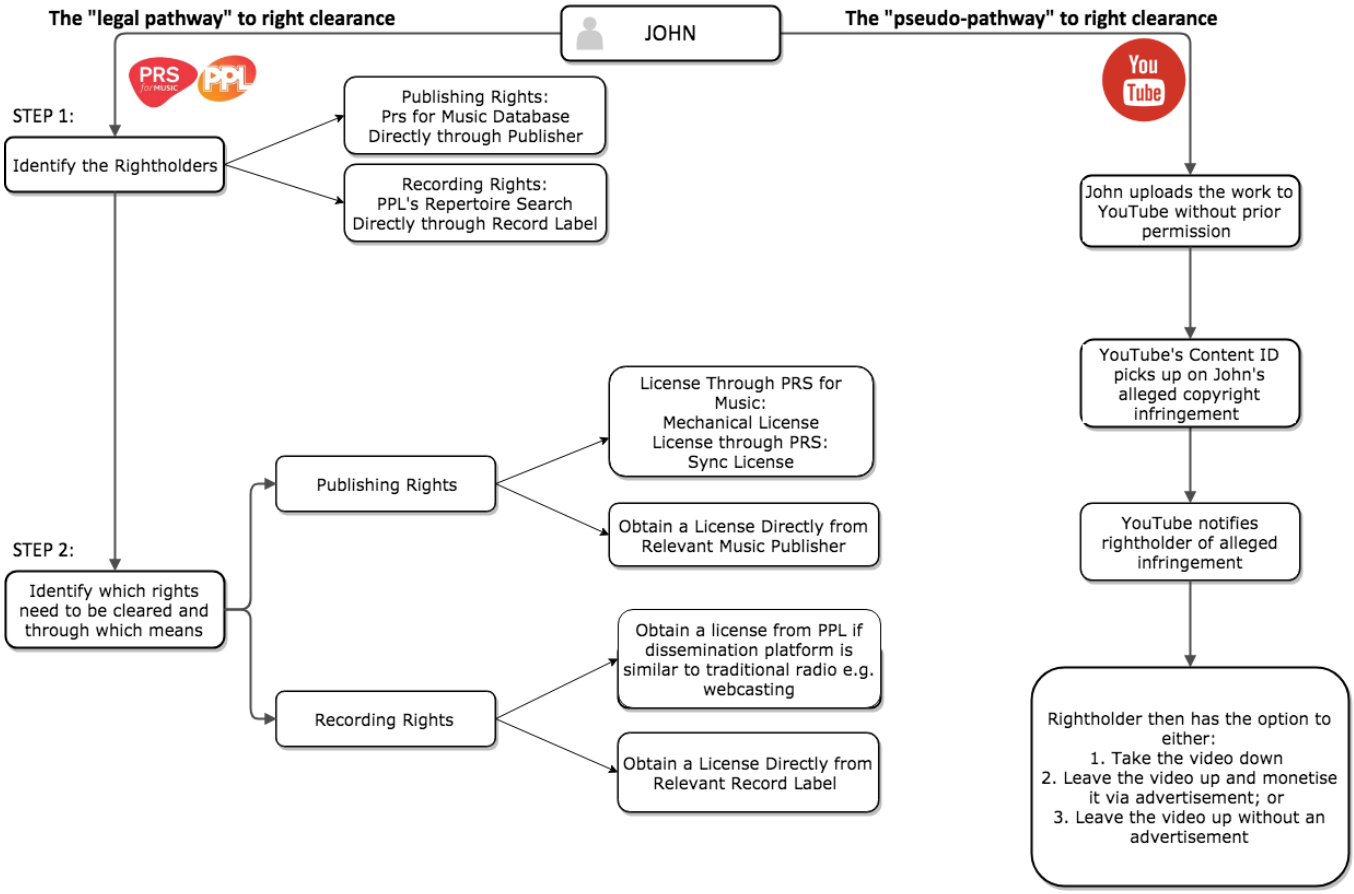


Figure 20: Diagram illustrating the right clearance process for John.

[626] 'How Content ID Works - YouTube Help' (n 395).
[627] A lot of other UGC orientated platforms e.g. SoundCloud have also implemented their own digital fingerprinting mechanisms meaning that a similar scenario would be experienced if John were to disseminate his cover through another platform.
[628] Heald (n 423).

Hence, unlike communities which have been the focus of existing research, prosumers of music are able to circumvent traditional rights clearance processes utilising the so called “pseudo-pathway” to rights clearance.

In phase one, several users engaged in discussions whereby the “pseudo-pathway” was explained. For instance, one user who had asked about what type of license they would need to obtain in order to post cover songs on YouTube received this reply explaining how the “pseudo-pathway” works:

“For most cover channels, they simply upload without permission. Their videos will usually get claimed by the copyright owners of the composition. Usually, the copyright owners will just take all the ad revenue, but in some cases there will be a sharing option and you can get a cut, too. To be eligible for revenue sharing, you would have to produce the backing track yourself (or have commercial rights to the backing track) AND be invited by the claimant to share revenue. However, the claimant can also choose to mute, block or take down your video. Takedowns (and strikes) are rare for covers, but they do happen from time to time.”.

Furthermore, several users pointed towards simply uploading their works to YouTube without prior permission as a method for “testing the waters”. For instance, one user who did not know whether they would receive a notice for a cover they wanted to upload to YouTube stated:

“I think I will just upload a cover and see what happens. Worst case scenario is that I get a warning for copyrights violation right?“.

This is an indication of users actively choosing to use the “pseudo-pathway” as opposed to obtaining the necessary licences prior to uploading their works to YouTube.

In phase two of this research, this was tested quantitatively by asking if prosumers had ever sought to secure a licence for all the elements, they reuse in the works they upload to YouTube.

As indicated in Chapter 2, namely Figure 14, before asking the first question which asked participants whether they had ever sought to obtain a license for the elements they reused in their work, before uploading their video to YouTube, a definition of rights clearance was provided. Rights clearance was defined using YouTube’s Terms of Service as a source with a hyperlink to YouTube’s terms of service. This was the definition provided:

YouTube's Terms of Service asks users to "secure all the rights to all elements in their video and... that the first step would be to contact the rights holders and negotiate the licenses for their use" before uploading a cover song or a remix.

64.29% of respondents indicated that they had never gone through the rights clearance process, indicating that prosumers of music do indeed utilise the so called "pseudo-pathway" to rights clearance (Table 16). This reaffirms what Heins and Beckles found, that, bloggers/YouTuber's and generally "*artists who freely appropriate copyrighted or trademarked material for creative purposes"* are more liberal in their reuse practices and thus are not necessarily caught by the "clearance culture".[629]

Table 16: How many respondents ever attempted to secure rights clearance.

	Frequency	%
Yes	30	35.71%
No	54	64.29%
Total	84	100%

Heald's study found that YouTube's operationalisation of copyright and related enforcement regimes which this thesis argues, ultimately creates the "pseudo-pathway" to rights clearance, effectively create new markets for derivative works.[630] This is achieved by YouTube's implementation of Content ID and its monetisation options available to both users and rightsholders. Upon the automatic detection of an allegedly infringing work of music prosumption, rightsholders who have registered their work with YouTube's Content ID database are notified and given the choice of how to proceed. They can either, "*block a whole video from being viewed; monetise the video by running ads against it, sometimes sharing revenue with the uploader; or simply track the video's viewership statistics".*[631] Rightsholders are also given the option of country specific restrictions on videos i.e. "*a video may be monetised in one country/region and blocked or tracked in another*".[632] Furthermore, once a match is found between a work which is being uploaded and a work registered on YouTube's Content ID database, that work receives what is known as a "Content ID claim".[633] This simply signifies that YouTube's Content ID, has found a match between the work which is being uploaded and a registered copyright protected work. This is different and should be distinguished from a notice filed by a rightsholder which results in that prosumer receiving what is referred to as a "copyright strike". Prosumers' experiences of both Content ID claims, and copyright strikes are presented in Chapter 6 which examines music prosumers' understanding,

[629] Heins and Beckles (n 633) 54.
[630] Heald (n 423).
[631] 'How Content ID Works - YouTube Help' (n 395).
[632] ibid.
[633] ibid.

experiences and interactions with legal processes encountered after they have uploaded their works to YouTube.

Prosumers of music who participated in the interview part of phase two of this research, generally exhibited a positive attitude towards the pseudo-pathway to rights clearance and YouTube's operationalisation of copyright and related enforcement regimes. For instance, one interviewee who categorised themselves as uploading remixes to YouTube when asked overall, how they have found YouTube's Content ID and copyright policies in the time they have been uploading remixes to YouTube responded:

"I took into account that the only thing that would affect the Content ID to my remix would be monetization, which makes it clear that all the ads would be monetized to the claimant which seems correct to me because the rights to the song belongs to the author.".

The same interviewee, when asked how their experience has been with seeking to secure the rights to elements in the remixes, they upload to YouTube been since they began uploading responded:

"I am completely satisfied and in accordance with copyright policies, because we are free to use these works taking into account certain criteria that the author of the work imposes. For example, a guitarist who likes to upload covers just for fun, has no problem that his video can be restricted or even deleted.".

Another interviewee, with regards to their experiences of YouTube's implementation of Content ID stated:

"I do not get paid for any of my youtube videos. Any song that I remix or cover is actually one I enjoy and I support the artists that have made them by buying albums and streaming music. If there is any profit on any video I dont own the rights to the owner can have all of it. I dont wish to take from anyone. I promote myself via rapping over popular songs because people look for whats popular instead of whats new unless those two things are one in the same. And that can be seen by how my remixes usually out perform my originals.".

Finally, another interviewee who has been uploading mashups to YouTube for several years noticed a decrease in rightsholders over enforcing their ability to request that remixes be taken down from YouTube. Instead, their works now remain available on YouTube and are monetised by the registered rightsholders:

"I have been on YouTube long enough to witness the years when they have been lax (pre-2014) and too strict (late 2015 to early 2017) with policies. Now we are in the middle (not too lax or too strict), I

barely hear stories of channels' struggling too much because of YouTube's policies unlike the past years. Overall, I can say that it feels like YouTube doesn't want us remixers/mashup artists to earn from YouTube since everything we publish, gets claimed instantly be it an audio only or full visual mix. I also applied for YouTube monetization when I got the right amount of subs and was actually earning before 2018 (I didn't take any money out though, I wanted to save it) but right now, I can no longer earn from my videos because as per YouTube "my channel has many copyright claims" which again is impossible to not have because once we publish a mashup, the video gets instantly claimed. The good thing about this middle ground though is there are no BIG disadvantages unlike the strict years that once you video is claimed, it can't be played ON ALL MOBILE DEVICES which means lesser views. Such a hassle those years were.".

Hence, from the above analysis, it can be deduced that prosumers of music typically utilise the pseudo-pathway to rights clearance and generally have a positive attitude towards doing so. However, as indicated by Table 17 below, proportionally, more respondents who indicated that they upload remixes to YouTube, than those who categorised themselves as uploading cover songs, revealed that they had attempted to secure the rights to the works which they were reusing in their works before uploading their work to YouTube. In Chapter 3 it was shown that prosumers' copyright knowledge is primarily generated through their lived experiences on YouTube and that YouTube's digital fingerprinting mechanism – Content ID – impacts prosumers' knowledge and understanding of copyright law.[634] Furthermore, Newman *et.al.* who argue that a "stemming" comparative analysis, where different aspects of songs are dissected – vocals, bass lines, and drums – and then comparatively analysed, allows for the more effective automated identification of cover songs, maintain that automatically detecting plagiarism between an "original" work and a "cover song" is inherently difficult, due to the fact that cover songs "*can seem highly divergent from the original recording".*[635] Hence, the fact that more remix artists than cover artists seek to secure rights clearance prior to uploading their works to YouTube, could be attributed to the fact that remix artists have a higher propensity to receive a Content ID claim when compared to cover artists. This would in turn translate to more remix artists being notified of the fact that their works need to be cleared. However, such a discussion at this point in this thesis, is purely hypothetical. Music prosumers' experiences and interactions with Content ID claims are discussed in greater detail in

[634] See Chapter 3, section 3.2.
[635] Lavonnia Newman and others, 'Cover Song Identification - A Novel Stem-Based Approach to Improve Song-To-Song Similarity Measurements' (2020) 3 SMU Data Science Review 2 <https://scholar.smu.edu/datasciencereview/vol3/iss2/15> accessed 8 March 2022.

Chapter 6 which looks at prosumer interactions with legal processes prosumers of music encounter after they have uploaded their works to YouTube.

Table 17: Crosstab between the type of content questionnaire respondents reported uploading and whether they attempted to secure rights clearance.

	COVER SONGS FREQUENCY	COVER SONGS %	REMIXES FREQUENCY	REMIXES %	BOTH FREQUENCY	BOTH %	TOTAL
YES	14	30.43%	10	43.48%	6	40.00%	30
NO	32	69.57%	13	56.52%	9	60.00%	54
TOTAL	46	100%	23		15		84

4.2.2 How do those music prosumers, who seek to obtain rights clearance, experience the rights clearance process?

Above it was shown that prosumers of music examined as part of this research utilise the "pseudo-pathway" to rights clearance and generally exhibit a positive attitude towards their experiences with doing so. Nevertheless, certain prosumers of music indicated that they had attempted to obtain rights clearance prior to uploading their work to YouTube. This section aims to present prosumers' experiences with attempting to secure rights clearance.

As discussed above, forum posters, examined in phase one of this research exhibited a struggle in identifying the relevant rightsholders and with regards to determining which rights they need to obtain permission to reuse. This struggle, as previously discussed, seems to be vested in a lack of knowledge surrounding the rights clearance process.

Interviewees who took part in phase two of this research, who had experience with seeking to secure the necessary rights for the works they reuse in the works they upload to YouTube characterised the process as hard and time consuming. For instance, one interviewee who characterised themselves as uploading remixes in the form of both samples and mashups to YouTube, claimed:

"We need to have permission from the artist or label or producer! And that's hard :'(Especially the "waiting game". So we rather take the claims, if ever it gets blocked worldwide (which I don't have much problems anymore), we just counterclaim and hope for the best. Mostly the results are positive.".

This not only shows that prosumers of music characterise the rights clearance process as hard and time consuming, but would rather be sanctioned for copyright infringement that having to endure the process. This reaffirms prosumers' preference of utilising the "pseudo-pathway" to rights clearance.

Furthermore, the aforementioned US study of documentary filmmakers found that filmmakers were sometimes refused access to reuse certain works directly by rightsholders.[636] Moreover, Fiesler *et.al.'s* study found that in the event that remix artists sought permission to reuse certain works, they were simply disregarded.[637] Heins and Beckles interviewed a leading broker, Dennis Reiff, who stated that even if a user thinks they have the necessary rights clearance to reuse a work they may still be sued and that often it is impossible to find the necessary rightsholders which results in the

[636] Aufderheide and Jaszi (n 238) 10.
[637] Fiesler, Feuston and S. Bruckman (n 243) 121.

stifling of creativity.[638] This was echoed in an interview with a prosumer who uploads remixes to YouTube who, when asked, in general how their experience has been, with seeking to secure the rights to elements in the remixes they upload to YouTube, claimed to be ignored when reaching out to labels stating:

"Thereshould be easier ways to go about it without having to track down who owns what, mostly because an irrevelvent guy lime me gets ignored when trying to reach out and ask. Labels, artists, producers often ignore that you contacted them.".

Moreover, prosumers of music who took part in this research and are aware of the need to obtain permission prior to disseminating their works online argue that contacting rightsholders is especially hard when the rightsholder in question is "more popular". For instance, in an email interview, a prosumer who uploads cover songs to YouTube, and had indicated that they had experience with obtaining permission from smaller, lesser well-known bands stated:

"The complicated side of securing the rights is getting the permission from the music owner, and also their respective music label/distributor/management. Especially the latter part if the artist is tied to a bigger label. Some artists are pretty relaxed to cover or remix, for example Porter Robinson. I think he already clarified awhile ago that it is okay to remix his songs. Mind you that this doesn't mean that your upload might not get claimed. This is where the music label part comes to play. You need to know which music label/distributor/management to ask for permission, and also bringing proof of permission from the artist. In a bigger label, the structure is so vast so if you only email it to the company, you might have to go through a lot of people and email to get permission.".

When asked if they had ever attempted to contact a so called "more popular" artist or band, the interviewee responded:

"*Yes, tried with Arctic Monkeys, Arctic Monkeys' drummer, Of Monsters and Men, Franz Ferdinand, Alt-J, Alt-J' pianist, Foals...Never got a reply. The biggest name on this list is Gregory Alan Isakov, I got a reply by the manager of him, it was like two empty words (which is more than nothing if I think about it)*".

What exactly do you mean by two empty words?

"*All good*"

Another interviewee who uploads remixes stated:

[638] Heins and Beckles (n 633) 6.

"*It depends on the author, for example, if you want to do a remix of songs by famous people (Justin Bieber, Camila Cabello, etc.) it is complicated, because you have to get in touch and contact them it is difficult*".

On the other hand, interviewees suggested that contacting smaller bands tends to be somewhat easier. One prosumer stated that:

"*if I do a cover by a hungarian band I ask them before/after concerts if that's okay to upload a cover by one of their songs. I do this till this day by the way and if the band isn't hungarian I always write them on social media. Never got a negative reply which I think it's nice. I always do that if I want to upload a song by an unpopular band mostly, because I know that they will reply*".

Similarly, another interviewee who uploads remixes to YouTube stated:

"if for example I want to make an official remix of an artist who is a friend, it's easy, I just have to talk to him and that's it.".

In conclusion, prosumers of music who took part in this research, who choose to obtain rights clearance prior to uploading their works to YouTube, exhibit a struggle in the identification and subsequent contacting of rightsholders. This struggle seems to intensify, depending on how popular the original artist is, which also translates to their respective representation being unattainable. On the other hand, prosumers of music who took part in this research suggest that contacting smaller, lesser well-known artists, is often easier.

4.2.3 Prosumers and the use of royalty free samples.

A recent study by Aufderheide and Sinnreich, which examined documentary filmmakers use of "fair use" throughout their creative process, found that documentary filmmakers often sought out ways to avoid licensing.[639] Namely, in a survey of 489 documentary filmmakers, they found that 74% "*have actively searched for public domain material or material made available via an open-source license such as Creative Commons".*[640] Forum posters examined in phase one, exhibited signs of turning to royalty free samples in their remixes as a way of avoiding copyright infringement, but sometimes still receiving copyright strikes. For instance, one forum user who claimed to use "royalty free samples" to create their remix uploaded it to YouTube but still received a notice:

"Sony Music Entertainment have claimed they have the copyright over a track used in one of my videos. They haven't taken it down, just monetized it. However, the song they are saying I have used has not been used. I used a royalty free track.".

This may be attributed to the fact that others who use the "royalty free" samples in the creation of original songs, later register their songs with YouTube's Content ID, which then identifies the allegedly royalty free remix uploaded to YouTube by a prosumer, which includes the so called "royalty free" sample, as amounting to copyright infringement. As stated in the literature review chapter, YouTube's help page explicitly excludes remixes, and more generally, unlicensed music, from being registered to the Content ID database. However, policing this, when a single sample such as a snare or kick drum, obtained from a "royalty free" sample pack, mixed in with original recordings, is being registered, suddenly becomes very hard.

Alternatively, this may be attributed to the inherent complexities associated with copyright law. Copyright law is a private right meaning that rightsholders have a choice of whether to enforce their rights. This becomes more complex when rightsholders add clauses to how their rights can be reused. For instance, T-Pain recently released his "Pizzle Pack" characterised as "royalty-free streamer beats".[641] This pack of 162 tracks, is primarily aimed at users who stream content on platforms like Twitch and YouTube and want to have background music playing. This is made evident by a legal disclaimer included on the official website of the so called "royalty-free streamer beats" which states that:

[639] Aufderheide and Sinnreich (n 606) 6.
[640] ibid.
[641] 'Pizzle Pack by T-Pain' <https://PizzlePack.com> accessed 8 March 2022.

"*I expressly reserve all rights to my music. I give you a limited revocable license to use my music in the background of your videos but you can't record to my music, change it, or use it anywhere else. If you do, you're violating my copyrights and that's gonna get your ass sued*".[642]

If a prosumer of music were to reuse any of the tracks included in T-Pain's "pizzle-pack" they would as per T-Pain be "violating his copyrights". This demonstrates that although "royalty free samples" may be advertised as "royalty free", due to the inherent nature of copyright, it is the choice of the rightsholder when, if ever, to enforce their rights whether that be circumstantial like T-Pain or otherwise chronological. A rightsholder may provide prosumers with "royalty free samples" and later chose to enforce their rights in the future, meaning that prosumers of music who use such samples in the works they upload to YouTube, may receive claims on their videos.

In summary, prosumers of music who are aware of their need to obtain rights clearance prior to uploading their works to YouTube, may resort to the use of "royalty free" samples in the creation of the works of music prosumption, and may still receive copyright strikes, despite their use of allegedly "royalty free" music. This may be due to the registration of "royalty free" samples to YouTube's automated digital fingerprinting mechanism's registration system, which translates to those samples no longer being regarded as "royalty free". Alternatively, this may simply be due to the fact that copyright is a private right and rightsholders have a choice of when, if ever, to enforce their rights.

[642] ibid.

4.2.4 What influences prosumers' decision to either seek or not seek permission to reuse works included in their work?

Above it was shown that not all prosumers of music will seek permission to reuse the works they use in the creation of their works of music prosumption prior to uploading them to YouTube. This may, in part, be due to the existence of the pseudo pathway to rights clearance. Alternatively, this may be due to certain prosumers' lack of knowledge of the fact that they are to a certain extent required to do so. This section drawing on data from the questionnaire conducted as part of phase two of this research, provides insights into what may influence prosumers' decision to either seek or not seek permission to reuse works included in their work.

Survey respondents who indicated that they had gone through the rights clearance process (N=30), were asked why they sought to obtain permission prior to uploading their work to YouTube (Table 18). Respondents were able to select more than one response to this question. 52.78% revealed that they knew they had to do so. This, to a certain extent, coincides with the findings with regards to prosumers' knowledge of the rights clearance process discussed above, where 57.69% of respondents were aware of the fact that they needed to obtain permission to reuse the works they upload to YouTube.[643] Interestingly, only 27.78% of respondents reported that YouTube had asked them to do so. This may be attributed to the fact that YouTube does not explicitly ask for users to have already secured the necessary rights at the point of upload. As indicated in Chapter 1,[644] YouTube, like other UGC orientated platforms, like SoundCloud, [645] informs users when they are uploading that "*by submitting your videos to YouTube, you acknowledge that you agree to YouTube's Terms of Service and Community Guidelines. Please be sure not to violate others' copyright or privacy rights".* This is presented to users in a very small font at the bottom of their screen. Bearing in mind YouTube's law setting powers for prosumers of music outlined in the preceding chapter, it is argued that such notices should be better enforced by YouTube. For instance, YouTube could actively ask users to confirm that they have secured necessary rights at the point at which they are uploading their works. However, this would, in turn arguably create an environment where rights clearance processes are overly enforced.

[643] See Chapter 4, section 4.1.
[644] See Chapter 1, section 1.3.2.1.
[645] 'SoundCloud – Listen to Free Music and Podcasts on SoundCloud' (*SoundCloud*) <https://soundcloud.com/> accessed 8 March 2022.

Table 18: Frequencies of why respondents sought to secure rights clearance.

REASONING	%
YouTube told me to do so	27.78%
I've seen others doing it	11.11%
I knew I had to do so	52.78%
Other, please specify	8.33%
Total	100.00%

Survey respondents that indicated that they had not gone through the rights clearance process (N=54), were also asked why they did not seek to obtain permission prior to uploading their work to YouTube (Table 19). Again, respondents were able to select more than one response. 36.62% of respondents attributed this to the fact that they did not know that they needed it. This to a certain extent, reaffirms the finding that there is a disparity between prosumers regarding knowledge of the fact that rights clearance is needed prior to uploading.

Table 19: Frequencies of why respondents did not seek to secure rights clearance

REASONING	%
It is too complicated	26.76%
It is too expensive	14.08%
I didn't know I needed it	36.62%
Other, please specify	22.54%
Total	100.00%

Of those that listed other as their option, 4 respondents made reference to the fact that contacting rightsholders is hard, thereby reaffirming the findings from phase one and the interviews, presented above, with responses such as: "*a lot of labels don't provide necessary contact info that would allow you to contact them*"; and "*at the beginning I tried to contact the Labels and so on. But they don't react to my Mails. And I cannot wait until I get an answer. That would mean, that I could publish maybe one video in a half year*". 3 respondents pointed towards the fact that the rights clearance is time consuming stating "*too long to do it. Valuable promo time would be lost".*

Another respondent claimed that rightsholders do not have the time to respond to permission requests stating: "*I doubt if famous singers have all the time to respond to my tweets given hom many they probably receive in a day. And I also assume it might arise costs I may not be very able to*

foot". This echoes the finding that prosumers argue that contacting rightsholders is especially hard when the rightsholder in question is "more popular"

3 respondents pointed towards utilising the "pseudo-pathway" to rights clearance with statements such as: "*I always believed YouTube has an agreement with the record labels, which makes sure that covers can be made on the platform in return the record label would share the revenue".*

Moreover, 3 respondents mentioned that what they upload does not require a license as it falls under "fair use" exceptions. This reaffirms what was discussed in Chapter 3, whereby it was demonstrated that prosumers of music possess varying levels of copyright knowledge with regards to the existence and applicability of copyright exceptions.[646] The 2 remaining respondents indicated that they did not have the necessary knowledge for seeking to secure permission to reuse a work prior to uploading it to YouTube, reasserting the fact that prosumers lack knowledge with regards to how to go about the rights clearance process.

[646] See Chapter 3, section 3.1.3.

4.3 Interim Conclusion.

At the time this research took place, prosumers of music would have to secure the rights to any of the works they reuse prior to uploading their works to YouTube, in order to do so "legally". Similar to what existing research has shown in the field of documentary filmmakers, prosumers of music struggle with the process of identifying rightsholders and which rights need to be cleared. For prosumers of music however, this struggle is mainly vested in a lack of knowledge regarding the rights clearance process.

Due to the way in which YouTube has operationalised copyright enforcement mechanisms, prosumers have an alternative route to rights clearance – the "pseudo-pathway" to rights clearance. This research reveals that prosumers of music do not always seek to obtain permission prior to reusing another artist's work. Furthermore, prosumers of music seem to have a positive attitude towards the way in which YouTube has operationalised copyright and related enforcement regimes.

For prosumers of music who do attempt to secure rights clearance, securing necessary rights seems to be more accessible when the artist whose song is being reused is a "smaller", "less well known" artist as opposed to mainstream, well-known artists. However, even if a prosumer of music manages to secure the necessary rights or choses to use "royalty-free" works, they still run the risk of facing copyright claims on their works.

It is argued that increasing awareness of the need to obtain permission, coupled with a more simple and efficient rights clearance process could potentially increase the percentage of prosumers that seek to obtain permission prior to uploading their works to YouTube. However, it is posited that doing so may not be necessary due to YouTube's operationalisation of copyright and related enforcement regimes which as aforementioned, has opened up new a new market for derivative works, and music prosumers' overall positive attitude towards the utilisation of the resulting pseudo-pathway to rights clearance that has been created. As already mentioned, the DSM Directive is likely to alter the landscape in the realm of music prosumption in this respect. A detailed discussion of what the future may hold for prosumers' encounters with copyright related regulatory frameworks before they upload their works to YouTube is found in Chapter 7.

Chapter 5 – Whilst Uploading.

In Chapter 1, it was shown that, whilst uploading a work to YouTube, a hypothetical prosumer – John – would encounter a number of choices which would potentially be guided by legal but also potentially, non-legal determinants of behaviour, such as social norms.[647]

As already established, at the point of uploading, among other things, prosumers of music are given the choice of how to title their works and what to include in the descriptions of the works they upload to YouTube. This plays an important role for prosumers in terms of their works being discoverable. As per YouTube:

"Well-written titles can be the difference between someone watching and sharing your video, or someone scrolling right past it. And it's best to create titles that accurately represent what's in the content.".[648]

YouTube's view seems to be echoed amongst forum posters examined in phase one of this research as well:

"I'm not suggesting that anyone 'game' the thumbnail/title thing, but just to choose the thumbnail/title combination carefully and keeping in mind that it might be more important than the content itself. I don't think anyone should use misleading titles or thumbnails, but that doesn't mean you can't create a flashy thumbnail that is reasonably relevant to your video with an equally catchy title.".

Moreover, in Chapter 1, it was shown that prosumers of music who are members of "YouTube's Partner Programme", are able to monetise the works they upload to YouTube, via the placement of advertisements on their works.[649] In order to be part of "YouTube's Partner Programme", a prosumer would need to have *"4,000 valid public watch hours in the last 12 months; more than 1000 subscribers; a linked AdSense account, agreeing to "YouTubes monetisation policies" which includes YouTubes terms of service and community guidelines, and live in a country or region where the partner programme is available".*[650] As described in Chapter 1, a prosumer who fulfils these requirements will be presented with the option to monetise the work they are uploading through

[647] See Chapter 1, section 1.3.2.2.
[648] 'Make Effective Thumbnails and Titles - YouTube' <https://creatoracademy.youtube.com/page/lesson/thumbnails?hl=en-GB#strategies-zippy-link-3> accessed 8 March 2022.
[649] See Chapter 1, section 1.3.2.1.
[650] 'YouTube Partner Programme Overview and Eligibility - YouTube Help' (n 256).

the placement of advertisements on their work, and if so, they will also have to choose how they would like advertisements to be displayed on their content.[651]

Hence, whilst uploading their work to YouTube, prosumers of music must make decisions on how they title their work and what they include in their video descriptions and; whether and if so how, they monetise their works.

As already discussed in Chapter 1, in the context of how such decisions are regulated, no research has been carried out in the realm of music prosumption, but some has been carried out on sub-cultures which are closely related to prosumers of music, such as, transformative fandom.[652] Existing research tends to, focus on small tight knit communities where in-person social interactions are common, such as roller derby skaters,[653] tattoo artists,[654] street artists,[655] and within the fashion industry. [656]

Such research shows that, although regulated by copyright law, certain communities gravitate towards a norms-based regulatory system which either compliments or substitutes formal black letter law. Often these rules surround the issue of plagiarism and the boundaries under which it is acceptable, which are often shaped by attribution and non-commercialisation norms. For instance, Iljadica found that reproduction was acceptable amongst graffiti artists if copying was for non-commercial purposes,[657] or accompanied by attribution.[658]

However, such research, as aforementioned, examines small tight knit communities where in-person social interactions are common. Could the formation and enforcement of such norms be replicated in an online environment? As outlined in Chapter 1, certain studies have examined social norms in the "positive space" of intellectual property amongst online communities.[659] Hence, attribution and non-commercialisation norms are not only found within offline communities where in-person social

[651] See Chapter 1, section 1.3.2.1.
[652] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306).
[653] Fagundes (n 307).
[654] Perzanowski (n 310).
[655] Iljadica (n 203).
[656] Noto La Diega (n 306).
[657] Iljadica (n 203) 200–201, 206.
[658] ibid 203–204.
[659] Fiesler, Feuston and S. Bruckman (n 203); Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 382); Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 270); See also, Andrés Monroy-Hernández and others, 'Computers Can't Give Credit: How Automatic Attribution Falls Short in an Online Remixing Community' [2011] Proceedings of the 2011 annual conference on Human factors in computing systems - CHI '11 3421. Monroy – Hernández *et.al.* found that users of Scratch, an online "*social media platform where hundreds of thousands of young people share and remix animations and video games",* share strong views regarding the importance of attribution, viewing remixing as acceptable provided it is accompanied by appropriate credit to the original creator.

interactions are common; but are also found to exist in online communities of creators where appropriation is common. In fact, Fiesler and Bruckman argue that "*intellectual property norms in fandom communities may have a long pre-Internet history and have simply been maintained by a persistent community identity despite changes in technology and membership"*.[660] However, they do argue that "*fan communities tend to be close-knit*", even in an online environment.[661] Can the same be said with regards to online communities who may never interact with each other and if they do, when such interactions are asynchronous and sporadic?

Such norms are also found to exist in online communities.[662] However, unclear parameters used to define social norms and varying degrees of contact amongst members of communities studied result in incomplete pictures being framed. This results in this thesis asking whether such informal norms could be found to exist within the realm of music prosumption.

In Chapter 1, it was also established that an idea which has yet to have been explored in the context of sociolegal research, is the concept of "mimicry".[663] In other words, prosumers of music may look to others within their community to determine how to title their works and whether to monetise their works, copying the actions of others. This non-legal determinant of behaviour is different from social norms, as behaviours which are mimicked are not necessarily socially enforced, but merely transcend through a social group of two or more people, providing an explanation for the commonality of a given behaviour.

Thus, although regulated by copyright law, existing research to a certain extent supports the notion that the decisions prosumers of music must make whilst uploading their works to YouTube, may be influenced by social norms.[664] Alternatively, behavioural commonalities amongst prosumers of music at this stage of their dissemination process, may be attributed to mimicry.[665] Hence this thesis asks:

"Do any social norms or other non-legal determinants of behaviour exist in the realm of music prosumption at the point at which prosumers are uploading their works to YouTube?"

[660] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 12.
[661] ibid 14.
[662] Fiesler, Feuston and S. Bruckman (n 243); Monroy-Hernández and others (n 670); Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 440).
[663] See Chapter 1, section 1.3.2.2.2.
[664] See Chapter 1, section 1.3.2.2. Social norms tend to exist where no formal laws apply or where formal laws that exist, do not apply wholeheartedly. See for instance, Yuval Feldman, 'An Experimental Approach to the Study of Social Norms: The Allocation of Intellectual Property Rights in the Workplace' (2016) 10 Journal of Intellectual Property Law 59, 93. Feldman argues that in accordance with the theory of social proof, social norms are typically relied upon where circumstances are ambiguous.
[665] As per Chartrand and Lakin, "*people mimic virtually everything they observe in others, including their motor movements and behaviours*". Chartrand and Lakin (n 322) 286.

In answering this question, this chapter uncovers determinants of behaviour prosumers of music may encounter whilst they are uploading their works to YouTube. Using data from both phases of research, it presents what determinants of behaviour, if any, prosumers of music encounter whilst uploading their works to YouTube. Given that as outlined in Chapter 1, this research occurs in the "positive space" of intellectual property, this chapter using results from both phases of empirical research, first presents what effect, if any, the copyright framework is likely to have on the choices prosumers of music encounter whilst uploading their works to YouTube. This chapter then moves on to present results regarding the existence of non-legal regulatory frameworks in this context. It begins by examining whether any non-legal regulatory frameworks influence how works are titled on YouTube, before examining their effect, if any, in the context of monetising works of music prosumption, that are uploaded to YouTube.

Ultimately, this chapter shows that prosumers of music, whilst uploading their works to YouTube, actively engage in attribution. Their motivations for doing so, however, vary from prosumer to prosumer. Moreover, prosumers of music who are eligible to do so, tend to monetise the works they upload to YouTube, and a determining factor seems to be YouTube's eligibility criteria.

5.1 The choices prosumers encounter whilst uploading in the context of formal black letter law.

In Chapter 1, it was shown that the choices prosumers of music must make whilst uploading their works to YouTube, may to a certain extent be regulated by copyright law.[666] This section, using data from both phases of empirical research, aims to present how the copyright framework impacts, if at all, the decisions prosumers make at the point at which they are uploading their works to YouTube. Namely, it examines music prosumers' attribution and monetisation practices in the context of formal black letter law.

[666] See Chapter 1, section 1.3.2.2.1.

5.1.1 Attribution in the context of copyright law.

Existing research shows that attribution is often thought of, amongst certain communities such as transformative fandom,[667] within the context of avoiding liability and often "*mistaken for a legal rule*".[668] This section aims to build a foundation for explaining social norms in the positive space of intellectual property law by presenting attribution in the context of copyright law, explaining how prosumers' ideas about the law track against the copyright regulatory framework.

Forum posters examined in phase one of this research, seem to share in the misconception exhibited by other communities, in that correct attribution absolves an alleged copyright infringer from liability. For instance, one user who created an original rap song but used an underlying beat which was created using samples from other works that had been advertised as "royalty free" stated:

"I gave everyone proper credit, and I am not monetizing my video. Is there a certain way you need to upload it? In the claim it says a cover of the song would be allowed. Isn't that basically the same as what I've done?".

This extract also shows a misconception regarding the effect of commercialisation. This will be discussed in more detail below. Another user who received a notice for a cover song they uploaded to YouTube but did not comprehend why, stated:

"There are countless song covers on YouTube. Even the particular song in question, "Time" by Pink Floyd, has several covers on YouTube with way more views than mine. I gave full credit to Pink Floyd and the specific songwriters in the description. Why has my video been blocked? Is there anybody at YouTube I can ask about this?"

Moreover, a user who claimed to had seen other cover song orientated channels and gained inspiration and wanted to start their own channel focused on releasing cover songs asked:

"Do i need permission or can i just credit the original artist???".

Finally, a remix artist who received a notice but did not understand how that was possible stated:

"i recently made a remix to Bjork's Hunter and i did not even use the whole tune itself just certain samples and everything is completely created by me. Even the sample I used was edited with effects yet i cannot have my own work up because it contains a sample owned my WMG? I gave Bjork the

[667] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 7.
[668] ibid.

credit and didnt claim it as my own but wrote it as [Mury Remix] and i still couldnt post it. PLEASE HELP.".

The view that attribution absolves music prosumers from any liability arising from copyright infringement, was echoed in phase two of this research amongst interviewees. For instance, one who categorised themselves as uploading cover songs stated that:

"I'm assuming that if I credit the original creators, am not claiming that the song is my own, and it is very clearly a cover - I am not breaking any rules. Also in the description, if I use a track, I will link it and say that I do not own the music used.".

This interviewee attributed their reason for doing so, to the way in which channels which provide backing tracks for users uploading cover songs to reuse, present their works on YouTube:

"Usually most karaoke/instrumentals channels say that you can use the track as long as you credit them in the description, so that is what I do. Then I make it clear that I do not own the track.".

However, as was the case with prosumers' knowledge of copyright infringement, exceptions and the rights clearance process, where varying degrees of knowledge were exhibited; certain forum posters examined in phase one were aware of the fact that correct attribution alone does not absolve prosumers from liability for copyright infringement. For instance, a forum poster who was confused about their receipt of a copyright strike for a cover song they had uploaded to YouTube, claiming that their strike must have been filed mistakenly since they had credited the creator of the instrumental they had used, as well as who they thought was the rightsholder of the original song they had recreated, received this response:

"Crediting does not absolve you of copyright claims. You need explicit permission in the form of a license or contract in order to do covers or use songs in your video.".

Nevertheless, it can be deduced that prosumers of music, like the transformative fandom community, to a certain extent believe that attribution absolves them from liabilities arising from potential copyright infringement. In the context of the copyright framework, although courts might consider attribution "*as part of an overarching sense of good faith"*,[669] attribution is not, as important as prosumers of music believe it to be in the determination of the applicability of copyright exceptions.[670] As outlined in Chapter 1, in the UK, attribution alone will not absolve liability for prosumers of music who may be infringing copyright.[671] Sufficient acknowledgement would be

[669] Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 272) 1029.
[670] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 1029.
[671] See Chapter 1, section 1.3.1.2.1.1.

required to be shown (unless impossible for reasons of practicality or otherwise) if a prosumer meets the purpose of the fair dealing exception, laid out in s30(1ZA) and the requirement of fair dealing.[672] This would of course vary, depending on the nature of a prosumer's reuse and their geographical location. However, in Chapter 1 it was shown that works of music prosumption,are only under certain circumstances going to be regarded as falling under a copyright exception.[673] Thus, although attribution may in theory help support prosumers build a defence, in reality, it is unlikely to have any substantial effect.

In Chapter 1 it was shown that works of music prosumption interact with a rightsholders' economic rights, in that a prosumer's reuse of a work will typically be regarded as infringing upon a rightsholder's right to reproduce that work.[674] Chapter 1 also showed, however, that copyright also confers what are referred to as "moral rights" which include the right to be recognised as the author of the work, i.e. an "attribution right".[675] As such, prosumers may to a certain extent be legally required to attribute the original artists whose rights they reuse.

Certain forum posters examined in phase one of this research view attribution as a legal requirement. For instance, a forum poster who sought advice on uploading cover songs to YouTube received this reply:

"Yes you can BUT YOU HAVE TO GIVE CREDIT.".

As discussed in Chapter 1, moral rights enforcement is uncommon; especially in Anglo-American copyright jurisdictions.[676] Moreover, in accordance with s87(2) of the CDPA a rightsholder is able to waive their attribution right,[677] and, it is arguably common practice for music industry contracts to ask of artists to waive their paternity rights.[678] Nonetheless, prosumers of music may in theory and in accordance with black letter law, be legally required to attribute the original creators of the works

[672] Ibid.
[673] See Chapter 1, section 1.3.1.2.
[674] See Chapter 1, section 1.3.1.1.
[675] See Chapter 1, section 1.3.2.2.1.
[676] Ibid.
[677] See s87(2) CDPA 1988. The Berne Convention does not expressly mention whether or not waiving of moral rights is prohibited or alternatively, permitted and this is left as a matter of contract law. As a result, there are variations between signatories to the Berne Convention regarding the matter.
[678] The musicians' union page which provides copyright knowledge for primarily UK based musicians states "*the right to be identified as the author (or director) of the work* […] *must be asserted in writing and some contracts will try to ask you to waive this*". 'Copyright, Moral Rights and Performers' Rights Musicians Must Know About' (n 231); Rajan Desai states that musicians in general lack the bargaining power to retain ownership over any aspect of their works stating "*popular music contracts customarily assign all rights in copyright to the publisher*" Desai (n 231) 8–9.

they reuse. However, given a lack of enforcement of moral rights, and all-consuming music industry contracts, it is unlikely that this legal requirement have any real-world effect.

To conclude, prosumers of music, like other communities which have been the focus of existing research, share in the misconception that correct attribution absolves them from liability. Some also view attribution as required by copyright law. To a certain extent this may in theory be correct. However, as was discussed above, attribution alone does not absolve liability for copyright infringement and in practice moral rights are under-enforced.

As aforementioned, one could argue that prosumers' lack of copyright knowledge may be driving commonly exhibited behaviours of attribution amongst prosumers of music. However, as was shown in Chapter 3, copyright knowledge varies amongst prosumers of music.[679] Additionally, forum posters examined in phase one of this research exhibited knowledge of the fact that attribution does not absolve them from liability but continue to attribute. For instance, one user who had received a copyright strike, which they perceived as mistaken, stating that they had attributed, was informed that attribution does not provide a route to escaping liability had stated:

"I understand that crediting does not absolve all liability.".

Hence, whist lack of knowledge regarding avoidance of liability may be a contributing factor regulating the conformity with the act of attribution, it is likely not the sole operative cause. As outlined in Chapter 1, other factors may be at play. Social norms may have developed in the positive space of intellectual property law, which go beyond what is required by law. Alternatively, behavioural commonalities exhibited by prosumers of music, in this respect, may be the result of behavioural mimicry. Each of these hypotheses will be elaborated upon in more detail below.

[679] See Chapter 3, section 3.1.3.

5.1.2 Monetisation in the context of copyright law.

As aforementioned, existing research has found behavioural commonalities in terms of communities not commercialising their works.[680]

Additionally, in Chapter 1, it was shown that the commercial nature of a reuse may determine the applicability of copyright exceptions.[681] Nevertheless, in Chapter 1, it was concluded that in general, copyright exceptions will only apply to works of music prosumption under certain specific circumstances .[682]

As a result, belief that non-commerciality absolves liability, is similar to the misconceptions discussed above regarding prosumers' act of attribution and may be attributed to the previously discussed lack of knowledge surrounding copyright exceptions that exists amongst prosumers of music.

This misconception regarding non-commercial use was found to exist amongst forum posters examined in phase one of this research. For instance, one user who claimed their work was taken down mistakenly, stated:

"I uploaded a video of a remix that i made to Kanye West's Runaways song and it was removed from youtube do to copyright infringement. I do not make any profit off of youtube, so why was my video taken down when there are thousands of other videos using mainstream songs in their videos?"

As will be discussed in more detail in the next chapter, in the questionnaire administered as part of phase two of this research, respondents who had never been sanctioned, believed that they were not being sanctioned, as a result of them abstaining from monetising their works, further demonstrating the existence of this misconception in the realm of music prosumption.

Bearing in mind prosumers' misconceptions surrounding the effects of commercial use, one could argue that prosumers do not commercialise in the belief that doing so absolves them from liability. However, Fiesler and Bruckman, argue that non-commercialisation norms in the realm of "fan-works" are heavily enforced. [683] However, they do not provide insights into how such norms are enforced.[684] Nevertheless, if the same can be said with regards to the realm of music prosumption, then one could argue that social norms may have developed in the positive space of intellectual

[680] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306).
[681] See Chapter 1, section 1.3.1.2.
[682] See Chapter 1, section 1.3.1.2.
[683] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 8.
[684] ibid.

property law, which go beyond what is required by law. Alternatively, behavioural commonalities exhibited by prosumers of music, in this respect, may be the result of behavioural mimicry.

5.2 Do non-legal regulatory frameworks influence the decisions prosumers of music encounter whilst they are uploading their works to YouTube?

Above, it was shown that existing research supports the notion that behavioural commonalities exhibited amongst prosumers of music at the point at which they are uploading their works to YouTube, may be explained by the existence of social norms, which go beyond what is required by copyright law, or alternatively may be the result of behavioural mimicry.

This section presents music prosumers' interactions with such non-legal determinants of behaviour at the point at which they are uploading their works to YouTube by drawing upon data from both phases of empirical research. It begins by providing insights into how prosumers title their works and what they include in their video descriptions, and what may influence the way they do so, before providing insights into whether prosumers of music monetise their works, and whether their decision to do so is determined by any non-legal determinants of behaviour.

5.2.1 Non-legal regulatory frameworks in the context of how works of music prosumption are titled and described on YouTube.

Existing research has shown that certain communities gravitate towards a norms-based regulatory system often shaped by attribution norms. Hence this section begins by examining the existence of attribution norms amongst prosumers of music. Alternatively, as discussed in Chapter 1, behavioural commonalities amongst prosumers of music at this stage of their dissemination process, may be attributed to mimicry.[685] Consequently, this section then provides insights into whether prosumers of music mimic the actions of their peers with regards to how they title or describe their works.

5.2.1.1 Attribution norms amongst prosumers of music.

As indicated by extracts from forum post discussions presented above, forum posters examined as part of phase one of this research, showed signs of engaging in attribution practices when deciding how to title their works, or what to include in the descriptions of their works. However, the existence of informal norms, or a lack thereof, could not be determined solely from data collected in phase one of this research.

As indicated, in Chapter 2, how one determines the existence of a norm is vital and the study of social norms is cumulative in that it builds on research from various disciplines such as economics, psychology and law.[686] Each of these disciplines has their own terminologies and methods of research, which when coupled with a lack of transparency does not allow for continuity in terms of studying the existence, prevalence and function of social norms. Moreover, in Chapter 2, it was argued that Bicchieri's method for measuring norms, successfully amalgamates various studies' approaches and was thus chosen as the scaffolding for this study, allowing for a clear and structured approach for testing for the existence of informal norms within a given community.[687] Consequently, following Bicchieri's method for measuring norms, this research sought to examine the existence of social norms amongst prosumers of music via the questionnaire administered as part of phase two of this research.

To test for the existence of social norms one must first identify the relevant reference group and a party's understanding of the reference group's beliefs regarding a specific behaviour.[688] Bicchieri states that "*to identify a reference network, we should ask questions about the people whose actions, beliefs, or preferences individuals take into account when deciding whether to perform a*

[685] See Chapter 1, section 1.3.2.2.2.
[686] See Chapter 2, section 2.2.2.3.
[687] See Chapter 2, section 2.2.2.3.
[688] Mackie and others (n 533) 8.

certain action".[689] This was employed when asking questionnaire respondents about their actions, beliefs and preferences in this research.

According to Bicchieri, one must first identify whether respondents actually engage in the behaviour.[690] As previously indicated, forum posters showed signs of attributing the original artists' whose works they reuse. However, given the inherent limitations of discussion forum research, it is impossible to know for certain whether forum posters are in fact prosumers of music. Furthermore, in order to quantitatively assess whether prosumers of music engage in this behaviour, respondents were asked whether they actually engage in the behaviour. The act of attribution was defined before asking the question as "*including the name of the original artists whose work you have created a cover of/remix of, either in the title or in the description of your video*".

98.33% of those who upload cover songs identified themselves as attributing (Table 20) and 93.75% of those who upload remixes identified themselves as attributing (Table 21), indicating that prosumers of music actively engage in the attribution of the original artists' whose works they reuse.

Table 20: How many of those who upload cover songs attribute.

	Frequency	%
Yes	59	98.33%
No	1	1.67%
Total	60	100.00

Table 21: How many of those who upload remixes attribute.

	Frequency	%
Yes	30	93.75%
No	2	6.25%
Total	32	100%

Sociological and social-psychological research indicates that social status plays a key role in conformity with a given behaviour. Namely, members of a given community who are regarded as falling within the middle ground of their community's social status hierarchy, are more likely to conform with a given behaviour when compared to those who would be regarded as falling under the high and low status categories, resulting in what is referred to as an "*inverted U-shaped*

[689] Bicchieri (n 544) 100.
[690] ibid 74.

relationship between status and conformity".[691] As a result, prosumers of music who have mid-level subscriber counts, and/or views , may be more likely to conform to behaviours exhibited by those who have high subscribers and/or view counts and are potentially part of the "YouTube Partner Program".

The one prosumer who uploads cover songs to YouTube who reported that they do not credit the original artists whose works they reuse in the cover songs they upload, began uploading cover songs in 2017 and has since uploaded more than 100 cover songs to YouTube, uploading approximately once a week with an average of 50,001 to 100,000 views generated on the cover songs they upload to YouTube. In Chapter 2, it was discussed that most respondents, albeit with a few exceptions reported attracting low view numbers.[692] Using Phillips and Zuckerman's middle status conformity theory discussed above,[693] this would translate to that prosumer being regarded as a "high profile" prosumer with both numerous uploads, but also a high average view count. Similarly, the two prosumers who upload remixes to YouTube, and reported not attributing, also lie upon the fringes of music prosumer categories. Both began uploading in 2018, one uploaded 25 whilst the other, uploading approximately once weekly, with one receiving on average between 301 and 1000 and the other between 10,001 and 50,000 views on the respective works they upload to YouTube.

Following the sociological and social-psychological research, regarding the role that social status has in conforming with a behaviour, discussed above, one could argue that those three prosumers who do not attribute, would not be regarded as "middle-status", thereby making them less likely to conform to the behaviour of attribution.[694]

One limitation of this study is that it does not uncover how far prosumers of music attribute. This study identifies that prosumers of music claim to attribute the original artists whose work they reuse but does not determine whether prosumers will attribute all artists involved in the creation of the work being reused and may ultimately be regarded as joint authors of the work under the lens of copyright. Creativity and the creative process is unique. Consequently, in each musical work, there may be a multitude of creators associated with varying degrees, for each work making it logistically, very hard to test. Nevertheless, this research shows that the majority of prosumers of music claim to engage in the behaviour of attributing the original artists whose works they reuse.

[691] Damon J Phillips and Ezra W Zuckerman, 'Middle-Status Conformity: Theoretical Restatement and Empirical Demonstration in Two Markets' (2001) 107 American Journal of Sociology 379, 379.
[692] See Chapter 2, section 2.2.2.4.
[693] Phillips and Zuckerman (n 718) 379.
[694] Phillips and Zuckerman (n 718).

Bicchieri does not mention testing for the frequency of engaging in a given behaviour. However, it is argued that certain prosumers may only rarely attribute the original artists whose works they reuse in the works they upload to YouTube. If so, this would not be regarded as amounting to a social norm since social norms denote that a commonly exhibited behaviour is recurrent.[695] Hence, participants who indicated that they engage in the behaviour of attribution, were then asked about the frequency of their engagement in attributing.

93.22% of those who upload cover songs to YouTube and attribute reported that they always do so (Table 22) and 93.33% of those who upload remixes to YouTube and attribute reported that they always do so (Table 23).

Table 22: How often do those who upload cover songs attribute.

	Frequency	%
Always	55	93.22%
Most of the time	2	3.39%
About half the time	2	3.39%
Sometimes	0	0.00%
Total	59	100.00%

Table 23: How often do those who upload remixes attribute.

	Frequency	%
Always	28	93.33%
Most of the time	1	3.33%
About half the time	1	3.33%
Sometimes	0	0.00%
Total	30	100.00%

Hence, it can be deduced that not only do prosumers of music actively engage in the attribution of original artists whose works they reuse in the works they upload to YouTube, they engage in this behaviour frequently.

[695] See how social norms are defined in Chapter 1, section 1.3.2.2.2. where injunctive and descriptive norms' definitions hint towards not only commonly exhibited behaviours but, commonly perceptions of behaviours which are recurrent. Additionally, social norms tend to be defined by the existence of social sanctions when a behaviour is not complied with. This further denotes an element of recurrence in a behaviour for it to be considered as amounting to a social norm.

As indicated in Chapter 1,[696] Cialdini distinguishes between descriptive and injunctive norms as a way of identifying the source of where specific norms will have originated from.[697] Bicchieri's method for measuring norms does the same, but goes a step further, distinguishing between personal normative beliefs, empirical expectations (which are what would be described as descriptive norms), and normative expectations (injunctive norms).[698]

Beginning with testing for descriptive norms, or as per Bicchieri, empirical expectations, respondents were first asked whether they think it is common practice amongst their respective reference group to credit original artists. 98.10% of those who upload cover songs (Table 24) and 82.14% of those who upload remixes (Table 25) exhibited evidence of descriptive norms i.e. believe that it is common practice for others who upload covers or remixes to YouTube to credit the original artists whose works are being reused.

Table 24: How many of those who upload cover songs to YouTube, think it is common practice among users who upload cover songs to YouTube, to credit the original artists.

	Frequency	%
Yes	51	98.10%
No	1	1.90%
Total	52	100.00

Table 25: How many of those who upload remixes to YouTube, think it is common practice among users who upload remixes to YouTube, to credit the original artists.

	Frequency	%
Yes	23	82.14%
No	5	17.86%
Total	28	100.00

Next Bicchieri states that one needs to measure personal normative beliefs i.e. what a prosumer thinks other prosumers should or ought to do, before examining the existence of injunctive norms.[699] Forum posters examined in phase one of this research demonstrated that attributing the original creators whose works they reuse, in the titles or descriptions of the works they upload to

[696] See Chapter 1, section 1.3.2.2.2.
[697] Schultz (n 275) 11. See Robert B. Cialdini *et.al.*, A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior, 24 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 201 (1991).
[698] Bicchieri (n 544) 69–70.
[699] Bicchieri (n 544).

YouTube is personally important to them, which could be an indication of personal norms. For instance, one user who claimed to upload cover songs to YouTube and had created a thread putting forward their views regarding the difficulties surrounding the rights clearance process, had with regards to the titling of videos stated that:

"I do agree that the original creators of the songs/pieces should be credited for each cover.".

One interviewee from phase two of this research, who categorised themselves as uploading both cover songs and remixes to YouTube, when asked about their experience with attributing the original artists whose works they reuse in the works they upload to YouTube, considered attribution as a form of respect stating:

"Crediting the artists is more of my way to respect the original artist that i acknowledge my works derived from their idea, and i just give it my own take".

Another interviewee who categorised themselves as uploading remixes to YouTube, considered attribution as the least a prosumer could do, and even stated that attributing could lead to increased exposure for the original artists considering the channel uploading works of music prosumption is big enough.

Another, in a similar vein stated that the original artists may notice a prosumer's work which for the prosumers is:

"AWESOME! I haven't got any first hand experience of this but others do. Makes you think that artists love remixes and mashups so it is sad that we are still not protected by "fair use". In a way we are promoting songs new and old. It's a win win situation!".

Hence, it can be argued that the way prosumers of music title their works, and what they include in their video descriptions, in terms of attribution, seems to be important to them for a variety of reasons. This is something which Fiesler and Bruckman found in the context of content creators who participate in the creation of derivative works which are disseminated online, which led them to describe the act of attribution as amounting to a "*good faith*" norm.[700]

The prevalence of personal norms was tested in the questionnaire administered as part of phase two of this research. 100% of those who upload covers (Table 26) and 93.8% of those who upload remixes (Table 27) responded that others uploading covers/remixes should credit the original artists whose works they reuse, indicating that prosumers of music hold strong personal normative beliefs

[700] Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 272) 1029.

that other prosumers of music should be attributing the original artists whose works they reuse in the works they upload to YouTube.

Table 26: How many of those who upload cover songs to YouTube, think that other users who upload cover songs to YouTube should credit the original artists.

	Frequency	%
Yes	58	100.00%
No	0	0.00%
Total	58	100.00

Table 27: How many of those who upload remixes to YouTube, think that other users who upload remixes to YouTube should credit the original artists

	Frequency	%
Yes	30	93.75%
No	2	6.25%
Total	32	100%

Participants were also asked to rate to what extent they agree with the following statement: "*when uploading a cover song/remix to YouTube, you must credit the original artists."* Most respondents strongly agreed (89.83% of those who upload cover songs (Table 28) and 90.63% of those who upload remixes(Table 29)), which further indicates that prosumers of music hold strong personal normative beliefs that other prosumers of music should be attributing the original artists whose works they reuse in the works they upload to YouTube.

Table 28: Participants' who upload cover songs to YouTube, rating of the statement: "when uploading a cover song to YouTube, you must credit the original artists"

	Frequency	%
Strongly agree	53	89.83 %
Somewhat agree	5	8.47 %
Neither agree nor disagree	1	1.69%
Somewhat disagree	0	0.0%
Strongly disagree	0	0.0%
Total	59	100%

Table 29: Participants' who upload remixes to YouTube, rating of the statement: "when uploading a remix to YouTube, you must credit the original artists"

	Frequency	%
Strongly agree	28	90.63 %
Somewhat agree	2	6.25 %
Neither agree nor disagree	0	0.0%
Somewhat disagree	0	0.0%
Strongly disagree	1	3.13%
Total	32	100%

The evidence of personal attribution norms amongst prosumers who participated in the questionnaire, reaffirms some of the findings exhibited by forum posters examined in phase one of this research. Using Galileo's analogy of a vulture destroying a nest of unhatched chicks, where the unhatched chicks represent Galileo's unpublished ideas which the vulture (a "scheming student") makes public, Biagioli, demonstrates that the act of plagiarism, as distinct from copyright infringement, is historically instilled in society.[701] As a result, providing "*credit where credit is due*" may be a deeply instilled personal norm which transcends across numerous subsections of society and not necessarily distinct for prosumers of music or prosumers in general for that matter. For instance, university students are expected to accurately reference authors' works they refer to in their assessments, using discipline-specific citation styles. Similarly, scholars who work on research projects together, expect to be credited as co-authors of any resulting papers.[702] Equally, prosumers of music seem to share strong personal normative beliefs that other prosumers of music should be attributing the original artists whose works they reuse in the works they upload to YouTube. This, however, is arguably not enough to signify the existence of social norms. Bicchieri states that one must measure injunctive norms against personal beliefs i.e. a prosumers perception of how other prosumers believe they themselves should behave.[703] 98.00% of those who upload covers (Table 30) and 90.00% of those who upload remixes (Table 31)stated that they believe that others who upload covers or remixes respectively believe that they themselves should credit the artists whose works they reuse indicating an existence of injunctive attribution norms amongst prosumers of music.

[701] Mario Biagioli, 'Plagiarism, Kinship and Slavery' (2014) 31 Theory, Culture & Society 65, 65–67.
[702] Jeffrey I Seeman and Mark C House, 'Influences on Authorship Issues: An Evaluation of Giving Credit' (2010) 17 Accountability in Research 146.
[703] Bicchieri (n 544).

Table 30: How many participants who upload cover songs to YouTube, think that other users who upload cover songs to YouTube think that they should credit the original artists

	Frequency	%
Yes	50	98.00%
No	1	2.00%
Total	51	100%

Table 31: How many participants who upload remixes to YouTube, think that other users who upload remixes to YouTube think that they should credit the original artists.

	Frequency	%
Yes	27	90.00%
No	3	10.00%
Total	30	100%

Hence, taking a synoptic view of the abovementioned, it can be deduced that prosumers of music are not attributing solely due to a mistaken belief that doing so absolves them from copyright infringement liability. Prosumers of music exhibit both descriptive and injunctive norms, but also hold strong personal normative beliefs with regards to attributing the original artists whose works they reuse in the works they upload to YouTube.

Posner defines social norms as a sub-group of behaviour regularities but nevertheless, argues that social norms differ in that they also carry certain sanctions with them if not followed.[704] Furthermore, as per Bendor and Swistak "*if violating a rule never triggers any kind of punishment, calling it a norm would violate a common sociological intuition*".[705] Moreover, existing social norms research in the realm of intellectual property law, discussed above tends to present the existence of social norms as being backed by social sanctions which may come in many different forms. For instance, in context of drag queens who operate in the negative space of intellectual property, Sarid found that anti-copy norms which were enforced through "*public on-stage shaming, badmouthing and gossip, and boycotts and professional isolation".*[706] In the case of roller derby skaters who operate in the positive space of intellectual property, not abiding by the social norms governing their use of pseudonyms is usually met with "ostracising".[707] Bicchieri's method for measuring norms, does not explicitly require testing for the existence of sanctions, but does state that "*violation of a*

[704] Posner (n 548).
[705] Bendor and Swistak (n 548).
[706] Sarid (n 291) 163.
[707] Fagundes (n 307) 1127.

norm typically elicits negative sanctions".[708] Furthermore, Bicchieri does state that one "*could ask the actors whether they are willing to directly punish certain actions or denounce them, and how many other respondents they believe would be willing to punish or denounce".*[709] Hence, it is argued that it is to some extent, essential that one determines whether failing to engage in the behaviour of attribution is enforced through the use of sanctions.

Questionnaire participants were asked what they thought would happen if others who create and upload works of music prosumption discovered that a user did not credit the original artists whose works they reused in the work they uploaded to YouTube, using an open-ended question. There were a total of 77 responses to this open-ended question. All responses to this question can be found in Table 4, in the Appendix. 22 respondents referred to receiving either a Copyright Strike or Content ID claim as a result of not attributing, echoing forum posters misconceptions discussed above. This reiterates prosumers' misconceptions regarding attribution as a legally mandated requirement which may absolve copyright infringing liabilities. As discussed in Chapter 3, misconceptions and assumptions about the law are a part of prosumers' legal consciousness,[710] which may drive conformity with a given behaviour, in this case attribution. However, as previously discussed, attribution alone does not excuse copyright infringement, and although attribution may be legally required by moral rights granted by copyright protection, in practise, they are rarely enforced, especially in an Anglo-American setting. Additionally, as was discussed in Chapter 1, Content ID claims are automatic claims which signify that YouTube's automated digital fingerprinting mechanism has detected a match between a work being uploaded and a work which is registered to its database.[711] Hence, incorrect attribution will not result in a Content ID claim. Copyright strikes are the result of a rightsholder submitting a formal copyright takedown request for an alleged infringement of their economic rights. What motivates rightsholders in filing formal takedown requests which translate to Copyright Strikes is not examined in this research. However, it is unlikely that incorrect attribution acts as a catalyst for enforcing economic rights against allegedly infringing works of music prosumption.

[708] Bicchieri (n 544) 61.
[709] ibid 97.
[710] In chapter 3, where the concept of legal consciousness was presented, it was stated that misconceptions about the law together with what prosumers know about the regulatory frameworks that apply to them make up prosumers' legal consciousness. As per Nielsen "*legal consciousness also refers to how people do not think about the law; that is to say, it is the body of assumptions people have about the law that are simply". See* Nielsen (n 437) 1059.
[711] See Chapter 1, section 1.3.3.2.

12 respondents made reference to naming and shaming in the comments sections of works which fail to attribute the original artists whose works they reuse. For instance, one respondent stated:

"They'd write in the comment section that it's not okay to not give credit to the song's original artist and if it's a lot people who discovered this I think some of them would report the upload.".

Hence, failure to attribute may result in social sanctions enforced by viewers who engage with the work negatively. This was echoed by an interviewee who stated:

"Never experienced it by myself because I always give credits at the previous mentioned places. I've seen other videos for example here: https://www.youtube.com/watch?v=-0touo6ePBo - this song is credited to Arctic Monkeys by an unofficial uploader and in the comments there are a lot of people who explain that it's not Arctic Monkeys, but Duck Fizz.

I know that if I would upload a cover with the title "[Username of interviewee]*" - Four Out of Five (Original - Bass Cover)" instead of "Arctic Monkeys - Four Out of Five (Bass Cover by* "[Username of interviewee]*")" I would get comments like you can see in my example link.".*

Like most social media platforms these days, YouTube, has a like/dislike button which allows for viewers to further engage with content. Like and dislike ratios play a role in the discoverability of works both to viewers but also potential advertisers.[712] 2 of 12 respondents stated that failing to attribute may in addition to naming and shaming in the comments section, result in dislikes, which may indirectly harm the prosumer in question. Thus, it can be deduced that failure to attribute may in some circumstances result in social sanctions enforced by viewers who negatively engage with the work in question. One respondent stated that such social sanctions are enforced when the prosumer in question tries to claim credit for a work which is not theirs:

"*I believe it could harm the creator's reputation as if they were trying to get credit for the authorship of the song. Some users might leave negative comments pointing to the fact the creator is not giving credit to the original artist.".*

However, the exact parameters under which such enforcement occurs remain unclear, with certain prosumers being unaware of what would happen if someone in their reference group failed to attribute. 11 respondents to the open-ended question did not know what would happen, whilst 15

[712] This information is for the most part hidden behind complex algorithms. However, it common practice for YouTubers to ask for likes at some point in their videos. Moreover, a test was conducted by a YouTuber which uploaded 2 identical videos with obscure titles (to make sure they were the only 2 results upon searching for those videos) and liked only one of them. Upon, searching for the obscure title, the liked video was presented first. See: MrBeast, *Why Do Youtubers Ask For Likes?* (2016) <https://www.youtube.com/watch?v=4cX-w-ia0RU> accessed 8 March 2022.

stated that most likely nothing would happen. This, as shown by the interviewees statement above, may be due to a lack of personal exposure to enforcement mechanisms, which as previously discussed may be the result of YouTube's inherent structure, which means that prosumers may never interact with each other. Finally, 17 respondents made statements such as "*Its Always good to credit original artists no matter what"* and "*they would probably be confused",* which could not be categorised.

Taking a synoptic view of the abovementioned, prosumers of music hold a strong personal belief that failing to attribute is wrong but also exhibit both descriptive and injunctive attribution norms which under certain circumstances are socially enforced by viewers, through negative engagement. As a result, bearing in mind the definition of a social norm discussed in Chapter 1,[713] one could argue that social norms of attribution exist amongst prosumers of music.

However, Bicchieri argues that for a behaviour to amount to a social norm, we must measure conditionality i.e., that social expectations have power indicated by behavioural change when social expectations change.[714] As per Bicchieri "*we have to check whether the choice to engage in appropriate behaviour is sensitive to expectations and, if such expectations were to change, behaviour would change in a predictable direction. We therefore need to measure expectations, "manipulate" them in a controlled way, and check if behaviour is sensitive to such manipulation".*[715]

This requires the use of hypotheticals where a member of the community imagines a world where social expectations were different. We then measure behaviour in that hypothetical situation. If there is a change in behaviour in accordance with a change in a reference groups' behaviour, then it could be characterised as a social norm. If, however, the behaviour stays the same, then it is most likely a personal norm.

For both those who upload cover songs and/or remixes, responses indicate that behaviours would not change with a shift in a reference group's behaviour (Tables 32-35).

[713] See Chapter 1, section 1.3.2.2.2.
[714] Bicchieri (n 544).
[715] ibid 87–88.

Table 32: If only 10% of users who upload cover songs to YouTube credited original artists, but 90% of users who upload cover songs to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the cover songs they uploaded to YouTube

	Frequency	%
Yes	55	94.83%
No	3	5.17%
Total	58	100%

Table 33: If 90% of users who upload cover songs to YouTube credited original artists, but only 10% of users who upload cover songs to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the cover songs they uploaded to YouTube.

	Frequency	%
Yes	55	94.83%
No	3	5.17%
Total	58	100%

Table 34: If only 10% of users who upload remixes to YouTube credited original artists, but 90% of users who upload remixes to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the remixes they uploaded to YouTube.

	Frequency	%
Yes	31	100.00%
No	0	0.00%
Total	31	100%

Table 35: If 90% of users who upload remixes to YouTube credited original artists, but only 10% of users who upload remixes to YouTube believed always doing so was appropriate, how many respondents would credit the original artists in the remixes they uploaded to YouTube.

	Frequency	%
Yes	30	96.77%
No	1	3.23%
Total	31	100%

Bicchieri states that "*even if a norm is present, we should not overestimate the intensity of allegiance to the approved behaviour. The existence of conditional preferences tells us that, were expectations to change, behaviour would change, and norm-compliance may significantly weaken*".[716] Hence,

[716] ibid 89.

given respondents' lack of behavioural change when presented with hypotheticals where attribution behaviours would change, one would argue that it is most likely that although prosumers exhibited both injunctive and descriptive norms, attribution norms that exist amongst prosumers of music would be categorised as personal norms. As per Bicchieri "*the more we value a norm, the less we worry about how many people follow it or how keenly they monitor our actions*".[717] Hence, respondents' lack of behavioural change when presented with hypotheticals, may be attributed to strongly internalised norms that are unaffected by changes in others' behaviours within the reference group.

However, as indicated above, alongside both descriptive and injunctive norms regulating attribution amongst prosumers of music, failure to comply may result in social sanctions enforced by viewers who negatively engage with the work in question. Other studies have considered this as sufficient so as to declare that social norms exist within a given group. For instance, Oliar and Sprigman's aforementioned study which examined the negative space of intellectual property in the realm of stand-up comedy, differentiated social norms from personal norms solely on the basis that social norms were enforced through the imposition of social sanctions which could in some circumstances "*destroy a comic's good reputation among his peers*".[718] Consequently, one could argue that social norms of attribution do in fact exist amongst prosumers of music since, both descriptive and injunctive norms are present which are enforced through the imposition of social sanctions.

Moreover, Bicchieri argues that "*hypothetical questions may be difficult to answer, as they require the capability to answer "what if" questions and also imagine scenarios that may seem prima facie impossible*. *They require the ability to assume as true claims that may conflict with what is accepted as true, and lack of such ability may lead someone to deny that the suggested scenario is possible*."[719] Hence, respondents' lack of behavioural change when presented with hypotheticals, may be attributed to strongly internalised norms that do not allow for them to imagine a scenario presenting them with alternative realities.

Consequently, following Bicchieris' method for measuring social norms, one could state that respondents' lack of behavioural change when presented with hypotheticals, indicates that prosumers exhibit personal norms rather than social norms. Alternatively, respondents' lack of behavioural change when presented with hypotheticals may attributed to respondent's inability to imagine alternative realities. Instead, adopting other studies' approach which differentiate social

[717] ibid 75.
[718] Oliar and Sprigman (n 291) 1815.
[719] Bicchieri (n 544) 90.

norms from personal norms solely on the fact that social norms are enforced through the imposition of social sanctions, one could argue that prosumers of music exhibit social norms of attribution.

This research concludes that music prosumers' experiences vary. Prosumers of music generally exhibit personal attribution norms which as argued above, are likely not exclusive to prosumers of music. Some prosumers of music exhibit social attribution norms which go beyond a purely personal norm. This variance in experiences is likely due to the inherent structure of YouTube where amateur and professional content sit alongside each other. Hence, although existing research suggests that social norms exhibited amongst offline, small, close-knit communities could be transcribed to an online environment, it is unlikely that this is applies universally, especially on a platform like YouTube, where online communities may never interact with each other and if they do, such interactions are asynchronous and sporadic.

5.2.1.2 Attribution through mimicry amongst prosumers of music.

So far it has been shown that prosumers of music, whilst uploading their works to YouTube, actively attribute the original artists whose works they reuse in the works they upload. There are however a variety of motivations for doing so. Namely it has been shown that certain prosumers conform to the behaviour due to a mistaken belief that doing so absolves them from liability. For some, social norms seem to be regulating enforcement. In general, however, prosumers seem to share a strong personal belief that doing so is the right thing to do. Above, however, it was discussed that, prosumers' collective attribution of original artists whose works they reuse in the works they upload to YouTube, may be the result of prosumers mimicking the actions of others within their community. There are, however, no sociolegal studies examining mimicry which could be used as the scaffolding for examining the existence of mimicry amongst prosumers of music. Hence this research is intended to be used as a starting point which would allow for further research to be carried out. As such, whilst phase one and two indicated that prosumers collectively engage in attribution practices the questionnaire administered as part of phase two set out to identify whether prosumers of music look at how other prosumers of music title their works when deciding how to title their work, and if so, how frequently they do so.

Questionnaire participants were asked, if when making the decision of whether to credit the original artists, they look at how others who upload cover songs/remixes to YouTube title their own cover songs/remixes. These results were mixed. For those who upload cover songs, 55.00% reported not looking at how others credit (Table 36) and for those who upload remixes 65.62% % reported not looking at how others credit (Table 37).

Table 36: How many respondents who upload cover songs to YouTube, look at how other who upload cover songs to YouTube title their own cover songs.

	Frequency	%
Yes	27	45.00%
No	33	55.00%
Total	60	100%

Table 37: How many respondents who upload remixes to YouTube, look at how others who upload remixes to YouTube title their own remixes.

	Frequency	%
Yes	11	34.38%
No	21	65.62%
Total	32	100%

Respondents who reported that they do look at how others who upload covers/remixes to YouTube title their own works, were asked about the frequency of doing so. These responses were also mixed (Tables 38 and 39).

Table 38: How often do respondents who upload cover songs to YouTube, look at how other who upload cover songs to YouTube title their own cover songs.

	Frequency	%
Always	3	11.11%
Most of the time	10	37.04%
About half the time	5	18.52%
Sometimes	9	33.33%
Total	27	100.00%

Table 39: How often do respondents who upload remixes to YouTube, look at how others who upload remixes to YouTube title their own remixes.

	Frequency	%
Always	4	36.36%
Most of the time	6	54.55%
About half the time	0	0.00%
Sometimes	1	9.09%
Total	11	100.00%

Hence, given the fact that prosumers of music do not collectively look at how other prosumers title their own works and those who do, do so infrequently, it is unlikely that prosumers' attribution behaviour is the result of collective mimicry in the realm of music prosumption. However, this could be tested further by for instance, using longitudinal research methods, identifying whether the same group of prosumers, over time, look at the actions of their peers throughout their decision-making process, which would allow for clearer results.

5.2.1.3 Summary of what drives attribution amongst prosumers of music.

This research shows that prosumers of music, whilst uploading their works to YouTube, like other subgroups of prosumers, actively engage in attribution. Certain prosumers of music attribute due to a mistaken belief that doing so absolves them from copyright infringement liability. However, as indicated above, attribution alone, does not excuse copyright infringement. Some prosumers of music are aware of this, but continue to attribute, indicating that lack of copyright knowledge is not the sole driver, motivating conformity with attribution whilst uploading. Another driver for conformity, in terms of attribution whilst uploading amongst prosumers of music, is what Fiesler and Bruckman describe as a "*good faith*" attribution norm, where credit is given as a way of respect to the original creators.[720] In other words, prosumers of music attribute because of a strongly internalised personal belief that doing so is the right thing to do. As per an interviewee "*I just like to credit where credit's due*". However, as abovementioned, attribution norms exhibited amongst prosumers of music may not be exclusive to prosumers of music; but may be the result of a deeply instilled personal norm which transcends across numerous subsections of society and not necessarily distinct for prosumers of music or prosumers in general for that matter.

Alternatively, as suggested above, prosumers of music attribute the original creators' whose works they reuse because there is a social norm of attribution amongst prosumers of music. Social norms were defined in Chapter 1, as the "*perception of where a social group is or where the social group ought to be on some dimension of attitude or behaviour*".[721] From this definition, two types of social norms can be derived – descriptive and injunctive norms – and prosumers of music who took part in the questionnaire exhibited both. Moreover, social norms are typically backed by socially enforced sanctions. Prosumers of music who fail to attribute may be faced with social sanctions enforced by viewers who negatively engage with the work in question. However, such sanctions are not routine and the exact parameters which command social sanctions remain unclear. Moreover, as per Bicchieri, for a behaviour to amount to a social norm, we must measure conditionality i.e., that social

[720] Fiesler and Bruckman, 'Remixers' Understandings of Fair Use Online' (n 272) 1029.
[721] Paluck and Ball (n 274) 9.

expectations have power indicated by behavioural change when social expectations change,[722] and prosumers of music who took part in the questionnaire, administered as part of phase two of this research, did not seem to be influenced by behavioural change.

Sociological research suggests that commonly exhibited behaviours may be the result of mimicry. However, prosumers of music do not look at how others title their works when making the decision of whether to attribute and those who do so, do so infrequently. Hence, it is unlikely that prosumers' attribution behaviour is the result of collective mimicry in the realm of music prosumption

Hence, conformity with attribution whilst uploading amongst prosumers of music may be driven by a number of factors, varying from prosumer to prosumer. This is most likely the result of YouTube's structure, discussed in Chapter 1,[723] which means that, prosumers of music may never interact with one another and those that do, will do so in a sporadic and asynchronous manner. As a result, prosumers of music experiences vary. Above it was discussed that existing research hints towards the fact that social norms, traditionally exhibited in small tight knit communities can be transcribed to an online environment. Fiesler and Bruckman, state that "*intellectual property norms in fandom communities may have a long pre-Internet history and have simply been maintained by a persistent community identity despite changes in technology and membership"*.[724] However, they do state that "*fan communities tend to be close-knit*", even in an online environment.[725] This research shows that the same cannot be said with regards to attribution norms amongst prosumers of music, with prosumers of music experiencing community interactions very differently.

[722] Bicchieri (n 544).
[723] See Chapter 1, section 1.2.
[724] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 12.
[725] ibid 14.

5.2.2 Non-legal regulatory frameworks in the context of monetising works of music prosumption.

As already established, prosumers of music can not only choose how to title their works and what to include in their video descriptions, whilst they are uploading them to YouTube but are also under certain circumstances, given a choice of whether to monetise them.

Above it was shown that certain communities tend to avoid commercialising their works with the belief that doing so absolves them from copyright infringement liability. [726] This same misconception was found to exist amongst forum posters examined in phase one of this research. In reality, commerciality alone will not determine whether an alleged infringer can be held liable for copyright infringement. It may, however, play a role in the determination of whether a reuse falls under a copyright exception. Nevertheless, as shown in Chapter 1, in general, it is unlikely that copyright exceptions apply to works of music prosumption.[727] Prosumers' misconception surrounding the role commerciality has in the determination of copyright infringement, discussed above, may, however, drive non-commercial behaviours.

Nevertheless, several forum posters examined in phase one, asked questions regarding how they could monetise their works or why they were no longer able to earn money after they had received a notice. For instance, one user wanted to start earning money from their cover songs and realised they could not but had at the same time, noticed that numerous other prosumers of music had been doing just that, and wanted to find out how this was possible:

"*Hi, I was looking into becoming a partner because I'm a singer/songwriter who is somewhat serious about my music, however when I saw the criteria, I realised I could not apply as I have cover songs on my youtube channel. However, I've noticed that other youtubers have covers on their channels (Sam Tsui, Jordan Jansen etc.), yet they still have mostly covers on their channels. Jordan Jansen does not have any original songs, and he doesn't appear to have permission to perform the covers he's performed on his channel, yet he has the banner which, I'm told, only partners get. Can someone please explain the whole partner thing to me?"*

Hence, although existing research has shown that certain communities where appropriation is common, exhibit commonalities with regards to the commercialisation of those works, this does not seem to be the case for prosumers of music. The commonalities in commercial behaviours exhibited amongst already examined subgroups of prosumers, are often shaped by social norms. Alternatively,

[726] ibid 8.
[727] See Chapter 1, section 1.3.1.2.

although not yet researched, they may be the result of mimicry. This section, using data primarily from phase two of this research aims to determine whether non-commercial norms exist amongst prosumers of music, but also whether prosumers of music mimic the commercial behaviours of their peers.

5.2.2.1 Commerciality norms amongst prosumers of music.

Using the same methods employed for examining attribution norms, [728] the questionnaire administered as part of phase two of this research, sought to examine the potential existence of non-commercialisation norms amongst prosumers of music. However, given the mixed results in phase one of this research, it sought to solely examine whether prosumers of music collectively engage in any non-commercialisation practices and if so, to explore the potential existence of non-commercialisation descriptive norms. If present, this would allow for further research to be carried out at a later date. However, as will emerge from the subsequent discussion, it is unlikely that non-commercialisation norms exist amongst prosumers of music.

As was done in the case of attribution norms, following Bicchieri's norms in the wild,[729] respondents were first provided with a definition of the behaviour (in this case "*monetising your cover songs/remixes allows you to earn money from them*") and then asked if they engage in the behaviour. 55.17% of those who upload covers (Table 40) and 70.97% of those who upload remixes (Table 41) reported that they do not monetise their works.

Table 40: How many respondents who upload cover songs to YouTube monetise any of the cover songs they upload to YouTube.

	Frequency	%
Yes	26	44.83%
No	32	55.17%
Total	58	100%

Table 41: How many respondents who upload remixes to YouTube monetise any of the remixes they upload to YouTube.

	Frequency	%
Yes	9	29.03%
No	22	70.97%
Total	31	100%

[728] Bicchieri (n 544).
[729] ibid.

Most prosumers who indicated that they monetise the works they upload to YouTube, tended to be more experienced prosumers who uploaded more than 100 works. Considering the fact that certain criteria must be met in order to be able to monetise one's work, namely "*4,000 valid public watch hours in the last 12 months and more than 1000 subscribers",*[730] it is argued that this is expected. Hence, it is envisioned that prosumers of music who do not monetise their works, do not do so as they are not capable of doing so, because of architectural constraints.

Depending on their response to the question asking whether they monetise their works, and in order to provide greater insights into what motivates prosumers to monetise their works, prosumers were then asked why they monetise or do not monetise their works respectively. The options presented to respondents were developed through analysis of the results from phase one of this research and through the literature review. Respondents were able to select more than one option.

Those who categorised themselves as uploading cover songs to YouTube and claimed they do not monetise the cover songs they upload to YouTube, (N=32) when asked why the do not monetise their works mainly stated reasons other than those specified (Table 42). Interestingly, 0 respondents listed the fact that others do not do so, as a motivating factor for not monetising their works. This could indicate a lack of injunctive non-commercialisation norms amongst prosumers of music. However, as aforementioned, this research only tested for the existence of descriptive non-commercialisation norms.

Table 42: Why do respondents who do not monetise the cover songs they upload to YouTube, not monetise those works.

Because others who upload covers to YouTube do not do so	0
Because I feel that it is not right to do so	6
Because it is illegal to do so	1
Because I do not own the rights to the cover songs I create	10
Because YouTube told me I could not do so	10
Other, please specify	13

[730] 'YouTube Partner Programme Overview and Eligibility - YouTube Help' (n 256).

6 prosumers indicated that they feel that it is not right to do so, which could indicate a personal non-commercialisation norm. Of the 13 respondents who listed other reasons, 1 person stated that they were banned from doing so whilst the remaining 12 listed the fact that they do not meet the threshold requirements required to become a "YouTube Partner". As a result, it is argued that most prosumers that do not monetise their works do not do so as they are not capable of doing so due to architectural constraints. Whether or not these respondents would monetise their works if they were able to do so, requires further research. However, one interviewee when asked if their receipt of copyright strikes has affected them in any way stated that:

"I don't think so. My channel is not yet qualified for monetization, I am not affected yet. In future it will be affected that copyrighted vidoe can't be Monetized."

This interviewee when asked if they intend to monetise the works they upload to YouTube once their channel qualifies responded:

"Yes, that is the plan. If not copyright claim by the Owner".

Hence, it could be argued that to a certain extent, prosumers of music intend to monetise the works they upload to YouTube, and that non-commercialisation norms do not exist amongst prosumers of music. Fiesler and Bruckman argue that "*within fandom norms around commercialization may be evolving due in part to generational differences and broader changes outside fandom in the context of the commodification of culture".*[731]

Those who categorised themselves as uploading remixes to YouTube and claimed they do not monetise the remixes they upload to YouTube (N=22), when asked why the do not monetise their works also mainly stated reasons other than those specified (Table 43). As above, however, 0 respondents listed the fact that others do not do so, being a contributing factor to them not monetising their works, thereby potentially negating the possible existence of injunctive non-commercialisation norms amongst prosumers of music.

[731] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 7.

Table 43: Why do respondents who do not monetise the remixes they upload to YouTube, not monetise those works.

Because others who upload remixes to YouTube do not do so	0
Because I feel that it is not right to do so	7
Because it is illegal to do so	5
Because I do not own the rights to the remixes I create	8
Because YouTube told me I could not do so	6
Other, please specify	9

7 prosumers who upload remixes to YouTube but do not monetise them, indicated that they feel that it is not right to do so, which could indicate a personal non-commercialisation norm. Similar to those who upload cover songs, 6 of the 9 respondents who listed other reasons as their motivation for not monetising, listed the fact that they do not meet the YouTube Partner threshold for monetisation as their basis for not monetising the remixes they upload to YouTube. 1 respondent even stated that they would otherwise monetise their content, echoing the fact that to a certain extent, prosumers of music intend to monetise the works they upload to YouTube. However, this would need to be tested further.

Respondents who categorised themselves as uploading covers songs to YouTube which they monetise (N=26), when asked why they monetise their content, most (N=13) indicated that they do so because YouTube told them they could do so (Table 44). This coincides with what was claimed above, in the sense that YouTube's criteria for its partner program act as a determinant of whether prosumers of music monetise their works.

10 respondents claimed to monetise the cover songs they upload because they own the rights to the cover songs they create. This could indicate that certain prosumers seek rights clearance prior to uploading their works to YouTube. Alternatively, prosumers may mistakenly believe that they own the rights attached to the cover songs they upload to YouTube. 7 of those 10 respondents who claimed to monetise the cover songs they upload because they own the rights to the cover songs they create, had previously indicated that they had attempted to secure the necessary rights for the cover songs they upload to YouTube. The remaining 3 had never sought to obtain rights clearance.

Political philosopher, John Locke's, labour theory, which states that one is entitled to ownership over the fruit of their labour, is often used as a justification for the existence of copyright protection. [732] In the context of prosumers of music who monetise the works they upload, it seems to be a justification for the commercial exploitation of copyright protected works. Specifically, 11 respondents indicated that they monetise because they feel it is their right to do so and 7 stated that they do not want to give their labour away for free. Moreover, forum posters examined in phase one of this research, exhibited similar feelings of ownership over the works they created and uploaded to YouTube, and showed signs of frustration and confusion when they were sanctioned. For instance, one user who believed they had ownership over their remix did not understand why they received a notice:

"Right, so i made a REMIX of a song called Scary monsters and nice sprites by Skrillex. WMG Do not own MY REMIX of the song. i made the remix, They don't own the remix. They cant copyright my remix of the song. Why are they blocking it!?"

Others who selected other reasons than those specified, when asked why they monetise their works, listed the utilisation of the previously discussed "pseudo-pathway" to rights clearance and the benefits of doing so. For instance, one user stated:

"Because youtube can identify covers and let the youtubers monetise it with the consent of the original owners. I believe the owners know and allow it because if you are the owner, you have the option to block others from using or allow them but the revenue is shared."

[732] Robert M Hurt and Robert M Schuchman, 'The Economic Rationale of Copyright' (1966) 56 The American Economic Review 421, 421.

Table 44: Why do respondents who monetise the cover songs they upload to YouTube, monetise those works.

Because others who upload covers to YouTube do so	7
Because I feel that it is my right to do so	11
Because I own the rights to the cover songs I create	10
Because I do not want to give away my labour for free	7
Because YouTube told me I could do so	13
Other, please specify	3

Respondents who categorised themselves as uploading remixes to YouTube which they monetise (N=9), mostly listed the fact that others who upload remixes monetise their works, being a motivating factor for doing so (Table 45). This could indicate that injunctive pro-commercialisation norms operate amongst prosumers of music who upload remixes to YouTube. However, given the small sample size, and the fact that this research did not set out to test for the existence and function of injunctive commercialisation norms, further research is needed.

Table 45: Why do respondents who monetise the remixes they upload to YouTube, monetise those works.

Because others who upload remixes to YouTube do so	4
Because I feel that it is my right to do so	3
Because I own the rights to the remixes I create	3
Because I do not want to give away my labour for free	1
Because YouTube told me I could do so	2
Other, please specify	3

Taking a synoptic view of the abovementioned, it can be deduced that in general, there does not seem to be any commonalities amongst prosumers of music with regards to their monetisation practices. However, a common determinant of whether prosumers of music monetise their works seems to be the fact that YouTube does not allow all users to monetise the content they upload. Prosumers who do not meet the criteria, do not monetise their works of music prosumption, but show a desire to do so. Similarly, prosumers of music who do monetise the works they upload, indicate, among other things, that the fact that YouTube allows them to do so, is a motivating factor for monetising their works of music prosumption.

Respondents who indicated that they engage in the behaviour of monetising the works they upload to YouTube, were asked about the frequency at which they monetise their works. Most respondents who categorised themselves as uploading covers songs which they monetise, claimed to always monetise their works (Table 46), whilst respondents who categorised themselves as uploading remixes which they monetise, exhibited mixed responses regarding their frequency of monetising their works (Table 47). The frequencies at which respondents indicated that they monetise their works, further supports the view that it is unlikely that non-commercialisation norms exist amongst prosumers of music.

Table 46: How often do respondents who monetise the cover songs they upload to YouTube, monetise those works.

	Frequency	%
Always	18	69.23%
Most of the time	3	11.54%
About half the time	0	3.39%
Sometimes	5	19.23%
Total	26	100.00%

Table 47: How often do respondents who monetise the remixes they upload to YouTube, monetise those works.

	Frequency	%
Always	1	11.11%
Most of the time	2	22.22%
About half the time	3	33.33%
Sometimes	3	33.33%
Total	9	100.00%

Next, following Bicchieri's guidance on measuring norms,[733] the existence of descriptive non-commercialisation norms was examined amongst prosumers who indicated that they do not monetise their works i.e. music prosumers' perception of how other prosumers of music behave. 44.83% of respondents who categorised themselves as uploading cover songs to YouTube (Table 48), and 46.67% of those who categorised themselves as uploading remixes (Table 49) exhibited evidence of descriptive non-commercialisation norms i.e., believe that it is common practice for others who upload covers or remixes to YouTube to not commercialise their works.

Table 48: How many respondents who upload cover songs to YouTube, think it is common practice among users who upload cover songs to YouTube, to not monetise the cover songs they upload to YouTube.

	Frequency	%
Yes	13	44.83%
No	16	55.17%
Total	29	100.00%

Table 49: How many respondents who upload remixes to YouTube, think it is common practice among users who upload remixes to YouTube, to not monetise the remixes they upload to YouTube

	Frequency	%
Yes	7	46.67%
No	8	53.33%
Total	15	100.00%

To conclude, it is unlikely that social norms regulate music prosumers' monetisation practices. A lack of commonality in how prosumers of music behave regarding whether they monetise their works, coupled with a lack of clear descriptive norms in this context, but also a desire to monetise, makes it unlikely that non-commerciality norms regulate music prosumer behaviour whilst they are uploading their works to YouTube. In the context of attribution norms, it was shown that the inherent structure of YouTube, does not allow for norms to flourish in the traditional sense, since prosumers of music may never interact with each other, and if they do, such contact is sporadic. Similarly, YouTube's architecture influences music prosumers' commercial endeavours. Namely, unlike other online platforms which have been the focus of existing research, YouTube allows users who meet certain criteria, namely having "*4,000 valid public watch hours in the last 12 months and more than 1000 subscribers",*[734] to monetise their works directly on the platform by placing advertisements on

[733] Bicchieri (n 544).
[734] 'YouTube Partner Programme Overview and Eligibility - YouTube Help' (n 256).

their respective works. Existing research, which has examined commercial behaviours of other subsets of prosumers in an online environment, explores commercialisation where creators attempt to profit from their works by asking for payment from viewers in exchange of either viewing their works or in order to enable them to continue working on unfinished works.[735] However, YouTube has made it easier for users to monetise works directly. Consequently, prosumers of music who meet the aforementioned criteria will often monetise their works.

Additionally, as discussed throughout this thesis, YouTube's utilisation of automated digital fingerprinting mechanisms, enables rightsholders to share in the revenues generated by derivative works based on their original creations. As a result, it is argued that YouTube, creates a new market for derivative works by not only enabling their dissemination, but also allowing for creators to earn money from their works.

5.2.2.2 Mimicking monetisation practices in the realm of music prosumption.

As was the case for the act of attribution, music prosumers' propensity to mimic the actions of their peers in terms of monetisation was tested first by asking questionnaire respondents whether they look at how other music prosumers monetise their own works, when making the decision of whether to monetise their own works. Most respondents, from both those who categorised themselves as uploading cover songs to YouTube (Table 50), and those who categorised themselves as uploading remixes (Table 51), claimed that they do not look at other prosumers of music when making their decision of whether or not to monetise their own works.

Table 50: How many respondents who upload cover songs to YouTube, when making the decision of whether or not to monetise the cover songs they upload to YouTube, look at how others who upload cover songs to YouTube monetise their own cover songs

	Frequency	%
Yes	15	25.86%
No	43	74.14%
Total	58	100%

[735] Fiesler (n 536) 751.

Table 51: How many respondents who upload remixes to YouTube, when making the decision of whether or not to monetise the remixes they upload to YouTube, look at how others who upload remixes to YouTube monetise their own remixes?

	Frequency	%
Yes	8	26.67%
No	22	73.33%
Total	30	100%

This indicates that it is unlikely that prosumers of music mimic the actions of their peers with regards to the monetisation of their works. This may in part be due to a lack of transparency regarding the monetisation of works. Prosumers are able to identify if a work is monetised by the placement of advertisements on a work. However, apparent advertisements do not necessarily indicate that a prosumer has monetised their work. As was discussed in Chapter 1,[736] advertisements may be placed on a work of music prosumption from the rightsholder. Hence this may create confusion with regards to whether or not other prosumers are in fact monetising their works. Furthermore, YouTube users as a whole, are rather secretive with regards to their monetisation practices, and talking about their monetisation practices is considered a rather taboo topic amongst the YouTuber community.[737]

Respondents who claimed to look at how their peers monetise their works, when making their decision of whether or not to monetise their works, when asked about their frequency of doing so, claimed to do so rather infrequently (Tables 52 and 53).

Table 52: How often do respondents who upload cover songs to YouTube look at how others who upload cover songs to YouTube monetise their own cover songs.

	Frequency	%
Always	3	20.00%
Most of the time	5	33.33%
About half the time	0	0.00%
Sometimes	7	46.67%
Total	15	100.00%

[736] See Chapter 1, section 1.3.3.2.
[737] 'R/NoStupidQuestions - Why Can't YouTubers Say How Much They Earn?' <https://www.reddit.com/r/NoStupidQuestions/comments/4i4kls/why_cant_youtubers_say_how_much_they_earn/> accessed 8 March 2022.

Table 53: How often do respondents who upload remixes to YouTube, look at how others who upload remixes to YouTube monetise their own remixes?

	Frequency	%
Always	2	25.00%
Most of the time	3	37.50%
About half the time	1	12.50%
Sometimes	2	25.00%
Total	8	100.00%

Bearing in mind the fact that prosumers do not look at other prosumers of music when making their decision of whether or not to monetise their own works, and those that do, do so infrequently, it is unlikely that prosumers mimic the actions of their peers when deciding whether to monetise their works.

5.2.2.3 Summary of prosumers' monetisation practices.

Taking a synoptic view of music prosumers' attitudes towards monetising their works examined above, it is argued that although existing research has shown that non-commerciality norms exist amongst subgroups of prosumers who disseminate works online, it is unlikely that such norms exist amongst prosumers of music. In general, there do not seem to be any commonalities amongst prosumers of music with regards to their monetisation practices. Certain prosumers monetise their works, whilst others do not, and a determining factor seems to be whether they meet YouTube's Partner Program criteria. Hence, overall, prosumers do not monetise their works as a result of not meeting YouTube's Partner Program criteria but demonstrate a desire to do so, and those who do monetise their works, do so because they meet the aforementioned criteria. Hence, it is unlikely that non-commerciality norms exist in the realm of music prosumption.

Additionally, prosumers of music do not seem to look at other prosumers of music when making their decision of whether or not to monetise their own works, and those that do, do so infrequently. This coupled with the fact that, there are inherent difficulties in discovering whether a prosumer of music has monetised their work makes it unlikely that prosumers of music mimic the actions of their peers in terms of commercialising or avoiding the commercialisation of their works.

5.3 Interim Conclusion.

At the point of uploading, among other things, prosumers of music are given the choice of how to title their works, what to include in the descriptions of the works they upload to YouTube, but also whether, to monetise their works, through the placement of advertisements.

Existing sociolegal research shows that, although regulated by copyright law, certain communities gravitate towards a norms-based regulatory system which either compliments or substitutes formal black letter law. Often these rules surround the issue of plagiarism and the boundaries under which it is acceptable, which are often shaped by attribution and non-commercialisation norms. Alternatively, although not yet examined in a sociolegal context, sociological research shows that commonalities in behaviour may be the result of behavioural mimicry.

This research shows that prosumers of music, whilst uploading their works to YouTube, like other subgroups of prosumers, actively engage in attribution. Their motivations for doing so, however, vary from prosumer to prosumer. This is likely attributed to the inherent structure of YouTube, where prosumers' works sit alongside official releases which are fully licensed. As a result, prosumers of music may never interact with each other and if they do, communication is sporadic and asynchronous. Moreover, prosumers of music who are eligible to do so, tend to monetise the works they upload to YouTube. Hence, although existing research shows that non-commercialisation norms tend to exist in certain subgroups of prosumers, it is unlikely that such norms exist in the realm of music prosumption. As aforementioned, Fiesler and Bruckman argue that "*within fandom norms around commercialization may be evolving due in part to generational differences and broader changes outside fandom in the context of the commodification of culture".*[738] This seems to be the case for prosumers of music who disseminate their works on YouTube, which enables users who meet certain criteria, to monetise their works directly, through the placement of advertisements.

[738] Fiesler and Bruckman, 'Creativity, Copyright, and Close-Knit Communities' (n 306) 7.

Chapter 6 – After Uploading.

Once a prosumer has uploaded their work to YouTube, they may encounter legal determinants of behaviour, which are made apparent through processes which operationalise copyright and related enforcement regimes. Bearing in mind the fact that works of music prosumption often amount to infringement,[739] would only under certain circumstances be considered as falling under an exception,[740] and the fact that prosumers of music tend to avoid rights clearance processes,[741] rightsholders are able to enforce their rights against allegedly infringing works of music prosumption through private practices and policies developed by platforms like YouTube who do so in order to comply with legal frameworks.[742] As a result, and as indicated in Chapter 1, upon uploading his work to YouTube, John – our hypothetical prosumer – would most likely encounter copyright and related enforcement regimes, through a Content ID claim and potentially a copyright strike.[743] Moreover, music prosumers', understanding of the regulatory frameworks they encounter throughout their dissemination process, including those which occur after they have uploaded their works to YouTube, may have an influential role in how they interact with those regulatory frameworks and may ultimately determine the law's hegemony

As outlined in Chapter 1, there is a growing body of literature examining the inner workings of processes mandated by copyright and related enforcement regimes, that are implemented on service providing platforms like YouTube. Yet, existing research tends to focus on the procedural aspects of notice and takedown regimes, rather than users' understanding, experiences or interactions with the regulatory frameworks. Currently, no studies have examined YouTube user experiences, interactions with and understandings of takedown regimes and how they are implemented on YouTube. This research thus asks:

"How do prosumers of music understand, perceive, interact with and experience online copyright enforcement mechanisms as operationalised by YouTube?"

This chapter, using data from both phases of empirical research answers this question by first providing insights into music prosumers' knowledge and understanding of the regulatory processes they encounter after they upload their works to YouTube. This section reveals that prosumers of

[739] See Chapter 1, section 1.3.1.1.
[740] See Chapter 1, section 1.3.1.2.
[741] See Chapter 4, section 4.2.1.
[742] See Chapter 2, section 1.3.3.2.
[743] See Chapter 1, section 1.3.3.2.

music examined as part of this research, exhibit awareness of the regulatory frameworks encountered after uploading a work to YouTube, as operationalised by YouTube.

Section 2 of this chapter, using data primarily gathered in phase two of this research, provides insights into music prosumers', interactions, and experiences with these regulatory frameworks which are made apparent through processes in place on YouTube, which prosumers of music may encounter once they have uploaded their works to YouTube. It reveals that most prosumers of music have had first-hand interactions and experiences with the regulatory frameworks encountered after uploading a work to YouTube, and that such interactions, for prosumers who participated in this research are generally positive.

6.1 Music prosumers' knowledge and understanding of copyright enforcement regimes and how they are operationalised on YouTube.

Chapter 1 demonstrated the importance of having insights into prosumers' legal knowledge and understanding. As aforementioned, after uploading a work to YouTube, prosumers of music will most likely interact with legal processes mandated by copyright and related enforcement regimes and a prosumer's understanding of the regulatory frameworks they encounter throughout their dissemination process, may have an influential role in how they react and ultimately on the law's hegemony.

As such, before identifying prosumers' experiences and interactions with the legal processes they encounter after they have uploaded their works to YouTube, this research sought to first examine prosumers' knowledge and understanding of the regulatory frameworks they experience. This section provides insights into prosumers' knowledge and understanding of both Content ID and Copyright strikes which as outlined above, are processes born out of YouTube's operationalisation of copyright and related enforcement regimes.

6.1.1 Music prosumers' knowledge and understanding of Content ID.

As previously discussed, Content ID is YouTube's automated digital fingerprinting mechanism, which tracks every individually uploaded work against a database of registered copyright protected works, searching for any instances of plagiarism. In phase one of this research, which qualitatively assessed, themes of knowledge, and misunderstandings or incomplete knowledge of copyright law, apparent on discussion forums used by prosumers of music, some forum posters showed signs of having an understanding of Content ID, and the role it plays for YouTube with statements such as:

"*The Content ID system is a system designed to aid content owners in identifying videos that may be infringing their copyright.".*

Most forum posters, however, exhibited signs of trying to obtain knowledge of how YouTube's digital fingerprinting mechanism – Content ID – operates, in terms of what would be caught by it, in order to circumvent the possibility of receiving a Content ID claim. Hence, forum posters sought to obtain and impart knowledge of how to avoid being caught by Content ID. For instance, one user sought advice on how to proceed when changing the speed of their backing track did not fool Content ID:

"*Hello fellow you tubers, I could really use your help. I have been trying to upload a drum cover for the past few days and am continuously being blocked for copyright worldwide. So I took other you tubers advice and changed the speed of the audio track by 15%. I am STILL NOT ABLE TO UPLOAD THE VIDEO. It is all very frustrating. My question is how are other drummers ale to use songs in their videos?"*.

Others, when asking about why they were not able to monetise some of the works they upload to YouTube were advised not to include original sound recordings as backing tracks to avoid being caught by Content ID:

"Now, we'll start with the practical. YouTube can not match cover songs unless you use real samples from the original track.".

This, as indicated in Chapter 3, may be linked with YouTube's position as a "law maker" for prosumers of music.[744] However, it also shows that the knowledge of Content ID that prosumers of music possess ultimately impacts how they behave. If prosumers of music are able to circumvent Content ID, they are effectively able to infringe copyright in the shadows, where it becomes incredibly hard for rightsholders to track and take action alleged infringements. However, as will

[744] See Chapter 3, section 3.2.

emerge from the discussion that follows in the subsequent section, Content ID is able to detect works of music prosumption. It is thus, unlikely that prosumers of music are able to employ tactics to evade Content ID.

Phase two of this research sought to provide further insights into music prosumers' knowledge of Content ID. In Chapter 3, it was shown that the perceived level of copyright knowledge one believes they possess may in turn influence how they react when they are sanctioned.[745] Similarly, prosumers' perceived knowledge of how Content ID operates, may influence how they react when they receive Content ID claims. Hence, as was done with regards to prosumers' perceived knowledge of copyright law in general, presented in Chapter 3, phase two of this research sought to first quantitatively examine music prosumers' perceived knowledge of how Content ID operates. Questionnaire respondents were asked to rate their level of knowledge of how Content ID operates on a scale from 0 to 100 with 0 representing no knowledge and 100 being an expert in the field. As indicated by Table 54 below, the mean for perceived knowledge (N=78) of Content ID was 47.65 indicating that prosumers' perceived knowledge of how Content ID operates was average.

Table 54: Participants' perceived knowledge of how Content ID operates.

How would you rate your knowledge of how Content ID operates?	
N	78
Mean	47.65
Median	50.00
Std. Deviation	29.73
Range	100.00
Minimum	0.00
Maximum	100.00

Using the same method used to test prosumers' actual knowledge of copyright law, presented in Chapter 3, where questionnaire respondents were asked to categorise statements as "true", "false" or "I don't know". Phase two also sought to examine prosumers' actual knowledge of Content ID. Namely it sought to examine whether prosumers of music know what Content ID is and if they are

[745] See Chapter 3, section 3.1.

able to differentiate Content ID claims from copyright strikes, which as discussed above, are two distinct terminologies employed by YouTube, with two very different repercussions.

Prosumers demonstrated a high level of knowledge in terms of characterising statements about Content ID correctly. Questionnaire respondents were presented with two statements pertaining to Content ID and were asked to categorise them as “true”, “false” or “I don’t know”. As indicated by Table 55 below, 66 respondents (86.84%) correctly characterised Content ID as a tool which helps track copyright infringements committed on YouTube and 57 (75.00%) correctly differentiated Content ID claims from copyright strikes. Furthermore, 90.14% of respondents correctly characterised both statements presented correctly (Table 56).

Table 55: All Content ID related statements presented to questionnaire participants, their correct categorisation and how participants responded.

Statement	Correct Response	TRUE		FALSE		I DON’T KNOW		Total
		%	N	%	N	%	N	
Content ID is a tool which helps track copyright infringements committed on YouTube.	True	86.84%	66	1.32%	1	11.84%	9	76
A Content ID claim is equivalent to a copyright strike.	False	13.16%	10	75.00%	57	11.84%	9	78

Table 56: How many Content ID related statements respondents correctly categorised.

Number of Correct Content ID Statement Categorisations		
	Frequency	%
0	1	1.41%
1	6	8.45%
2	64	90.14%
Total	71	100.0%

This demonstrates that prosumers of music are aware of what function Content ID plays in YouTube’s operationalisation of takedown regimes and are able to differentiate it from a Copyright Strike, which as previously discussed, is given to channels who have received a formal copyright takedown notice from a rightsholder.

As aforementioned and as will be discussed in greater detail below, prosumers of music can react to Content ID claims and copyright strikes in a number of ways. The fact that they are aware of Content ID's role and function and can distinguish Content ID claims from copyright strikes may provide an explanation for why prosumers react to Content ID claims and copyright strikes in specific ways respectively.

As was shown in Chapter 4, interviewees who took part in this research, exhibited a positive attitude towards Content ID, which enables their utilisation of the pseudo-pathway to rights clearance.[746] This positive attitude towards Content ID was also evident amongst forum posters examined as part of phase one of this research with some maintaining that Content ID enables prosumers to in some instances generate an income stream through YouTube's revenue share function. Some however, felt that there was still room for improvement, but YouTube's implementation strategies were not at fault, but much rather, outdated copyright regimes. For instance, as this forum poster so eloquently stated:

"The system is not perfect (in my opinion it is probably going to be the case for amending copyright law in the 21st century) but the problem with suing YouTube over their policies on how to protect copyrights of content creators is that you cannot sue them for sticking with the law and telling you in advance how it works. And this is NOT the first time, and each time the claim was eventually dismissed and revoked/removed, but till the idiots decide to respond, there is NOTHING the TRUE VICTIMS can do! False positives are, unfortunately, common in instrumental/classical music and not always down to a manual claim. Content ID, cool as it is, is never going to be able to be so perfect that it can tell one version of Für Elise from another perfectly every time.".

This may be the result of their understanding of the role of and distinction between Content ID and Copyright Strikes, however further research could provide further insights into the role that knowledge of YouTube's Content ID plays for prosumers of music.

[746] See Chapter 4, section 4.2.1.

6.1.2 Music prosumers' knowledge and understanding of the regulatory framework which forms the basis of Copyright Strikes.

As previously discussed, if a rightsholder choses to enforce their rights against an allegedly infringing work of music prosumption, they can do so by utilising notice and takedown procedures which allow for them to submit a formal takedown notice, resulting in the corresponding account which uploaded the work, receiving what YouTube refers to as a copyright strike.

Discussion forum users, studied in phase one of this research, exhibited both knowledge and a lack thereof with regards to traditional notice and takedown regimes operationalised through processes in place on YouTube, which as aforementioned is the regulatory framework which forms the basis of copyright strikes. Running a coding matrix query in NVivo, which allows for the identification of an intersection between two or more codes, with regards to knowledge or a lack thereof regarding notice and takedown regimes revealed that forum posters examined in phase one, lack understanding with regards to the notice and takedown regime currently in place on YouTube. Specifically, as indicated by Table 57 below, lack of knowledge with regards to notice and takedown regimes outweighed that of knowledge by 90 references.

Table 57: Coding matrix query for knowledge of notice and takedown regimes or lack thereof.

	Notice
Knowledge	23
Lack of knowledge	113
Total	136

Themes regarding lack of knowledge suggested that a lot of users seem to be lacking a general understanding of when a notice can be sent. For instance, one user looking to start a YouTube channel focused on disseminating cover songs but did not know of the possible repercussions of doing so stated:

"Dear Youtube, For my channel I want to do covers, but I don't know whether I will get copyright strike or not, so how could I prevent that?"

Another user received a notice for a cover song they disseminated on YouTube, but thought covers were legal, translating to the user believing that the notice they received was misplaced in that

notices were only filed for direct forms of copyright infringement i.e. the reposting of original content:

"Hello, and thanks for taking the time to read this. I uploaded a cover song to youtube and have received this: musical composition administered by: One or more music publishing rights collecting societies Sony ATV Publishing. Are they under the impression that i uploaded the original version by the artist? Do i just accept the claim? or should I dispute it? It's not clear to me. It seems if i accept the claim they are going to thing its the original song. Anyway, how do you deal with this?".

Another user, but this time in the context of remixes had the same misconception:

"My channel got recently terminated for 3 copyright strikes, and I want to know what I can do or know about copyright strikes because technically, the remixes aren't the ACTUAL song, but a remix of it.".

Hence, forum posters examined in phase one of this research who lack knowledge of when a notice can be sent are confused when they are sanctioned. As discussed in Chapter 1, this phenomenon was also evident amongst prosumers in the broader sense in the context of knowledge of what amounts to copyright infringement.[747] In Fiesler et. al's study which, found that "*frequently the posters do not understand why they were sanctioned, either because of confusion about copyright law or confusion about site policies*".[748] Confusion surrounding forum posters may thus be attributed to a lack of knowledge of what amounts to infringement, which as discussed in Chapter 3, varies from prosumer to prosumers.[749]

Certain forum posters examined in phase one of this research, were aware of the fact that covers and/or remixes may sometimes receive notices. For instance, in a thread discussing the legalities surrounding uploading a cover song on YouTube, where one user believed that cover songs were exempt from receiving a notice, one user stated:

"Takedowns and copyright strikes on covers do happen, though rarely. Here is a famous cover artist, David Choi, complaining about a copyright strike: https://www.youtube.com/watch?v=FGmeI5tdlzo".

Hence, phase one of this research, which qualitatively assessed themes of knowledge and misunderstandings or incomplete knowledge of copyright law, apparent on discussion forums used by prosumers of music, revealed that knowledge of notice and takedown regimes varies from forum poster to forum poster, but generally forum posters share a lack of knowledge of notice and

[747] See Chapter 1, section 1.3.4.2.
[748] Fiesler, Feuston and S. Bruckman (n 243) 121.
[749] See Chapter 3, section 3.3.2.

takedown regimes, which as aforementioned is the regulatory framework which forms the basis of copyright strikes. This lack of knowledge is most likely linked with prosumers' lack of knowledge of what amounts to infringement, discussed in Chapter 3.[750] One inherent limitation of phase one which has already been discussed in preceding chapters is the inability to know with certainty whether forum posters are indeed prosumers of music. As a result, phase two of this research sought to further examine music prosumers' knowledge of takedown regimes in place on YouTube. The questionnaire, administered as part of phase two of this research, specifically sought to determine whether prosumers of music are aware of the mechanisms available to rightsholders for dealing with alleged infringements online, but also of the mechanisms available to them for disputing claims they receive which they deem to be false or mistaken.

Phase two participants exhibited awareness of the existence of notice and takedown mechanisms available to rightsholders. Namely as indicated by Table 58 below, 59 respondents (75.64%) demonstrated awareness of the fact that rightsholders are able to enforce their rights by requesting that content they deem as infringing their copyright be taken down from YouTube. Only 2 respondents (2.56%) characterised the statement "there are mechanisms in place for copyright owners to take works they regard as infringing their copyright down from YouTube" incorrectly. In Chapter 3, it was shown that most prosumers of music obtain their copyright related knowledge from lived experiences they have on YouTube.[751] Hence, their increased awareness of the existence of takedown regimes is likely attributed to the fact that many of them will have had first-hand experiences with these mechanisms. Upon the receipt of a removal request, YouTube will notify the alleged infringer. It is thus, suggested that prosumers who have received a takedown notice will have had first had experiences with the mechanisms available to rightsholders for dealing with alleged infringements on YouTube. Prosumers experiences of and interactions with YouTube's operationalisation of such takedown regimes is presented below.

[750] See Chapter 3, section 3.1.2.
[751] See Chapter 3, section 3.2.

Table 58: The notice-and-takedown regime related statements presented to questionnaire participants, their correct categorisation and how participants responded.

Statement	Correct Response	TRUE		FALSE		I DON'T KNOW		Total
		%	N	%	N	%	N	
There are mechanisms in place for copyright owners to take works they regard as infringing their copyright down from YouTube.	True	75.64%	59	2.56%	2	21.79%	17	78
Creators who have received a claim which resulted in their work being taken down from YouTube, have the option to dispute that claim.	True	89.74%	70	1.28%	1	8.97%	7	78

In a recent study Fiala and Husovec, using an experimental design simulating the relationship between content creators and platforms, sought to examine why counter notice procedures are underutilised. They found that content creators are apathetic towards complaints and generally apathetic towards filing counter claims and tend to file fewer counter claims, the longer they spend playing the simulation game which recreates the relationship between content creators and platforms.[752] As per Fiala and Husovec "*this shows that previous experience with a lack of credible remedy to their situation makes them even more resigned".*[753] Moreover, as aforementioned, existing research, which examined stakeholder interactions and perceptions of notice and takedown regimes has shown that counter notice procedures, are generally under-utilised. For instance, Urban *et.al.* found that large internet service providers handling thousands of takedown requests received no counter-notices.[754] Furthermore, Urban and Quilter found that only seven counter notices were included in the Chilling Effects database.[755] One could, argue that content creators' failure to utilise

[752] Lenka Fiala and Martin Husovec, 'Using Experimental Evidence to Design Optimal Notice and Takedown Process' (TILEC Discussion Paper No 2018-028 2018) 25.
[753] ibid.
[754] Urban, Karaganis and Schofield (n 375) 44.
[755] Urban and Quilter (n 371) 679.

counter claims exhibited in the studies mentioned above, may be attributed to content creators' lack of knowledge with regards to their ability to file a counter claim.

However, prosumers of music who participated in phase two of this research seem to be aware of their ability to file a counter claim. Namely 70 respondents (89.74%) categorised the statement "creators who have received a claim which resulted in their work being taken down from YouTube, have the option to dispute that claim" as true, whilst only 1 (1.28%) as false and 7 (8.97%) did not know. As above, bearing in mind the fact that most prosumers obtain the copyright and related knowledge they possess from lived experiences they have on YouTube, their awareness of their ability to file a counter claim is most likely due to having been presented with the option of doing so. Upon receipt of a copyright claim, which signifies that the rightsholder has taken action against that work of music prosumption,[756] the prosumer who uploaded the work will be notified of their ability to dispute a given claim. It is thus argued that prosumers who will have received a copyright claim, will most likely be aware of their ability to dispute a claim by submitting a counterclaim. Moreover, as will emerge from the discussion below, not only are prosumers aware of the existence of their ability to dispute claims, but they also actively do so.

[756] The available action routes a rightsholder could take against a work of music prosumption they deem as infringing their copyright, was covered in Chapter 1, section 1.3.3.

6.1.3 Summary of prosumers' knowledge and understanding of Content ID and Copyright Strikes.

After uploading a work to YouTube, prosumers of music will most likely interact with legal processes mandated by copyright and related enforcement regimes and a prosumer's understanding of the regulatory frameworks they encounter throughout their dissemination process, may have an influential role in how they react and ultimately on the law's hegemony. Namely, upon uploading their work to YouTube, prosumers of music may interact with Content ID and notice and takedown regimes through copyright strikes and the level of knowledge prosumers possess with regards to the regulatory frameworks which mandate such process, but also the processes themselves has an influential role and may ultimately determine how they experience such processes. Prosumers' experiences of the regulatory framework and processes mandated by the regulatory frameworks they encounter once they have uploaded their works to YouTube is presented in the section that follows.

Above it was shown that prosumers of music hold a certain level of knowledge with regards to the function of Content ID and the role it plays in operationalising takedown regimes on YouTube. Prosumers of music are able to differentiate Content ID claims from Copyright strikes. This, as will emerge from the discussion below, may provide an explanation for why prosumers react to Content ID claims and copyright strikes in specific ways respectively.

Prosumers of music also demonstrated awareness of a rightsholder's ability to file a copyright takedown notice for content they deem to be infringing their copyright. Bearing in mind the fact that most prosumers of music obtain their copyright and related knowledge from lived experiences they have on YouTube, their increased awareness of the existence of takedown regimes is most likely attributed to the fact that many of them will have had first-hand experiences with these mechanisms. Similarly, prosumers of music are aware of their ability to file counterclaims, which is also likely due to prosumers lived experiences on YouTube, since prosumers who have received copyright related claims will have been presented with the option of disputing that claim by submitting a counterclaim.

6.2 How prosumers of music experience and interact with copyright and related enforcement regimes after they have uploaded their works to YouTube.

As demonstrated above, in phase one of this research, forum posters asked questions about how to deal with having received Content ID claims and copyright strikes. Phase two of this research sought to further examine how prosumers of music experience and interact with both Content ID claims and copyright strikes. Namely it sought to examine how many Content ID claims and copyright strikes, prosumers of music tend to receive, what they think affects their propensity to receive one, whether certain types of prosumers are indeed more susceptible to receiving one, and how they react to the receipt of a Content ID claim and copyright strike, respectively. This section, using data primarily gathered in phase two of this research, aims to present prosumers' experiences and interactions with the copyright and related enforcement regimes they encounter after they have uploaded their works to YouTube. It begins by providing insights into prosumers' experiences and interactions with Content ID and then moves on to present insights into prosumers' experiences and interactions with copyright strikes.

6.2.1 Music prosumers' experiences and interactions with Content ID.

As previously mentioned, a Content ID claim signifies that YouTube's digital fingerprinting mechanism found a match between the work which is being uploaded and a work which is registered with its Content ID database. Also, in Chapter 1, it was established that prosumers reuse already existing works in the creation of their works of music prosumption.[757] Hence, if Content ID is indeed effective as a tool for detecting alleged infringements, and the works which are reused by prosumers are registered to YouTube's Content ID database, most prosumers of music will have received a Content ID claim and will thus have had experiences and interactions with Content ID, after they have uploaded their works to YouTube. This section, drawing on data primarily from phase two of this research aims to present how many Content ID claims prosumers of music tend to receive, what they think affects their propensity to receive one, whether certain types of prosumers are indeed more susceptible to receiving one, and finally how they react to the receipt of a Content ID claim.

6.2.1.1 Is a prosumer of music likely to receive a Content ID claim?

As has already been established, forum posters examined in phase one of this research, engaged in discussions fuelled by Content ID and Content ID claims, whether that was to share their knowledge or lack thereof with regards to how Content ID operates, or how Content ID fuels the creation of a "pseudo-pathway" to rights clearance. As indicated above, forum posters examined in phase one, asked questions about how to deal with Content ID claims after having received claims. This is an indication that prosumers of music are sometimes the recipients of Content ID claims.

Bearing in mind the fact that works of music prosumption reuse portions of already existing works, to varying degrees, if Content ID is indeed an effective tool in tracking when a work has been reused, it is likely that most prosumers of music will have received a Content ID claim, provided the works they reuse are registered with Content ID's database.

Phase two of this research sought to further examine prosumers' experiences with and interactions with YouTube's Content ID claims system, by first examining the extent at which prosumers of music receive Content ID claims. Consequently, questionnaire respondents were first asked if they had ever received a Content ID claim. Terms used in the questions asked, were defined using YouTube's terms of service and contained in-text hyperlinks taking users to the section of YouTube's terms of

[757] See Chapter 1, section 1.1 and 1.3.1.1.

service which contained the specific extracts used in the question. For instance, the first question seeking insights on users' experiences with Content ID claims was phrased as follows:

YouTube's Terms of Service states that:

"If you upload a video that contains copyright-protected material, you could end up with a Content ID claim. Companies that own music, movies, TV shows, video games or other copyright-protected material issue these claims. Content owners can set to block material from YouTube when a claim is made. They can also allow the video to remain live on YouTube with ads. In those cases, the advertising revenue goes to the copyright owners of the claimed content.

Have you ever received a Content ID claim?"

Table 59: How many respondents received a Content ID claim.

	Frequency	%
Yes	78	89.66%
No	9	10.34%
Total	87	100.00

As indicated by Table 59 above, only 9 respondents (10.34%) claimed they have never received a Content ID claim. 6 were respondents who categorised themselves as uploading cover songs and 3 were respondents who categorised themselves as uploading remixes. They indicated that their works did not attract many views. However, the number of views a work of music prosumption attracts should not determine whether a prosumer receives a Content ID claim. As previously discussed, provided the work being reused in the resulting work of music prosumption is a work which is registered to YouTube's Content ID database, and the work of music prosumption closely resembles the registered work, then it will most likely receive a Content ID claim. Hence, prosumers who claimed to have not received a work of music prosumption will have either uploaded cover songs or remixes of works which are not registered to YouTube's Content ID database or are altered to the extent that they are undetectable by Content ID. Nevertheless, most respondents (89.7%) reported having received a content ID claim. This illustrates the fact that Content ID, for the most part, picks up on alleged infringements committed by prosumers of music.

6.2.1.2 What do prosumers think affects their propensity to receive a Content ID claim?

Respondents who reported not having received a claim (N=9), were asked to describe what they thought the reason they had not received a claim was. Four of the nine respondents who reported

not having received a claim chose to respond to this open-ended question. The other five respondents skipped the question. One respondent claimed they did not know the reason why they had not received a claim, whilst another mentioned the fact that they do not monetise their uploads as being a contributing factor. It is however, argued that it is unlikely that monetisation impacts one's propensity to receive a Content ID claim. As illustrated in Chapter 1, a Content ID claim is received automatically when YouTube's automated filtering mechanism finds a match between any aspect of the work which is being uploaded and one or more work that is registered with the Content ID database,[758] and it is unlikely that whether or not the work which is being uploaded has been monetised by the uploader impacts Content ID's propensity to identify a match. This does, however reaffirm, the finding presented in Chapter 5, where certain prosumers of music tend to avoid commercialising their works with the belief that doing so absolves them from copyright infringement liability.[759]

The receipt of a Content ID claim may in fact affect a prosumers' propensity to monetise their work and not the other way around.[760] Once a prosumer of music who is part of YouTube's "Partner Program", meaning that they are eligible to monetise their works and opts to do so, receives a Content ID claim, they will no longer be able to monetise that work in question, unless the Content ID claim is successfully disputed. Alternatively, the rightsholder, who is notified of the match, may opt to share revenues with the prosumer. YouTube's automated algorithmic decision making, in this respect, has led some commentators to view the automated Content ID process negatively. For instance, Bartholomew stated that "i*f a match is found, the system automatically files a copyright infringement claim on behalf of a purported copyright owner against the uploader. In each instance, this filing triggers an automatic freeze of advertisement revenue that the uploader was earning from the disputed video; the freeze occurs without the uploader having the chance to defend himself*".[761] This may be an issue for content creators whose livelihood depends on their ability to monetise the content they upload to YouTube. Content ID's inability to automatically recognise whether content being reused has been licensed and whether content created, falls under an exception to copyright, may result in such content creators being automatically unable to monetise content that would otherwise be permissible. However, as discussed in Chapter 1,[762] but also in more detail below,

[758] See Chapter 1, section 1.3.3.2.
[759] See Chapter 5, section 5.1.2.
[760] See Chapter 1, section 1.3.3.2.
[761] Taylor B Bartholomew, 'The Death of Fair Use in Cyberspace: Youtube and the Problem with Content ID' (2014) 13 Duke Law & Technology Review 66, 67.
[762] See Chapter 1, section 1.3.3.2.

content creators are able to dispute claims for which they have grounds to. If successful, their ability to monetise that content will be reinstated.

YouTube provides a free dissemination platform for prosumers of music, who as discussed in Chapter 1 most often infringe copyright.[763] It also allows for them to circumvent the complex and often expensive traditional rights clearance process in favour of the "pseudo-pathway" to rights clearance. As a result, prosumers of music seem to accept the fact that they are not always able to monetise content that is matched by Content ID. Two interviewees, from phase two of this research, who upload remixes to YouTube, one who uploads what would be categorised as sampling, and one who mainly uploads what would be regarded as mashups in response to their views on Content ID stated that:

"I took into account that the only thing that would affect the Content ID to my remix would be monetization."

"Yes, because unlike before, copyright claims haven't had much negative impact like before. You can't monetize your video anymore. That's it.".

Hence, it can be deduced that although Content ID's automated freezing of monetisation may be a cause for concern for content creators who unlike prosumers of music, do not regularly reuse pre-existing works but are the victims of Content ID's false positive identification of alleged plagiarism, but not for prosumers of music, who seem to accept it. Nevertheless, given the small sample size, of interviewees, no generalisations can be made.

Another questionnaire respondent, in response to the question asking why they thought they had not received a Content ID claim, stated that they obtain the necessary rights to the content they upload before it is uploaded to YouTube. Given the fact that Content ID claims are sent out automatically, securing permission to reuse a work will not impact one's propensity to receive a Content ID claim. It may, however, increase one's ability to dispute a claim on their work by submitting a counterclaim since they will have obtained the necessary rights clearance. This is discussed in greater detail below.

Finally, one questionnaire respondent stated, "*My remixes aren't similar enough to the original maybe?*" This is the most likely contributing factor influencing one's propensity to receive a Content ID claim. As abovementioned, provided the work being reused in the resulting work of music prosumption is a work which is registered to YouTube's Content ID database, and the work of music

[763] See Chapter 1, section 1.3.1.1.

prosumption closely resembles the registered work, then it will most likely receive a Content ID claim. Hence, prosumers who claimed to have not received a work of music prosumption will have either uploaded cover songs or remixes of works which are not registered to YouTube's Content ID database, or are altered to the extent that they are undetectable by Content ID. Hence, Content ID's ability to pick up on a match is most likely affected by how unrecognisable the work which is being reused in the work which is being uploaded is. Newman *et.al.* who argue that a "stemming" comparative analysis, where different aspects of songs are dissected – vocals, bass lines, and drums – and then comparatively analysed, allows for the more effective automated identification of UGC, maintain that automatically detecting plagiarism between an "original" work and a work of music prosumption is inherently difficult, due to the fact that works of music prosumption "*can seem highly divergent from the original recording".*[764] Newman *et.al.* refer specifically to cover songs, but their analysis could equally apply to a remix, mainly in the form of a sample which is edited to the extent, where it is no longer recognisable. This analysis of Content ID's inability to recognise highly edited works of music prosumption seems to have been replicated, albeit inadvertently, in the CJEU's decision in *Pelham* where the CJEU stated:

"where a user, in exercising the freedom of the arts, takes a sound sample from a phonogram in order to use it, in a modified form unrecognisable to the ear, in a new work, it must be held that such use does not constitute 'reproduction' within the meaning of Article 2(c) of Directive 2001/29".[765]

Similarly, where the work which is being reused is no longer recognisable to Content ID's algorithmic ear, it is less likely to find a match between the work which is being uploaded and a work registered on its database. Consequently, the more modified the work being reused is in a work of music prosumption the less likely it should be to receive a Content ID claim, which in accordance with the CJEU in *Pelham*, should to a certain extent, not be regarded infringing copyright. This could then translate to works not being caught by Content ID in fact not being regarded as copyright infringing. One question which this raises, is whether a work of music prosumption that is edited to that extent can still be regarded as a work of music prosumption. Arguably, a remix or cover song that is edited to the extent that it is no longer recognised as remix or cover song respectively, can no longer be regarded as a remix or cover song respectively. Hence, although the level of editing that has taken place in a work of music prosumption may absolve copyright infringement, it may to result in a deviation from the remits of a work of music prosumption.

[764] Newman and others (n 646).
[765] Case C-476/17 *Pelham GmbH, Moses Pelham and Martin Haas v Ralf Hutter and Florian Scheider-Esleben* [2019], at 31.

6.2.1.3 Are certain prosumers more susceptible to receiving Content ID claims?

As abovementioned, most prosumers will have received a Content ID claim. Nevertheless, prosumers who upload works which reuse works which are not registered with YouTube's Content ID database or works which are altered to the extent where they are no longer recognisable to Content ID, will likely not receive a claim. Consequently, bearing in mind the definitions of works of music prosumption presented in Chapter 1,[766] one could argue that certain forms of music prosumption are more likely to receive Content ID claims. Phase two of this research sought to investigate this further. Respondents were first asked about the frequency at which they receive Content ID claims. The majority of respondents (52.56%) reported having received more than 20 Content ID claims (Table 60).

Table 60: How many Content ID claims respondents received.

	Frequency	%
1	7	8.97%
2-5	11	14.10%
6-10	11	14.10%
11-15	4	5.13%
16-20	4	5.13%
More than 20	41	52.56%
Total	78	100.00%

One limitation of this study, which could be addressed in further research, is the lack of more granular data on the category "more than 20", which could reveal more nuanced data regarding the frequency at which prosumers of music receive Content ID claims.

Running a crosstab between the content respondents categorised themselves as uploading to YouTube and the number of content ID claims they reported receiving, reveals that there does not seem to be much of a difference between cover songs and remixes in terms of the number of content ID claims received (Figure 21). Proportionally, those who upload remixes to YouTube are slightly more likely to receive more content ID claims, thereby pointing towards the theory that prosumers who upload remixes are more likely to be caught by YouTube's Content ID since they are more likely to reuse the audio directly which makes it easier for YouTube's automated filtering mechanism to pick up on alleged infringements. However, the differences that do exist are not

[766] See Chapter 1, section 1.1.

sizeable. This may be due to the fact that other variables may impact prosumers' propensity to receive a Content ID claim, such as the number of works one has uploaded.

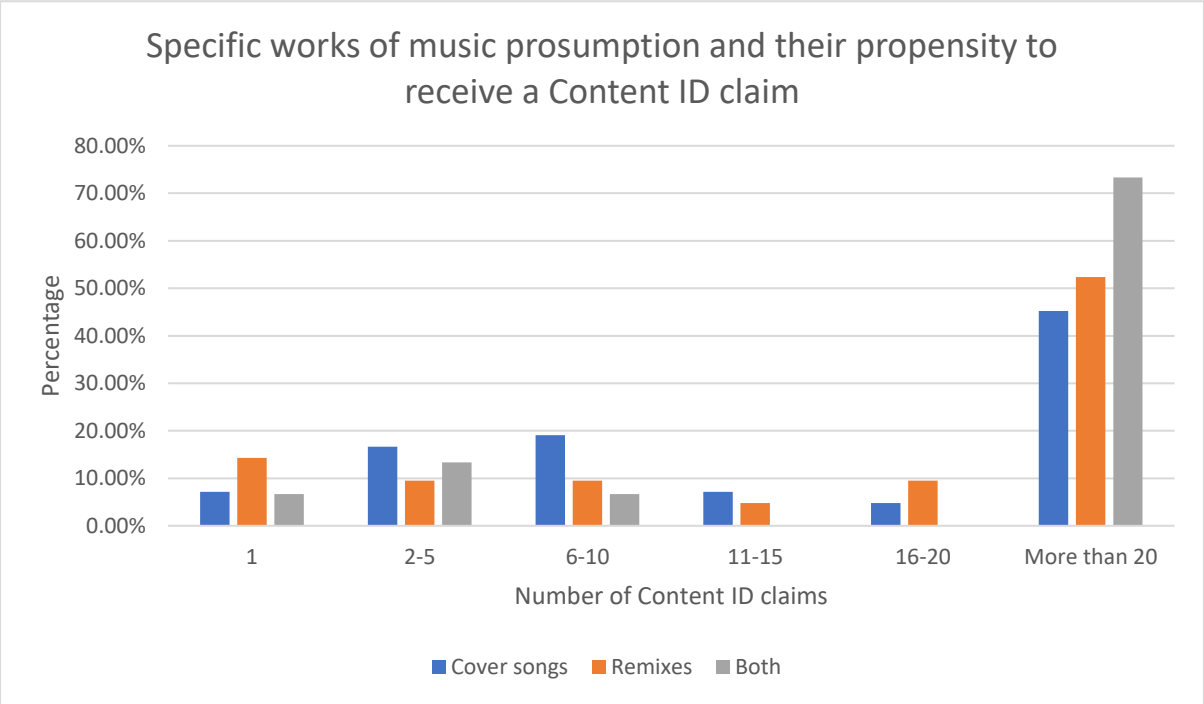


Figure 21: Specific works of music prosumption and their propensity to receive a Content ID claim.

The number of works prosumers upload to YouTube may influence the number of claims they receive, whereby the more one uploads to YouTube, the more likely they are to receive more Content ID claims (Table 61). Interestingly, certain prosumers who had uploaded between 1 and 20 cover songs and/or remixes to YouTube claimed to have received more than 20 Content ID claims. This may be attributable to the fact that there could be multiple Content ID claims against one work of music prosumption. Nevertheless, those who indicated that they upload more than 100 works to YouTube, account for most of those that indicated that they had received more than 20 Content ID claims.

Table 61: Crosstab between the number of works uploaded and the number of Content ID claims received.

		How many cover songs have you uploaded since you began?										
		1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100	More than 100
How many Content ID claims have you received?	1	1	2	1	0	0	0	0	0	0	0	0
	2-5	7	1	0	0	0	0	0	0	1	0	0
	6-10	3	1	1	1	0	1	1	0	0	0	1
	11-15	0	0	2	0	1	0	0	0	0	0	0
	16-20	0	1	0	0	0	1	0	0	0	0	0
	More than 20	4	1	1	1	3	2	2	1	2	0	13
Totals		15	6	6	2	4	4	3	1	3	0	14
		How many remixes have you uploaded since you began?										
		1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100	More than 100
How many Content ID claims have you received?	1	1	1	1	0	0	0	0	0	0	0	0
	2-5	1	0	1	0	0	0	0	1	0	0	0
	6-10	1	0	0	0	0	0	0	1	0	0	1
	11-15	0	1	0	0	0	0	0	0	0	0	0
	16-20	0	0	1	1	0	1	0	0	0	0	0
	More than 20	2	0	0	0	1	1	0	0	2	0	12
Totals		5	2	3	1	1	1	0	2	2	0	13

Alternatively, the type of cover songs and/or remixes a prosumer uploads to YouTube is likely to influence their propensity to receive a Content ID claim. For instance, if a user uploads a mashup as opposed to a sample, or a cover song which reuses the original sound recording or a cover song where every aspect of the song is recreated by the user, it is likely to have an impact on their propensity to receive a Content ID claim, since such differences involve different levels of borrowing which in turn, impact Content ID's ability to pick up on a match.

Table 62: Crosstab between the type of works uploaded and the number of Content ID claims received.

		How would you categorise the types of works you upload to YouTube?											
		Cover Records		Cover Songs		Instrumental Covers				Mashups		Samples	
						Over the sound recording		Instrument on its own					
		Frequency	%	Frequency	%	Frequency	%	Frequency	%	Frequency	%	Frequency	%
How many Content ID claims have you received?	1	2	10%	3	8.11%	2	18.18%	2	8.70%	1	7.14%	3	10.34%
	2-5	1	5%	5	13.51%	3	27.27%	4	17.39%	2	14.29%	2	6.90%
	6-10	6	30%	7	18.92%	2	18.18%	6	26.09%	1	7.14%	3	10.34%
	11-15	0	0%	2	5.41%	1	9.09%	1	4.35%	0	0%	1	3.45%
	16-20	2	10%	1	2.70%	0	0%	0	0%	1	7.14%	2	6.90%
	More than 20	9	45%	19	51.35%	3	27.27%	10	43.48%	9	64.29%	18	62.07%
Totals		20	100%	37	100%	11	100%	23	100%	14	100%	29	100%

Nevertheless, looking at which types of works of music prosumption that are proportionally more likely to receive more than 20 Content ID claims, works such as instrumental covers which reuse the original sound recording and mashups which are more likely to reuse aspects of a work which are more likely to be caught by Content ID are not necessarily more likely to receive a Content ID claim when compared to works such as cover songs and samples which are less likely to receive a Content ID claim (Table 62). However, as above, other variables such as the amount of works a prosumer has uploaded may influence their propensity to receive a Content ID claim. Also, another potentially influencing variable which could influence a prosumers propensity to receive a claim would be as aforementioned, how closely their reuse resembles the original. Unfortunately, this cannot be tested since, data gathered would be subjective based on a prosumer's perception of how altered or edited their reuse is. Hence, as of yet no definitive conclusions can be made.

6.2.1.4 How do prosumers of music react to a Content ID claim?

The receipt of a Content ID claim signifies that one or more aspects of the work being uploaded has been matched with a work that is registered to YouTube's Content ID database. Upon receiving a Content ID claim the person who uploaded the work can do one of six things. However, as will be seen, only three of these six options are suitable options for prosumers of music. First, upon receiving a Content ID claim, a user can simply do nothing, and YouTube's help page states that

users can change their mind in due course.[767] This is one of the options a prosumer of music could take.

Second a user can automatically trim out the content which is being claimed using YouTube's "assisted trim" feature, meaning that the specific aspect which is being claimed will no longer exist within the work which is being uploaded.[768] This option is unlikely to be utilised by prosumers of music since it is likely that the entirety of their work would be removed.[769] This option is more suitable for users such as content creators who accidentally reuse another person's work.

Third, if a user is using music in their video, and that is what is being claimed, they can remove the music,[770] or fourth they can swap the music.[771] Similarly, given the fact that music is the primary content of a music prosumer's work which is being uploaded to YouTube, it is unlikely that such options would be utilised by prosumers of music. Alternatively, prosumers of music are more likely to simply remove the content in its entirety.

Fifth, if the user in question is part of what YouTube refers to as its "YouTube Partner Programme" which allows for users to monetise the works they upload to YouTube and earn revenue from them; then that user upon receiving a content ID claim may be able to share revenues with the rightsholder provided the rightsholder choses to do so upon being notified of the Content ID match.[772] Hence, this is not necessarily a music prosumers choice, but much rather depends upon whether the rightsholder in question chooses to do so.

The sixth and final option available to a user who has received a Content ID claim, which is also a suitable option in a scenario involving a work of music prosumption, is to dispute the claim.[773] This mirrors the "counter-claim" procedure available under the US notice and takedown regime, discussed in Chapter 1.[774] Hence, if a user receives a Content ID claim which they have ground to believe is false such as in an instance where *"they have all the rights to the content in their video, or*

[767] What Is a Content ID Claim? - YouTube Help' <https://support.google.com/youtube/answer/6013276?hl=en-GB&ref_topic=9282678> accessed 8 March 2022.
[768] 'Remove Claimed Content from Your Video - YouTube Help' <https://support.google.com/youtube/answer/9583084> accessed 8 March 2022.
[769] This option could only be utilised by a prosumer of music in the unlikely scenario where a that prosumer has uploaded a multitude of works within one video and not all the works have been claimed.
[770] 'What Is a Content ID Claim? - YouTube Help' (n 400).
[771] ibid.
[772] ibid.
[773] ibid.
[774] See Chapter 1, section 1.3.3.1.2.

think that the system misidentified their video" they can file a dispute.[775] YouTube's help page states that before filing a dispute a user must first understand "*how fair use and the public domain work*", and hyperlinks are provided for both with further information.[776] Nonetheless, upon clicking on the hyperlinks, namely the one regarding "fair use", the information provided is quite limited i.e. users are told that "*fair use is a US law that allows the reuse of copyright-protected material under certain circumstances without getting permission from the copyright owner*".[777] In order to get more information on what "fair use" is, such as examples of scenarios where something may amount to fair use, users have to follow a further hyperlink, redirecting them to another YouTube help page.[778]

Figure 22 below illustrates all the options a rightsholder (represented by the black boxes) and user (represented by the green boxes) can take throughout the process of disputing a Content ID claim. Upon filing a dispute, the rightsholder will be notified, and will have 30 days from the date of receipt to respond.[779] Within those 30 days a rightsholder can either release the claim or do nothing and let the claim expire which will result in the claim being removed. The rightsholder, can however, chose to uphold the claim.[780] They can simultaneously at this point, take action via the "notice and takedown" procedure by filing a copyright takedown notice. If the rightsholder choses to uphold the claim, the user may be able to appeal the claim if they still have ground to do so i.e., if the still if they still have ground to believe that they received a wrongful claim.

Upon filing an appeal for a rejected dispute the rightsholder is notified of this and has a further 30 days upon receipt of notice to once again either release the claim, or do nothing and let the claim expire which will result in the claim being removed.[781] At this point if the rightsholder still believes the claim is valid, they may request the immediate or scheduled removal of the claimed content through submitting a copyright takedown notice, via the "notice and takedown" procedure discussed above. This will result in the user's channel receiving a "copyright strike". A user can still dispute the claim via the "counter-notice" procedure of the DMCA discussed above.

[775] 'Dispute a Content ID Claim - YouTube Help' <https://support.google.com/youtube/answer/2797454> accessed 8 March 2022.
[776] ibid.
[777] 'YouTube Copyright and Fair Use Policies - How YouTube Works' (*YouTube copyright and fair use policies - How YouTube Works*) <https://www.youtube.com/howyoutubeworks/policies/copyright/> accessed 8 March 2022.
[778] 'Fair Use on YouTube - YouTube Help' <https://support.google.com/youtube/answer/9783148?hl=en> accessed 8 March 2022.
[779] 'Dispute a Content ID Claim - YouTube Help' (n 802).
[780] ibid.
[781] ibid.

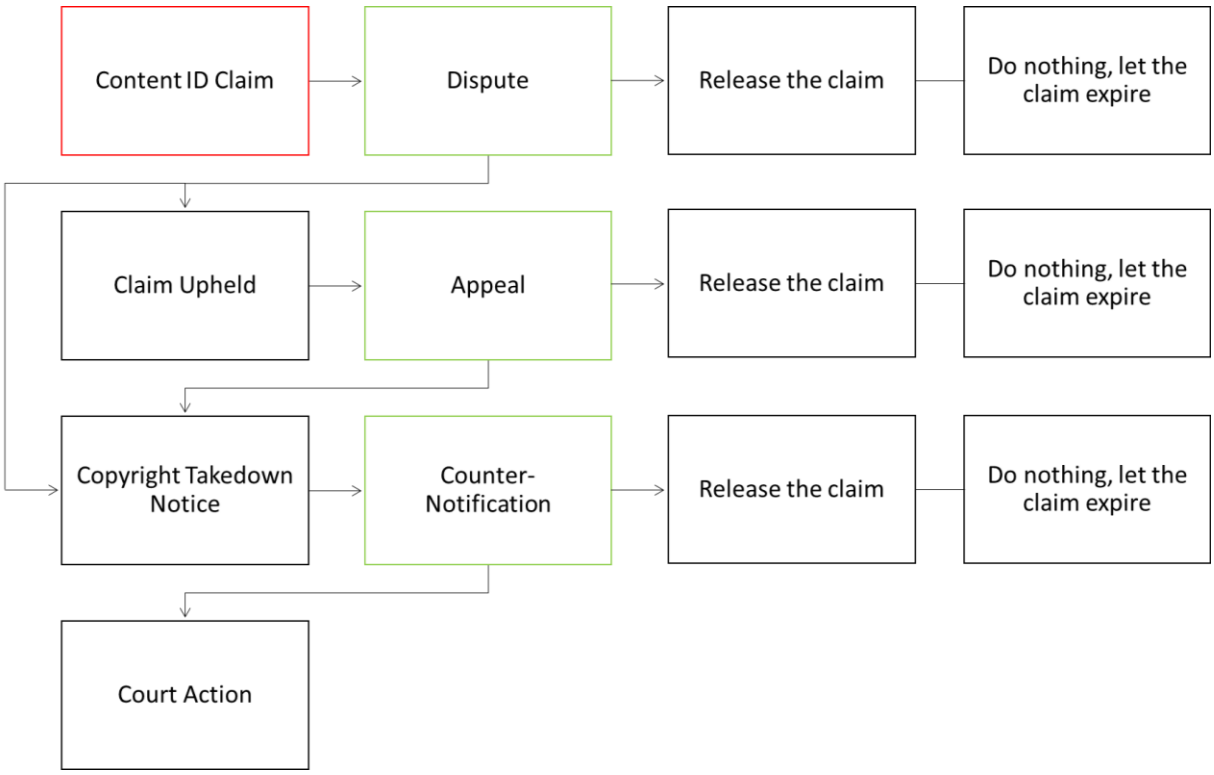


Figure 22: Illustration of YouTube's Content ID Claim, dispute process.

Hence, taking a synoptic view of the abovementioned, the only viable options for prosumers of music who receive a Content ID claim are to either, do nothing, remove the content in its entirety or dispute the claim by filing a counter claim.

To better understand how prosumers of music interact with and experience YouTube's operationalisation of notice and takedown regimes, questionnaire respondents were asked to indicate how they would typically respond to a Content ID claim. This was done on a granular level. Depending on their response for the frequency of claims received, participants were presented with matrix questions asking them how they typically reacted for those claims. For instance, if a participant indicted that they had received 6-10 claims, they were asked to specify how they reacted for those 6-10 claims, but also to detail the frequency of those reactions. For example, sometimes I reacted by removing the video, but rarely reacted by filing a counter claim. The options presented to participants were developed through analysis of phase one results in conjunction with the literature review.

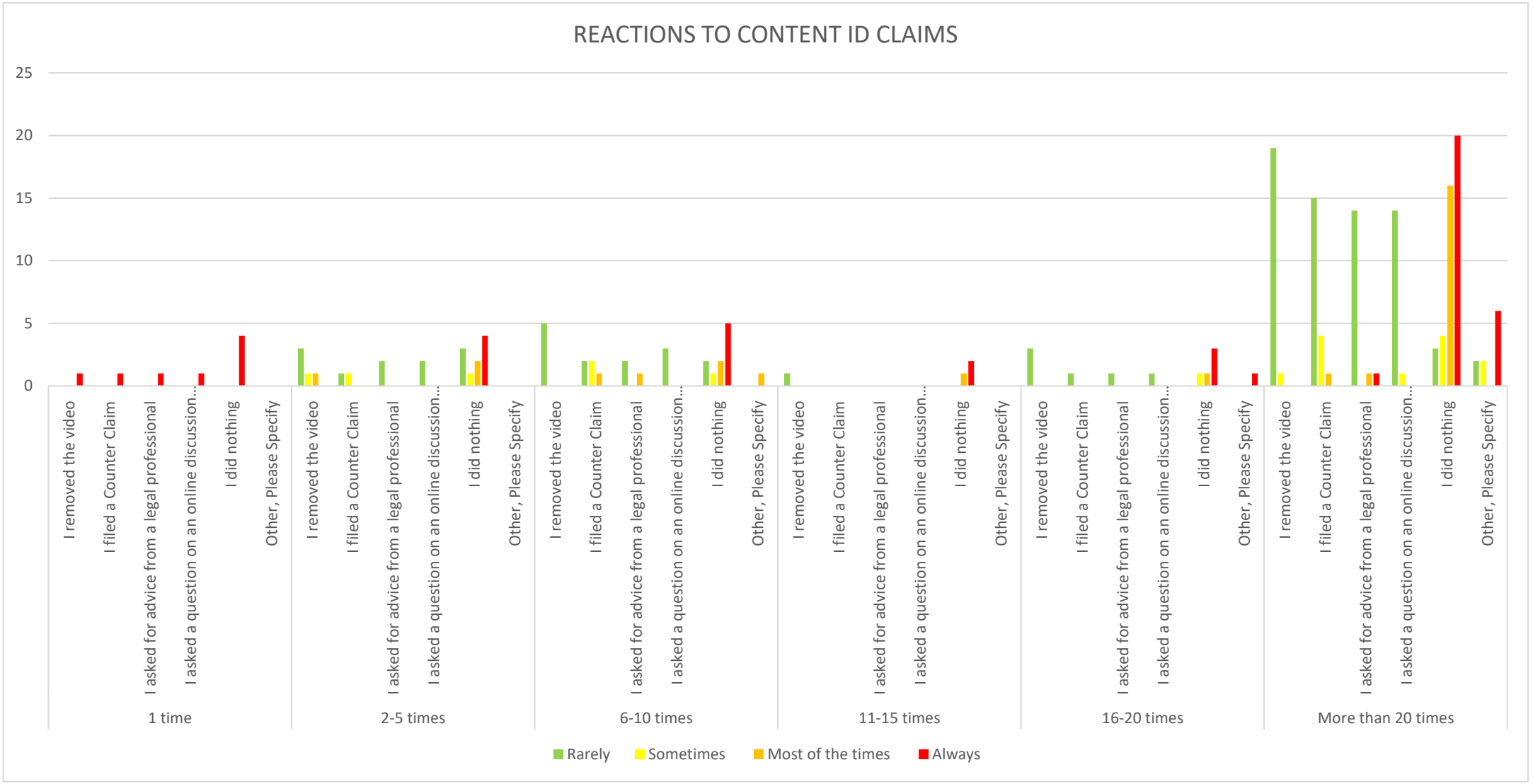


Figure 23: How respondents typically react upon receiving a Content ID claim.

As illustrated by Figure 23 above, for all frequencies of Content ID claims, the most common reaction seems to be reacting by doing nothing. Consequently, one could argue that prosumers of music are to a certain extent indifferent to their receipt of Content ID claims. This rings true with YouTube's terms of service which states that:

"Unlike takedowns, which are defined by law, Content ID is a YouTube system that is made possible by deals made between YouTube and content partners who have uploaded material that they own to our database.

You'll know if your video is affected by a Content ID claim if, in your copyright notices, you see the phrase 'Includes copyrighted content'. Usually, the claim is just to track or monetise the video, not to block it. So, your video remains live with those claims (but may have ads on it) and you can still share it with others.

Content ID claims don't result in copyright strikes, channel suspensions or channel termination. However, if you believe that a claim was made in error, you can dispute the claim. Learn more about Content ID claims".[782]

As such, it seems that Content ID claims do not necessarily impact prosumers negatively. In fact, as was shown in Chapter 4,[783] and above, prosumers of music who took part in this research exhibited a positive attitude towards YouTube's operationalisation of copyright and related enforcement regimes and specifically Content ID which operationalises the "pseudo-pathway" to rights clearance system. For instance, one interviewee had stated:

"Overall, I can say that it feels like YouTube doesn't want us remixers/mashup artists to earn from YouTube since everything we publish, gets claimed instantly be it an audio only or full visual mix. I also applied for YouTube monetization when I got the right amount of subs and was actually earning before 2018 (I didn't take any money out though, I wanted to save it) but right now, I can no longer earn from my videos because as per YouTube "my channel has many copyright claims" which again is impossible to not have because once we publish a mashup, the video gets instantly claimed. The good thing about this middle ground though is there are no BIG disadvantages unlike the strict years that once you video is claimed, it can't be played ON ALL MOBILE DEVICES which means lesser views. Such a hassle those years were."

[782] 'The Difference between Copyright Takedowns and Content ID Claims - YouTube Help' <https://support.google.com/youtube/answer/7002106?hl=en-GB> accessed 8 March 2022.
[783] See Chapter 4, section 4.2.1.

Hence, although prosumers of music are prone to receiving Content ID claims, their receipt of a Content ID claim, is unlikely to have any profound effect on them. As previously discussed, Content ID claims, simply signify that the work in question reuses an aspect of a work which has been registered with YouTube's Content ID database. It does not necessarily result in any negative consequences, other than freezing monetisation for those who have opted to monetise their works. In Chapter 5, it was shown that in general, prosumers of music show a desire to monetise their works.[784] However, as shown above, prosumers of music accept the fact that they are not able to monetise their works upon having received a claim.

[784] See Chapter 5, section 5.2.2.1.

6.2.2 Music prosumers' experiences and interactions with copyright strikes.

Content ID claims signify that YouTube's automated digital fingerprinting mechanism identified a match between the work which is being uploaded and a work which is registered to its Content ID database. Upon identifying a match, the registered rightsholder will be notified who then has the option to either, leave the video up and monetise it by placing advertisements on it, leave the video up without monetisation or file a copyright takedown notice.

If a rightsholder submits a complete and valid copyright takedown notice via the "notice and takedown" procedure discussed in Chapter 1, this will result in the user's account whose video has been taken down, receiving what YouTube refers to as a "Copyright Strike".

This section, drawing on data primarily from phase two of this research, provides insights into music prosumers' interactions and experiences with Copyright Strikes on YouTube. It does so by presenting how many copyright strikes prosumers of music tend to receive, what they think affects their propensity to receive one, whether certain types of prosumers are indeed more susceptible to receiving one, and finally how they react to the receipt of a copyright strike.

6.2.2.1 Is a prosumer of music likely to receive a copyright strike?

Forum posters examined in phase one of this research generally did not understand why they were sanctioned, with statements such as:

"Hello I get a Mail yesterday from SME [Merlin] Beggars (because copyright). I did a remix of Adele - Hello Hardstyle Bootleg / Remix. Now i delete the upload. But i don't understand it... Is he the owner of the song?".

Others sought advice on how to avoid receiving copyright strikes, with posters asking questions such as:

"Can you post remixes of popular songs without getting a copyright strike?".

Whilst others sought advice on what to do after their accounts had received three copyright strikes:

"My channel got recently terminated for 3 copyright strikes, and I want to know what I can do or know about copyright strikes because technically, the remixes aren't the ACTUAL song, but a remix of it.".

As discussed in Chapter 3, such statements are most likely vested in a lack of copyright knowledge,[785] which coincides with what existing research has shown.[786] However, they also show that prosumers

[785] See Chapter 3, section 3.1.
[786] Fiesler, Feuston and S. Bruckman (n 243) 121.

of music will likely experience and interact with copyright strikes upon uploading their works to YouTube. This research thus, sought to further examine how prosumers of music experience and interact with copyright strikes, in phase two. Questionnaire respondents were first asked if they had ever received a Copyright Strike. 32.94% of respondents claimed to have received a Copyright Strike whilst 67.06% did not (Table 63).

Table 63: How many respondents have received a copyright strike.

	Frequency	%
Yes	28	32.94%
No	57	67.06%
Total	85	100.00

Bearing in mind the fact that copyright is a private right, and it is ultimately the rightsholders choice of whether or not to file a formal takedown notice which may result in a copyright strike, it is unsurprising that the number of prosumers who report having received a copyright strike is lower than those who have received a Content ID claim. Existing research has however, shown that rightsholders tend to overuse the notice and takedown process by submitting vast amounts of formal takedown notices.[787] Furthermore, the music industry accounts for the largest volume of formal takedown requests.[788] Nevertheless, this does not seem to be the case for works of music prosumption which are uploaded to YouTube. Urban, Karagannis and Schofield had found that most formal takedown requests submitted to Google were for Torrent related websites, whilst only 4.4% of requests were for forums/fan sites and 3.7% for video streaming sites.[789] As such, one could argue that although rightsholders seem to be overusing their ability to submit formal takedown requests, such requests tend to target more clear cases of copyright infringement rather than targeting user-generated content. Unfortunately, one limitation of this study is the lack of a rightsholders' perspective, but it seems that the way in which YouTube has operationalised copyright and related enforcement regimes, reduces the need to submit formal takedown requests. However, this is something which would benefit from further research.

[787] Joe Karaganis and Jennifer Urban, 'The Rise of the Robo Notice' (2015) 58 Commun. ACM 28; Fiala and Husovec (n 779); Damilola Ibosiola and others, 'A Large-Scale Empirical Analysis of DMCA Notices and Online Complaints'; Daniel Kiat Boon Seng, 'The State of the Discordant Union: An Empirical Analysis of DMCA Takedown Notices' (2014) 18 Vanderbilt Journal of Entertainment and Technology Law 369.
[788] Seng (n 814) 419–420.
[789] Jennifer M Urban, Joe Karaganis and Brianna Schofield, 'Takedown in Two Worlds: An Empirical Analysis' (2018) 64 Journal of Copyright Society 483, 497.

6.2.2.2 What do prosumers think affects their propensity to receive a copyright strike?

Questionnaire respondents who reported not having received a copyright strike were asked why they thought they had never received one. Of the 57 respondents (67.06%) that indicated they have never received a copyright strike, 47 responded to the open-ended question asking them what they thought the reason why they had not received one was. 4 respondents stated that they had secured the necessary rights prior to uploading. In Chapter 4, it was shown that prosumers of music often avoid the traditional rights clearance process, due to a lack of knowledge of the requirement for doing so, high costs and complicated processes.[790] Those who do secure the necessary rights for the works they upload, will most likely not receive a copyright strike.

14 respondents made reference to the use of the pseudo-pathway to rights clearance and the fact that copyright owners seem to utilise YouTube's revenue sharing function. This reinforced the finding that prosumers of music are more likely to utilise the pseudo-pathway to rights clearance, but that they themselves view it as an effective route towards avoiding takedown notices. As previously discussed, YouTube's operationalisation of copyright and related enforcement mechanisms, has opened up new markets for works of music prosumption. Through the implementation of digital fingerprinting mechanism, it allows for the free dissemination of works of music prosumption whilst also ensuring a certain level of control over the reuse of works for registered rightsholders. One limitation of this study which has already been discussed, is the lack of a rightsholder's perspective. Nonetheless, from the point of view of the prosumers, the pseudo-pathway to rights clearance seems to create a more welcoming route to publication.

7 respondents referred to the fact that they do not use the original sound recording, contributing to the fact that they do not receive copyright strikes. This reinforces prosumers' lack of knowledge with regards to copyright exceptions presented in Chapter 3.[791] However, bearing in mind the function of Content ID, how it operates and the fact that it may struggle to identify a reuse which deviates from the work which is registered to its database, it is likely that not reusing the original sound recording may in fact translate to a lower chance of receiving a copyright strike. If rightsholders are not notified of an alleged infringement, because Content ID failed to identify a match, then it is more likely that rightsholders will not enforce their rights against those works.

3 respondents made reference to the size of their channel as a contributing factor to them not receiving a copyright strike. Unfortunately, as has already been mentioned, one limitation of this research, is the lack of a rightsholders perspective. Hence, although prosumers of music cite their

[790] See Chapter 4, sections 4.1 and 4.2.4.
[791] See Chapter 3, section 3.1.3.

channel size as a determinant of whether they receive a copyright strike, it is ultimately the rightsholders decision. A study that has examined rightsholders' motivations for submitting a formal takedown notice on YouTube for allegedly infringing UGC is provided by Erickson and Kretschmer.[792] As mentioned in Chapter 1, they examined "user generated parody videos" on YouTube, annually tracking them, to determine takedown rates and any potential pattern in rightsholder behaviour signifying motivations for filing claims.[793] They found "*a significantly negative effect for number of views on the risk of a takedown. This means that more popular videos (as measured in 2012) had a lower risk of being removed by rightsholders*".[794]

3 respondents claimed that the fact that they credit the original artists whose songs they reuse in the works they upload to YouTube, translates to them not receiving a copyright strike. This reinforces the finding presented in Chapter 5 where prosumers of music tend to believe that crediting absolves them from any liability stemming from copyright infringement.[795] Similarly, 2 respondents claimed that the fact that they do not monetise their works, contributes to them not receiving a copyright strike. This also reaffirms, the finding presented in Chapter 5, where certain prosumers of music tend to avoid commercialising their works with the belief that doing so absolves them from copyright infringement liability.[796] The remaining respondents provided other reasons such as claiming that it is not against YouTube's policies to upload cover songs and remixes.

In conclusion, prosumers of music believe that various factors determine their propensity to receive a copyright strike, ranging from rights clearance, to attribution, monetisation and even the size of their channel. Such perceptions may be the result of the level of knowledge or lack thereof individual music prosumers possess, and the result of lived experiences they have had, which ultimately represent music prosumers' legal consciousness, discussed in Chapter 3.[797] Ultimately, however, bearing in mind the fact that copyright is a private right, "*rightsholders must decide which content they will expend resources protecting, and which types of potential infringement they should most aggressively pursue"*.[798] Existing research, specifically in the realm of "user generated parody videos" discussed above, can provide insights into what may motivate rightsholders to submit a formal copyright takedown request, resulting in the YouTube users' account in question, receiving a

[792] Erickson and Kretschmer (n 419).
[793] See Chapter 1, section 1.3.3.3.
[794] Erickson and Kretschmer (n 419) para 50.
[795] See Chapter 5, section 5.1.1.
[796] See Chapter 5, section 5.1.2.
[797] See Chapter 3, section 3.1.
[798] Erickson and Kretschmer (n 419) para 2.

copyright strike. However, rightsholders' motivations specifically in the realm of music prosumption, are still unknown.

6.2.2.3 Are certain prosumers more susceptible to receiving copyright strikes?

Prosumers who claimed to have received a copyright strike, were asked about the frequency of those copyright strikes. 92.86% of respondents claimed to have received between 1 and 5 copyright strikes in total (Table 64). As previously discussed, YouTube adopts a graduated response mechanism approach to Copyright Strikes, which is often referred to as a "three-strikes and you're out" approach. Consequently, users who receive 3 copyright strikes risk having their accounts terminated. As such it is not surprising that prosumers of music do not receive a great amount of copyright strikes. Certain prosumers of music indicated that they had received more than 3 copyright strikes, which could indicate that they have either received numerous strikes on multiple accounts or have repeatedly received strikes after they have expired. Alternatively, this may be an indication of misreporting.

Table 64: How many copyright strikes respondents received.

	Frequency	%
1	14	50.00%
2-5	12	42.86%
6-10	1	3.57%
11-15	1	3.57%
16-20	0	0.00%
More than 20	0	0.00%
Total	28	100.00%

As discussed above, certain types of works of music prosumption may in theory be more susceptible to receiving Content ID claims. Moreover, upon identification of a match, Content ID will notify the relevant rightsholders who are then given the option of how to proceed. Additionally, existing research shows that formal takedown notices are over-enforced.[799] Hence, one could argue that YouTube's operationalisation of copyright and related enforcement regimes through Content ID enables the over enforcement of formal copyright takedown requests.

Running a crosstab between the number of Content ID claims received and the number of copyright strikes received, shows that there could be a positive correlation between the receipt of a Content

[799] Fiala and Husovec (n 779); Urban, Karaganis and Schofield (n 816); Karaganis and Urban (n 814).

ID claim and a copyright strike. As indicated by Table 65 below, users who received more than 20 Content ID claims, accounted for most users who received a copyright strike (17 out of the 28 respondents who had indicated that they had received a copyright strike had received more than 20 Content ID claims). However, this does also indicate that not all Content ID claims result in copyright strikes. As aforementioned, YouTube's operationalisation of copyright and related enforcement mechanisms, does not only act as a platform for rightsholders to submit formal takedown requests, but also offers an alternative route to exploitation of their works, such as the monetisation of that work, indirectly replicating a scenario where that work in question was licensed. Hence, it seems that although Content ID claims aid in the enforcement of formal takedown requests, not all Content ID claims result in copyright strikes.

Table 65: Crosstab between the number of copyright strikes received and the number of Content ID claims received.

	How many Content ID claims have you received?							
How many copyright strikes have you received?		1	2-5	6-10	11-15	16-20	More than 20	Total
	1	0	3	2	0	2	6	13
	2-5	1	1	0	0	0	10	12
	6-10	0	0	0	0	0	1	1
	11-15	0	0	0	1	0	0	1
	16-20	0	0	0	0	0	0	0
	More than 20	0	0	0	0	0	0	0
Total		1	4	2	1	2	17	27

Only one respondent claimed to have received a copyright strike without having received a Content ID claim. In the question which asked why they thought they had never received a Content ID claim, that respondent chose to skip that question and thus, no inferences can be drawn as to why that prosumer was not caught by YouTube's Content ID. However, they did categorise themselves as uploading instrumental covers to YouTube where they do not use the original sound recording and simply play an instrument on its own which may act as a contributing factor.

One could argue that a positive correlation between Content ID claims and Copyright Strikes could in fact stifle creativity for prosumers of music. So far in this thesis, YouTube's operationalisation of copyright and related enforcement regimes, through the utilisation of Content ID has been praised. By providing an alternative route to rights clearance for prosumers of music, but also allowing for

rightsholders to track and take action against allegedly copyright infringing works, more efficiently and in a variety of ways, many of which allow for the work to still be viewable, new avenues for creativity are created. However, as indicated throughout this thesis, Content ID is not perfect. One commonly cited flaw of automated digital fingerprinting mechanisms, including Content ID, is their inability to draw distinctions between works which may fall under a copyright exception and clear-cut case of infringement, leading to high volumes of "false positive" Content ID matches.[800] However, as discussed in Chapter 1 copyright exceptions will only apply to works of music prosumption under certain specific circumstances .[801] Hence, although Content ID's inability to decipher when a work being uploaded would fall under an exception, is a real flaw which will affect copious amounts of works which are uploaded to YouTube, it is unlikely to affect a substantial amount of works of music prosumption.

One more likely issue prosumers of music may face would be false positives in terms of reusing "royalty free" music or music for which the rights have already been cleared, but which have subsequently been registered to YouTube's Content ID, which was discussed in Chapter 4.[802] Content ID is made up of a database of registered works which is used to track every work which is uploaded individually. As such, if for instance, a musical work which reuses a "royalty free" sample, or a work which is in the public domain, is registered to that database, and that same "royalty free" sample is reused in a work of music prosumption, it will most likely receive a Content ID claim, when in fact that should not be the case. This consequently creates a complex game of cat and mouse, in terms of who registers their reuse of "royalty free" samples first.

6.2.2.4 How do prosumers of music react to a copyright strike?

Once a user has received a copyright strike, they have three options available to them in order to resolve a copyright strike. First, as discussed in Chapter 1, after attending the so called "copyright school", they can wait 90 days for the strike to expire.[803] Second, they can contact the person who has issued the copyright takedown notice and ask them to retract their claim.[804] If a rightsholder agrees to retract their claim, the retraction notice must be made using the same email which was

[800] Toni Lester and Dessislava Pachamanova, 'The Dilemma of False Positives: Making Content ID Algorithms More Conducive to Fostering Innovative Fair Use in Media Creation' (2017) 24 UCLA Entertainment Law Review 51, 64; Benjamin Boroughf, 'The Next Great Youtube: Improving Content ID to Foster Creativity, Cooperation, and Fair Compensation' (2015) 25 Albany Law Journal of Science & Technology 95, 107–110; Leron Solomon, 'Fair Users or Content Abusers: The Automatic Flagging of Non-Infringing Videos by Content ID on Youtube Note' (2015) 44 Hofstra Law Review [i], 257–259.
[801] See Chapter 1, section 1.3.1.2.
[802] See Chapter 4, section 4.2.3.
[803] See Chapter 1, section 1.3.1.2.
[804] 'Retract a Claim of Copyright Infringement - YouTube Help' <https://support.google.com/youtube/answer/2807691> accessed 8 March 2022.

used to submit the copyright takedown notice.[805] Third, as discussed above and as illustrated by figure 22, if the user has grounds to believe that the copyright strike they receive is wrongful, they can submit a counter-notification.

YouTube's help page states that, only the video uploader or "*an agent authorised to act on their behalf such as a lawyer*" mut submit the counter-notification, and that on should only be submitted where they have grounds to believe that the video "*was taken down due to a mistake or misidentification of content, including cases of fair use"* and for no other reason.[806] A hyperlink explaining what may fall under "fair use" is provided.[807] It then provides a step-by-step guide to submitting a counter-notification explaining where a user must click in order to reach the online form which allows them submit their counter-notification.[808]

To better understand how prosumers of music interact with and experience YouTube's operationalisation of notice and takedown regimes, questionnaire respondents were asked to indicate how they would typically respond to a copyright strike. As above, this was done on a granular level.

[805] ibid.
[806] 'Submit a Copyright Counter Notification - YouTube Help' <https://support.google.com/youtube/answer/2807684?hl=en-GB&ref_topic=9282678> accessed 8 March 2022.
[807] 'Fair Use on YouTube - YouTube Help' (n 805).
[808] 'Submit a Copyright Counter Notification - YouTube Help' (n 833).

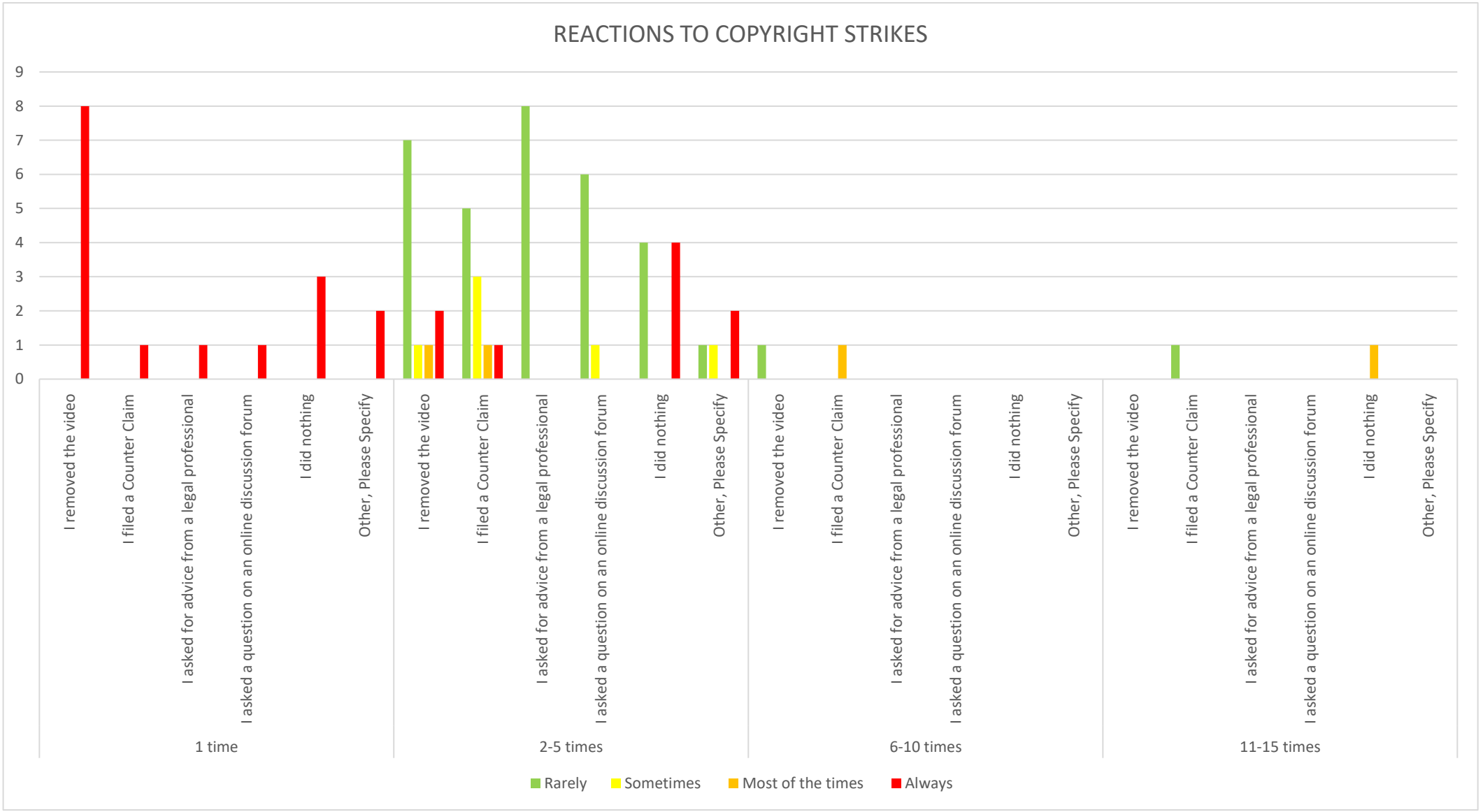


Figure 24: How respondents typically react upon receiving a copyright strike.

As can be seen from figure 24 above, most prosumers react to the receipt of a copyright strike by either removing the video or simply by doing nothing. As aforementioned a copyright strike is the result of a rightsholder submitting a formal copyright takedown notice to YouTube. Copyright strikes are linked to the allegedly infringing user's account and not the video itself. Upon receipt of a formal takedown notice, YouTube will block access to the video globally and the user will be presented with the statement "Video taken down: Copyright strike" next to their video.[809] This is different from traditional takedown processes which are encountered on other platforms, in the sense that the video is no longer viewable. On YouTube the video is still accessible but accompanied by a message.[810]

Figure 25: Illustration of the message that displays on a video that has been taken down.

YouTube's help page states that "*deleting a video with a strike won't resolve your strike*".[811] Nevertheless, this research shows that prosumers tend to remove their videos upon receipt of a copyright strike. Prosumers who took part in the interviews via email were asked about why they remove their videos upon receipt of a copyright strike and all mentioned initial feelings of panic which result in the removal of video. One prosumer who uploads covers stated:

"When my cover got blocked for the first few times I went to a forum (Reddit to be specific) to ask some questions because I didn't know what is this and I felt in danger my channel. After I learnt what is this I always delete mye blocked videos, because I know that I can't make anything about that".

Another prosumer who uploads remixes to YouTube stated that:

"When I received my first strike it was scary so I turned to forums. I don't have friends who know how things work on YouTube so that was not an option for me. Though once I started having more friends who were mashup artists, it all felt like a normal struggle so we just accepted it. Most of the times, I just remove the striked video because 1) it won't be visible in my channel anyways, 2) I'm scared it might affect the people making the decisions to lift the strike, or 3) I just accepted the fact that the

[809] 'The Difference between Copyright Takedowns and Content ID Claims - YouTube Help' (n 809).
[810] Jacques *et.al.* used this to their advantage when examining the procedural aspects of YouTube's takedown regime which was discussed above. Jacques and others (n 421).
[811] 'Copyright Strike Basics - YouTube Help' (n 402).

strike won't be lifted and just upload lesser videos with songs the mashup community knows are "safe" to publish."

Another who uploads remixes made a distinction between copyright strikes and Content ID claims stating:

"At first I panicked about the copyright claim came for my first video. Then I have go through the policies about it. I will do nothing about that. If copy strike happen only I will remove the video other wise I don't remove and I will do nothing".

As such, prosumers have a sense of having a "clean slate" in terms of copyright related takedowns on their channel by removing the videos which display messages such as the one above.

As discussed above, existing research has shown that although platforms have mechanisms in place for users to submit counter claims, such procedures are underutilised.[812] However, as already established, prosumers of music are aware of the existence of such mechanism and as can be seen from figure 24 above, are actively using them. Namely, although most questionnaire respondents who received a copyright strike reported removing the video which resulted in the strike, or doing nothing, another common response was the filing of a counter claim. Moreover, the process of filing a counterclaim was characterised as straightforward by one interviewee who stated:

"It doesn't take much time though. Just a few minutes. Just state your name, channel name, contact adress and reason why you believe it's not a valid claim. Then a tick box that what you are saying is true and if counter claim is not valid, YouTube has a right to terminate channel or make a case etc. Usually I just type in the reason box with "I do this for entertainment purposes and I don't earn money from this."

That same interviewee had stated that most of the time their counter claims had been successful stating:

"Success rate you can say that only two requests to lift a strike of mine got rejected. You can safely say success rate of 80% percent including experiences with friends :) Again, YouTube is not that strict now with counter claims (I believe). But they do make content ID claims faster now. Like minutes from just uploading."

Another interviewee however, stated that they would only dispute a claim if they had valid reasons for doing so:

[812] Urban, Karaganis and Schofield (n 375); Urban and Quilter (n 371).

“On two occasions I attacked the claim: once there were a fake studio or something who claimed a few of my videos. It was obvious that it was not their rights so I attacked that claim and I won, later the video was claimed by the right owner, and I'm cool with it.”

Hence although existing research has shown that counter notice procedures are often under-utilised, this does not seem to be the case for prosumers of music who participated in this research and are aware of their ability to dispute a claim and are to a certain extent actively doing so. However, one caveat for this is the small sample size. As already mentioned, 28 questionnaire respondents reported receiving a copyright strike. As such, no generalisations can be made for the realm of music prosumption.

6.3 Interim Conclusion.

Once a prosumer has uploaded their work to YouTube, they may encounter legal determinants of behaviour, which are made apparent through processes which operationalise copyright and related enforcement regimes. This chapter sheds light on music prosumers' knowledge and understanding of, and experiences and interactions with such processes, they encounter after they have uploaded their works to YouTube.

Prosumers of music share a baseline level of understanding of such processes and the relevant enforcement regimes which mandate such processes, in that they can distinguish between YouTube's terminologies used, and are also aware of the mechanisms available to rightsholders for dealing with alleged infringements online, but also to themselves in terms of disputing a rightsholders choice to enforce their rights against them.

Most prosumers have received a Content ID claim which indicates that YouTube's implementation of automated digital fingerprinting mechanisms seem to be working effectively. Prosumers are primarily unaffected by the receipt of a Content ID claim, with most respondents claiming that they commonly will do nothing upon the receipt of a Content ID claim. Not as many prosumers reported having received a copyright strike, which could indicate that rightsholders are not enforcing their rights by submitting formal copyright takedown requests. However, further research is needed which could provide a rightsholder perspective. Interestingly, prosumers primarily react to the receipt of a copyright strike, by removing their video, which does not affect their position on YouTube, as a copyright strike is attached to the user's account and not the video for which a strike is received. Moreover, prosumers of music actively utilise their ability to submit a counter claim and assert that the process is effective in restoring their claimed works.

PART THREE.

Chapter 7 – Conclusion.

Through two phases of empirical research, this research set out to examine how prosumers of music, who disseminate their works on YouTube understand, perceive, experience, and interact with the regulatory frameworks they encounter throughout their dissemination process. Namely, as outlined in Chapter 1, the questions which guided this research were:

- How do music prosumers understand and perceive the aspects of copyright law they are likely to encounter throughout their dissemination process?
- How do music prosumers understand, perceive, interact with and experience, if at all, the rights clearance process?
- How do prosumers of music understand, perceive, interact with and experience, if at all, notice and takedown procedures as operationalised by YouTube?
- Do any social norms or other non-legal determinants of behaviour exist in the realm of music prosumption?

Although these research questions guided the empirical enquiry of this research, they did not occur in an empirical vacuum. As outlined in Chapter 1, they emerged after a doctrinal analysis of the legislative framework prosumers of music who disseminate their works on YouTube are likely to encounter throughout their dissemination process. However, like other regulatory frameworks, copyright policy, is in a constant state of transformation and this research took place whilst the EU was undergoing a re-evaluation of how online platforms like YouTube should be regulated. The result of this re-evaluation was Article 17 of the DSM Directive which arguably, shifts liability for copyright infringement in the realm of music prosumption. This shift of liability brings to light some of this research's main findings.

Hence, before providing this thesis's overall conclusions, section 1 of this chapter introduces and critically analyses this recent policy development that ties together and exemplifies several observations made throughout this thesis. Section 2 then revisits each of the research questions which helped guide this research but does so in light of this recent policy change, providing this thesis's main conclusions, as well as their implications where relevant, for researchers, policymakers, YouTube as a dissemination platform for works of music prosumption and, for prosumers of music themselves. Finally, using this research's findings, section 3 provides final concluding remarks on how this recent policy development may affect UGC that is disseminated online in a broader context.

7.1 Article 17 of the DSM Directive.

As outlined in Chapter 1, until recently, and when this research took place the ECD regulated UGC orientated platforms' liability in the EU, with regards to copyright infringements committed by the platform's users. The ECD allowed for platforms like YouTube, to escape liability for their users' copyright infringements, through the so called "safe harbour" provisions.[813]

However, in an attempt to modernise EU copyright law, on the 17th of May 2019, the Digital Single Market Directive (DSM) was published.[814] As discussed in Chapter 1, the UK has government has made it clear that they have no intention of implementing the DSM Directive.[815] It is however, likely to affect platforms like YouTube, who operate in the EU, and it is thus merits discussion. This new directive contains a number of provisions which alter the landscape for UGC orientated platforms like YouTube. Arguably, the most contentious and heavily discussed provision of the DSM Directive is contained under Article 17.[816] Article 17 of the DSM Directive is primarily aimed at addressing the so called "value gap", which is a term coined in this respect by the music industry, and essentially purports that there is an unfair imbalance between the revenue generated from unauthorised content by UGC orientated platforms and the amount of revenues returned to the rightsholders whose works are being reused without authorisation.[817] Article 17 of the DSM aims to bridge this gap by holding platforms which host "large amounts" of UGC responsible for their users' copyright infringements.[818]

The DSM Directive regulates online content-sharing service providers (OCSSPs) which are defined, by Article 2(6) of the DSM Directive as "*providers of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and*

[813] See Chapter 1, section 1.3.3.1.1.
[814] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92.
[815] See Chapter 1, section 1.3.3.1.
[816] One Member State, namely Poland, has already filed for an action for annulment using Article 263 of the Treaty on the Functioning of the European Union, see Case C-401/19 Poland v Parliament and Council [Action for an annulment brought on the 24th May 2019] at the time of writing this case is still in progress. Recently, however, A.G. Henrik Saugmandsgaard Øe did in their opinion suggest that the CJEU find that Article 17, is in line with freedom of expression and information and therefore dismiss the action brought by Poland. See Case C-401/19 *Republic of Poland v European Parliament, Council of the European Union* [2021] ECLI:EU:C:2021:613, Opinion of AG Henrik Saugmandsgaard Øe, para 220.
[817] Quintais (n 364) 37; Samuelson (n 382) 218; Alina Trapova, 'Reviving Collective Management – Will CMOs Become the True Mediators They Ought to Be in the Digital Single Market?' (2019) 42 European Intellectual Property Review 272, 276.; Samuelson (n 133) 218; Trapova 276.
[818] Quintais (n 364) 37.

promotes for profit-making purposes".[819] This is a broad definition, ultimately targeted towards regulating platforms like YouTube.[820]

Article 17(1) of the DSM, states that OCSSPs perform "*an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users*".[821] Hence, unlike previously where platforms who adopted a wholly passive role with regards to copyright infringement committed by their users, qualified for exemption of liability with regards to such infringements under the aforementioned "safe harbour" provisions, the DSM Directive now holds OCSSPs liable for performing "*an act of communication to the public or an act of making available to the public"* in reference to content uploaded by a platform's users. In fact, Article 17(3) expressly excludes platforms from relying on "safe harbour" provisions.

However, the DSM Directive provides a new route for such platforms to avoid direct liability for their users' infringements.[822] As indicated by Figure 26 below, platforms are given two possibilities for avoiding liability for the users' actions. They may either obtain a license covering their users' actions or cumulatively meet the "best efforts" requirements found under Article 17(4).[823] The next two subsections of this chapter critically analyse each of these routes to avoiding liability respectively.

[819] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92, Article 2(6).
[820] Quintais (n 364) 37.
[821] Ibid, Article 17(1).
[822] Quintais (n 364) 38.
[823] ibid.

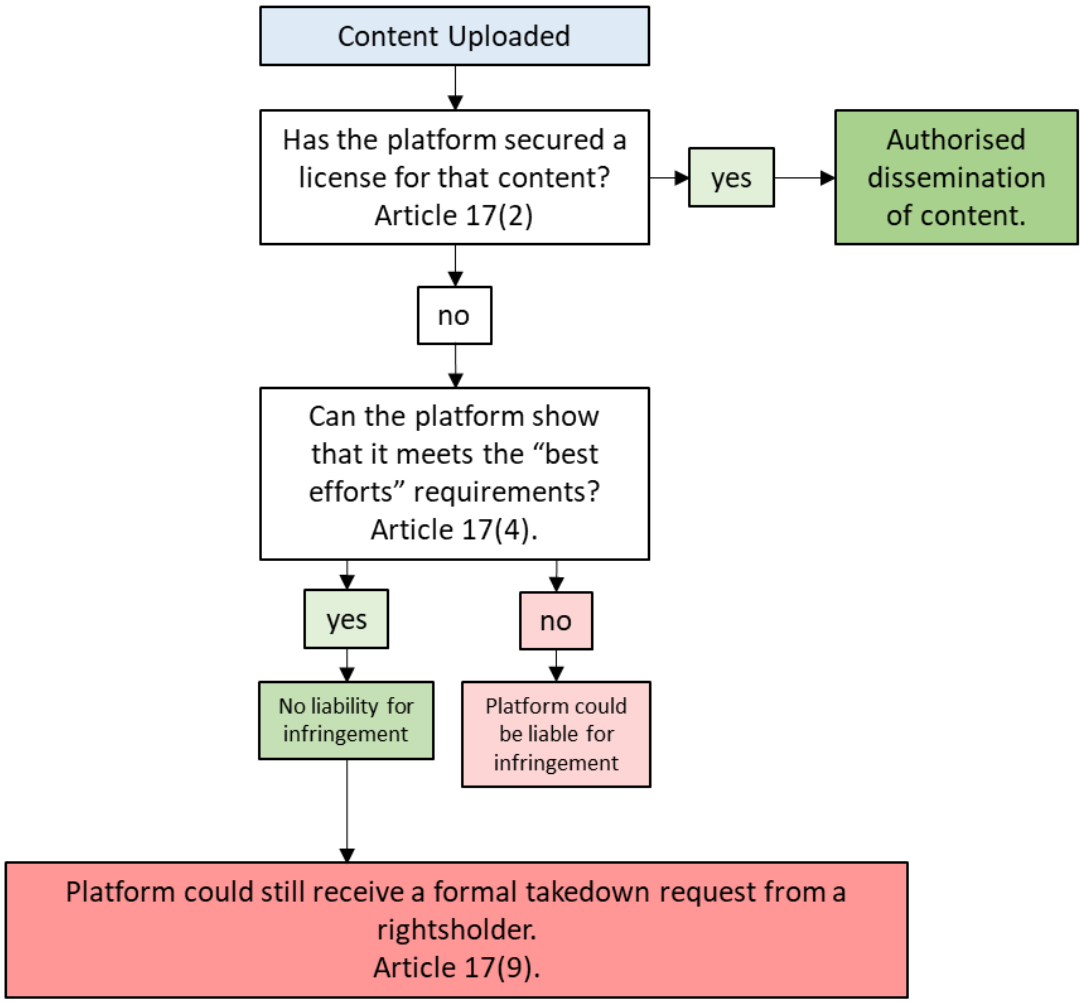


Figure 26: Illustrating of a platform's obligations under Article 17 of the DSM Directive, if they are to avoid liability for their users' infringements.

7.1.1 Licensing route.

Article 17(2), when read in conjunction with subsection (4)(a), asks of UGC orientated platforms to at least attempt to obtain licenses to cover all content that may be uploaded by their users.[824] Namely Article 17(2) states that:

"Member States shall provide that, where an online content-sharing service provider obtains an authorisation, for instance by concluding a licensing agreement, that authorisation shall also cover acts carried out by users of the services falling within the scope of Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis or where their activity does not generate significant revenues".

Additionally, Article 17(4)(a), states that the first requirement that a platform must meet in order to meet the threshold of "best efforts" is to show evidence of at least attempting to secure a license. Hence, it is argued that the DSM Directive to a certain extent shifts the burden of rights clearance from individual users to platforms. Platforms are now explicitly asked to secure rights clearance covering "*acts carried by their users*", but whether this will in fact remove users' need to secure rights clearance remains to be seen. This will be discussed in more detail below.

Given the difficulties associated with rights clearance presented above, it would be unrealistic to expect of online platforms to secure licenses from every European rightsholder.[825] But also as per Senftleben, "*a Pan-European license for UGC – covering a wide variety of works that may be uploaded by users – seems beyond reach*, meaning a universal blanket license approach is not yet possible.[826] According to the Commission's guidelines on the implementation of Article 17, it is stated that: "*In order to facilitate the identification of rightsholders and the grant of authorisations, the Member States may encourage the development of registries of rightsholders that could be consulted by online content-sharing service providers, in compliance with data protection rules, when applicable.*[827] Hence, there is arguably a push from the commission towards a more systematic approach to collective licensing, enabling platforms to secure rights clearance.

[824] Samuelson (n 382) 219.
[825] Samuelson (n 382); Martin Husovec and JoÃo Pedro Quintais, 'How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms under the Copyright in the Digital Single Market Directive' (2021) 70 GRUR International 325, 329–330.
[826] Martin Senftleben, 'Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market' (2019) 41 European Intellectual Property Review 480.
[827] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 9.

The Commission's guidelines also state that "*the efforts to reach out to rightsholders in order to obtain the necessary authorisations should be assessed on a case-by-case basis, taking into account in particular the size and audience of the service and the different types of content it makes available, including the specific situations where some types of content may appear only rarely on the service. While large service providers with a big audience in several or all Member States may be expected to reach out to a high number of rightsholders to obtain authorisations, smaller service providers with limited or national audience may be expected to contact proactively only relevant CMOs and possibly a few other easily identifiable rightsholders. These smaller service providers would need to make sure that other rightsholders could contact them easily, for example by providing clear contact details or ad-hoc tools on their website. They would be required to engage with all rightsholders approaching them to offer a licence"*.[828] Hence, the concept of "best efforts" should be proportionate to the size of the platform in question meaning that platforms like YouTube, would be expected to conclude numerous licensing deals both at the collective and individual scale.

The guidelines also state that: "*considering the volume and variety of content uploaded by users, service providers should not be expected to proactively seek out rightsholders who are not easily identifiable by any reasonable standard"*.[829] Hence, this provision may inadvertently favour established artists, who are more easily identifiable.[830]

As presented in Chapter 4,[831] prosumers of music, often circumvent traditional rights clearance processes, utilising the "pseudo-pathway" to rights clearance, created by YouTube's operationalisation of the regulatory frameworks preceding the DSM Directive. Hence as will be discussed in more detail in section 2 of this chapter, it is envisioned that the provisions found under Article 17(2) and 4(a) of the DSM Directive, will bridge the gap between law in books and law in action, in the sense that prosumers' experiences of copyright and related enforcement regimes as operationalised by YouTube, will be mandated by black letter law.

[828] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 9.
[829] Ibid.
[830] Martin Husovec and João Quintais, 'Too Small to Matter? On the Copyright Directive's Bias in Favour of Big Right-Holders', *Global Intellectual Property Protection and New Constitutionalism. Hedging Exclusive Rights* (Oxford University Press 2021).
[831] See Chapter 4, section 4.2.1.

7.1.2 Best efforts.

As aforementioned, and indicated by Figure 26 above, platforms are also given an alternative route to avoiding liability for their users' actions, covering content for which a license cannot be obtained. Specifically, if a platform can show that it cumulatively meets the requirements under Article 17(4) of the DSM Directive, it can still avoid liability for copyright infringement. In order to avoid liability a platform must be able to show that it has cumulatively: "*(a) made best efforts to obtain an authorisation, and (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightsholders, have provided the service providers with the relevant and necessary information; and in any event (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightsholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b)".*[832] This, in combination with a rightsholders ability to file a formal takedown request enshrined in Article 17(9) which is discussed below, has led to some commentators characterising the DSM Directive as creating a new safe harbour for OCSSPs.[833]

As aforementioned, Article 17(4)(a) requires that a platform at least attempts to secure a license and in accordance with the Commission's guidelines this would have to be judged on a case-by-case basis.[834] Hence, provided a platform can show that it has at least made an attempt to secure a license, the first cumulative requirement under article 17(4) of the DSM Directive will be met. The effect this provision will have in the realm of music prosumption will be discussed in section two of this chapter.

Although not explicitly stated, and the DSM clearly rejecting this in Article 17(8), it is envisioned that Article 17(4)(b), encourages platforms to actively use filtering mechanisms.[835] In fact, this has been confirmed by EU officials.[836] Moreover, the Commission's guidelines state that "*in order to determine whether an online content-sharing service provider has made its best efforts in line with high industry standards of professional diligence, it is particularly relevant to look at the available industry*

[832] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92, Article 17(4).
[833] Sunniva Hansson, 'The Digital Services Act: Upgrading Liability, Responsibility and Safety Online' (2020) 31 Entertainment Law Review 94, 96.
[834] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 9.
[835] Trapova (n 844) 278; Senftleben (n 853) 482; Samuelson (n 382) 219.
[836] 'EU Commissioner Gunther Oettinger Admits: Sites Need Filters To Comply With Article 13' (*Techdirt.*) <https://www.techdirt.com/articles/20190329/15501341902/eu-commissioner-gunther-oettinger-admits-sites-need-filters-to-comply-with-article-13.shtml> accessed 8 March 2022.

practices on the market at any given point in time. This includes the use of technology or particular technological solutions".[837] This when read in conjunction with the CJEU's wording, where YouTube was praised for its implementation of its own filtering mechanism (Content ID), in its recent judgement for the joined case of *YouTube and Cyando*, [838] creates the impression that platforms on a scale such as YouTube, are encouraged to implement automated filtering mechanisms. This was also recently confirmed by AG Saugmandsgaard Øe, in their opinion in the Polish action for annulment of Article 17, where they concluded that Article 17 will, in most instances result in platforms implementing "*automatic content recognition*" tools.[839]

The third research question which helped guide this research's empirical enquiry examined music prosumers' encounters with YouTube's own automated filtering mechanism, Content ID and can thus provide valuable insights into the effect automated filtering mechanisms may have from a user's perspective. This will discussed in more depth in section two of this chapter.

Article 17(4)(c) reiterates a notice and takedown regime, but also enforces a "notice-and-stay-down" regime or "re-upload" filter.[840] This essentially requires that platforms use their digital fingerprinting mechanisms to inhibit the re-upload of already identified copyright infringing works that have been uploaded and subsequently removed from their platforms. This in essence creates architectural constraints on the re-uploading of copyright infringing works. [841]

The remainder of Article 17 consists of a number of provisions whose aim is to balance stakeholder interests.[842] Specifically, Article 17(5) sets out a number of non-exhaustive factors such as "*the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service*" which alongside the principle of proportionality, should be taken into account when considering whether an OCSSP has complied with the requirements under Article 17(4).[843]

[837] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 12.
[838] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, at 84.
[839] C-401/19 *Republic of Poland v European Parliament, Council of the European Union* [2021] ECLI:EU:C:2021:613, Opinion of AG Henrik Saugmandsgaard Øe, paras 57-69.
[840] Quintais (n 364) 38.
[841] For a discussion on what role architectural constraints play in regulating the internet, see Lawrence Lessig, *Code: And Other Laws of Cyberspace* (ReadHowYouWant 2009).
[842] Quintais (n 364) 38.
[843] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92, Article 17(5).

Article 17(6) limits the scope of applicability of the obligations described above for small scale OCSSPs.[844] This provision is directed at "start-up" platforms who may not be able to comply with all of the preceding requirements and will thus, not affect YouTube in any way.

Article 17(7) provides that "*Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services: (a) quotation, criticism, review (b) use for the purpose of caricature, parody or pastiche".*[845] This is arguably the DSM Directive's attempt to maintain that users are able to rely on copyright exceptions.[846] However, the directive does not provide any details with regards to how such a provision is to operate in practice. Furthermore, the Commission's guidelines simply states that Member States are required to transpose the requirements found under Article 17(7).[847] Certain Member states have consequently resorted to implementing Article 17(7) verbatim.[848]

However, when Article 17(7) is read in conjunction with the requirement to use filtering mechanisms, this could potentially cause issues for platforms. This is due to the fact that one flaw of such mechanisms discussed in preceding chapters,[849] is their inability to decipher content that would otherwise be regarded as falling under an exception. The Commission's guidelines state with regards to this that:

"In order to ensure compliance with Article 17(7) in practice, and leave unaffected legitimate uses, including uses under exceptions and limitations, when an upload matches a specific file provided by rightsholders, automated blocking, i.e. preventing the upload by the use of technology, should in principle be limited to manifestly infringing uploads.

As indicated more in details below, other uploads, which are not manifestly infringing, should in principle go online and may be subject to an ex post human review when rightsholders oppose by sending a notice.

This approach, according to which service providers should determine at the upload whether content is manifestly infringing or not, is a reasonable practical standard to determine whether an upload

[844] Ibid Article 17(6).
[845] Ibid Article 17(7).
[846] Quintais (n 364) 38–39.
[847] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 18.
[848] 'Germany Attempts to Square the Circle in Its Implementation of Article 17 CDSMD – Part 1' (*Kluwer Copyright Blog*, 2 June 2021) <http://copyrightblog.kluweriplaw.com/2021/06/02/germany-attempts-to-square-the-circle-in-its-implementation-of-article-17-cdsmd-part-1/> accessed 8 March 2022.
[849] See Chapter 6, section 6.2.1.2.

should be blocked or go online, and to ensure the respect for Article 17(7), taking into account the existing limitations of technology".[850]

This is the approach which Germany has taken when implementing Article 17, with its so called "presumably authorised uses".[851] Namely, Germany's implementation sets a *de minimis* threshold for UGC that may be regarded as presumably authorised. Specifically, UGC uploaded would be regarded as presumably authorised if it cumulatively meets the following requirements:

1. *"The upload uses less than half of one or more third-party works,* [section 9]
2. *it combines third-party content with other content,* [section 9] *and*
3. *it must be either a minor use (non-commercial use of less than 15 seconds of audio or video, 160 characters of text or 125 kB of an image)* [section 10] *or have been flagged by the user as authorized by law"* [section 11].

Arguably, Germany's approach to a certain extent attempts to quantitatively assess a reuse which has historically been judged on both a quantitative and qualitative scale. Bearing in mind the definitions of works of music prosumption presented in Chapter 1, one could argue that Germany's approach would favour remixes in the form of samples, as they would be able to reach viewership without being automatically blocked. One issue with doing so is that works which would typically be regarded as infringing copyright could sometimes reach a viewership online.

An alternative approach towards the preservation of users' rights is offered by Finland whose DSM Directive implementation proposal suggests that instead of automated blocking of user uploads, rightsholders are instead automatically notified of alleged matches for which they have provided the platform information of.[852] This arguably reflects YouTube's operationalisation of the regulatory frameworks that predate the DSM Directive, and is likely to have little to no effect on YouTube as a dissemination platform for works of music prosumption. The exact effect that Member State's implementation may have for the realm of music prosumption is discussed in more depth in section two of this chapter.

[850] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 20.
[851] Urheberrechts-Diensteanbieter-Gesetz – UrhDaG 2021, sections 9-11.
[852] Paul Keller, 'Finnish Article 17 Implementation Proposal Prohibits the Use of Automated Upload Filters' (*International Communia Association*, 23 December 2020) <https://www.communia-association.org/2020/12/23/finnish-article-17-implementation-proposal-prohibits-the-use-of-automated-upload-filters/> accessed 8 March 2022.

Under Article 17(9), rightsholders would still be able to utilise formal takedown requests, removing such content. Hence, Germany's approach is a welcomed starting point for trying to find an appropriate balance between fostering creativity whilst protecting rightsholders rights.

Namely, Article 17(9) obligates platforms to "*put in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them".*[853] This mirrors the notice and counter-notice procedures already followed by most OCSSPs as a requirement under the DMCA.

Hence, taking a synoptic view of the abovementioned, the DSM Directive in an attempt to modernise copyright law, shifts liability for UGC that amounts to copyright infringement online. As a result, in order to avoid liability, platforms may have to alter their policies and private practices in the ways described above. The next section of this chapter aims to provide this thesis's main conclusions, as well as their implications where relevant, for researchers, policymakers, YouTube as a dissemination platform for works of music prosumption and, for prosumers of music themselves. In doing is it will also discuss what effect Article 17 of the DSM directive is likely to have for the realm of music prosumption.

[853] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92, Article 17(9).

7.2 Overview, main conclusions, implications, and recommendations.

Having introduced the recent legislative development brought about by Article 17 of the DSM Directive, this section of this chapter aims to revisit each of the research questions which helped guide this research's empirical enquiry. In doing so, this section provides this thesis's main conclusions, as well as their implications where relevant, for researchers, policymakers, YouTube as a dissemination platform for works of music prosumption and, for prosumers of music themselves. Moreover, using the analysis of Article 17 of the DSM Directive provided above, and this research's findings in respect of each of its research questions, this section aims to, where relevant, provide practical insights into the effect, if any, Article 17 is likely to have on the realm of music prosumption.

7.2.1 Copyright Knowledge.

With regards to the first research question which sought to identify how prosumers of music understand and perceive aspects of copyright law they are likely to encounter throughout their dissemination process, this thesis concludes that:

Copyright knowledge varies amongst prosumers of music and one's level of copyright knowledge has an influential role in how they experience and interact with the regulatory processes they encounter. Copyright knowledge exchange should thus be increased in the realm of music prosumption.

This research found that music prosumers do not all share a common understanding of copyright law. Some are aware of what amounts to copyright infringement whilst others are not.[854] Some prosumers of music are aware of the existence of copyright exceptions and when they might apply whilst others are not. Hence, copyright knowledge varies from prosumer to prosumers.

Nonetheless, the level of knowledge prosumers of music possess, has an influential role in how prosumers of music experience and interact with the copyright related regulatory processes they encounter throughout their dissemination process. For instance, this research found that certain prosumers attribute the original artists whose works they reuse, with the mistaken belief that doing so absolves them from any liability that may arise from copyright infringement.[855] Similarly, certain prosumers of music believe that not commercialising their work translates to that work being exempt from copyright infringement.[856]

Prosumers' lack of copyright knowledge often results in a sense of confusion and frustration when they are sanctioned.[857] Alternatively, prosumers of music who are aware of the fact that their works amount to infringement are accepting of the fact that their works may occasionally be the subject of takedown requests.[858] Hence, increasing music prosumers' knowledge with regards to the boundaries of copyright law, would arguably help them navigate the complex web of legal rules they encounter throughout their dissemination process. This has been recognised by the European Commission in its recent guidance on the implantation of Article 17 of the DSM Directive discussed above. Specifically, the Commission's guidance states that:

"The Member States need to implement in their law the obligation of online content-sharing service providers to inform their users in their terms and conditions that users can use works and other

[854] See Chapter 3, section 3.1.
[855] See Chapter 5, section 5.1.1.
[856] See Chapter 5, section 5.1.2.
[857] See Chapter 6, section 6.1.2.
[858] Ibid.

subject matter under exceptions or limitations to copyright and related rights provided for in Union law".[859]

This research found that prosumers of music primarily obtain the copyright knowledge they possess through lived experiences they have on YouTube.[860] Hence, the Commissions guidelines which direct Member States towards holding platforms accountable for increasing users' copyright knowledge is welcomed. Increasing awareness of what amounts to infringement and the boundaries of copyright exceptions, would arguably alleviate feelings of frustration and confusion prosumers of music exhibit as a result of a lack of copyright knowledge. However, care must be taken in how knowledge is imparted. This research found that, knowledge of the fact that one's work amounts to infringement, may in certain circumstances, result in a "chilling effect" dissuading prosumers of music from uploading their works due to a fear of infringement.[861] Although this could prove to be beneficial for platforms and rightsholders, in the sense that both platforms and rightsholders would experience reduced instances of infringement, it would arguably stifle creativity in the realm of music prosumption.[862] The Commission's guidance provides some suggestions for how copyright knowledge could be increased. Namely, the Commission's guidelines state that:

"Service providers could provide accessible and concise information on the exceptions for users, containing as a minimum information on the mandatory exceptions provided for in Article 17. Besides providing this information in the general terms and conditions of the service providers, this information could be given in context of the redress mechanism, to raise the awareness of users of possible exceptions or limitations that can be applicable".[863]

It is argued that, by focusing on the applicability of exceptions rather than on the fact that UGC could potentially be regarded as amounting to infringement may have the desired effect, and the Commission's guidelines are welcomed for doing so. However, further research would be required in order to discern the exact effect of platforms engaging in increased knowledge exchange in this respect.

[859] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 25.
[860] See Chapter 3, section 3.2.
[861] See Chapter 3, section 3.1.2.
[862] Giorgos D Vrakas, 'Does Copyright Support Musical Creativity in a Remix Era?' in Tatiana-Eleni Synodinou and others (eds), *EU Internet Law in the Digital Single Market* (Springer International Publishing 2021) 186–190.
[863] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 25.

Nevertheless, as aforementioned, pre-Article 17 of the DSM Directive, prosumers of music were found to lack knowledge and understanding of aspects of copyright law they are likely to encounter throughout their dissemination process. Namely, although the level of copyright knowledge was found to vary amongst prosumers of music, prosumers were found to lack knowledge of what amounts to infringement and the applicability of exceptions. It is thus envisioned that by increasing users' knowledge of their rights to reuse certain works, prosumers of music who live in a world of darkness are essentially being given a torch, helping them navigate the complex web of legal rules they are likely to encounter throughout their dissemination process.

7.2.2 Rights clearance.

The second research question which guided this research asked how prosumers of music understand, perceive, interact with and experience, the rights clearance process. In response to this research question, this thesis concludes that:

Several prosumers of music upload unauthorised works of music prosumption utilising YouTube's operationalisation of copyright and related enforcement regimes and thus do not necessarily engage with traditional rights clearance processes. This is enabled through the pseudo-pathway to rights clearance. Prosumers of music ultimately experience a more welcoming route to publication for their works of music prosumption, which through the DSM Directive, is likely to become the legal route to dissemination for prosumers and is thus a welcomed recent policy development.

This research found that in their attempt to secure rights clearance, prosumers of music struggle in the identification of rightsholders, but also with regards to the determination of which rights they need to clear, describing their overall experience as time consuming, confusing, and expensive.[864] However, it was also shown that such experiences only apply to those who attempt to secure rights clearance and that prosumers of music have the option to circumvent traditional rights clearance processes.[865] Instead prosumers of music can, and do upload unauthorised works to YouTube, utilising the so called "pseudo-pathway" to rights clearance, discussed above.

This research thus reveals that a gap has been created between law in books and law in action. Black letter law mandates the rights clearance process. The subsistence of copyright protection which grants rightsholders a bundle of rights, means that prosumers must typically seek permission to reuse works used in their works of music prosumption that they upload to YouTube. However, YouTube's operationalisation of copyright and related enforcement regimes, through the implementation of digital fingerprinting mechanisms, coupled with music prosumers obtaining their legal knowledge primarily through their lived experiences,[866] creates a scenario under which prosumers of music no longer experience traditional rights clearance processes. YouTube acts as the mediator bringing alleged infringements to the attention of rightsholders, who then have the option, to essentially "license" their works by opting to monetise them through the placement of advertisements. As per Heald: "*YouTube's Content ID system greatly lowers "transaction costs,""* involved in the process of disseminating a derivative work.[867]

[864] See Chapter 4, section 4.2.2.
[865] See Chapter 4, section 4.2.1.
[866] See Chapter 3, section 3.2.
[867] Paul J Heald, *Copy This Book!* (Stanford University Press 2020) 70.

In the event that prosumers of music were uploading unauthorised works to platforms that had not operationalised copyright and related enforcement regimes in the way that YouTube did, it is likely that prosumers of music would experience rightsholders overzealously enforcing their rights.[868] However, though the "pseudo-pathway", YouTube arguably manages to strike a fair balance between protecting rightsholders' interests and allowing for UGC to more efficiently be disseminated. This is what led the CJEU to praise YouTube's implementation strategies, in the recent judgement for the joined case of *YouTube and Cyando*.[869] The court stated that under the regulatory framework which predates the DSM directive, a platform would be held liable for communicating to the public if it "*refrains from putting in place the appropriate technological measures that can be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform".*[870] Hence the court ultimately stated that YouTube's operationalisation of copyright and related enforcement regimes tipped the balance in favour of YouTube being found to not perform an act of communication to the public. This was a welcomed decision by Georg Nolte, Google's legal representative who drew parallels between what this could mean in the context of YouTube as a platform operating under the DSM.[871] Georg argued that the CJEU's decision, although not explicitly mentioned, hinted towards YouTube fulfilling the requirement under Article 17(4)(b) of the DSM Directive.[872] Irrespective of whether that is indeed the case, YouTube's operationalisation of copyright and related enforcement regimes, is welcomed as it arguably bridges the gap created between law in books and law in action in the context of rights clearance in the realm of music prosumption.

As outlined in section 1 of this chapter, the DSM Directive arguably shifts the burden of rights clearance from prosumers of music to the platforms which host works of music prosumption. In accordance with Articles 17(2) and (4)(a), YouTube will now have to actively seek to secure licenses covering the works of music prosumption that are being uploaded to YouTube. As outlined above, it is likely that YouTube will be expected to conclude numerous licensing deals both at the collective and individual scale. Hence, the fact that Article 17 of the DSM Directive, now requires that platforms like YouTube seek to obtain a license which covers the acts of its users, will inevitably create a legally mandated "pseudo-pathway" to rights clearance. YouTube, under Article 17(4)(b),

[868] Existing research has shown that this is tends to be the case. See for instance: Karaganis and Urban (n 814); Fiala and Husovec (n 779); Ibosiola and others (n 814); Seng (n 814).
[869] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, at 84.
[870] Ibid.
[871] IFIM Stockholm University, *Joint IPKat/BLACA/IFIM Rapid Response Event on CJEU YouTube/Cyando Ruling* (2021) at 22:00-25:00 <https://www.youtube.com/watch?v=5eobePxb7ac> accessed 8 March 2022.
[872] Ibid.

will still be required to implement its Content ID system for which it has been praised.[873] This, coupled with the fact that YouTube is now responsible for securing licenses to cover works of music prosumption being uploaded, will bridge the gap between law in books and law in action, in the sense that prosumers' experiences of copyright and related enforcement regimes as operationalised by YouTube, will be mandated by black letter law. Additionally, in instances where YouTube has been able to secure a license, prosumers of music, will no longer interact with traditional rights clearance mechanisms nor will they encounter enforcement mechanisms as operationalised by YouTube.

This research found that prosumers of music who did attempt to secure rights clearance prior to uploading to YouTube struggled in the identification of rightsholders, but also with regards to the determination of which rights they needed to clear, describing their overall experience as time consuming, confusing, and expensive.[874] Whereas prosumers who relied on the "pseudo-pathway" to rights clearance described their overall experience as positive.[875] Hence, it is argued that the provisions under Article 17 of the DSM Directive create an overall more welcoming route to dissemination for prosumers of music.

One issue is that Article 17(2) states that users' works will only be covered by a platform's license "*where their activity does not generate significant revenues".* This research found that prosumers of music who do not monetise their works generally indicate a desire to do so. The Commission's guidelines state that users who "*generate limited advertising revenues"* should be covered by a platform's license and that "*Member States should not set out quantitative thresholds when implementing the concept of 'significant revenues'. This concept should be examined on a case-by-case basis, by reference to all the circumstances of the user's activity in question.*[876] Hence, as of yet there is no legal certainty as to whether music prosumers' monetised works would be covered by YouTube's licenses. In any case, if they are not, the default is the "pseudo-pathway" to rights clearance, which as aforementioned, has been described as an overall positive experience by prosumers of music.

Nevertheless, the DSM Directive arguably bridges the gap between law in books and law in action in the context of the legal process prosumers of music encounter before they upload their works to YouTube. This ultimately creates a more welcoming route to dissemination for prosumers of music

[873] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, at 84.
[874] See Chapter 4, section 4.2.2.
[875] See Chapter 4, section 4.2.1.
[876] Commission "Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market" COM (2021) 288 final, 7.

who will no longer encounter traditional rights clearance processes which they described as time consuming, confusing, and expensive.[877]

[877] See Chapter 4, section 4.2.2.

7.2.3 Enforcement.

In response to the third research question which helped guide this research, which asked how prosumers of music understand, perceive, interact with and experience, if at all, notice and takedown procedures as operationalised by YouTube, this thesis concludes that:

Prosumers of music experience notice and takedowns through YouTube's operationalisation of copyright enforcement regimes, and their interactions are generally positive. YouTube's operationalisation of notice and takedown procedures arguably strikes a fair balance between protecting rightsholders' interests whilst hosting works of music prosumption, but further research offering a rightsholder's perspective would be welcomed.

YouTube as aforementioned developed and implemented its own digital fingerprinting mechanism – Content ID. YouTube incorporates Content ID in its operationalisation of notice and takedown regimes. Namely, Content ID was developed and implemented as a tool by YouTube, as a way of maintaining its position, within the so called "safe harbour" established by the DMCA, which facilitates the formal "notice and takedown procedure" of the US.[878] It acts as a first line of defence against copyright infringement online. This led Urban, Karaganis and Schofield to describe platforms who implement digital fingerprinting mechanisms as implementing "DMCA PLUS" measures.[879]

Upon uploading their work of music prosumption to YouTube, it will likely receive what YouTube refers to as a Content ID claim which signifies that a match has been found between the work that has been uploaded and a work which is registered with its database. Unlike a takedown request, Content ID claims bear no legal consequences.[880]

Forum posters examined as part of phase one of this research sought to obtain and impart knowledge of how to circumvent Content ID, effectively allowing for them to commit infringements in the shadows of copyright law. However, most prosumers of music who took part in the questionnaire administered as part of phase two of this research (89.66%), reported having received a Content ID claim.[881] This, to a certain extent illustrates that Content ID, is effectively able to pick up on alleged infringements committed by prosumers of music. Hence, YouTube is arguably able to track and notify rightsholders of instances of alleged copyright infringement committed by prosumers of music on the platform. Arguably, this is what led the CJEU to praising YouTube for its

[878] See Chapter 1, section 1.3.3.2. Whilst the DMCA, only applies to one jurisdiction, namely the US, it has "*become the dominant paradigm for organising liability of online intermediaries*". Erickson and Kretschmer (n 340) 4.
[879] Urban, Karaganis and Schofield (n 375) 53.
[880] 'What Is a Content ID Claim? - YouTube Help' (n 400).
[881] See Chapter 6, section 6.2.1.1 (Table 59).

implementation of such measures.[882] As discussed above, in this case, the court stated that if it were not for Content ID, YouTube would most likely have been found to be liable for communicating to the public.[883]

However as mentioned in section one of this chapter, one commonly cited flaw of automated digital fingerprinting mechanisms, including Content ID, is their inability to recognise works which may be regarded as falling under an exception.[884] As previously discussed, this is a genuine issue which will impact various forms of UGC. However, as already established works of music prosumption, will only under certain circumstances fall under an exception.[885] Hence, although Content ID's inability to distinguish between a permitted reuse and copyright infringement may be a cause for concern for certain categories of UGC such as parodies, it is not necessarily an issue for works of music prosumption.

In response to a Content ID claim, prosumers are able to either remove the content in its entirety, dispute the claim by filing a counter claim or simply by doing nothing. The questionnaire administered as part of phase two of this research revealed that most prosumers of music who took part in this research opt to "do nothing" in response to a Content ID claim and prosumers of music who were interviewed as part of this research exhibit a positive attitude towards YouTube's use of Content ID.

Upon identification of a match, resulting in the work of music prosumption receiving what YouTube refers to as a Content ID claim, the registered rightsholder is notified and given the option of how to proceed. To maintain its position within the aforementioned "safe harbour", YouTube offers rightsholders the option to submit a notice to remove the allegedly infringing work from the platform, but also allows for alleged infringers to dispute a notice.

If a rightsholder submits a formal takedown request, the user's channel in question, receives what YouTube refers to as a copyright strike. YouTube adopts a graduated response mechanism approach to Copyright Strikes,[886] which is often referred to as a "three-strikes and you're out" approach,[887] i.e. upon receipt of three strikes, the infringers account along with any associated channels is subject to

[882] Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503, para 84. In suggesting that YouTube should not be held liable for infringements committed by its users the CJEU stated that having appropriate technical measures in place preventing unauthorised reuse makes for better legal standing.
[883] Ibid.
[884] Lester and Pachamanova (n 827) 64; Boroughf (n 827) 107–110; Solomon (n 827) 257–259.
[885] See Chapter 1, section 1.3.1.2.
[886] 'Copyright Strike Basics - YouTube Help' (n 402).
[887] Quist (n 403).

termination, all their uploaded works are removed and they are no longer able to create new channels.[888] This effectively bars repeat offenders from using YouTube as a dissemination platform. YouTube's algorithmic private practices have, at times, been exploited by rightsholders who attempt to shut down allegedly infringing channels, by filing multiple formal notices against specific channels.[889] This has led to some commentators arguing for changes to be made to YouTube's enforcement procedures.[890] However, only 32.94% of prosumers who took part in the questionnaire administered as part of phase two reported having received a copyright strike and 50% of those who had received a copyright strike reported having received just 1 copyright strike. This may be due to rightsholders utilisation of alternative enforcement mechanisms offered by YouTube. As demonstrated in preceding chapters, given the fact that copyright is a private right meaning that rightsholders have a choice of whether to enforce their rights, YouTube also presents rightsholders whose works have been matched by Content ID, with the option to monetise the allegedly infringing work rather than removing the content completely. This creates the aforementioned, "pseudo-pathway" to rights clearance and in the last three years Google reported that it had paid "*more than $30 billion to creators, artists, and media companies*".[891]and $4 billion to the music industry in the past 12 months, over 30% of which comes from monetised UGC,[892] indicating that rightsholders utilise their ability to monetise content that would otherwise be taken down.

Similarly, Heald's study found that YouTube's operationalisation of copyright and related enforcement regimes through Content ID effectively create new markets for derivative works.[893] Equally, through its operationalisation of copyright enforcement mechanisms, YouTube allows for works of music prosumption to, as aforementioned, reach viewers more efficiently, by bypassing the traditional rights clearance process, but also allows for them to remain viewable, provided rightsholders chose not to enforce their rights through a formal takedown notice. However, one limitation of this research,

[888] 'Copyright Strike Basics - YouTube Help' (n 402).
[889] Bailey, 'Gaming YouTuber Targeted by Strategic DMCA Notices - Plagiarism Today' (22 March 2021) <https://www.plagiarismtoday.com/2021/03/22/gaming-youtuber-targeted-by-strategic-dmca-notices/> accessed 8 March 2022; Shoshana Wodinsky, 'YouTube's Copyright Strikes Have Become a Tool for Extortion' (*The Verge*, 11 February 2019) <https://www.theverge.com/2019/2/11/18220032/youtube-copystrike-blackmail-three-strikes-copyright-violation> accessed 8 March 2022.
[890] Bailey (n 916). Bailey says: "*one good step would be to make it so that rapid-fire DMCA notices from the same rightsholder count as a single strike*".
[891] 'Access for All, a Balanced Ecosystem, and Powerful Tools' (*blog.youtube*) <https://blog.youtube/news-and-events/access-all-balanced-ecosystem-and-powerful-tools/> accessed 9 March 2022.
[892] 'YouTube Wins User Copyright Fight in Top EU Court Ruling' (*Reuters*, 22 June 2021) <https://www.reuters.com/technology/eu-top-court-says-youtube-not-liable-user-copyright-breaches-2021-06-22/> accessed 8 March 2022; 'Access for All, a Balanced Ecosystem, and Powerful Tools' (*blog.youtube*) <https://blog.youtube/news-and-events/access-all-balanced-ecosystem-and-powerful-tools/> accessed 9 March 2022.
[893] Heald (n 423).

already outlined in Chapter 6, is the lack of a rightsholder's perspective.[894] A rightsholder's perspective could provide a more holistic understanding of how YouTube's operationalisation of copyright enforcement mechanisms operates in action.

In response to a copyright strike, prosumers can either, wait 90 days for the strike to expire, or they can contact the person who has issued the copyright takedown notice and ask them to retract their claim or as abovementioned, they can submit a formal a counter-notification. In the questionnaire administered as part of phase two of this research, the most frequently reported response to a copyright strike was deleting the video which resulted in the strike. Copyright strikes are however, linked to the allegedly infringing user's account and not the video itself. Hence as per YouTube's help page "*deleting a video with a strike won't resolve your strike*".[895] Videos which receive a strike, although not playable, are still viewable on a user's account. As a result, prosumers of music reported deleting the video which resulted in the strike, as a way of keeping a "clean slate", ultimately removing the source which resulted in the strike. This does not have any practical effect on prosumers' accounts, and yet prosumers continue to do so. Prosumers of music attribute doing so to initial feelings of panic, but once they familiarise themselves with what a copyright strike entails, they accept that their most viable option is to wait it out.

In summary, YouTube's Content ID largely does a good job of recognising works of music prosumption as works which reuse another work. Consequently, it is argued that YouTube efficiently and effectively keeps track of copyright infringements committed on its platform in the context of music prosumption. Moreover, YouTube's alternative options offered to rightsholders, seem to create a platform where unauthorised works of music prosumption remain viewable. However, one limitation of this research is the lack of rightsholders' perspectives, which could provide valuable insights into how rightsholders utilise YouTube's operationalisation of copyright and related enforcement regimes in the realm of music prosumption. It is nevertheless, on the basis of this research concluded that YouTube's operationalisation of notice and takedown procedures strikes a fair balance between protecting rightsholders' interests whilst hosting works of music prosumption.

As outlined in section one of this chapter, this balancing exercise is likely to find even more of an equilibrium through the implementation of the DSM Directive. In accordance with Article 17(4)(b) of the DSM Directive, YouTube' implementation of Content ID, will now be required by law. As outlined above, based upon this research's findings, this is a welcomed policy development for the realm of music prosumption which will create a more welcoming route to dissemination.

[894] See Chapter 6, sections, 6.2.2.1 and 6.2.2.2.
[895] 'Copyright Strike Basics - YouTube Help' (n 402).

Article 17(4)(b) is counterbalanced by a requirement to preserve users' rights found under Article 17(7) of the DSM Directive. Although, Content ID is as of yet, unable to decipher content that would otherwise be regarded as falling under an exception, it is argued that this is not cause for concern in the realm of music prosumption, since as outlined in Chapter 1, works of music prosumption, will only under certain specific circumstances be regarded as falling under an exception to copyright.[896] Moreover, based upon this research's findings, it is argued that Finland's approach towards the implementation of Article 17(7) discussed above, which essentially transcribes YouTube's operationalisation of Content ID into law, is the most appropriate means for realising an appropriate balance between protecting rightsholders interests whilst allowing for UGC to be disseminated. This in combination with users' ability to file counter notices and YouTube's approach which offers rightsholders alternative options other than the immediate removal of content, creates a more welcoming dissemination platform for works of music prosumption.

[896] See Chapter 1, section 1.3.1.2.

7.2.4 Social Norms.

The final research question which helped guide this research asked whether social norms or other non-legal determinants of behaviour exist in the realm of music prosumption. In response to this question this research concludes that:

Informal norms regulate some, but not all the decisions prosumers of music must make whilst uploading their works to YouTube. Such norms complement the relevant copyright frameworks.

In Chapter 1, it was shown that at the point of uploading, among other things, prosumers of music are given the choice of how to title their works and what to include in the descriptions of the works they upload to YouTube, but also, provided they are members of "YouTube's Partner Programme", they are given the option to monetise their works through the placement of advertisements.[897] Existing empirical research has found that certain communities may regulate such decisions through informal norms, and phase one of this research which analysed discussion forums used by prosumers of music, hinted towards the existence of social norms exhibited amongst other communities, namely attribution and non-commercialisation norms. Alternatively, behavioural commonalities amongst prosumers of music at this stage of their dissemination process, may have been attributed to mimicry.

The questionnaire administered as part of phase two of this research tested for the existence of behavioural mimicry and social norms amongst prosumers of music specifically with regards to attribution and commercialisation practices. This research found that it is unlikely that prosumers of music mimic the actions of their peers in the context of attribution and commercialisation of their works. This may be due to the inherent structure of YouTube which houses vast amounts of content ranging in categories but also quality (i.e., amateur, and professional content are housed within the same platform). This means that music prosumers' experiences with the regulatory framework which influences the choices they have to make whilst uploading, varies from prosumer to prosumer.

Similarly, phase two of this research found that non-commercialisation norms exhibited amongst other communities are unlikely to exists within the realm of music prosumption. Interestingly, prosumers of music which took part in the questionnaire administered as part of phase two of this research exhibited a desire to monetise the works they upload to YouTube, but an inability due to not meeting "YouTube's Partner Programme" criteria. As outlined in section one above, in

[897] See Chapter 1, section 1.3.2.1.

accordance with Article 17(2) of the DSM Directive, there is no legal certainty as to whether prosumers of music will be able to continue to monetise their works on YouTube whilst being covered by the licenses YouTube concludes with relevant rightsholders. However, a study conducted by Erickson, Kretschmer and Mendis found that derivative versions of songs uploaded on YouTube, specifically parodies, appeal to separate markets to those of "original songs" attracting a separate, albeit sometimes overlapping audience.[898] Although this study is not perfect, in that one could argue that the "original songs" could have earned more views in the absence of numerous derivative parodies, it nevertheless, indicates that derivative musical works uploaded to YouTube do not destroy the market for the original song. This in combination with rightsholders' potential utilisation of YouTube's monetisation function through Content ID, discussed above, creates a scenario under which prosumers of music should be allowed to monetise their works.

In the context of attribution norms, phase two of this research found that some, but not all prosumers of music experience social norms regulating their attribution practices. This could, once again be attributed to the inherent structure of YouTube where amateur and professional content sit alongside each other. In general, attribution in the realm of music prosumption seems to be attached to what Buccafusco, Sprigman and Burns describe as the "moral value" of attribution.[899] In chapter 5 it was shown that prosumers of music who took part in this research, typically attribute the original artists whose works they reuse because of strongly internalised personal norms, which as has already been argued in Chapter 5, may not be exclusive to prosumers of music, transcending across multiple subsections of society.[900] Separate creative groups have their own set of rules governing attribution, with some more formal than others. For instance, Hollywood has "*elaborate and legally enforceable rules for granting screen credit"*,[901] whilst in scientific research less formalised norms govern attribution.[902] In the realm of music prosumption attribution, at least for the majority of those studied as part of this research, seems to be granted as a way of respectfully giving credit where credit is due.

As outlined in preceding chapters informal norms often fill the gaps created by formal black letter law.[903] Norms are an integral part of social structure.[904] They contribute to an effective organisation

[898] Erickson, Kretschmer and Mendis (n 169).
[899] Christopher Buccafusco, Christopher Sprigman and Zachary Burns, 'What's a Name Worth?: Experimental Tests of the Value of Attribution in Intellectual Property' (2012) 93 Boston University Law Review 1, 113.
[900] See Chapter 5, section 5.2.1.1.
[901] Catherine Fisk, 'Credit Where It's Due: The Law and Norms of Attribution' (2006) 95 Georgetown Law Journal 49, 76.
[902] ibid 83.
[903] See Chapter 1, section 1.3. where it was discussed that social norms tend to exist where the law is unclear or largely unenforced.
[904] Baier (n 279) 1.

of society through the proscription of behaviour without the complexities of formal black letter law.[905] Social norms govern human behaviour,[906] while bridging the gap between law and society.[907] Moreover, as per Robert Ellickson, social norms can promote more efficient results than law.[908] Hence, an understanding of the existence and function of social norms "*ought to be fundamental to the scientific study of law*",[909] and this is how social norms research began. The study of social norms began as a devotion to the normative understanding of society.[910] But to provide a holistic understanding of a regulatory framework, one must not only examine the existence of informal norms, but also determine how social norms operate alongside existing legal frameworks. [911]

As discussed in preceding chapters,[912] attribution is mandated by the subsistence of moral rights. Namely, the right to be recognised as the author of the work, is akin to an "attribution right". However, a lack of moral rights enforcement, and all-consuming music industry contracts, make it unlikely that this legal requirement have any real-world effect.[913] Thus, in the context of attribution norms in the realm of music prosumption, such informal norms arguably complement the regulatory framework, by preserving a largely under-enforced attribution right. Existing empirical research shows that for certain creators, such as, digital artists, attribution has value.[914] One could argue that it could potentially have the same value for musicians, directing viewers of works of music prosumption to the original work in question. This suggests that attribution practices should be maintained within the realm of music prosumption, highlighting the importance of the existence of such norms within the realm of music prosumption.

So far it has been shown that Article 17 of the DSM Directive is likely to bring about change to most aspects explored by this research. Article 17 of the DSM Directive, however, makes no reference to moral rights. Hence, based on this research's findings, outlined above, it is envisioned that prosumers of music will continue to attribute the original artists whose works they reuse.

[905] ibid.
[906] Hydén (n 281) 140.
[907] Baier and Svensson (n 282) 15.
[908] Ellickson (n 283).
[909] Baier (n 279) 1.
[910] ibid.
[911] ibid 2–3.
[912] See Chapter 1, section 1.3.2.2.1.
[913] See Chapter 1, section 1.3.2.2.1, and Chapter 5, section 5.1.1.
[914] Smita Kheria, 'Copyright and Digital Art Practice: The "Schizophrenic" Position of the Digital Artist' (2013) 19 Leonardo Electronic Almanac 114, 119; Smita Kheria, 'An Exploration of the Dissonance between Protection of Moral Rights in the UK and Creative Practitioners' Perspectives', *La propriété intellectuelle en dehors de ses frontières* (Larcier 2019).

7.3 Final concluding remarks.

Doctrinal research has often argued that stringent copyright rules set up barriers for works of music prosumption and this research by empirically examining music prosumers' encounters with copyright and related enforcement regimes, brought to light some of those copyright related barriers prosumers of music may face. However, it also showed that in some instances, prosumers of music are presented with different routes, such as the pseudo-pathway to rights clearance which create new "avenues for creativity". This brings to light jurisprudential justifications of copyright, where copyright is ultimately a balancing exercise between rewarding creators with exclusive rights whilst allowing for follow-up creators a big enough piece of the "hypothetical creativity pie" to create follow-up creations. Based on this research's findings, with caveats for future research to be carried out, Article 17 of the DSM Directive although heavily scrutinised, arguably strikes a fair balance between protecting rightsholders interests whilst allowing for works of music prosumption to be disseminated on platforms like YouTube. Can the same be said however with regards to other forms of UGC that are disseminated online?

As aforementioned the first avenue for platforms to avoid direct liability of their users' copyright infringements is that of the licensing route discussed above. As already established, rights clearance is a cumbersome task that extends beyond the realm of music prosumption with the hurdles prosumers of music exhibited in the context of rights clearance, being hurdles exhibited amongst other subgroups which have been the focus of other empirical research.[915] Thus, some of the barriers to creativity created by rights clearance such as it being time consuming and expensive are issues which extend beyond the remits of music prosumption. Hence, the fact that Article 17 now arguably shifts the burden of rights clearance from users to platforms, is a welcomed development for users who disseminate UGC online.

Nevertheless, although this may in theory negate users' need to obtain rights clearance that is derived from black letter law, it is likely that YouTube will continue to ask its users to obtain rights clearance prior to uploading their work to YouTube. Currently, YouTube's terms of service ask users to obtain rights clearance prior to uploading their works to YouTube, and it is possible that YouTube will continue to do so despite this recent policy development. YouTube asked of its users to secure rights clearance in an era where it could avoid liability via safe harbour provisions. Thus, it is unlikely that it will change such terms in an era where it could be held liable for its users' infringements. It is in YouTube's benefit that its users, where possible, do not utilise its platform to disseminate

[915] See for instance in the context of documentary filmmakers, Flynn and Jaszi (n 192); Aufderheide and Jaszi (n 192); Or in the context of "remix artists" see Fiesler, Feuston and S. Bruckman (n 197).

unauthorised works. Hence, it is likely that users will still be asked to secure rights clearance before uploading their works to YouTube.

However, this research found that prosumers of music can, and actively do, circumvent traditional rights clearance processes, by utilising the "pseudo-pathway" to rights clearance. The "pseudo-pathway" to rights clearance is not exclusive to works of music prosumption and could, in theory, be utilised by users who upload other forms of UGC. Users who upload other forms of UGC could also simply upload their works to YouTube without seeking prior authorisation. How such works are received however, merits further research. Nevertheless, although it is likely that YouTube will continue to ask of its users to obtain rights clearance prior to uploading their works, users will be able to simply upload their unauthorised works to YouTube utilising the "pseudo-pathway" to rights clearance. This, as previously discussed, is achieved through YouTube's operationalisation of copyright and related enforcement regimes. Specifically, YouTube's use of its Content ID system facilitates the "pseudo-pathway" to rights clearance.

Article 17(4)(b) now legally mandates the use of Content ID. One downside of this, that has already been discussed above, is Content ID's inability to recognise works which may be regarded as falling under an exception.[916] Above it was concluded that this will typically not affect works of music prosumption since such works would only be regarded as falling under an exception under certain circumstances. However, in the wider context of UGC, Content ID's inability to discern works which may fall under an exception may result in an inadvertent stifling of creativity.[917] UGC which would otherwise have been regarded as falling under an exception, may be blocked or taken down from YouTube as a result of a false positive identification by Content ID.[918]

Nevertheless, as discussed above, the DSM Directive, under Article 17(7), attempts to maintain that users are able to rely on copyright exceptions.[919] However, at the time of writing, no further guidance is provided with regards to how such a provision is to be transposed, which has resulted in certain Member States implementing Article 17(7) verbatim.[920] Hence, how such a provision unfolds in an era where mandated automated filtering mechanisms are unable to distinguish works which could potentially fall under an exception remains to be seen. It is, nonetheless, promising that the DSM Directive recognises the importance of users being able to rely on copyright exceptions.

[916] Lester and Pachamanova (n 827) 64; Boroughf (n 827) 107–110; Solomon (n 827) 257–259.
[917] Jacques and others (n 421).
[918] ibid.
[919] Quintais (n 364) 38–39.
[920] 'Germany Attempts to Square the Circle in Its Implementation of Article 17 CDSMD – Part 1' (n 875).

Based on the findings of this research, this thesis concludes that despite its criticisms, the DSM is a welcomed development for all forms of UGC. As already established the "pseudo-pathway" to rights clearance, allows for the more efficient dissemination of UGC, circumventing hurdles created by traditional rights clearance processes. The DSM Directive, by to a certain extent,legally mandating a "pseudo-pathway" to rights clearance, will arguably enable a more welcoming route to publication for UGC.

Nevertheless, the DSM Directive's indirect mandate for filtering mechanisms may ultimately stifle creativity. As already discussed, one downside of automated filtering mechanisms, is their inability to recognise UGC which may fall under an exception.[921] This may in turn result in a chilling effect, where UGC which falls under a legal reuse is automatically blocked, creating algorithmic constraints on creativity.[922] However, as aforementioned, the DSM Directive maintains that "*Member States shall ensure that users in each Member State are able to rely on […] exceptions".*[923] Arguably this provision will be hard to maintain when automated filtering mechanisms are mandated.[924] It is, however, as abovementioned, positive that the DSM Directive tries to maintain user's rights. How such a provision operates in practice, however, remains to be seen.

[921] See Chapter 6, section 6.2.2.3.
[922] Jacques and others (n 421).
[923] Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92, Article 17(7).
[924] Quintais (n 364) 39.

BIBLIOGRAPHY

Aplin T and Bently L, *Global Mandatory Fair Use: The Nature and Scope of the Right to Quote Copyright Works* (Cambridge University Press 2020)

Aplin T and Bently L, 'Displacing the Dominance of the Three-Step Test: The Role of Global Mandatory Fair Use' in Haochen Sun, Ng-Loy Wee Loon and Shyamkrishna Balganesh (eds), *The Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press 2021)

Baier M, *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (Ashgate 2013)

Baier M and Svensson M, *Om Normer* (2009)

Bently L and others, *Intellectual Property Law* (5 edition, OUP Oxford 2018)

Bently L and Aplin T, 'Whatever Became of Global, Mandatory, Fair Use? A Case Study in Dysfunctional Pluralism', *Is Intellectual Property Pluralism Functional?* (Edward Elgar 2019)

Berlin I, *The Hedgehog and the Fox: An Essay on Tolstoy's View of History* (Weidenfeld & Nicolson 1953)

Bicchieri C, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms* (Oxford University Press 2017)

Blomqvist J, *Primer on International Copyright and Related Rights* (Edward Elgar Publishing Ltd 2014)

Bryman A, *Social Research Methods* (4 edition, OUP Oxford 2012)

Bryman A, *Social Research Methods* (5 edition, OUP Oxford 2015)

Bumiller K, *The Civil Rights Society: The Social Construction of Victims* (JHU Press 1992)

Burgess J and Green J, *YouTube: Online Video and Participatory Culture* (Polity Press 2018)

Burrell R and Coleman A, *Copyright Exceptions: The Digital Impact* (Cambridge University Press 2005)

Charmaz K, *Grounded Theory: Objectivist and Constructivist Methods. in Denzin NK, Lincoln Ys (Eds) Handbook of Qualitative Research. Second Edition. Sage Publications* (2000)

Charmaz KC, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (1 edition, SAGE Publications Ltd 2006)

Demers JT, *Steal This Music: How Intellectual Property Law Affects Musical Creativity* (University of Georgia Press 2006)

Ellickson RC, *Order without Law : How Neighbors Settle Disputes* (Harvard University Press 1991)

Erasmus D, *Adagia* (1500)

Erickson K and Kretschmer M, 'Empirical Approaches to Intermediary Liability', *Oxford Handbook of Online Intermediary Liability* (Oxford University Press 2020)

Gervais DJ, *(Re)Structuring Copyright: A Comprehensive Path to International Copyright Reform* (Edward Elgar Publishing Ltd 2017)

Goldstein P and Hugenholtz PB, *International Copyright: Principles, Law, and Practice* (OUP USA 2013)

Heald PJ, *Copy This Book!* (Stanford University Press 2020)

Hine C, 'Virtual Ethnography: Modes, Varieties, Affordances', *The SAGE Handbook of Online Research Methods* (SAGE Publications, Ltd 2008)

Hudson E, *Drafting Copyright Exceptions: From the Law in Books to the Law in Action* (Cambridge University Press 2020)

Handler M and Hudson E, 'Fair Use As an Advance on Fair Dealing? Depolarizing the Debate' in Haochen Sun, Ng-Loy Wee Loon and Shyamkrishna Balganesh (eds), *The Cambridge Handbook of Copyright Limitations and Exceptions* (Cambridge University Press 2021)

Husovec M and Quintais J, 'Too Small to Matter? On the Copyright Directive's Bias in Favour of Big Right-Holders', *Global Intellectual Property Protection and New Constitutionalism. Hedging Exclusive Rights* (Oxford University Press 2021)

Hydén H, 'Looking at the World through the Lenses of Norms'

Icek. Ajzen, *Understanding Attitudes and Predicting Social Behavior* (Paperback edition., Prentice-Hall 1980)

Iljadica M, *Copyright Beyond Law: Regulating Creativity in the Graffiti Subculture* (Hart Publishing 2016)

Jacques S, *The Parody Exception in Copyright Law* (Oxford University Press 2019)

Karapapa S and McDonagh L, *Intellectual Property Law* (Oxford University Press 2019)

Kheria S, 'Copyright in the Everyday Practice of Writers' in Janis Jefferies and Sarah Kember (eds), *Whose Book is it Anyway?* (Open Book Publishers 2019)

Kretschmer M and Hardwick P, 'Authors' Earnings from Copyright and Non-Copyright Sources: A Survey of 25,000 British and German Writers' (Bournemouth University, UK; Centre for Intellectual Property Policy & Management (CIPPM) 2007) ID 2619649

Lessig L, *Code: And Other Laws of Cyberspace* (ReadHowYouWant 2009)

Lessig Lawrence, *Remix: Making Art and Commerce Thrive in the Hybrid Economy.* (A & C Black 2008)

Lionel Bently and Tanya Aplin, 'Whatever Became of Global, Mandatory, Fair Use? A Case Study in Dysfunctional Pluralism', *Is Intellectual Property Pluralism Functional?* (Edward Elgar Publishing 2019)

Loshin J, 'Secrets Revealed: How Magicians Protect Intellectual Property without Law', *Law and Magic A Collection of Essays* (Carolina Academic Press 2010)

Marshall L and Frith S, *Music and Copyright* (Taylor and Francis 2013)

McLeod K and DiCola P, *Creative License: The Law and Culture of Digital Sampling* (Duke University Press 2011)

Merry SEE, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans: Law, Power and Resistance Among Working-Class Americans* (2nd ed. Edition, University of Chicago Press 1990)

Oliar D and Sprigman CJ, 'Intellectual Property Norms in Stand-Up Comedy', *Making and Unmaking Intellectual Property Creative Production in Legal and Cultural Perspective* (University of Chicago Press 2011)

Padgett R, *Cover Me: The Stories Behind the Greatest Cover Songs of All Time* (Sterling 2017)

Pasquale F, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Reprint edition, Harvard University Press 2016)

Play It Again: Cover Songs in Popular Music (Ashgate Publishing, Ltd 2010)

Posner EA, *Law and Social Norms* (Harvard University Press 2009)

Přibáň J, *Research Handbook on the Sociology of Law* (Edward Elgar Publishing 2020)

Robert K. Yin, *Case Study Research: Design and Methods* (Sage Publications 1984)

Schwartz SH, 'Normative Influences on Altruism' in Leonard Berkowitz (ed), *Advances in Experimental Social Psychology*, vol 10 (Academic Press 1977)

Sexton J, 'Introduction' in Jamie Sexton (ed), *Music, Sound and Multimedia: From the Live to the Virtual* (Edinburgh University Press 2007)

Théberge P, 'Technology, Creative Practice and Copyright', *Music and Copyright* (Taylor and Francis 2013)

Thomson J, 'Social Construction of Copyright: The Popular Production of Communication-Based Legality' (Ann Arbor, MI: ProQuest LLC, 2013)

Toffler Alvin, *The Third Wave* (Morrow 1980)

Tourangeau R, Conrad FG and Couper MP, *The Science of Web Surveys* (1 edition, Oxford University Press, Usa 2013)

Vrakas GD, 'Does Copyright Support Musical Creativity in a Remix Era?' in Tatiana-Eleni Synodinou and others (eds), *EU Internet Law in the Digital Single Market* (Springer International Publishing 2021)

Waelde C and others, *Contemporary Intellectual Property: Law and Policy* (4 edition, OUP Oxford 2016)

Webb EJ and others, *Unobtrusive Measures: Nonreactive Research in the Social Sciences* (Rand Mcnally 1966)

Wong MHC, 'Play It Again: Cover Songs in Popular Music. Ed. by George Plasketes.' (2012) 93 Music and Letters 639

Journal Articles and Reports

Adebiyi O, '"Law Imitating Life": Will the Day Ever Come? Parody, Caricature, and Pastiche' (2014) 25 Entertainment Law Review 243

Ahlert C, Marsden C and Yung C, 'How "Liberty" Disappeared from Cyberspace: The Mystery Shopper Tests Internet Content Self-Regulation'

Ajzen I, 'The Theory of Planned Behavior' (1991) 50 Organizational Behavior and Human Decision Processes 179

Akmon D, 'Only with Your Permission: How Rights Holders Respond (or Don't Respond) to Requests to Display Archival Materials Online' (2010) 10 Archival Science 45

Aufderheide P and Jaszi P, 'Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers' [2004] Center for Social Media, School of Communication, American University

Aufderheide P and Sinnreich A, 'Documentarians, Fair Use and Free Expression: Changes in Copyright Attitudes and Actions with Access to Best Practices' (2016) 19 Information, Communication & Society

Azran J, 'Bring Back the Noise: How Cariou v. Prince Will Revitalize Sampling' (2014) 38 Columbia Journal of Law & the Arts 69

Bartholomew TB, 'The Death of Fair Use in Cyberspace: Youtube and the Problem with Content ID' (2014) 13 Duke Law & Technology Review 66

Bar-Ziv S and Elkin-Koren N, 'Behind the Scenes of Online Copyright Enforcement: Empirical Evidence on Notice & Takedown' (2017) 50 Connecticut Law Review

Bendor J and Swistak P, 'The Evolution of Norms' (2001) 106 American Journal of Sociology 1493

Bernieri F, Reznick J and Rosenthal R, 'Synchrony, Pseudosynchrony, and Dissynchrony: Measuring the Entrainment Process in Mother-Infant Interactions.' [1988] Journal of Personality and Social Psychology

Biagioli M, 'Plagiarism, Kinship and Slavery' (2014) 31 Theory, Culture & Society 65

Boroughf B, 'The Next Great Youtube: Improving Content ID to Foster Creativity, Cooperation, and Fair Compensation' (2015) 25 Albany Law Journal of Science & Technology 95

Buccafusco C, Sprigman C and Burns Z, 'What's a Name Worth?: Experimental Tests of the Value of Attribution in Intellectual Property' (2012) 93 Boston University Law Review 1

Cabay J and Lambrecht M, 'Remix Prohibited: How Rigid EU Copyright Laws Inhibit Creativity' (2015) 10 Journal of Intellectual Property Law & Practice 359

Carpou Z, 'Robots, Pirates, and the Rise of the Automated Takedown Regime: Using the DMCA to Fight Piracy and Protect End-Users' (2016) 39 551

Cave M, Deegan M and Heinink L, 'Copyright Clearance in the Refugee Studies Centre Digital Library Project · Copyright Cortex' (2000) 4 OCLC, Research Libraries Group Inc., Cornell University Library

Chartrand TL and Bargh JA, 'The Chameleon Effect: The Perception-Behavior Link and Social Interaction' (1999) 76 Journal of Personality and Social Psychology 893

Chartrand TL and Lakin JL, 'The Antecedents and Consequences of Human Behavioral Mimicry' (2013) 64 Annual Review of Psychology 285

Christensen C, 'YouTube: The Evolution of Media?' [2007] Screen Education 36

Cooke C, 'DISSECTING THE DIGITAL DOLLAR - Part One - "How Streaming Services Are Licensed and the Challenges Artists Now Face"' (Music Managers Forum 2015)

Cooke C, 'DISSECTING THE DIGITAL DOLLAR - Part Two' (Music Managers Forum 2016)

Cowan D, 'Legal Consciousness: Some Observations' (2004) 67 The Modern Law Review 928

Cox SP and Eger R, 'Procedural Complexity of Tax Administration: The Road Fund Case' (2006) 18 Journal of Public Budgeting, Accounting and FInancial Management 259

Cusic D, 'In Defense of Cover Songs' (2005) 28 Popular Music and Society 171

D'Agostino G, 'Healing Fair Dealing - A Comparative Copyright Analysis of Canada's Fair Dealing to U.K. Fair Dealing and U.S. Fair Use' (2008) 53 McGill Law Journal 309

Depoorter B and Vanneste S, 'Norms and Enforcement: The Case Against Copyright Litigation' (2006) 84 Oregon Law Review 1127

Derclaye E, 'Wonderful or Worrisome? The Impact of the ECJ Ruling in Infopaq on UK Copyright Law' [2010] European Intellectual Property Review 247

Desai R, 'Music Licensing, Performance Rights Societies, and Moral Rights for Music: A Need in the Current U.S. Music Licensing Scheme and a Way to Provide Moral Rights' (2001) 10 University of Baltimore Intellectual Property Law Journal 1

DiCola PC, 'Money from Music: Survey Evidence on Musicians' Revenue and Lessons About Copyright Incentives' (2013) 55 Arizona Law Review 301

Eble K, 'This Is a Remix: Remixing Music Copyright to Better Protect Mashup Artists' (2013) 2013 University of Illinois Law Review

Edwards L, 'Role and Responsibility of the Internet Intermediaries in the Field of Copyright and Related Rights' (WIPO 2011) Report <https://strathprints.strath.ac.uk/35492/> accessed 29 May 2018

Edwards ML, Dillman DA and Smyth JD, 'An Experimental Test of the Effects of Survey Sponsorship on Internet and Mail Survey Response' (2014) 78 Public Opinion Quarterly 734

Eisenhardt KM, 'Building Theories from Case Study Research' (1989) 14 The Academy of Management Review 532

Erickson K and Kretschmer M, '"This Video Is Unavailable": Analyzing Copyright Takedown of User-Generated Content on YouTube' (2018) 9 JIPITEC

Erickson K, Kretschmer M and Mendis D, 'Copyright and the Economic Effects of Parody: An Empirical Study of Music Videos on the Youtube Platform and an Assessment of the Regulatory Options' (2013) Intellectual Property Office Research Paper No. 2013/24

Faddoul M, Chaslot G and Farid H, 'A Longitudinal Analysis of YouTube's Promotion of Conspiracy Videos' [2020] arXiv:2003.03318 [cs]

Fagundes D, 'Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms' (2011) 90 Texas Law Review

Fagundes D and Perzanowski A, 'Clown Eggs' (2019) 94 Notre Dame Law Review 1313

Fauchart E and von Hippel E, 'Norms-Based Intellectual Property Systems: The Case of French Chefs' (2008) 19 Organization Science 187

Favale M and others, 'Copyright, and the Regulation of Orphan Works: A Comparative Review of Seven Jurisdictions and a Rights Clearance Simulation' (2013)

Feldman Y, 'An Experimental Approach to the Study of Social Norms: The Allocation of Intellectual Property Rights in the Workplace' (2016) 10 Journal of Intellectual Property Law 59

Fiala L and Husovec M, 'Using Experimental Evidence to Design Optimal Notice and Takedown Process' (TILEC Discussion Paper No 2018-028 2018)

Fiesler C, 'Everything I Need to Know I Learned from Fandom: How Existing Social Norms Can Help Shape the Next Generation of User-Generated Content' (2007) 10 Vanderbilt Journal of Entertainment and Technology Law 729

Fiesler C and Bruckman AS, 'Remixers' Understandings of Fair Use Online', *Proceedings of the 17th ACM conference on Computer supported cooperative work & social computing* (Association for Computing Machinery 2014)

Fiesler C and Bruckman AS, 'Creativity, Copyright, and Close-Knit Communities: A Case Study of Social Norm Formation and Enforcement' (2019) 3 Proceedings of the ACM on Human-Computer Interaction 241:1

Fiesler C, Feuston J and Bruckman AS, '"I Am Not a Lawyer": Copyright Q&A in Online Creative Communities', *Proceedings of the 18th International Conference on Supporting Group Work* (Association for Computing Machinery 2014)

Fiesler C, Feuston J and S. Bruckman A, 'Understanding Copyright Law in Online Creative Communities' (2015)

Fisk C, 'Credit Where It's Due: The Law and Norms of Attribution' (2006) 95 Georgetown Law Journal 49

Flynn S and Jaszi PA, 'Untold Stories in South Africa: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers' (2010) WCL Research Paper No. 2010-23 Program on Information Justice and Intellectual Property Public Impact Series

Freund K, '"Fair Use Is Legal Use": Copyright Negotiations and Strategies in the Fan-Vidding Community' (2014) 18 New Media & Society 1347

Friedman LM, 'The Law and Society Movement' (1986) 38 Stanford Law Review 763

Gallagher W, 'What Is a "Law and Society" Perspective on Intellectual Property?' (Center for the Study of Law and Society/Jurisprudence and Social Policy Faculty Working Paper 2008) No. 63

Garcia AC and others, 'Ethnographic Approaches to the Internet and Computer-Mediated Communication' (2009) 38 Journal of Contemporary Ethnography 52

Gervais DJ, 'The Tangled Web of UGC: Making Copyright Sense of User-Generated Content' (2009) 11 Vanderbilt Journal of Entertainment and Technology Law 841

Giletti T, 'Why Pay If It's Free? Streaming, Downloading, and Digital Music Consumption in the "ITunes Era"' (2012)

Ginsburg J, 'Comment on Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 992 F.3d 99 (2d Cir. 2021)' [2021] Journal of Intellectual Property Law & Practice, forthcoming; Columbia Public Law Research Paper No. 14-691

Gowers A, 'Gowers Review of Intellectual Property' (2006)

Graham R and Winter C, 'What Happened After the 2012 Shift in Canadian Copyright Law? An Updated Survey on How Copyright Is Managed across Canadian Universities' (2017) 12 Evidence Based Library and Information Practice 132

Han W and others, 'Evaluating User-Generated Content in Social Media: An Effective Approach to Encourage Greater pro-Environmental Behavior in Tourism?' (2017) Journal of Sustainable Tourism 1

Hansson S, 'The Digital Services Act: Upgrading Liability, Responsibility and Safety Online' (2020) 31 Entertainment Law Review 94

Hargreaves I, 'Digital Opportunity A Review of Intellectual Property and Growth An Independent Report'

Harper E, 'Music Mashups: Testing the Limits of Copyright Law as Remix Culture Takes Society by Storm' (2010) 39 Hofstra Law Review

Heald PJ, 'How Notice-and-Takedown Regimes Create Markets for Music on YouTube: An Empirical Study' (2014) 83 UMKC Law Review 313

Hetcher S, 'Using Social Norms to Regulate Fan Fiction and Remix Culture' (2009) 157 University of Pennsylvania Law Review 1869

Hudson E, 'The Pastiche Exception in Copyright Law: A Case of Mashed-up Drafting?' (2017) 4 Intellectual Property Quarterly 346

Hurt RM and Schuchman RM, 'The Economic Rationale of Copyright' (1966) 56 The American Economic Review 421

Husovec M and Quintais JP, 'How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms under the Copyright in the Digital Single Market Directive' (2021) 70 GRUR International 325

Hymes DH, 'What Is Ethnography?' [1977] ERIC

Ibosiola D and others, 'A Large-Scale Empirical Analysis of DMCA Notices and Online Complaints'

Ingram JR and Hinduja S, 'Neutralizing Music Piracy: An Empirical Examination' (2008) 29 Deviant Behavior 334

Jacques S, 'Are National Courts Required to Have an (Exceptional) European Sense of Humour?' (2015) 37 European Intellectual Property Review 134

Jacques S, 'Are the New "fair Dealing" Provisions an Improvement on the Previous UK Law, and Why? Part of a Wider Reform' (2015) 10 Journal of Intellectual Property Law & Practice

Jacques S, 'Mash-Ups and Mixes: What Impact Have the Recent Copyright Reforms Had on the Legality of Sampling?' [2015] Entertainment Law Review (Sweet & Maxwell)

Jacques S, 'An Empirical Study of the Use of Automated Anti-Piracy Systems and Their Consequences for Cultural Diversity' (2018) 15 SCRIPTed 277

Karaganis J and Urban J, 'The Rise of the Robo Notice' (2015) 58 Commun. ACM 28

Katz RJ, 'A Pilot Study of Fan Fiction Writer's Legal Information Behavior' (2019) 3 Journal of Copyright in Education & Librarianship

Kheria S, 'Copyright and Digital Art Practice: The "Schizophrenic" Position of the Digital Artist' (2013) 19 Leonardo Electronic Almanac 114

Kheria S, 'An Exploration of the Dissonance between Protection of Moral Rights in the UK and Creative Practitioners' Perspectives', *La propriété intellectuelle en dehors de ses frontières* (Larcier 2019)

Klang M and Nolin J, 'Tolerance Is Law: Remixing Homage, Parodying Plagiarism' [2012] SCRIPTed <https://script-ed.org/article/article-3/> accessed 14 November 2017

Lambrecht M and Cabay J, 'Remix Allowed: Avenues for Copyright Reform Inspired by Canada' (2016) 11 Journal of Intellectual Property Law & Practice 21

Lee YH, 'United Kingdom Copyright Decisions and Post-Brexit Copyright Developments 2020' (2021) 52 IIC - International Review of Intellectual Property and Competition Law 319

Lester T and Pachamanova D, 'The Dilemma of False Positives: Making Content ID Algorithms More Conducive to Fostering Innovative Fair Use in Media Creation' (2017) 24 UCLA Entertainment Law Review 51

Lin TTC, Younbo J and Sim C, 'Towards an Understanding of Intention to Use Mobile Videos: Impression Management, Perceived Facilitation, and Social Norms' (2015) 3 Mobile Media & Communication 106

Liu J, ‘Copyright for Blockheads: An Empirical Study of Market Incentive and Intrinsic Motivation’ [2015] Columbia Journal of Law & the Arts

Loo EC, Mckerchar M and Hansford A, ‘UNDERSTANDING THE COMPLIANCE BEHAVIOUR OF MALAYSIAN INDIVIDUAL TAXPAYERS USING A MIXED METHOD APPROACH’ (2009) 4 Journal of the Australasian Tax Teachers Association 181

Mackie G and others, *What Are Social Norms? How Are They Measured?* (2015)

Majumdar S, ‘Sing a Song for Sixpence- the Coming of Age of Copyright Law in the Light of New Developments in the Music Industry’ (2003) 14 Entertainment Law Review 193

Masiyakurima P, ‘The Trouble with Moral Rights’ (2005) 68 The Modern Law Review 411

McAvan E, ‘Boulevard of Broken Songs: Mash-Ups as Textual Re-Appropriation of Popular Music Culture’ (2006) 9 Journal of Media and Culture

McAvan E, ‘Boulevard of Broken Songs: Mash-Ups as Textual Re-Appropriation of Popular Music Culture’ (2006) 9 Journal of Media and Culture

Meho LI, ‘E-Mail Interviewing in Qualitative Research: A Methodological Discussion’ (2006) 57 Journal of the American Society for Information Science and Technology 1284

Merry S, ‘Concepts of Law and Justice among Working Class Americans: Ideology as Culture’ (1985) 11 Legal Studies Forum 59

Metzger A and Senftleben M, ‘Comment of the European Copyright Society on Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market Into National Law’ [2020] European Copyright Society

Miranda Branco Tomé Quintais JP, ‘Copyright in the Age of Online Access: Alternative Compensation Systems in EU Copyright Law’

Mishra E, ‘Cover Versions and the New Copyright Regime in India’ (2014) 9 Journal of Intellectual Property Law & Practice 510

Mongillo D, ‘The Girl Talk Dilemma: Can Copyright Law Accommodate New Forms of Sample-Based Music?’ (2009) 9 Pittsburgh Journal of Technology Law and Policy

Monroy-Hernández A and others, ‘Computers Can’t Give Credit: How Automatic Attribution Falls Short in an Online Remixing Community’ [2011] Proceedings of the 2011 annual conference on Human factors in computing systems - CHI ’11 3421

Morgan DL, ‘Practical Strategies for Combining Qualitative and Quantitative Methods: Applications to Health Research’ (1998) 8 Qualitative Health Research 362

Nanayakkara G, ‘Mimesis, Cover Versions and the Commercial Vocalists’ Dilemma; Sri Lankan Perspective’ [2012] International Conference on Asian Studies

Newman L and others, ‘Cover Song Identification - A Novel Stem-Based Approach to Improve Song-To-Song Similarity Measurements’ (2020) 3 SMU Data Science Review

Nielsen LB, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment' (2000) 34 Law and Society Review 1055

Noto La Diega G, 'Can the Law Fix the Problems of Fashion? An Empirical Study on Social Norms and Power Imbalance in the Fashion Industry' (2019) 14 Journal of Intellectual Property Law & Practice 18

Palfrey J and others, 'Youth, Creativity, and Copyright in the Digital Age' [2009] International Journal of Learning and Media

Paluck E and Ball L, 'Social Norms Marketing Aimed at Gender Based Violence: A Literature Review | Eldis' [2010] International Rescue Committee

Papies D and Clement M, 'Adoption of New Movie Distribution Services on the Internet' (2008) 21 Journal of Media Economics 131

Perzanowski A, 'Tattoos & IP Norms' (2013) 98 Minnesota Law Review 511

Pham H, 'Standing Up for Stand-Up Comedy: Joke Theft and the Relevance of Copyright Law and Social Norms in the Social Media Age' (2019) 30 Fordham Intellectual Property, Media and Entertainment Law Journal 55

Phillips DJ and Zuckerman EW, 'Middle-Status Conformity: Theoretical Restatement and Empirical Demonstration in Two Markets' (2001) 107 American Journal of Sociology 379

Potter W, 'Music Mash-Ups: The Current Australian Copyright Implications, Moral Rights and Fair Dealing in the Remix Era' (2013) 17 Deakin Law Review 349

Quintais J, 'The New Copyright in the Digital Single Market Directive: A Critical Look' (2020) 42 European Intellectual Property Review 28

Quist DW, 'Three Strikes and You're Out: A Survey of Foreign Approaches to Preventing Copyright Infringement on the Internet' (2010) 66 The Business Lawyer 261

Ritzer G and Jurgenson N, 'Production, Consumption, Prosumption: The Nature of Capitalism in the Age of the Digital "Prosumer"' (2010) 10 Journal of Consumer Culture 13

Ramalho A and Gomez Garcia MC, 'Copyright after Brexit' (2017) 12 Journal of Intellectual Property Law & Practice 669

Rostama G, 'Remix Culture and Amateur Creativity: A Copyright Dilemma' [2015] *WIPO MAGAZINE*

Samuelson P, 'Regulating Technology through Copyright Law: A Comparative Perspective' (2020) 42 EIPR: European Intellectual Property Review 214

Sarid E, 'Don't Be a Drag, Just Be a Queen – How Drag Queens Protect Their Intellectual Property Without Law' (2014) 10 FIU Law Review

Scheflen AE, 'The Significance of Posture in Communication Systems' (1964) 27 Psychiatry 316

Schell C, 'The Value of the Case Study as a Research Strategy' [1992] Manchester Business School

Schultz MF, 'Copynorms: Copyright and Social Norms', *Intellectual Property and Information Wealth* (Praeger Publishers 2007)

Seawright J and Gerring J, ‘Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options’ (2008) 61 Political Research Quarterly 294

Seeman JI and House MC, ‘Influences on Authorship Issues: An Evaluation of Giving Credit’ (2010) 17 Accountability in Research 146

Senftleben M, ‘Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market’ (2019) 41 European Intellectual Property Review 480

Seng DKB, ‘The State of the Discordant Union: An Empirical Analysis of DMCA Takedown Notices’ (2014) 18 Vanderbilt Journal of Entertainment and Technology Law 369

Shih T-H and Xitao Fan, ‘Comparing Response Rates from Web and Mail Surveys: A Meta-Analysis’ (2008) 20 Field Methods 249

Silbey SS, ‘After Legal Consciousness’ (2005) 1 Annual Review of Law and Social Science 323

Smith JK, ‘Quantitative Versus Qualitative Research: An Attempt to Clarify the Issue’ (1983) 12 Educational Researcher 6

Smith JK and Heshusius L, ‘CLOSING DOWN THE CONVERSATION: THE END OF THE QUANTITATIVE-QUALITATIVE DEBATE AMONG EDUCATIONAL INQUIRERS’ (1986) 15 Educational Researcher

Solomon L, ‘Fair Users or Content Abusers: The Automatic Flagging of Non-Infringing Videos by Content ID on Youtube Note’ (2015) 44 Hofstra Law Review [i]

Stobo V and others, ‘Current Best Practices among Cultural Heritage Institutions When Dealing with Copyright Orphan Works and Analysis of Crowdsourcing Options’ (Diligentsearch.eu 2018) Monograph

Stobo V and others, ‘“I Should like You to See Them Some Time”: An Empirical Study of Copyright Clearance Costs in the Digitisation of Edwin Morgan’s Scrapbooks’ (Zenodo 2018)

Stratton B, *Seeking New Landscapes: A Rights Clearance Study in the Context of Mass Digitisation of 140 Books Published Between 1870 and 2010* (British Library 2011)

Sunder M, ‘IP3’ (2006) 59 Stanford Law Review

Susarla A, Oh J-H and Tan Y, ‘Social Networks and the Diffusion of User-Generated Content: Evidence from YouTube’ (2011) 23 Information Systems Research 23

Svensson M and Larsson S, ‘Intellectual Property Law Compliance in Europe: Illegal File Sharing and the Role of Social Norms’ (2012) 14 New Media & Society 1147

Svensson M and Larsson S, ‘Social Norms and Intellectual Property. Online Norms and the European Legal Development’ (Lund University) ID 1598288

‘The Principles for User Generated Content Services: A Middle-Ground Approach to Cyber-Governance’ (2008) 121 Harvard Law Review 1387

Trapova A, ‘Reviving Collective Management – Will CMOs Become the True Mediators They Ought to Be in the Digital Single Market?’ (2019) 42 European Intellectual Property Review 272

Urban J, Karaganis J and Schofield B, 'Notice and Takedown in Everyday Practice' (UC Berkeley Public Law Research Paper No 2755628 2017)

Urban J and Quilter L, 'Efficient Process or "Chilling Effects"? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act' [2005] Berkeley Law Scholarship Repository

Urban JM, Karaganis J and Schofield B, 'Takedown in Two Worlds: An Empirical Analysis' (2018) 64 Journal of Copyright Society 483

van Dijck J, 'Users like You? Theorizing Agency in User-Generated Content' (2009) 31 Media, Culture & Society 41

van Rooij B and others, 'Piracy by Approval: Social Norms, Deterrence, and Copyright Compliance in China Compared to the United States' (UC Irvine School of Law Research Paper No 2015-03 2014) ID 2539225

Vrana RM, 'The Remix Artist's Catch-22: A Proposal for Compulsory Licensing for Transformative, Sampling-Based Music Note' (2011) 68 Washington and Lee Law Review 811

Vuopala A, 'Assessment of the Orphan Works Issues and Costs for Rights Clearance · Copyright Cortex' (European Commission 2010)

Willis G and Lessler J, 'Question Appraisal System QAS-99' (1999)

Zainal Z, 'Case Study as a Research Method' (2007) 9 Jurnal Kemanusiaan

Websites

‘(2) Remix - YouTube’ <https://www.youtube.com/results?search_query=remix> accessed 8 March 2022.

‘(99+) YouTube Help Forum - Google Product Forums’ <https://productforums.google.com/forum/#!forum/youtube> accessed 8 March 2022.

‘Access for All, a Balanced Ecosystem, and Powerful Tools’ (*blog.youtube*) <https://blog.youtube/news-and-events/access-all-balanced-ecosystem-and-powerful-tools/> accessed 9 March 2022

‘Alexa - Top Sites’ <https://www.alexa.com/topsites> accessed 8 March 2022.

‘Alexa - Website Traffic, Demographics, and Competitors - Alexa’ <https://www.alexa.com/siteinfo> accessed 8 March 2022

Arthur C, ‘What Is the 1% Rule?’ *The Guardian* (20 July 2006) <http://www.theguardian.com/technology/2006/jul/20/guardianweeklytechnologysection2> accessed 8 March 2022

‘Artists & Writers | Universal Music Publishing Group UK’ <http://www.umusicpub.com/uk/Artists.aspx> accessed 8 March 2022

‘Audible Magic - Automatic Content Recognition, Content Identification (ID) and Rights Administration’ (*Audible Magic*) <https://www.audiblemagic.com/> accessed 8 March 2022

Bailey, ‘Gaming YouTuber Targeted by Strategic DMCA Notices - Plagiarism Today’ (22 March 2021) <https://www.plagiarismtoday.com/2021/03/22/gaming-youtuber-targeted-by-strategic-dmca-notices/> accessed 8 March 2022

Baio A, ‘The Tangled Issue of Cover Song Copyright on YouTube’ (*WIRED UK*) <http://www.wired.co.uk/article/cover-song-licensing-on-youtube> accessed 8 March 2022

bullet4sum, *Slipknot Feat. Justin Bieber - Psychosocial Baby Remix* <https://www.youtube.com/watch?v=NPtJt4A7iOA> accessed 8 March 2022

Burgess J, ‘Fan Creation & Copyright Survey: Preliminary Results – Organization for Transformative Works’ (2017) <https://www.transformativeworks.org/fan-creation-copyright-survey-preliminary-results/> accessed 8 March 2022

Bryman A, ‘Integrating Quantitative and Qualitative Research: How Is It Done?’: [2006] Qualitative Research <https://journals.sagepub.com/doi/10.1177/1468794106058877> accessed 8 March 2022

Christine. Hine, *Virtual Ethnography* (SAGE 2000) <http://www.ezproxy.is.ed.ac.uk/login?url=http://methods.sagepub.com/book/virtual-ethnography> accessed 8 March 2022

‘Content ID Turns Three’ (*blog.youtube*) <https://blog.youtube/news-and-events/content-id-turns-three/> accessed 8 March 2022

Cooke C, ‘Maria Schneider Criticises YouTube’s Repeat Infringer Policies in Ongoing Content ID Litigation | Complete Music Update’ (7 April 2021)

<https://completemusicupdate.com/article/maria-schneider-criticises-youtubes-repeat-infringer-policies-in-ongoing-content-id-litigation/> accessed 8 March 2022

Cooke C, 'Maria Schneider Says She Can't Meet YouTube's Demands in Content ID Access Case without Access to Content ID | Complete Music Update' (21 April 2021) <https://completemusicupdate.com/article/maria-schneider-says-she-cant-meet-youtubes-demands-in-content-id-access-case-without-access-to-content-id/> accessed 8 March 2022

'Copyright & Risk: Scoping the Wellcome Digital Library Project | CREATe' <https://www.create.ac.uk/publications/copyright-risk-scoping-the-wellcome-digital-library-project/> accessed 8 March 2022

'Copyright, Claims, Strikes & Legal Discussion' (*YouTube Forum | The #1 YouTube Community | Video Editing, Branding & YouTube Help*) <http://yttalk.com/forums/copyright-claims-strikes-legal-discussion.79/> accessed 8 March 2022

'Copyright, Moral Rights and Performers' Rights Musicians Must Know About' <https://musiciansunion.org.uk/legal-money/rights-and-legislation/copyright-moral-rights-and-performers-rights> accessed 8 March 2022

'Copyright Strike Basics - YouTube Help' <https://support.google.com/youtube/answer/2814000> accessed 8 March 2022

'Create & Manage Playlists - Computer - YouTube Help' <https://support.google.com/youtube/answer/57792?co=GENIE.Platform%3DDesktop&hl=en> accessed 8 March 2022

Daly S, 'The Sole Track That Launched Commercial Hip-Hop in 1979' *Vanity Fair* (November 2005) <https://archive.vanityfair.com/article/2005/11/hip-hop-happens> accessed 8 March 2022

Delaney KJ, 'YouTube to Test Software To Ease Licensing Fights' *Wall Street Journal* (13 June 2007) <https://www.wsj.com/articles/SB118161295626932114> accessed 8 March 2022

'Dispute a Content ID Claim - YouTube Help' <https://support.google.com/youtube/answer/2797454> accessed 8 March 2022

'DJ Earworm Mashup - Shape of Now - YouTube' <https://www.youtube.com/watch?v=NRJh-o65CUQ> accessed 8 March 2022

'Email Interview', in Lisa Given, *The SAGE Encyclopedia of Qualitative Research Methods* (SAGE Publications, Inc 2008) <http://methods.sagepub.com/reference/sage-encyc-qualitative-research-methods/n126.xml> accessed 8 March 2022

'Economics of Music Streaming - Committees - UK Parliament' <https://committees.parliament.uk/work/646/economics-of-music-streaming/publications/> accessed 22 March 2022

'Fair Use on YouTube - YouTube Help' <https://support.google.com/youtube/answer/9783148?hl=en> accessed 8 March 2022

Ferguson K, *Everything Is a Remix* (Vimeo 2015) <https://vimeo.com/139094998> accessed 8 March 2022

'Fighting Piracy' <https://fightingpiracy.withgoogle.com/#what-we-do> accessed 8 March 2022

'Find a Licence' <https://www.prsformusic.com:443/licences> accessed 8 March 2022

'Germany Attempts to Square the Circle in Its Implementation of Article 17 CDSMD – Part 1' (*Kluwer Copyright Blog*, 2 June 2021) <http://copyrightblog.kluweriplaw.com/2021/06/02/germany-attempts-to-square-the-circle-in-its-implementation-of-article-17-cdsmd-part-1/> accessed 8 March 2022

Google, 'How Google Fights Piracy' (2018) <https://www.blog.google/documents/25/GO806_Google_FightsPiracy_eReader_final.pdf> accessed 8 March 2022

Heins M and Beckles T, 'Will Fair Use Survive? Free Expression in the Age of Copyright Control - Intro' (*National Coalition Against Censorship*, 1 December 2005) <https://ncac.org/fepp-articles/will-fair-use-survive-free-expression-in-the-age-of-copyright-control> accessed 8 March 2022

Hellweg E, 'Mix and Mash: The Mashup Is Born from a Blend of Two Songs' (*Edutopia*, 2004) <https://www.edutopia.org/mix-mash-mashup-born-blend-two-songs> accessed 8 March 2022

'Home | Archive of Our Own' <https://archiveofourown.org/> accessed 8 March 2022

Hosch WL, 'YouTube | History, Founders, & Facts', *Encyclopedia Britannica* <https://www.britannica.com/topic/YouTube> accessed 8 March 2022

'How Content ID Works - YouTube Help' <https://support.google.com/youtube/answer/2797370?hl=en-GB&ref_topic=9282364> accessed 8 March 2022

'How Many Views Does a YouTube Video Get on Average?' (*Tubular Labs*, 2 February 2015) <https://tubularlabs.com/blog/average-youtube-views/> accessed 8 March 2022

'How to License Music | Universal Music Publishing Group UK' <http://www.umusicpub.com/uk/FilmAndTv/How-to-License-Music.aspx> accessed 8 March 2022

'How User-Generated Content on YouTube Can Be Important for Your Brand?' (*Helplama.com*, 9 September 2021) <https://helplama.com/user-generated-video-content-youtube/> accessed 9 March 2022

IFIM Stockholm University, *Joint IPKat/BLACA/IFIM Rapid Response Event on CJEU YouTube/Cyando Ruling* (2021) <https://www.youtube.com/watch?v=5eobePxb7ac> accessed 8 March 2022

'IP Awareness Survey 2015 Results - GOV.UK' <https://www.gov.uk/government/publications/ip-awareness-survey-2015-results> accessed 8 March 2022

Keller P, 'Finnish Article 17 Implementation Proposal Prohibits the Use of Automated Upload Filters' (*International Communia Association*, 23 December 2020) <https://www.communia-association.org/2020/12/23/finnish-article-17-implementation-proposal-prohibits-the-use-of-automated-upload-filters/> accessed 8 March 2022

Kelly M, 'YouTube's New Kids' Content System Has Creators Scrambling' (*The Verge*, 13 November 2019) <https://www.theverge.com/2019/11/13/20963459/youtube-google-coppa-ftc-fine-settlement-youtubers-new-rules> accessed 8 March 2022

‘Know When You Need Copyright Permissions - YouTube’ <https://creatoracademy.youtube.com/page/lesson/manage-copyright-permissions_know-when-you-need-copyright-permissions_list?cid=manage-copyright-permissions&hl=en-GB> accessed 8 March 2022

‘Make Effective Thumbnails and Titles - YouTube’ <https://creatoracademy.youtube.com/page/lesson/thumbnails?hl=en-GB#strategies-zippy-link-3> accessed 8 March 2022

Masouyé C, ‘Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)’ (1978) <https://www.wipo.int/publications/en/details.jsp?id=3172&plang=HU> accessed 8 March 2022

McIntyre H, ‘More And More, It’s The Remix That’s Actually The Hit’ [2016] (*Forbes)* <https://www.forbes.com/sites/hughmcintyre/2016/03/27/more-and-more-its-the-remix-thats-actually-the-hit/?sh=4d43d4df5bf4> accessed 8 March 2022

McIntyre H, ‘Report: YouTube Is The Most Popular Site For On-Demand Music Streaming’ (*Forbes*) <https://www.forbes.com/sites/hughmcintyre/2017/09/27/the-numbers-prove-it-the-world-is-listening-to-the-music-it-loves-on-youtube/> accessed 8 March 2022

MrBeast, *Why Do Youtubers Ask For Likes?* (2016) <https://www.youtube.com/watch?v=4cX-w-ia0RU> accessed 8 March 2022

Mulligan M, ‘How YouTube’s Domination of Streaming Clips the Market’s Wings’ (*Music Industry Blog*, 3 January 2019) <https://musicindustryblog.wordpress.com/2019/01/03/how-youtubes-domination-of-streaming-clips-the-markets-wings/> accessed 8 March 2022

Murray B, ‘Remixing Culture And Why The Art Of The Mash-Up Matters’ (*TechCrunch*) <https://social.techcrunch.com/2015/03/22/from-artistic-to-technological-mash-up/> accessed 8 March 2022

Patrick J, ‘A Guide to Pierre Schaeffer, the Godfather of Sampling’ [2016] (*FACT)*< https://www.factmag.com/2016/02/23/pierre-schaeffer-guide/> accessed 8 March 2022

‘Pizzle Pack by T-Pain’ <https://PizzlePack.com> accessed 8 March 2022

‘PPL - PPL Licenses Recorded Music Played in Public’ <http://www.ppluk.com/> accessed 8 March 2022

‘PPL Repertoire Search’ <http://repsearch.ppluk.com/ars/faces/pages/audioSearch.jspx?_afrLoop=105413326625144230&_afrWindowMode=0&_adf.ctrl-state=fsz7302n9_4> accessed 8 March 2022

‘PRS for Music: Royalties, Music Copyright and Licensing’ <https://www.prsformusic.com:443/> accessed 8 March 2022

PTXofficial, *[OFFICIAL VIDEO] Hallelujah - Pentatonix* <https://www.youtube.com/watch?v=LRP8d7hhpoQ> accessed 8 March 2022

‘Qualify for Content ID - YouTube Help’ <https://support.google.com/youtube/answer/1311402?hl=en-GB&ref_topic=9282364> accessed 8 March 2022

‘Quality, Quantity and Knowledge Interests: Avoiding Confusions’, in Martin Bauer and George Gaskell, *Qualitative Researching with Text, Image and Sound* (SAGE Publications Ltd 2000) <http://methods.sagepub.com/book/qualitative-researching-with-text-image-and-sound/n1.xml> accessed 8 March 2022

‘REMIX | Meaning in the Cambridge English Dictionary’ <https://dictionary.cambridge.org/dictionary/english/remix> accessed 8 March 2022

‘Remix, n.’ <https://www.oed.com/view/Entry/246356> accessed 8 March 2022

‘Remove Claimed Content from Your Video - YouTube Help’ <https://support.google.com/youtube/answer/9583084> accessed 8 March 2022

‘Response Rate’, in Sarah Boslaugh, *Encyclopedia of Epidemiology* (SAGE Publications, Inc 2008) <http://methods.sagepub.com/reference/encyc-of-epidemiology/n400.xml> accessed 8 March 2022

‘Retract a Claim of Copyright Infringement - YouTube Help’ <https://support.google.com/youtube/answer/2807691> accessed 8 March 2022

‘R/NoStupidQuestions - Why Can’t YouTubers Say How Much They Earn?’ <https://www.reddit.com/r/NoStupidQuestions/comments/4i4kls/why_cant_youtubers_say_how_much_they_earn/> accessed 8 March 2022

‘Searching the Database’ <https://www.prsformusic.com:443/works/searching-the-database> accessed 8 March 2022

‘Senator Warns YouTube Algorithm May Be Open to Manipulation by “Bad Actors”’ (*the Guardian*, 5 February 2018) <http://www.theguardian.com/technology/2018/feb/05/senator-warns-youtube-algorithm-may-be-open-to-manipulation-by-bad-actors> accessed 8 March 2022

‘SoundCloud – Listen to Free Music and Podcasts on SoundCloud’ (*SoundCloud*) <https://soundcloud.com/> accessed 8 March 2022

‘Spotify Charts’ <https://www.spotifycharts.com/> accessed 8 March 2022

‘Spotifycharts.Com Competitive Analysis, Marketing Mix and Traffic - Alexa’ <https://www.alexa.com/siteinfo/spotifycharts.com> accessed 8 March 2022

‘Submit a Copyright Counter Notification - YouTube Help’ <https://support.google.com/youtube/answer/2807684?hl=en-GB&ref_topic=9282678> accessed 8 March 2022

‘Submit a Copyright Takedown Request - YouTube Help’ <https://support.google.com/youtube/answer/2807622?hl=en-GB> accessed 8 March 2022

‘Survey: Demographic Questions’, in Mike Allen, *The SAGE Encyclopedia of Communication Research Methods* (SAGE Publications, Inc 2017) <https://sk.sagepub.com/reference/the-sage-encyclopedia-of-communication-research-methods//i14203.xml> accessed 8 March 2022

TechPostPlus, ‘YouTube Video Categories List (Complete Guide)’ (*TechPostPlus*, 26 April 2019) <https://techpostplus.com/youtube-video-categories-list-faqs-and-solutions/> accessed 9 March 2022

'The Difference between Copyright Takedowns and Content ID Claims - YouTube Help' <https://support.google.com/youtube/answer/7002106?hl=en-GB> accessed 8 March 2022

UK IPO, 'IP Awareness Survey 2015 Results' (2015) <https://www.gov.uk/government/publications/ip-awareness-survey-2015-results> accessed 8 March 2022

'User Generated Content Principles' <https://ugcprinciples.com/> accessed 8 March 2022

Video Identification (2008) <https://www.youtube.com/watch?v=xWizsV5Le7s&ab_channel=YouTubeAdvertisers> accessed 8 March 2022

'Web Scraper' <https://www.webscraper.io/> accessed 8 March 2022

'Web Scraping Tool & Free Web Crawlers for Data Extraction | Octoparse' <https://www.octoparse.com/> accessed 8 March 2022

Wed A 3rd 2019 3:33am-MM, 'EU Commissioner Gunther Oettinger Admits: Sites Need Filters To Comply With Article 13' (*Techdirt.*) <https://www.techdirt.com/articles/20190329/15501341902/eu-commissioner-gunther-oettinger-admits-sites-need-filters-to-comply-with-article-13.shtml> accessed 8 March 2022

'What Is a Content ID Claim? - YouTube Help' <https://support.google.com/youtube/answer/6013276?hl=en-GB&ref_topic=9282678> accessed 8 March 2022

'What Is NCapture? | NVivo FAQ' <https://www.qsrinternational.com/nvivo/support-overview/faqs/what-is-ncapture> accessed 8 March 2022

Wodinsky S, 'YouTube's Copyright Strikes Have Become a Tool for Extortion' (*The Verge*, 11 February 2019) <https://www.theverge.com/2019/2/11/18220032/youtube-copystrike-blackmail-three-strikes-copyright-violation> accessed 8 March 2022

'Written Questions and Answers - Written Questions, Answers and Statements - UK Parliament' <https://questions-statements.parliament.uk/written-questions/detail/2020-01-16/4371> accessed 22 March 2022

'YouTube Copyright and Fair Use Policies - How YouTube Works' (*YouTube copyright and fair use policies - How YouTube Works*) <https://www.youtube.com/howyoutubeworks/policies/copyright/> accessed 8 March 2022

'YouTube Copyright School' <https://www.youtube.com/copyright_school> accessed 8 March 2022

'YouTube Cover Versions Have Gone from Being Unwelcome to Broadly' (*The Independent*, 23 July 2014) <http://www.independent.co.uk/life-style/gadgets-and-tech/features/youtube-cover-versions-have-gone-from-being-unwelcome-to-broadly-tolerated-and-why-not-9624378.html> accessed 8 March 2022

YouTube Creators, *Important Update for All Creators: Complying with COPPA* (2019) <https://www.youtube.com/watch?v=-JzXiSkoFKw> accessed 8 March 2022

‘YouTube Partner Programme Overview and Eligibility - YouTube Help’ <https://support.google.com/youtube/answer/72851?hl=en-GB&ref_topic=9153826> accessed 8 March 2022

‘YouTube Rolls Out Copyright Checks Tool, Which Analyzes Your Video Prior to Upload, to More Users’ (*Social Media Today*) <https://www.socialmediatoday.com/news/youtube-rolls-out-copyright-checks-tool-which-analyzes-your-video-prior-to/596922/> accessed 8 March 2022

‘YouTube Wins User Copyright Fight in Top EU Court Ruling’ (*Reuters*, 22 June 2021) <https://www.reuters.com/technology/eu-top-court-says-youtube-not-liable-user-copyright-breaches-2021-06-22/> accessed 8 March 2022

‘YouTube’s Big Transition: Moving From Amateur to Professional Era of Online Video’ (*ReadWrite*, 22 May 2012) <https://readwrite.com/2012/05/22/youtubes-big-transition-moving-from-the-amateur-to-professional-era-of-online-video/> accessed 8 March 2022

Table of cases

Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 992 F.3d 99 (2d Cir. 2021).

Ashdown v Telegraph Group Ltd (2001) EWCA Civ 1142.

Associated Newspapers Group v. News Group Newspapers [1986] *RPC* 515.

Bridgeport Music, Inc. v Dimension Films, 410 F.3d 792 (6th Cir. 2005).

C-70/10 *Scarlet Extended SA v SABAM* [2012] ECDR 4.

Campbell v Acuff-Rose Music Inc., 510 U.S. 569.

Cariou v. Prince, 714 F.3d 694 (2d Cir. 2013).

Case C-401/19 Poland v Parliament and Council [Action for an annulment brought on the 24th May 2019]

Case C-476/17 *Pelham GmbH, Moses Pelham and Martin Haas v Ralf Hutter and Florian Scheider-Esleben* [2019].

Deckmyn and Vrijheidsfonds VZW v Vandersteen (C-201/13) (2014) ECDR 21.

Designers Guild Ltd v Russell Williams (Textiles) Ltd (2001) FSR 11.

England And Wales Cricket Board Ltd. & Anor v Tixdaq Ltd. & Anor [2016] EWHC 575 (Ch).

Eva-Maria Painer v Standards Verlags GmbH (C-145/10) [2011] E.C.D.R. 13.

Express Newspapers v. Liverpool Daily Post [1985] 3 *All ER* 680.

Fitzgerald v CBS Broad Inc., 491 F. Supp. 2d 177, 185-187 (D. Mass. 2007).

Forensic Telecommunication Services v. Chief Constable of West Yorkshire [2012] *FSR* 428.

Forensic Telecommunications Services Ltd v Chief Constable of West Yorkshire (2011) EWHC 2892

Temple Island Collections Ltd v New English Teas Ltd (2012) FSR 9.

Google France Sarl v Louis Vuitton Malletier SA (C-236/08) [2011] Bus. L.R. 1.

Harper & Row v. Nation Enterprises, 471 U.S. 539.

Hawkes & Sons (London) Ltd v Paramount Film Services Ltd (1934) Ch. 593.

Hubbard v Vosper (1972) 2 QB 84 CA.

Hyde Park Residence Ltd v Yelland (2001) Ch. 143, at 38.

Gramophone Co. of India v Super Cassettes Industries Ltd., (1996) PTC (16).

Infopaq v Danske Dagblades Forening (2009) ECDR 16.

IPC Media Ltd v News Group Newspapers Ltd (2005) FSR (35) 752.

Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH and Elsevier Inc. v Cyando AG [2021] Digital Reports, ECLI:EU:C:2021:503.

Ladbroke v William Hill (1964) 1 WLR 273.

L'Oreal SA v eBay International AG (C-324/09) [2012] Bus. L.R. 1369.

Newspaper Licensing Agency [1999] *EMLR* 369, 384 (Ch).

Newspaper Licensing Agency v. Marks & Spencer [2000] 4 *All ER* 239 (CA).

Newspaper Licensing Association v. Meltwater & PRCA [2011] EWCA Civ 890.

Newton v Diamond, 388 F.3d 1189, at 1192 (9th Cir. 2004).

NXIVM Corp., v Ross Inst., 364 F.3d 471 (23 Cir. 2004).

Pro Sieben Media [1997] *EMLR* 509.

Pro Sieben Media AG v Carlton UK Television Ltd (1999) WLR 605.

Pro Sieben Media v. Carlton Television [1999] *FSR* 610.

Produce Records Ltd v BMG Entertainment UK and Ireland Ltd Unreported, January 19, 1999.

Sheeran v Chokri [2022] EWHC 827 (Ch)

Sillitoe v. McGraw Hill [1983] *FSR* 545.

Skidmore v Led Zeppelin No. 16-56057 (9th Cir. 2018).

Skidmore v Led Zeppelin No. 16-56057 (9th Cir. 2020).

Sony Corp. v Universal City Studios Inc., 464 U.S. 417, (1984).

UMG Recordings Inc. v MP3.co, Inc., 92 F. Supp. 2d 349, 351 (S.D.N.Y 2000).

University of London Press Ltd v University Tutorial Press Ltd (1916) 2 Ch. 601.

Viacom International, Inc. v. YouTube, Inc., No. 07 Civ. 2103.

VMG Salsoul, LLC v Ciccone, No. 13-57104 (9th Cir. 2016).

Table of Legislation

Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979).

Copyright Modernization Act (S.C. 2012, c. 20, An Act to amend the Copyright Act).

Copyright, Designs and Patents Act 1988.

Digital Millennium Copyright Act 1998.

Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ 2 178/1/01.

Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ 2 130/92.

Directive on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ 2 167/10.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM/2020/825 final.

The Electronic Commerce (EC Directive) Regulations 2002, Regulation 22.

U.S. Copyright Act, 17 U.S.C.

Appendix

Phase one

Tables pertaining to phase one

Table 1: Number of posts made and how they correlate to the number of users in this study.

NUMBER OF USERS	NUMBER OF POSTS MADE
833	1
99	2
43	3
11	4
8	5
2	6
4	7
7	8
3	9
1	10
1	11
3	13
1	16
1	18
1	20
1	21
2	24
2	28
1	45
1	111

The sources column indicates in how many of the six documents discussed in Chapter 2, a code was created. The references column signifies how many times a specific code appeared.

Table 2: Initial codes for Phase one.

Name	Sources	References
annoyed-frustrated	3	62
attribution	3	81
Copyright Claim	4	212
false claim	2	129
multifaceted strikes on mashup	2	3
wanting to know how to remove a claim	2	14
copyright knowledge or lack thereof	5	744
copyright stifles creativity for remix artists	2	19
Counter Notice	3	43
I filed a counter notice	3	41
want to file a counter notice	2	20
wont file a counter notice	2	5
Cover vs Remix	4	26
covers are culturally accepted	2	3
creating royalty free remixes	3	20
Creative Commons	3	39
dissuaded from publishing a remix by copyright	1	1
don't do a cover - dissuaded from doing the cover	2	13
drum cover	1	10
exceptions	4	94
false positive	6	334
fear	3	32
Getting around Content ID	4	34
guitar cover	1	6
introducing themselves	4	75
Knowledge of Content ID	4	18
lessons	1	1
list of coverable songs	2	40
list of remixable songs	2	2
looking for feedback- wanting to collaborate	6	105
merchandise	2	2
monetisation	4	327
originality-ownership over cover	2	62
originality-ownership over remix	1	68
remixer views of record companies	1	1
rights clearance	4	305
already have a license	4	36
expensive	3	8
independent rights clearance organisations	1	63

pseudo-pathway	4	134
Creating a cover-remix to test the waters	3	24
public domain	3	12
royalty free samples	1	1
seeing others do it	5	128
seeking advice prior to covering -remixing-uploading	4	70
seeking legal advice	1	7
self help	3	38
technical issues	2	38
tips and tricks	6	51
try using another forum	1	1
view on cover songs by non-prosumer	2	40
view on cover songs by prosumer	3	28
view on remixes by prosumer	2	8
views on remixes by non-prosumer	2	18
views regarding collecting societies	1	3
welcoming	5	31
what is a cover - you should actually play the music	2	78
what is a remix	1	18
which songs to remix	2	19

Table 3: The seven top level codes for Phase one.

Name	Sources	References
Discussions regarding copyright issues	6	2942
copyright knowledge or lack thereof	5	1485
knowledge	4	312
lack	5	428
Counter Notice	3	136
I filed a counter notice	3	53
Which was then rejected	2	12
want to file a counter notice	2	23
wont file a counter notice	2	5
You should file a counter notice	2	7
You should not file a counter notice	2	2
exceptions	4	94
Getting a Copyright Claim	4	355
multifaceted strikes on mashup	2	3
perceived false claim	2	130
wanting to know how to remove a claim i.e. not accepting the claim but not mentioning false claim or knowledge of counter claim	2	14
originality-ownership over cover	2	63
originality-ownership over remix	1	64
rights clearance	5	633
already have a license	4	36
creating royalty free remixes	3	20
Creative Commons	3	39
expensive	3	10
independent rights clearance organisations	1	63
pseudo-pathway	4	156
Creating a cover-remix to test the waters	3	24
public domain	3	12
using royalty free samples	1	1
Stifling creativity	4	111
copyright stifles creativity for remix artists	2	19
dissuaded from publishing a remix by copyright	1	1
don't do a cover - dissuaded from doing the cover	2	13
seeking advice prior to covering -remixing-uploading	4	70
Discussions regarding prosumer content (unrelated to copyright)	6	387
Cover vs Remix	4	26
introducing themselves	4	73
looking for feedback- wanting to collaborate	6	105
technical issues	2	38
tips and tricks	6	52
welcoming	5	33

which songs to remix or cover	4	60
list of coverable songs	2	39
list of remixable songs	2	2
Emotions	3	97
annoyed-frustrated	3	64
fear	3	33
Knowledge of how YouTube works	4	59
Getting around Content ID	4	34
Knowledge of Content ID	4	21
Other	6	479
false positive	6	334
remixer views of record companies	1	1
seeking legal advice	1	7
self help	3	38
try using another forum	1	1
view on cover songs by non-prosumer	2	40
view on cover songs by prosumer	3	28
view on remixes by prosumer	3	9
views on remixes by non-prosumer	2	18
views regarding collecting societies	1	3
Potential Social Norms	6	531
attribution	3	84
covers are culturally accepted	2	3
Monetary	5	315
merchandise	2	2
monetisation	5	309
seeing others do it	5	129
Types of prosumer activities	3	106
drum cover	1	10
guitar cover	1	5
lessons	1	1
what is a cover - you should actually play the music	2	72
what is a remix	1	18

Phase two

Email invitations and reminders to participate in the questionnaire

EMAIL INVITATION

Subject Line: Invitation to participate in a study regarding users' experiences with YouTube. (The University of Edinburgh).

Dear YouTuber,

My name is Giorgos D. Vrakas and I am a PhD student at the University of Edinburgh studying the production of cover songs and remixes and their distributions on online platforms.

I am writing to seek your help in understanding the experiences of YouTube users. Specifically, I am interested in finding out how YouTube users who upload music to YouTube such as yourself, navigate technological and legal issues on this platform, and I would highly appreciate it if you could share your experiences and insights in this process. This will allow for me to identify where improvements could be made. Your participation is thus, highly important as you are a key actor in achieving this.

I kindly ask you to follow this unique link where you will be asked to complete a questionnaire.

Follow this link to the Survey:
[LINK]

Or copy and paste the URL below into your internet browser:
[LINK]
The questionnaire will take approximately 15-20 minutes to complete.

I hope you enjoy completing the questionnaire and I look forward to receiving your responses.

Many thanks,

Giorgos D. Vrakas.

Follow the link to opt out of future emails:
${l://OptOutLink?d=Click here to unsubscribe}

REMINDER 1 (28/02/2020)

Subject Line: REMINDER: Invitation to participate in a study regarding you experiences with uploading cover songs and/or remixes to YouTube (The University of Edinburgh).

Dear YouTuber,

My name is Giorgos D. Vrakas and I am a PhD student at the University of Edinburgh.

I previously contacted you asking for your help in understanding how musicians who upload their works to YouTube such as yourself, navigate technological and legal issues on YouTube.

If you are keen on taking part in this study, I kindly ask you to follow this unique link where you will be asked to complete a questionnaire.

Follow this link to the Survey:
[LINK]

Or copy and paste the URL below into your internet browser:
[LINK]
The questionnaire will take approximately 15-20 minutes to complete.

I hope you enjoy completing the questionnaire and I look forward to receiving your responses.

Many thanks,

Giorgos D. Vrakas.

Follow the link to opt out of future emails:
${l://OptOutLink?d=Click here to unsubscribe}

REMINDER 2 (4/03/2020)

Subject Line: REMINDER: Invitation to participate in a study regarding you experiences with uploading cover songs and/or remixes to YouTube (The University of Edinburgh).

Dear YouTuber,

My name is Giorgos D. Vrakas and I am a PhD student at the University of Edinburgh.

I recently contacted you asking if you help me understand how musicians who upload their works to YouTube such as yourself, navigate technological and legal issues on YouTube, by completing an online questionnaire.

I would like to thank those who have already completed the questionnaire.

If you have yet to complete the questionnaire and are keen on taking part in this study, I kindly ask you to follow this unique link where you will be asked to complete a questionnaire.

Follow this link to the Survey:
[LINK]

Or copy and paste the URL below into your internet browser:
[LINK]
The questionnaire will take approximately 15-20 minutes to complete.

I hope you enjoy completing the questionnaire and I look forward to receiving your responses.

Many thanks,

Giorgos D. Vrakas.

Follow the link to opt out of future emails:
${l://OptOutLink?d=Click here to unsubscribe}

REMINDER 3 (16/03/2020)

Subject Line: REMINDER: Invitation to participate in a study regarding you experiences with uploading cover songs and/or remixes to YouTube (The University of Edinburgh).

Dear YouTuber,

My name is Giorgos D. Vrakas and I am a PhD student at the University of Edinburgh.

I recently contacted you asking if you could help me understand how musicians who upload their works to YouTube such as yourself, navigate technological and legal issues on YouTube, by completing an online questionnaire.

I would like to thank those who have already completed the questionnaire.

If you have yet to complete the questionnaire and are keen on taking part in this study, I kindly ask you to follow this unique link below.

Follow this link to the Survey:
[LINK]

Or copy and paste the URL below into your internet browser:
[LINK]

This study will enhance our understanding of how musicians such as yourself navigate technological and legal issues on YouTube and enable the researcher to identify where improvements could be made. Your participation is thus, highly important as you are a key actor in achieving this.

The questionnaire will take approximately 15-20 minutes to complete.

I hope you enjoy completing the questionnaire and I look forward to receiving your responses.

Many thanks,
Giorgos D. Vrakas.

Follow the link to opt out of future emails:
${l://OptOutLink?d=Click here to unsubscribe}

REMINDER 4 (20/03/2020) FINAL REMINDER

Subject Line: REMINDER: Invitation to participate in a study regarding you experiences with uploading cover songs and/or remixes to YouTube (The University of Edinburgh).

Dear YouTuber,

My name is Giorgos D. Vrakas and I am a PhD student at the University of Edinburgh.

I recently contacted you asking if you would help me understand how musicians who upload their works to YouTube such as yourself, navigate technological and legal issues on YouTube, by completing an online questionnaire.

The questionnaire will only be open for five more days. Thus, if you are keen on taking part in this study, I kindly ask you to follow this unique link.

Follow this link to the Survey:
[LINK]

Or copy and paste the URL below into your internet browser:
[LINK]The questionnaire will take approximately 15-20 minutes to complete.

I hope you enjoy completing the questionnaire and I look forward to receiving your responses.

Many thanks,

Giorgos D. Vrakas.

Follow the link to opt out of future emails:
${l://OptOutLink?d=Click here to unsubscribe}

Questionnaire

Start of Block: INFORMATION SHEET & CONSENT FORM

I&C INFORMATION SHEET

ABOUT THE PROJECT

You are invited to participate in a study which aims to understand the way in which YouTubers who upload cover songs and/or remixes to YouTube, like yourself navigate technological and legal issues on YouTube. This study is being undertaken by Giorgos D. Vrakas (the researcher) as part of his PhD at the University of Edinburgh's School of Law.

WHAT DOES PARTICIPATION INVOLVE?

Your participation in this study is entirely voluntary. You are asked to complete a questionnaire in which you will be asked a number of questions on your use and experience of sharing content on YouTube. Namely, the questionnaire is split into five sections:

1. Your YouTube profile.
2. Your user experience.
3. How you engage with your and others' YouTube videos.
4. Your Knowledge of YouTube and Copyright.
5. A bit more information about you.

The questionnaire will take approximately 15-20 minutes to complete.

If you wish to pause the questionnaire and return to it at a later stage, you can do so within 7 days from the date you initially started the questionnaire, by simply closing the tab you are completing the questionnaire in, and returning to it using the link sent to you via email. After 7 days of starting the questionnaire, your responses will be recorded and you will be unable to resume completion.

WHAT ARE THE BENEFITS OF CONTRIBUTING TO THIS PROJECT?

You will not receive any financial benefits or costs for participating in this study. However, this study will enhance our understanding of how YouTubers like yourself navigate technological and legal issues on YouTube and enable the researcher to identify where improvements could be made. Your participation is thus, highly important as you are a key actor in achieving this.

WHAT ARE THE POSSIBLE DISADVANTAGES AND RISKS OF TAKING PART?

Participating in this study could lead to the disclosure of information to the researcher, regarding your potentially unauthorised sharing of cover songs and/or remixes on YouTube. However, your personal details will not be disclosed in any publication of this research. Your contributions will be completely anonymised, and it will be impossible to link any of your responses back to you.

WHAT WILL HAPPEN TO THE DATA?

The data will be analysed, and results will be published in the form of a PhD thesis, journal articles, conferences papers, blog posts and other documents. Access to the data will be limited to the researcher and his supervisory team. All data will be saved securely and

confidentially for a period of two years until after the researcher has graduated. This is to allow for further publications to be made. The project data will then be destroyed.

HOW CAN I WITHDRAW FROM THIS PROJECT?

At the start of the questionnaire, you will be presented with a unique number ID. Please take note of this number. If you have filled out the questionnaire and want to subsequently withdraw your participation, you may do so for any reason and at any point up to 30 calendar days after submitting the questionnaire, by emailing the researcher quoting your unique number ID. Please note that without the unique number ID, the researcher will not be able to withdraw your responses from the dataset. Thereafter, your data may have been analysed or archived.

Your unique number ID will not be linked with any information which may be traced back to you in any way and will be securely stored on an encrypted computer and backed up on the university of Edinburgh's secure cloud data storage service.

WHO CAN I CONTACT IF I HAVE QUESTIONS?

If you have any questions about this study, please contact the researcher at: Giorgos.Vrakas@ed.ac.uk.

○ PLEASE SELECT TO CONTINUE TO THE QUESTIONNAIRE (1)

Page Break

Q104 TERMS & CONDITIONS
By ticking the box below, I agree with the following statements:

1. I am 16 years or above in age. 2. I have read and understood the purpose of this study and how data will be used and stored. 3. I have had the opportunity to ask questions before taking part in this study. 4. I voluntarily consent to be a participant in this study and understand that I can withdraw from the study at any point up to 30 calendar days after submitting the questionnaire, without having to give a reason, using the unique number ID presented to me at the start of this questionnaire. 5. My responses will be analysed by the researcher. 6. My responses may be quoted directly without identifying me. 7. I understand that the information I provide will be used in the researcher's final thesis and other publications. 8. I understand that responses will be kept securely for a period of two years after the researcher's graduation. 9. I am not being rewarded financially or otherwise for my participation.

○ I AGREE TO THE STATEMENTS ABOVE (1)

End of Block: INFORMATION SHEET & CONSENT FORM

Start of Block: RANDOM ID

RANDOM ID RANDOM ID NUMBER
This is your Random ID number **${e://Field/RANDOM%20ID}.**

Please note that without your unique number ID, the researcher will not be able to withdraw your response from the dataset.
Furthermore, your data may have been analysed or archived 30 days after submitting your responses.

○ I have taken a note of my random ID number and will use it if I have filled out the questionnaire and want to subsequently withdraw my participation. I may do so for any reason and at any point up to 30 calendar days after submitting the questionnaire, by emailing the researcher quoting this unique number ID. (1)

End of Block: RANDOM ID

Start of Block: WHAT TYPE OF PROSUMER ARE YOU?

SECTION 1: YOUR YOUTUBE PROFILE

Q1 What content do you upload to YouTube?

- ○ Cover songs (1)
- ○ Remixes (2)
- ○ Both (3)
- ○ Neither (5)

Page Break

Display This Question:

If Q1 = Neither

Q1.1 How would you describe the type of content you upload to YouTube?

_____

Display This Question:

If Q1 = Neither

Q1.2 How is the content you upload to YouTube different to cover songs and/or remixes?

_____

Display This Question:

If Q1 != Remixes

And Q1 != Neither

Q2.1 Do you create the cover songs you upload to YouTube yourself?

- ○ Yes, I create the cover songs I upload to YouTube myself (1)
- ○ No, I re-upload cover songs created by other users (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

Q2.2 Do you create the remixes you upload to YouTube yourself?

- ○ Yes, I create the remixes I upload to YouTube myself (1)
- ○ No, I re-upload remixes created by other users (2)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

Q3.1 How would you describe the types of cover songs you upload to YouTube? (You can pick more than one option).

- ☐ **Instrumental Covers** i.e. covers where one instrument (such as a guitar, drums, piano or voice) is used either on its own or over the original sound recording (1)
- ☐ **Cover Records** i.e. the re-recording of a previously existing song from scratch, as an exact replica (2)
- ☐ **Cover Songs** i.e. the re-recording of a previously existing song from scratch, but adding your own touch to it such as changing the genre or lyrics of the original song (3)
- ☐ None of the above (4)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

Q3.2 How would you describe the types of remixes you upload to YouTube? (You can pick more than one option).

- ☐ **Mashups** i.e. the mixing of two or more already existing songs together (1)
- ☐ **Sampling** i.e. the copying of sounds recordings from existing recordings (such as the vocals or drum beat) in order to create a new sound recording or musical work (2)
- ☐ None of the above (4)

Display This Question:

If Q3.1 = Instrumental Covers i.e. covers where one instrument (such as a guitar, drums, piano or voice) is used either on its own or over the original sound recording

Q3.1.1 How exactly would you categorise your instrumental covers?

- ○ I play an instrument over the original sound recording (1)
- ○ I play an instrument on its own (2)
- ○ Both of the above (4)

Display This Question:

If Q3.1 = None of the above

Q3.1.2 How is the type of cover songs you upload to YouTube different from the list provided i.e. instrumental covers, cover records or cover songs?

_____

Display This Question:

If Q3.2 = None of the above

Q3.2.1 How is the type of remixes you upload to YouTube different from the list provided i.e. mashups or sampling?

_____

Display This Question:

If Q3.1 = None of the above

Q3.1.3 How would you describe the type of cover songs you upload to YouTube?

_____

Display This Question:

If Q3.2 = None of the above

Q3.2.2 How would you describe the type of remixes you upload to YouTube?

_____

Display This Question:

If Q1 = Cover songs

Or Q1 = Both

And If

Q3.1 != None of the above

Q4.1 When approximately did you start uploading cover songs to YouTube?

▼ 2005 (1) ... 2020 (16)

Display This Question:

If Q1 = Remixes

Or Q1 = Both

And If

Q3.2 != None of the above

Q4.2 When approximately did you start uploading remixes to YouTube?

▼ 2005 (1) ... 2020 (16)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And If

Q3.1 != None of the above

Q5.1 How many cover songs have you uploaded to YouTube since ${Q4.1/ChoiceGroup/SelectedChoices}?

▼ 1 (1) ... 100+ (100)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And If

Q3.2 != None of the above

Q5.2 How many remixes have you uploaded to YouTube since ${Q4.2/ChoiceGroup/SelectedChoices}?

▼ 1 (1) ... 100+ (100)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q6.1 On average, how often do you upload a cover song to YouTube?

- More than once a week (1)
- Once a week (2)
- Once every few weeks (3)
- Once a month (4)
- Once every few months (5)
- Once a year (6)
- Once every few years (7)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q6.2 One average, how often do you upload a remix to YouTube?

- More than once a week (1)
- Once a week (2)
- Once every few weeks (3)
- Once a month (4)
- Once every few months (5)
- Once a year (6)
- Once every few years (7)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q7.1 On average, how many views do your cover songs have?

- Less than 300 (1)
- 301-1000 (2)
- 1001-5000 (3)
- 5001-10,000 (4)
- 10,001-50,000 (5)
- 50,001-100,000 (6)
- More than 100,000 (7)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q7.2 On average, how many views do your remixes have?

- Less than 300 (1)
- 301-1000 (2)
- 1001-5000 (3)
- 5001-10,000 (4)
- 10,001-50,000 (5)
- 50,001-100,000 (6)
- More than 100,000 (7)

End of Block: WHAT TYPE OF PROSUMER ARE YOU?

Start of Block: SAVE & CONTINUE 1

S.C. 1 You are about to move onto the next section of this questionnaire. You can save your current responses and return to them within 7 days of the date you initially started the questionnaire, or continue on to the next section. In order to pause your completion, you can simply close the tab in which you are completing this survey. You can return to this survey using the link sent to you via email.

- ○ Continue to the next section (1)

End of Block: SAVE & CONTINUE 1

Start of Block: NOTICES

SECTION 2: YOUR USER EXPERIENCE

Q8 YouTube's Terms of Service states that: "If you upload a video that contains copyright-protected material, you could end up with a Content ID claim. Companies that own music, movies, TV shows, video games or other copyright-protected material issue these claims. Content owners can set to block material from YouTube when a claim is made. They can also allow the video to remain live on YouTube with ads. In those cases, the advertising revenue goes to the copyright owners of the claimed content." Have you ever received a Content ID claim?

- ○ Yes (1)
- ○ No (2)

Page Break

Display This Question:

If Q8 = No

Q8.1 What do you think is the reason you did not receive a Content ID claim?

_____

Display This Question:

If Q8 = Yes

Q9 How many Content ID claims have you received?

- ○ 1 (1)
- ○ 2-5 (2)
- ○ 6-10 (3)
- ○ 11-15 (4)
- ○ 16-20 (5)
- ○ More than 20 (6)

Page Break

Display This Question:

If Q9 = 1

Q9.1 Of the 1 time you received a Content ID claim, how did you react?

- ☐ I removed the video (1)
- ☐ I filed a counter claim/dispute (2)
- ☐ I asked for advice from a legal professional (3)
- ☐ I asked a question on an online discussion forum (4)
- ☐ I did nothing (5)
- ☐ Other, please specify (6) _____

Display This Question:

If Q9 = 2-5

Q9.2 Of the 2-5 times you received a Content ID claim, how did you react? (You can pick more than one option).

	Rarely (e.g. 1 time) (1)	Sometimes (e.g. 2-3 times) (2)	Most of the time (e.g. 4 times) (3)	Always (e.g. 5 times) (4)
I removed the video (1)	☐	☐	☐	☐
I filed a counter claim/dispute (2)	☐	☐	☐	☐
I asked for advice from a legal professional (3)	☐	☐	☐	☐
I asked a question on an online discussion forum (4)	☐	☐	☐	☐
I did nothing (6)	☐	☐	☐	☐
Other, please specify (7)	☐	☐	☐	☐

Display This Question:

If Q9 = 6-10

Q9.3 Of the 6-10 times you received a Content ID claim, how did you react? (You can pick more than one option).

	Rarely (e.g. 1-3 times) (1)	Sometimes (e.g. 4-6 times) (2)	Most of the times (e.g. 7-9 times) (3)	Always (e.g. 10 times) (4)
I removed the video (2)	☐	☐	☐	☐
I filed a counter claim/dispute (3)	☐	☐	☐	☐
I asked for advice from a legal professional (4)	☐	☐	☐	☐
I asked a question on an online discussion forum (5)	☐	☐	☐	☐
I did nothing (11)	☐	☐	☐	☐
Other, please specify (12)	☐	☐	☐	☐

Display This Question:

If Q9 = 11-15

Q9.4 Of the 11-15 times you received a Content ID claim, how did you react? (You can pick more than one option).

	Rarely (e.g. 1-4 times) (1)	Sometimes (e.g. 5-9 times) (2)	Most of the times (e.g. 10-14 times) (3)	Always (e.g. 15 times) (4)
I removed the video (1)	☐	☐	☐	☐
I filed a counter claim/dispute (2)	☐	☐	☐	☐
I asked for advice from a legal professional (3)	☐	☐	☐	☐
I asked a question on an online discussion forum (21)	☐	☐	☐	☐
I did nothing (22)	☐	☐	☐	☐
Other, please specify (23)	☐	☐	☐	☐

Display This Question:

If Q9 = 16-20

Q9.5 Of the 16-20 times you received a Content ID claim, how did you react? (You can pick more than one option).

	Rarely (e.g. 1-6 times) (1)	Sometimes (e.g. 7-13 times) (2)	Most of the times (e.g. 14-19 times) (3)	Always (e.g. 20 times) (4)
I removed the video (1)	☐	☐	☐	☐
I filed a counter claim/dispute (2)	☐	☐	☐	☐
I asked for advice from a legal professional (3)	☐	☐	☐	☐
I asked a question on an online discussion forum (21)	☐	☐	☐	☐
I did nothing (22)	☐	☐	☐	☐
Other, please specify (23)	☐	☐	☐	☐

Display This Question:

If Q9 = More than 20

Q9.6 Of the more than 20 times you received a Content ID claim, how did you react? (You can pick more than one option).

	Rarely (e.g. 25% of the time) (1)	Sometimes (e.g. 50% of the times) (2)	Most of the times (e.g. 75% of the times) (3)	Always (e.g. 100% of the times) (4)
I removed the video (1)	☐	☐	☐	☐
I filed a counter claim/dispute (2)	☐	☐	☐	☐
I asked for advice from a legal professional (3)	☐	☐	☐	☐
I asked a question on an online discussion forum (4)	☐	☐	☐	☐
I did nothing (5)	☐	☐	☐	☐
Other, please specify (6)	☐	☐	☐	☐

Q10
YouTube's Terms of Service states that:

"If you receive a copyright strike, that means that your video has been taken down from YouTube because a copyright owner has sent us a complete and valid legal request asking us to do so. When a copyright owner formally notifies us that you don't have their permission to post their content on the site, we take down your upload to comply with copyright law."

Have you ever received a copyright strike?

- ○ Yes (1)
- ○ No (2)

Display This Question:

If Q10 = No

Q164 What do you think is the reason you did not receive a copyright strike?

_____

Display This Question:

If Q10 = Yes

Q11 How many copyright strikes have you received?

- ○ 1 (1)
- ○ 2-5 (2)
- ○ 6-10 (3)
- ○ 11-15 (4)
- ○ 16-20 (5)
- ○ More than 20 (6)

Display This Question:

If Q11 = 1

Q11.1 Of the 1 time you received a copyright strike, how did you react?

- ☐ I removed the video (1)
- ☐ I filed a counter claim/dispute (2)
- ☐ I asked for advice from a legal professional (3)
- ☐ I asked a question on an online discussion forum (4)
- ☐ I did nothing (5)
- ☐ Other, please specify (6) _____

Display This Question:

If Q11 = 2-5

Q11.2 Of the 2-5 times you received a copyright strike, how did you react? (You can pick more than one option).

	Rarely (e.g. 1 time) (1)	Sometimes (e.g. 2-3 times) (2)	Most of the time (e.g. 4 times) (3)	Always (e.g. 5 times) (4)
I removed the video (1)	○	○	○	○
I filed a counter claim/dispute (2)	○	○	○	○
I asked for advice from a legal professional (3)	○	○	○	○
I asked a question on an online discussion forum (4)	○	○	○	○
I did nothing (6)	○	○	○	○
Other, please specify (7)	○	○	○	○

Display This Question:

If Q11 = 6-10

Q11.3 Of the 6-10 times you received a copyright strike, how did you react? (You can pick more than one option).

	Rarely (e.g. 1-3 times) (1)	Sometimes (e.g. 4-6 times) (2)	Most of the times (e.g. 7-9 times) (3)	Always (e.g. 10 times) (4)
I removed the video (2)	☐	☐	☐	☐
I filed a counter claim/dispute (3)	☐	☐	☐	☐
I asked for advice from a legal professional (4)	☐	☐	☐	☐
I asked a question on an online discussion forum (5)	☐	☐	☐	☐
I did nothing (11)	☐	☐	☐	☐
Other, please specify (12)	☐	☐	☐	☐

Display This Question:

If Q11 = 11-15

Q11.4 Of the 11-15 times you received a copyright strike, how did you react? (You can pick more than one option).

	Rarely (e.g. 1-4 times) (1)	Sometimes (e.g. 5-9 times) (2)	Most of the times (e.g. 10-14 times) (3)	Always (e.g. 15 times) (4)
I removed the video (2)	☐	☐	☐	☐
I filed a counter claim/dispute (3)	☐	☐	☐	☐
I asked for advice from a legal professional (4)	☐	☐	☐	☐
I asked a question on an online discussion forum (5)	☐	☐	☐	☐
I did nothing (11)	☐	☐	☐	☐
Other, please specify (12)	☐	☐	☐	☐

Display This Question:

If Q11 = 16-20

Q11.5 Of the 16-20 times you received a copyright strike, how did you react? (You can pick more than one option).

	Rarely (e.g. 1-6 times) (1)	Sometimes (e.g. 7-13 times) (2)	Most of the times (e.g. 14-19 times) (3)	Always (e.g. 20 times) (4)
I removed the video (1)	☐	☐	☐	☐
I filed a counter claim/dispute (2)	☐	☐	☐	☐
I asked for advice from a legal professional (3)	☐	☐	☐	☐
I asked a question on an online discussion forum (21)	☐	☐	☐	☐
I did nothing (22)	☐	☐	☐	☐
Other,please specify (23)	☐	☐	☐	☐

Display This Question:

If Q11 = More than 20

Q11.6 Of the more than 20 times you received a copyright strike, how did you react? (You can pick more than one option).

	Rarely (e.g. 25% of the time) (1)	Sometimes (e.g. 50% of the times) (2)	Most of the times (e.g. 75% of the times) (3)	Always (e.g. 100% of the times) (4)
I removed the video (1)	☐	☐	☐	☐
I filed a counter claim/dispute (2)	☐	☐	☐	☐
I asked for advice from a legal professional (3)	☐	☐	☐	☐
I asked a question on an online discussion forum (4)	☐	☐	☐	☐
I did nothing (5)	☐	☐	☐	☐
Other, please specify (6)	☐	☐	☐	☐

End of Block: NOTICES

Start of Block: RIGHTS CLEARANCE

Q12 YouTube's Terms of Service asks users to "secure all the rights to all elements in their video and... that the first step would be to contact the rights holders and negotiate the licenses for their use" before uploading a cover song or a remix.

Have you ever "secured all the rights to all elements in your video" before uploading it to YouTube?

- ○ Yes (1)
- ○ No (2)

Display This Question:

If Q12 = Yes

Q12.1 Why did you seek to "secure all the rights to all elements in your video"? (You can pick more than one option).

- ☐ YouTube told me to do so (4)
- ☐ I've seen others doing it (5)
- ☐ I knew I had to do so (6)
- ☐ Other, please specify (7) _____

Display This Question:

If Q12 = No

Q12.2 Why did you not seek to "secure all the rights to all elements in your video"? (You can pick more than one option).

- ☐ It is too complicated (1)
- ☐ It is too expensive (2)
- ☐ I didn't know I needed it (3)
- ☐ Other, please specify (4) _____

End of Block: RIGHTS CLEARANCE

Start of Block: SAVE & CONTINUE 2

S.C.2
You are about to move onto the next section of this questionnaire. You can save your current responses and return to them within 7 days of the date you initially started the questionnaire, or continue on to the next section. In order to pause your completion, you can simply close the tab in which you are completing this survey. You can return to this survey using the link sent to you via email.

- ○ Continue to the next section (1)

End of Block: SAVE & CONTINUE 2

Start of Block: SOCIAL NORMS & MIMICKING

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

SECTION 3: HOW YOU ENGAGE WITH YOUR AND OTHERS' VIDEOS

Q13.1 When uploading a cover song to YouTube, do you credit the original artists whose work you have used in your cover song?

Credit means including the name of the original artists whose work you have created a cover of, either in the title or in the description of your video.

- Yes (1)
- No (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q13.2 When uploading a remix to YouTube, do you credit the original artists whose work you have used in your remix?

Credit means including the name of the original artists whose work you have created a remix of, either in the title or in the description of your video.

- Yes (1)
- No (2)

Display This Question:

If Q13.1 = Yes

Q14.1 How often do you credit the original artists whose works you have used in your cover songs?

- Always (1)
- Most of the time (2)
- About half the time (3)
- Sometimes (4)

Display This Question:

If Q13.2 = Yes

Q14.2 How often do you credit the original artists whose works you have used in your remixes?

- Always (1)
- Most of the time (2)
- About half the time (3)
- Sometimes (4)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q15.1 When making the decision of whether or not to credit the original artists, do you look at how others who upload cover songs to YouTube title their own cover songs?

- Yes (1)
- No (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q15.2 When making the decision of whether or not to credit the original artists, do you look at how others who upload remixes to YouTube title their own remixes?

- Yes (1)
- No (2)

Display This Question:

If Q15.1 = Yes

Q16.1 How often do you look at how others who upload cover songs to YouTube title their own cover songs, before uploading your video?

- Always (1)
- Most of the time (2)
- About half the time (3)
- Sometimes (4)

Display This Question:

If Q15.2 = Yes

Q16.2 How often do you look at how others who upload remixes to YouTube title their own remixes, before uploading your video?

- Always (1)
- Most of the time (2)
- About half the time (3)
- Sometimes (4)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q17.1 Do you think it is common practice among users who upload cover songs to YouTube, to credit the original artists?

- Yes (4)
- No (6)
- I don't know (8)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q17.2 Do you think it is common practice among users who upload remixes to YouTube, to credit the original artists?

- Yes (1)
- No (2)
- I don't know (3)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q18.1 Do you think that other users who upload cover songs to YouTube should credit the original artists?

- ○ Yes (26)
- ○ No (27)
- ○ I don't know (28)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q18.2 Do you think that other users who upload remixes to YouTube should credit the original artists?

- ○ Yes (21)
- ○ No (22)
- ○ I don't know (23)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q19.1 Do you think that other users who upload cover songs to YouTube think that you should credit the original artists?

- Yes (21)
- No (22)
- I don't know (23)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q19.2 Do you think that other users who upload remixes to YouTube think that you should credit the original artists?

- Yes (21)
- No (22)
- I don't know (23)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q20.1 To what extent do you agree with the following statement:

When uploading a cover song to YouTube, you must credit the original artists.

- Strongly agree (1)
- Somewhat Agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q20.2 To what extent do you agree with the following statement:

When uploading a remix to YouTube, you must credit the original artists.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q21.1 What do you think would happen if others who create and upload cover songs to YouTube, discovered that a user did not credit the original artists?

_____

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q21.2 What do you think would happen if others who create and upload remixes to YouTube, discovered that a user did not credit the original artists?

_____

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q22.1 If only 10% of users who upload cover songs to YouTube credited original artists, but 90% of users who upload cover songs to YouTube believed always doing so was appropriate, would you credit the original artists in the cover songs you uploaded to YouTube?

- Yes (1)
- No (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q22.2 If only 10% of users who upload remixes to YouTube credited original artists, but 90% of users who upload remixes to YouTube believed always doing so was appropriate, would you credit the original artists in the remixes you uploaded to YouTube?

- Yes (1)
- No (2)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q23.1 If 90% of users who upload cover songs to YouTube credited original artists, but only 10% of users who upload cover songs to YouTube believed always doing so was appropriate, would you credit the original artists in the cover songs you uploaded to YouTube?

- Yes (1)
- No (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q23.2
If 90% of users who upload remixes to YouTube credited original artists, but only 10% of users who upload remixes to YouTube believed always doing so was appropriate, would you credit the original artists in the remixes you uploaded to YouTube?

- Yes (1)
- No (2)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q24.1 Monetising your cover songs allows you to earn money from them.

Do you monetise any of the cover songs you upload to YouTube?

- Yes (1)
- No (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q24.2
Monetising your remixes allows you to earn money from them.
Do you monetise any of the remixes you upload to YouTube?

- Yes (1)
- No (2)

Display This Question:

If Q24.1 = No

Q24.1.1 Why do you not monetise the cover songs you upload to YouTube? (You can pick more than one option).

- ☐ Because others who upload covers to YouTube do not do so (1)
- ☐ Because I feel that it is not right to do so (2)
- ☐ Because it is illegal to do so (3)
- ☐ Because I do not own the rights to the cover songs I create (5)
- ☐ Because YouTube told me I could not do so (6)
- ☐ Other, please specify (4) _____

Display This Question:

If Q24.2 = No

Q24.2.1 Why do you not monetise the remixes you upload to YouTube? (You can pick more than one option).

- ☐ Because others who upload remixes to YouTube do not do so (1)
- ☐ Because I feel that it is not right to do so (2)
- ☐ Because it is illegal to do so (3)
- ☐ Because I do not own the rights to the remixes I create (5)
- ☐ Because YouTube told me I could not do so (6)
- ☐ Other, please specify (4) _____

Display This Question:

If Q24.1 = Yes

Q24.1.2 Why do you monetise the cover songs you upload to YouTube? (You can pick more than one option).

- ☐ Because others who upload covers to YouTube do so (1)
- ☐ Because I feel that it is my right to do so (2)
- ☐ Because I own the rights to the cover songs I create (5)
- ☐ Because I do not want to give away my labour for free (6)
- ☐ Because YouTube told me I could do so (7)
- ☐ Other, please specify (4) _____

Display This Question:

If Q24.2 = Yes

Q24.2.2 Why do you monetise the remixes you upload to YouTube? (You can pick more than one option).

- ☐ Because others who upload remixes to YouTube do so (1)
- ☐ Because I feel that it is my right to do so (2)
- ☐ Because I won the rights to the remixes I create (4)
- ☐ Because I do not want to give away my labour for free (5)
- ☐ Because YouTube told me I could do so (6)
- ☐ Other, please specify (3) _____

Display This Question:

If Q24.1 = Yes

Q25.1 How often do you monetise the cover songs you upload to YouTube?

- ○ Always (1)
- ○ Most of the time (2)
- ○ About half the time (3)
- ○ Sometimes (4)

Display This Question:

If Q24.2 = Yes

Q25.2 How often do you monetise the remixes you upload to YouTube?

- ○ Always (1)
- ○ Most of the time (2)
- ○ About half the time (3)
- ○ Sometimes (4)

Display This Question:

If Q24.1 = Yes

Q26.1 What are your approximate monthly earnings from monetising the cover songs you upload to YouTube?

▼ Less than $1 (11) ... More than $10,000 (27)

Display This Question:

If Q24.2 = Yes

Q26.2 What are your approximate monthly earnings from monetising the remixes you upload to YouTube?

▼ Less than $1 (11) ... More than $10,000 (27)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q27.1 When making the decision of whether or not to monetise the cover songs you upload to YouTube, do you look at how others who upload cover songs to YouTube monetise their own cover songs?

- ○ Yes (1)
- ○ No (2)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q27.2 When making the decision of whether or not to monetise the remixes you upload to YouTube, do you look at how others who upload cover songs to YouTube monetise their own remixes?

- ○ Yes (1)
- ○ No (2)

Display This Question:

If Q27.1 = Yes

Q28.1 How often do you look at how others who upload cover songs to YouTube monetise their own cover songs?

- ○ Always (1)
- ○ Most of the time (2)
- ○ About half the time (3)
- ○ Sometimes (4)

Display This Question:

If Q27.2 = Yes

Q28.2 How often do you look at how others who upload remixes to YouTube monetise their own remixes?

- ○ Always (1)
- ○ Most of the time (2)
- ○ About half the time (3)
- ○ Sometimes (4)

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q3.1 != None of the above

Q29.1 Do you think it is common practice among users who upload cover songs to YouTube, to not monetise the cover songs they upload to YouTube?

- Yes (1)
- No (2)
- I don't know (3)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q3.2 != None of the above

Q29.2 Do you think it is common practice among users who upload remixes to YouTube, to not monetise the remixes they upload to YouTube?

- Yes (1)
- No (2)
- I don't know (3)

End of Block: SOCIAL NORMS & MIMICKING

Start of Block: SAVE & CONTINUE 3

S.C.3 You are about to move onto the next section of this questionnaire. You can save your current responses and return to them within 7 days of the date you initially started the questionnaire, or continue on to the next section. In order to pause your completion, you can simply close the tab in which you are completing this survey. You can return to this survey using the link sent to you via email.

- Continue to the next section (1)

End of Block: SAVE & CONTINUE 3

Start of Block: KNOWLEDGE

SECTION 4: YOUR KNOWLEDGE OF YOUTUBE & COPYRIGHT

Q30 How would you rate your level of copyright knowledge?

0 10 20 30 40 50 60 70 80 90 100

Please move the slider to indicate what level of copyright knowledge you believe you possess. 0 being no copyright knowledge and 100 being an expert in the field. ()	

Q31 Are these Copyright statements true or false?

	True (1)	False (2)	I don't know (3)
Copyright protection does not last forever. (1)	○	○	○
To protect a piece of work with copyright it should be registered with the government. (2)	○	○	○
YouTube owns the copyright attached to all cover songs and remixes on the platform. (3)	○	○	○
The creator of a cover song or remix owns all the rights attached to the cover song or remix created. (4)	○	○	○
Under certain conditions, copyright protected material may be legally copied or reused without the need for prior permission. (5)	○	○	○
As long as a creator of a cover song does not include the original sound recording in the video they upload to YouTube they are not infringing copyright. (6)	○	○	○
There are mechanisms in place for copyright owners to take works they regard as infringing their copyright down from YouTube. (7)	○	○	○
Creators who have received a claim which resulted in their work being taken down from YouTube, have the option to dispute that claim. (8)	○	○	○
Shops can legally play music to their customers without previously obtaining permission to do so. (9)	○	○	○

Content uploaded to YouTube must not include third-party intellectual property (such as copyrighted material) unless the uploader has permission from that party or is otherwise legally entitled to do so. (10)			

Display This Question:

If Q30 [Please move the slider to indicate what level of copyright knowledge you believe you possess. 0 being no copyright knowledge and 100 being an expert in the field.] != 0

Q32 Where would you say you obtained the copyright knowledge you possess? (You can pick more than one option).

- ☐ From a course I attended at university or college (1)
- ☐ From discussion forums (2)
- ☐ By reading about it online (3)
- ☐ From lived experiences I have had on YouTube (4)
- ☐ Other, please specify (5) _____

Q33 How would you rate your knowledge of how Content ID operates?

0 10 20 30 40 50 60 70 80 90 100

Please move the slider to indicate what level of Content ID knowledge you believe you possess. 0 being no knowledge of how Content ID operates and 100 being an expert in the field. ()	

Q34 Are these Content ID statements true or false?

	True (1)	False (2)	I don't know (3)
Content ID is a tool which helps track copyright infringements committed on YouTube. (1)	○	○	○
A Content ID claim is equivalent to a copyright strike. (2)	○	○	○

Page Break

Display This Question:

If Q1 != Remixes

And Q1 != Neither

Q35.1 Have you ever participated in a discussion forum regarding any of your cover songs uploaded to YouTube?

- YouTube's own discussion forum (1)
- YTTalk (2)
- TubeBuddy (3)
- Other, please specify (4) _____
- No (5)

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

Q35.2 Have you ever participated in a discussion forum regarding any of your remixes uploaded to YouTube?

- YouTube's own discussion forum (6)
- YTTalk (7)
- TubeBuddy (8)
- Other, please specify (9) _____
- No (10)

Page Break

Display This Question:

If Q1 != Remixes

And Q1 != Neither

And Q35.1 != No

Q35.1.1 Which of the following topics did you discuss on the discussion forums? (You can pick more than one option).

- ☐ Copyright Strikes (1)
- ☐ How to obtain a license (2)
- ☐ Copyright Exceptions (3)
- ☐ Monetisation (4)
- ☐ How to increase views (5)
- ☐ How to get more subscribers (6)
- ☐ Other, please specify (7) _____

Display This Question:

If Q1 != Cover songs

And Q1 != Neither

And Q35.2 != No

Q35.2.1 Which of the following topics did you discuss on the discussion forums? (You can pick more than one option).

- ☐ Copyright Strikes (1)
- ☐ How to obtain a license (2)
- ☐ Copyright Exceptions (3)
- ☐ Monetisation (4)
- ☐ How to increase views (5)
- ☐ How to get more subscribers (6)
- ☐ Other, please specify (7) _____

End of Block: KNOWLEDGE

Start of Block: SAVE & CONTINUE 4

S.C.4 You are about to move onto the final section of this questionnaire. You can save your current responses and return to them within 7 days of the date you initially started the questionnaire, or continue on to the next section. In order to pause your completion, you can simply close the tab in which you are completing this survey. You can return to this survey using the link sent to you via email.

- ○ Continue to the next section (1)

End of Block: SAVE & CONTINUE 4

Start of Block: DEMOGRAPHICS

SECTION 5: A BIT MORE INFORMATION ABOUT YOU

Q36 Gender

- Male (1)
- Female (2)
- Other (3)
- Prefer not to say (4)

Q37 Age

- 16 - 18 (1)
- 18 - 24 (2)
- 25 - 34 (3)
- 35 - 44 (4)
- 45 - 54 (5)
- 55 - 64 (6)
- 65 - 74 (7)
- 75 - 84 (8)
- 85 or older (9)

Q38 Which country do you upload your musical works to YouTube from?

▼ Afghanistan (1) ... Zimbabwe (1357)

Q39 Would you like to receive a summary of the results of this study? If so, please enter you email address below.

_____

Q40 Thank you for taking the time to complete this survey.

If you would like to share your experience of uploading cover songs/remixes to YouTube in more detail, then I invite you to participate in an email interview where you will have the opportunity to do so.

Email interviews consist of you answering a few questions in your own time and at your own convenience and will give you the opportunity to convey your own experience of uploading covers and/or remixes to YouTube more clearly to the researcher.

Would you like to participate in an interview via email? if so please enter your email address below.

_____

End of Block: DEMOGRAPHICS

Tables pertaining to the questionnaire

Table 4: What respondents said would happen if it were discovered that a user did not credit the original artists whose works, they reused in the work they uploaded to YouTube.

Cover Songs	Remixes
Copyright Strike/Content ID Claim	
Copyright strike/Content ID and possible lawsuit depending on the popularity and revenue stream of the video	As if video goes well, YouTube gives you copyright claim. Otherwise you can upload in Creative Common Rights
Could get into legal trouble	Copyright Strikes could be given out to that person who didn't give credit to the original artists
Creator can ask to credit him or delete the video.	Either contact the uploader for permission, if denied then strike the video.
Even if you do credit the artist you still get copy right claims I wouldn't if even in imagine what would happen if you didn't you would most likely get a strike I think	Get their video claimed or taken down
It's not legal. And Youtube is not supporting this.	It depends on the video title, usually it says: "Name of the original artist" - "Name of the song" ("Name of the creator of remix" Remix) [Technically it would be called Bootleg if the remix is not official but the word "remix" is what it positions]. If you do not put the name of the original author is a "content theft" and that is serious if the original author has the rights and realizes (if you do not have the rights technically can not do anything).
Legal stuff, legal issues. Especially regarding copyright, since covers are pretty much uses the original song structure.	It's not legal. And Youtube is not supporting this.
Maybe a strike	Legal stuff too, since most of the time remixes samples a part (or parts) of the original song structure.
Not sure...sue them?	Probably get a copyright strike as remixes use parts of the original songs.
Probably some legal action if the artist is not then credited, especially if it is a popular song/artist. In my opinion, it's not okay to not credit another musician for their work, no matter how popular they are.	They can file charges
will subjected to copyright strike	they can put copyright strike on it
They'd consider plagiarism or maybe they'd contact the channel to give the credits or take the content out	Message the user to ask for permissions, If the user doesn't comply ask to have the video removed if not copyright striked
Naming and shaming in the Comments	
Don't know, maybe just blame in comments	Maybe a few distasteful comments, but nothing crazy I wouldn't imagine
Maybe comments telling him to credit the original artist	some negative Comments and more dislikes

nothing because it happened to me before by accident but fans mentioned it in the comments so i fixed it by crediting the original artist.	
some negative Comments and more dislikes	
They might say something in the comments, or just ignore it if they don't want to be negative.	
They would leave mean comments.	
They would probably be criticized in the comments.	
They'd write in the comment section that it's not okay to not give credit to the song's original artist and if it's a lot people who discovered this I think some of them would report the upload.	
Usually people in the comment section would ask for artists name and if the channel refused to give out the information, then they would be seen negatively by the YouTube community.	
I believe it could harm the creator's reputation as if they were trying to get credit for the authorship of the song. Some users might leave negative comments pointing to the fact the creator is not giving credit to the original artist.	
Did not know	
i do not know	Don't know
I don’t know	I don't know
I'm not sure	I don’t know
I'm not sure. Most of the time they're usually really popular so there isn't a need to put the artist name in the title. As long as they're not claiming that the song is theirs I don't see harm	No idea
no idea	
No idea	
No lo sé – I do not know	
Nothing would happen	
I think it's okay, from the tittle of the cover song we already know the original song.	i didn't think anything
If they claimed it as their own that's one thing if they just sang the song, it doesn't seem it should be a big deal.	I don't think they would do anything as it's not their responsibility
It wont really matter , everyone will think its a new style tm	I don’t think the would do anything, because they are more interested in the content than it’s title or description on the platform. People rarely do something about that.
Not much actually. But the youtuber would look almost like a thief to me. Stealing other's work and pretend that it's his/her work.	Nothing
nothing	Nothing, but a channel who cares about his community will credit the original songs so the people who enjoyed the remix can also listen to original

Nothing	NothingCreator can ask to credit him or delete the video.
Nothing, but a channel who cares about his community will credit the original songs so the people who enjoyed the cover can also listen to original	
They won’t care less	
To be honest I don't think anything would happen	
Other	
Confusion because i think it'd become a situation where whoever an innocent youtube viewer first hears the song from would be percieved as the actual owner but if credit is given, then the original artist can get direction for their fans; which in my opinionnis a good thing.	Its Always good to credit original artists no matter what,
Give them a nudge to credit an artist - it's hard to contact people via Youtube, though.	Most of the time - nothing. A lot of major labels when submitting a song for you to upload and include the links to feature in video description, leave out the original artist(s).
I think we have to tell them. What about if their song used to anybody's video	Offended
Ils le signalerais surement.Moi c'est ce que je ferais - They would probably report it. I would do that.	Original artists on a large scale would probably not notice, remixers who's remixes have been reposted without their permission or attribution would probably get reported
it would hurt the original artist	They would be upset as crediting them would build their fan base
Its Always good to credit original artists no matter what,	They'd report the video in spite, most likely due to being upset that a personal video probably got stroked...and they don't like the fact that others get away.
seems unfair like you’re trying to take credit for someone else’s work, might be confusing for others	
that these people would be doing plagiarism	
They may think about not crediting the original artists in future after a while.	
They will be angry and deceptionating because they're going to realize that the user isn't the original create.	
They would probably be confused, since they can hear that it's a song they've heard before. It's also important to know the definition of "crediting original artists". In my eyes, when I mention the song's name in title and description I feel like I've let people know who's the rightful owners are. (Without an actual legal statement containing: "This song is protected by copyright law and is owned by	

these ..artists.. songwriters.. labels.. blablabla. Naming the title of your cover video with the song's name is usually also the way the garner as much views as you can, so it's pretty weird when a cover artists doesn't include the artist and song name.	

Email interview information sheet and consent form

STUDY INFORMATION

WHAT IS THIS STUDY ABOUT AND WHO IS IN CHARGE OF THIS STUDY?

You are invited to participate in a study which aims to understand the way in which YouTubers who upload cover songs and/or remixes to YouTube, like yourself navigate technological and legal issues on YouTube.

This study is being undertaken by Giorgos D. Vrakas (the researcher) as part of his PhD at the University of Edinburgh's School of Law.

WHY IS THIS RESEARCH BEING CARRIED OUT & WHAT DOES PARTICIPATION INVOLVE?

As a follow-up to the questionnaire, you are asked to answer a few questions via email. The questions will ask you to elaborate on some of your responses from the questionnaire.

You will be asked to respond to these questions via email meaning that you will be able to respond in your own time. You will be asked to clarify, or answer follow-up questions by e-mail.

Your participation in this study is entirely voluntary.

If you have agreed to take part in this study and want to subsequently withdraw your participation, you may do so for any reason and at any point up to 30 calendar days after submitting your responses, by emailing the researcher.

WHAT ARE THE BENEFITS OF CONTRIBUTING TO THIS PROJECT?

You will not receive any financial benefits or costs for participating in this study. However, this study will further enhance our understanding of how musicians such as yourself navigate technological and legal issues on YouTube and enable the researcher to identify where improvements could be made. Your participation, is thus, highly important as you are a key actor in achieving this.

WHAT ARE THE POSSIBLE DISADVANTAGES AND RISKS OF TAKING PART?

Participating in this study could lead to the disclosure of information to the researcher regarding your unauthorised dissemination of cover songs and/or remixes on YouTube. However, your personal details, such as your username, will not be disclosed in any publication of this research. It will be impossible to link any of your responses back to you.

WHAT WILL HAPPEN TO THE DATA?

The data will be analysed, and results will be published and disseminated in the form of a PhD thesis, journal articles, conferences papers, blog posts and other documents.

All data will be saved securely and confidentially for a period of two years until after the researcher has graduated. This is to allow for publications of findings. The project data will then be destroyed. Access to the interview transcripts will be limited to the researcher and his supervisory team.

WHO CAN I CONTACT IF I HAVE QUESTIONS?

If you have any questions about this study, please contact the researcher at:

Thank you for agreeing to be interviewed as part of the above research project. Ethical procedures for academic research undertaken from UK institutions require that interviewees explicitly agree to being interviewed and how the information contained in their interview will be used. This consent form is necessary in order to ensure that you understand the purpose of your involvement and that you agree to the conditions of your participation.

CONSENT FORM

I agree with the following statements:

1. I have read and understood the purpose of this study and how data will be used and stored.
2. I have had the opportunity to ask questions before taking part in this study.
3. I can withdraw my participation for any reason and at any point up to 30 calendar days after submitting my responses, by emailing the researcher.
4. My responses will be analysed by the researcher.
5. My responses may be quoted directly without identifying me.
6. I understand that the information I provide will be used in the researcher's final thesis and other publications.
7. I understand that my responses will be kept securely for a period of two years after the researcher's graduation.
8. I am not being rewarded financially or otherwise for my participation.

Print Name: _____

E-mail: _____

Signature: _____

Date: _____

Template for email Interviews

Initial Questions

Content ID/Copyright Strike

- Overall, how have you found YouTube's Content ID and copyright policies in the time you have been uploading [cover songs/remixes/cover songs and remixes] to YouTube?

Rights clearance

- How has your experience been, with seeking to secure the rights to elements in the [cover songs/remixes/cover songs and remixes] you upload to YouTube been since you began uploading in [insert date]?

Attribution

- What has your experience with crediting the artists whose works you reuse in your [cover songs/remixes/cover songs and remixes] you upload to YouTube been since you began uploading in [insert date]?

Potential Probes about responses in Questionnaire

Content ID Claim

Upon receiving a Content ID claim, you reported that you [input response]. Could you please elaborate on this a bit further, explaining the reasoning behind your responses?

OR

You reported that you have never received a Content ID Claim and claim that the reason for this is that [input response]. Why do you think that is? Please try and explain your reasoning behind your opinion.

Copyright Strike

Upon receiving a copyright strike, you reported that you [input response]. Could you please elaborate on this a bit further, explaining the reasoning behind your responses?

OR

You mentioned that you have never received a copyright strike and claim that the reason behind this is that [input response]. Could you please elaborate on this a bit further, explaining the reasoning behind your responses?

Rights clearance

You mention that you have “secured all the rights to all elements in your video" before uploading it to YouTube. Could you elaborate on the process, by using an example of one of the [cover songs/remixes/works] you sought approval for, prior to uploading it to your YouTube channel?

OR

You mention that you have never “secured all the rights to all elements in your video" before uploading it to YouTube and claim that the reason for that is that [input response]. Could you elaborate on this a bit further, explaining the reasoning behind your responses?

Attribution

You mentioned that you always credit and that not doing so could result in [input response]. Could you elaborate on this a bit further, explaining the reasoning behind your responses?

Tables pertaining to the email interviews

Table 5: The nine top level codes for Phase two (email interviews).

Name	Sources	References
Content ID Claims	6	14
Content ID	1	2
Content ID = danger	1	1
Content ID claims do not affect prosumer	4	4
content ID helps with crediting	1	1
Content ID received claim immediately upon uploading	2	2
tricks to avoid getting caught by content ID	2	2
Using Content ID as a method of identifying rightsholders	1	2
Copyright Strike	6	16
Always delete my blocked videos	1	1
Copyright strike caused panic	1	1
Copyright Strikes	3	5
Copyright strikes - barriers	1	1
Copyright Strikes = Scary	1	3
Copyright strikes do not have an impact	1	1
Copyright strikes have an impact	2	2
size of channel influences whether or not you recieve a copyright strike	1	1
Counter-Claims	3	7
80% success rate of counter-claims	1	1
Counter-Claim	3	4
Counter-Claim is easy and efficient	1	1
how prosumers make the decision to file a counter claim	1	1
Crediting	6	16
Always credit	1	1
crediting as respect	1	1
crediting is important	1	1
crediting leads to exposure	1	1
Crediting makes you counter claim stronger	1	1
crediting may lead to the original artists hearing your remix which is 'AWESOME!'	1	1
Crediting results in no claims.strikes	1	2
Don’t always credit, but feel bad about it	1	1
naming and shaming for not attributing	1	1
not crediting is illegal	1	1
not crediting is immoral	1	1
not crediting is plagiarism	1	2
not crediting leads to legal action	2	2
How_Why I create	4	7

covers.remixes as an homage to the original creator	2	2
Generate traffic	1	1
I make covers.remixes for the exposure they give	1	1
materials reused sometimes leaked by artist or production company = fair game	1	1
my covers are exposure for the 'original' bands	1	1
remixes as exposure	1	1
Knowledge	7	24
Copyright knowledge	3	3
don't know where to obtain knowledge from	1	1
Evidence of knowledge of counter-claim	1	1
exceptions	2	3
knowledge of rights clearance	1	1
Lack of copyright knowledge	2	5
need for increased copyright knowledge	2	3
sound recording used = cannot monetise	1	1
The line is too blurry for me to understand, so i tried my best to avoid any legal action	1	1
Using discussion forums as a source of knowledge	2	2
using karaoke track which have copyright disclaimers	2	3
Monetising	7	19
intention to monetise remixes	1	1
It’s sad we can’t make money	1	1
Monetisation	6	12
monetisation may change the rules	2	2
never monetise	1	1
not doing it for the money	2	2
Other	6	17
copyright disclaimer	3	4
copyright policies restrict which songs i recreate	1	1
Don't care what other remix artists think	1	1
mashups - higher chance of getting a claim	1	1
Mimicking	1	2
Newly released Song = Higher chance of strike	2	2
noticed a difference throughout the years	1	4
Prosumers perspective of record labels view on covers and remixes	1	1
YouTube should be a place to nurture such creativity not hinder them.	1	1
Rights clearance Process	7	39
bigger bands tend to not give permission when compared to smaller bands	1	1
Claims are better than having to go through the rights clearance process	1	1

contacting smaller bands in person at concerts	1	1
Hard to contact rightsholders	3	3
no rights clearance since not doing it professionally	1	1
Platforms should get licenses	1	1
Positive attitude towards pseudo-pathway	5	11
Pseudo-pathway	2	3
Rights clearance	6	11
Rights clearance = Waiting Game	1	1
rights clearance is unfair	1	1
the rights clearance process is hard	3	3
The rights clearance process should be made easier	1	1