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Where's the Fair Use? Participatory Culture, Creativity, and Copyright on Youtube

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WHERE'S THE FAIR USE? PARTICIPATORY CULTURE, CREATIVITY, AND
COPYRIGHT ON YOUTUBE

by

Joe Barden

A Thesis Submitted in
Partial Fulfillment of the
Requirements for the Degree of

Master of Arts

in Media Studies

at

The University of Wisconsin-Milwaukee

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ABSTRACT

WHERE'S THE FAIR USE? PARTICIPATORY CULTURE, CREATIVITY, AND COPYRIGHT ON YOUTUBE

by

Joe Barden

The University of Wisconsin-Milwaukee, 2018
Under the Supervision of Professor David S. Allen

This thesis examines how citizens used YouTube to air concerns about copyright law and its influence on content creation. It studies the “Where’s the Fair Use?” (#WTFU) movement that was formed in February 2016 and used YouTube videos to oppose the site’s copyright systems. Using textual and discourse analysis, this thesis examines seven different videos and their respective comment sections. It analyzes how video is used to express dissent, it analyzes the movement’s discourse about fair use, and it examines how YouTube’s copyright systems influence participation. Among the findings, this thesis argues that videos are framed much like television news stories to create a sense of credibility and authenticity as well as a shared sense of space for the movement. It also suggests that while the movement’s discourses on fair use often express the values of a free culture, they also put forward more capitalist interests in an attempt to ensure the profitability of their work. The discourses expressed in the comments and videos often oppose one another and reveal YouTube as a site of conflict about the interpretation of copyright law and the role it ought to play in structuring expression in a democratic society.

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First, I want to thank anyone who takes the time to read this thesis. The work presented here is the culmination of over two years of writing and research, making it the most time and energy I've ever devoted to a single project. Whether you agree or disagree with my analysis, hopefully it prompts you to engage further with the issues presented throughout.

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CHAPTER I

INTRODUCTION

As a devout cinephile, my relationship with a film doesn't end when the movie does. It is only after the film has concluded that I often have the most profound experience; that is, discussing and analyzing the merits (or lack thereof) of the movie with others. Engaging in these discussions has been a part of my life for as long as I can remember. All throughout my childhood and even into my teenage years, my family had a weekly tradition every Saturday of eating pizza and watching movies. My parents' supervision during our family movie nights allowed me to be exposed to some more mature themes at a younger age by providing me with the proper context to understand films like *Jaws* and *The Godfather* (two of my favorite films when I was younger) and gave me a much-needed perspective on other cultures that existed outside of our rural Minnesota community.

As I got older, I began using the Internet as a resource to discuss films with others. One of my most frequented websites was the Internet Movie Database (IMDB). I got lost for countless hours looking at the trivia pages for my favorite films and engaging in discussions on the message boards. While I always valued talking with my own family about films, there was something special about being able to interact with people from all over the world to hear their own unique perspectives and discovering new movies in the process. It is because of experiences like this that I firmly believe everyone should be able to freely participate and engage in meaningful discussions about art. However, while the Internet has seemingly allowed for greater participation, many sites have adopted policies that restrict the voices of its users. One prominent example of this is the video sharing website YouTube.

Although YouTube was founded with the ideal of being able to “Broadcast Yourself” to the rest of the world, the site has also been used somewhat problematically as a tool for uploading copyrighted works without the permission of the author(s). YouTube’s primary method for dealing with copyrighted material is known as the Content ID system. The Content ID system works by scanning all uploaded videos for copyrighted content and alerting the copyright holder(s) of the perceived infringement. The copyright holder is then given three choices of what to do with the video: monetize the video from ad revenue, have the video immediately removed, or simply do nothing.¹ Although this has proven to be an effective method for detecting copyrighted content, the Content ID system has been controversial with content creators on YouTube. Creators want to use pieces of copyrighted material in their videos for the purposes of commentary, criticism, or parody to create new and unique pieces of art.

On February 16, 2016, Doug Walker, a popular YouTube film critic better known by his online persona of the “Nostalgia Critic,” uploaded a video to his channel titled “Where’s the Fair Use?” In the video, Walker discusses his own experiences with creating videos for YouTube and how the company’s copyright system has affected his ability to create. For someone like Walker, who has over one million subscribers² on YouTube, making web videos isn’t just a creative exercise, it’s also a way to make a living. While Walker uses copyrighted material from the films he’s discussing, such a use is permitted under fair use conventions which allow for the use of copyrighted material for uses such as criticism or parody.³ In the video, Walker describes his increasing frustration with a system that continuously fails to recognize fair use and allows big media companies to exploit content creators for their own personal gains. Walker’s position is

¹ YouTube Help, “YouTube Content ID,” YouTube video, September 28, 2010.

<https://www.youtube.com/watch?v=9g2U12SsRns>

² As of December 2017.

³ Andrew Mcwhirter, “Film Criticism, Film Scholarship and the Video Essay,” *Screen* 56, no. 3 (2015): 374.

best summarized in his own words by an impassioned monologue he delivers near the end of the video:

We're not going away. Content creators like us have only gotten bigger and all your attempts to keep us down have only made us stronger. No matter what you do, we will always find a way to comment, to praise, to criticize, to satirize, and to educate. And to all the YouTubers out there, whether you make a living at this or you just watch for entertainment, this is something we all need to stick together on because change is already happening If we can make it clear now that fair use is real, it's being abused and it's hurting the growth of industry that you love to watch or produce, we can create a more stable environment for new creators to produce great work. The Internet is a place where anyone can become famous – let's try to keep it that way.⁴

While Walker was by no means the first content creator to speak out against YouTube's flaws, his video sparked a larger movement encouraging other content creators to raise awareness about the issue and continue the conversation under the hashtag #WTFU (Where's the Fair Use?). Although the movement was started by a YouTuber with a focus on film criticism, it's important to acknowledge that the movement quickly attracted the support and participation of a diverse community of content creators. The Content ID system affects every YouTube user equally. Whether their videos focus on film criticism, reacting to other videos, creating mash-ups and remixes, or performing covers of songs, the #WTFU movement has provided content creators from all backgrounds the opportunity to come together under a shared set of ideals.

⁴ Channel Awesome, "Where's the Fair Use? – Nostalgia Critic," YouTube, February 16, 2016. <https://www.youtube.com/watch?v=zVqFAMotwaI>

With a set of ideals and goals firmly expressed in the video as a reaction and a resistance to a larger entity's policies, it's useful to examine a movement like this as a way in which the Internet and social media platforms like YouTube function as sites for social movements and protests. This thesis considers the #WTFU movement as a protest movement and how YouTube and online video sharing function for groups such as this to engage in modes of dissent. Perhaps one of the most intriguing and unique aspects about this movement is that its members are utilizing YouTube, the very platform they are protesting, to make their voices heard.

Additionally, this research seeks to develop a stronger idea of how YouTube and online video function in a protest movement. While other social media sites like Facebook, Twitter, and Instagram have incorporated the use of video as a feature, YouTube remains the only one of these platforms that is focused solely on the creation of videos. As Facebook and Twitter use predominately text-based status updates, and Instagram photos with captions, videos can incorporate both text and photos as well as audio and moving images to allow for a broader form of expression. This thesis explores the role of video in a protest movement and analyzes how web videos are used to express dissent.

Furthermore, as the nature of this protest movement is deeply concerned with issues of copyright, fair use, and free speech, this thesis also examines the changing nature of participatory culture on YouTube. One of the key concerns of the #WTFU movement is the dichotomy of YouTube attempting to be a platform for free creation and innovation for all users while simultaneously catering to the demands of larger media companies to protect their copyrighted content. This dichotomy parallels what media scholar Steve Collins identifies as a constant

tension between “cultural fairness” and “copyright fairness.”⁵ This tension is caused by creators who want to engage with and remix existing media and rights holders looking to protect their properties.⁶ This thesis analyzes the discourse of the #WTFU movement regarding how disputes over copyrighted material and fair use ought to be resolved on YouTube.

⁵ Steve Collins, “Digital Fair: Prosumption and the Fair Use Defence,” *Journal of Consumer Culture* 10, no. 1 (2010): 51.

⁶ Ibid.

CHAPTER II

LITERATURE REVIEW AND METHODS

To conduct this research, it is first necessary to review past literature that is relevant to this topic to provide proper context to the main issues being discussed. First, I examine the history of YouTube as both a company and as a social media platform. Doing so will offer a greater understanding of the ideals YouTube was founded on in addition to how the company fits into the broader social media landscape. This also includes examining past literature on the Content ID system and its similarities to previous methods of detecting cases of copyright infringement online. Next, I review literature relating to copyright law and fair use. This section is not meant to be an extensive coverage of the complete history of copyright law, but rather a more abbreviated and focused history that examines the issues that are most relevant to YouTube and the concerns of the #WTFU movement. The next section examines participatory culture as it relates to YouTube, specifically, the features of YouTube that make it representative of the ideals of a participatory culture. The nature of dissent in the networked age is discussed next. This section provides past understandings of what it means to dissent and engage in acts of resistance and different ways such acts have been carried out on the Internet. The final section examines the public sphere and how advances in technology have shaped modern discourse on platforms like YouTube.

History of YouTube

Founded in February 2005 by three former PayPal employees, Chad Hurley, Steve Chen, and Jawed Karim, YouTube aimed to foster an environment where users could freely share their experiences with the rest of the world through the medium of video. Hurley described YouTube

as being the “ultimate form of reality TV” that would allow an unfiltered glimpse into other people’s lives.⁷ One early inspiration for the site came from Janet Jackson’s infamous “wardrobe malfunction” during the Super Bowl halftime show in 2004. Karim noted that it was difficult to find any videos online that showed the wardrobe malfunction.⁸

Karim uploaded the first ever video to YouTube on April 23, 2005. The video, titled “Me at the Zoo,” is only 18 seconds long and features Karim talking directly to camera as he stands in front of a pair of elephants at a zoo. The following is a transcript of what Karim says in the video: “All right, so here we are in front of the elephants. The cool thing about these guys is that they have really, really, really, long, um, trunks. And that’s cool. And that’s pretty much all there is to say.”⁹

While “Me at the Zoo” doesn’t fit under the genre of comedy, much of the content uploaded to YouTube in its formative years drew comparisons to shows like *America’s Funniest Home Videos*, minus the comedic stylings of Bob Saget or Tom Bergeron providing commentary for each clip.¹⁰ Indeed, it was because of videos of teenagers performing ridiculous stunts (usually resulting in some form of injury), an animal doing something funny or out of the ordinary, and users’ personal video blogs (or, “vlogs”) that YouTube found its early success. In fact, by March of 2006, over 35,000 videos were uploaded to the site every day with 3 million videos being watched per day, making it the 30th most visited English language website that month.¹¹

⁷ Jefferson Graham, “Video Websites Pop Up, Invite Postings,” *USA Today*, November 21, 2005.

⁸ Jim Hopkins, “Surprise! There’s a Third YouTube Co-Founder,” *USA Today*, October 11, 2006.

⁹ Jawed, “Me at the Zoo,” YouTube video, April 23, 2005. <https://www.youtube.com/watch?v=jNQXAC9IVRw>

¹⁰ Ivor Tossell, “YouTube Is My Tube,” *The Globe and Mail*, March 24, 2006.

¹¹ *Ibid.*

YouTube provided an enticing service for those looking to watch and/or upload videos online by offering a more streamlined and user-friendly experience compared to rival video sharing websites. Creating a YouTube account to upload videos was free and had no other restrictions that might prohibit someone from being able to do so. For those simply interested in watching videos, no account was needed. Watching a video on YouTube was also free of pop-ups and large banner advertisements, something that was present on rival video sites like iFilm.com.¹² YouTube's video player also made it easy to embed videos into other web pages such as news articles, blog entries, or social networking sites like Myspace thereby eliminating the need to visit the main YouTube site to watch videos. Compared to its competitors, YouTube made the process of uploading a video significantly easier. Google Video, a rival to YouTube, required the user to download software to transfer the video files, upload the clip, fill out a form with the video's information (title, genre, description, etc.), and then wait for Google to approve the clip; a process which could take either hours or days.¹³ YouTube's ease of use also appealed to major companies like Nike who took advantage of the platform to create advertisements for their products.¹⁴

As its popularity continued to increase, some theorized that YouTube would replace television and become a primary source of entertainment, particularly for teenagers and a younger audience. As one newspaper reported, “[YouTube is] creating a new form of television that's at once personal, grassroots and unfettered.”¹⁵ This “new form of television” was marked

¹² Ibid.

¹³ It's worth noting here that Google would later purchase YouTube in November of 2006 and have it take the place of the Google Video service. Google no doubt saw the popularity and upside to YouTube's service and decided to acquire it rather than try and compete with it. See Graham for more on the process of uploading content to Google Video.

¹⁴ Ben Ratliff, “A New Trove of Music Video in the Web's Wild World,” *The New York Times*, February 3, 2006.

¹⁵ Michelle Quinn, “Video Could Kill the TV Too,” *The Courier Mail* (Australia), July 15, 2006.

by a few key differences from “old television.” First, YouTube videos were generally only a fraction of the length of television shows with the average clip running between a minute to two minutes in length. In fact, YouTube capped the maximum length of its videos at 10 minutes largely to prevent users from uploading copyrighted material such as full television episodes or films.¹⁶ Second, YouTube was not restricted in the same way as television with regard to censorship and regulation from governmental organizations like the Federal Communications Commission (FCC). Finally, YouTube allowed for a level of social engagement that simply wasn’t possible through television by putting the users in control of the content and allowing for instantaneous feedback and reactions from its viewers in the form of comments and response videos. YouTube’s slogan of “Broadcast Yourself” is the perfect embodiment of this engagement as it shifted the power from television networks to the user. YouTube ultimately had more in common with social networking sites like Facebook and Twitter than it did with television. Users can attract followers, comment on posts, “like” posts, and have status updates come in the form of videos rather than 140 characters of text. Although the “Broadcast Yourself” slogan might suggest a somewhat utopian view of YouTube’s cultural significance of being able to turn regular people into celebrities, many users have achieved a degree of fame and wealth through their videos.¹⁷

¹⁶ YouTube would later remove the 10-minute restriction on videos as it established new methods of handling copyrighted material through its Content ID system.

¹⁷ The popularity of YouTube personalities is most noticeable among teenagers and young adults. A 2014 survey found that teenagers are more influenced by content creators on YouTube (such as the comedy duo Smosh and videogame streamer PewDiePie) than celebrities like Jennifer Lawrence, Katy Perry, or Leonardo DiCaprio. See <http://variety.com/2014/digital/news/survey-youtube-stars-more-popular-than-mainstream-celebs-among-u-s-teens-1201275245/> for additional details from this survey. For a list of some of the highest earning YouTube personalities, see <http://www.tvguide.com/galleries/youtube-stars-make-more-1089689/>

The opportunity to broadcast yourself to the world appealed to ordinary people in a way that few other websites did and revealed a shift in the practice of making home movies that had broader social implications. As media scholar Michael Strangelove argues:

Throughout the last century, home moviemaking was largely a domestic, private activity of the economically privileged. This meant that home movies were shaped by the dominant cultural practices, ideals, and sensibilities shared by a narrow slice of the population.¹⁸

By providing a platform that offered equal access to everyone in the world, YouTube made it possible for all users to create and share videos regardless of their economic and cultural status. Whether the user was shooting video on a high-quality camcorder, a cell phone, or a webcam, the barrier to entry for new content creators was relatively low as anyone with access to such a device could create a web video.

The Content ID System

Although copyright holders can submit claims directly to YouTube about any videos they believe are infringements, YouTube developed the Content ID system in 2007 to make it easier for copyright owners to “identify and control” content.¹⁹ However, it’s important to note that the Content ID System’s creation was largely the result of legal action against YouTube. In 2007, Viacom sued YouTube for \$1 billion dollars for hosting tens of thousands of copyrighted videos. YouTube argued that if they complied and removed the infringing material when notified that they were not liable for the content users uploaded. To help further ease tensions with copyright

¹⁸ Michael Strangelove, *Watching YouTube: Extraordinary Videos by Ordinary People*, (University of Toronto Press, 2010), 39-40.

¹⁹ YouTube Help, “YouTube Content ID.”

holders, YouTube created the Content ID system to track infringing content and let copyright holders decide what action(s) to take.²⁰

The Content ID system operates similar to a police fingerprint database. The Content ID system scans through videos uploaded on YouTube and marks any video that contains even small fragments of matched copyrighted material.²¹ The practice is controversial within the YouTube community. As one critic noted:

By relying on a system that automatically matches, blocks, and monetizes videos that allegedly contain any amount of infringing content, both YouTube and copyright holders have promoted a system that opposes the Copyright Act and YouTube's goals of promoting creativity and protecting fair use.²²

YouTube has tried to reassure content creators that “most” copyright claims will not adversely affect the standing of their accounts.²³ However, having their videos monetized by a third party *does* affect their accounts, regardless of whether a content creator is banned due to a copyright claim. For full-time YouTube content creators (those who make their living by creating YouTube videos), such claims limit their earned revenue. Copyright claims can also be made by third parties with little to no proof that they are, in fact, the rightful owners of the copyrighted material. YouTube has responded to criticisms of questionable rights holders making claims by saying, “Online rights are often resold to companies like music labels and aggregators. While you might not recognize the owner, this doesn't necessarily mean their claims

²⁰ Miguel Helft, “Judge Sides with Google in Viacom Video Suit,” *The New York Times*, June 23, 2010.

²¹ Kevin Delaney, “YouTube to Test Software to Ease Licensing Fights,” *The Wall Street Journal*, June 12, 2007.

²² Benjamin Boroughf, “The Next Great YouTube: Improving Content ID to Foster Creativity, Cooperation, and Fair Compensation,” *Albany Law Journal of Science & Technology* (2015): 95-96.

²³ Alli Pyrah, “YouTube Responds to Criticism of Content ID Copyright Protection System,” *Managing Intellectual Property*, December 2013.

are invalid.”²⁴ Drafting guidelines for what is acceptable use in digital mediums with regard to copyright is a task that is delegated to speech lawyers. Companies like YouTube must carefully consider their “Terms of Use” with the help of lawyers to determine a set of rules that best reflect the service and its community.²⁵ Another reason the Content ID system was implemented was because YouTube simply doesn’t have the staff needed to review the hundreds of hours of video that are uploaded every minute to the website.²⁶ To protect their company from legal action for carrying copyrighted works, YouTube holds content creators accountable for their posts.²⁷ According to speech lawyers, the most important aspect of protecting free speech in digital mediums is “[to] ensure that Internet platforms will not be subject to crippling damages for anything a person publishes on their platforms.”²⁸

Copyright Law and Fair Use

The Copyright Act of 1976 was the last major rewriting of copyright law in the United States. The main purpose of this act was to protect works of authorship as well as the authors themselves. In order for a work of authorship to be granted copyright protection, it “must be original, fixed in a tangible medium of expression, and fall within one of eight broad subject-matter categories of protected works.”²⁹ The eight broad subject-matter categories of protected works are defined as:

²⁴ Ibid.

²⁵ Marvin Ammori, “Freedom of the Press: The ‘New’ New York Times: Free Speech Lawyering in the Age of Google and Twitter,” *Harvard Law Review* 127 (2014): 2273.

²⁶ Ibid.

²⁷ Ibid., 2285.

²⁸ Ibid.

²⁹ Ryan J. Richardson, “The Art of Making Art: A Narrative of Collaboration in American Theatre and a Response to Calls for Change to the Copyright Act of 1976,” *Cumberland Law Review* 42, no. 3 (September 2011): 497.

(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.³⁰

Works *not* protected under copyright law are defined as “any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”³¹ Notably, the act also extended copyright protection for the duration of an author’s life in addition to fifty years after their death. However, The Copyright Term Extension Act of 1998 later granted an additional twenty years of copyright protection to the author.³²

The Copyright Act of 1976 also introduced the fair use doctrine. Fair use allows for the use of copyrighted material without permission from the owner under certain circumstances. In determining if a work is fair use, four factors are considered. These four factors include:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.³³

³⁰ “17 U.S. Code § 102 - Subject Matter of Copyright: In General,” Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/102>

³¹ *Ibid.*

³² “17 U.S. Code § 302 - Duration of Copyright: Works Created on or After January 1, 1978,” Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/302>

³³ “17 U.S. Code § 107 - Limitations on Exclusive Rights: Fair Use,” Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/107>

Additionally, the doctrine states that copyrighted works may be used “for purposes such as criticism, [commentary], news reporting, teaching (including multiple copies for classroom use), scholarship, or research.”³⁴ Works that meet the four factors and are used for one of these purposes are more likely to be considered fair use.

However, what works are considered fair use is determined on a case-by-case basis in the courts. As such, fair use is rather ambiguous as a topic as different sources interpret the law in various ways. The ambiguity and difficulty in defining what constitutes fair use is perhaps best captured by one scholar: “Fair use is an equitable rule of reason that tries to balance two seemingly contrary rights guaranteed by the U.S. Constitution: freedom of speech and copyright protection.”³⁵ The Constitution gave Congress the power, “To promote the Progress of Science and Useful Arts, by securing for a limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries.”³⁶ The idea of “promoting progress” has been of interest to copyright scholars who argue that the intent of the framers was to encourage creativity rather than protect property.³⁷

One of the ways legal systems have attempted to make clearer definitions of fair use is through the concept of a “transformative use.”³⁸ Transformative uses emphasize the purpose by which copyrighted material is reused. The Third and Ninth U.S. Circuit Courts, in addition to the State of California, designed the “transformative use test” to determine whether works added a

³⁴ Ibid.

³⁵ Susan Bielsten, “Fair Use and Its Users,” *Cinema Journal* 52, no. 2 (Winter 2013): 127-131.

³⁶ Bill Ivey, *Arts, Inc.: How Greed and Neglect Have Destroyed our Cultural Rights* (Berkeley: University of California Press, 2010) 13.

³⁷ Ibid.

³⁸ Peter Decherney, “Fair Use Goes Global,” *Critical Studies in Media Communication* 31, no. 2 (May 2014): 147.

significant amount of creative transformativity to an original expression.³⁹ For example, parody is an acceptable transformative use under the test as parodies do not threaten the original work's economic viability and also provide commentary on the original work.⁴⁰ However, the idea of what constitutes a transformative use has been particularly controversial with works of art. Some artists believe that updating and transforming old art to create new works is a fair use. Other artists argue that such uses are copyright infringement and neglect the original artist's exclusive rights to make derivative works of the original art.⁴¹

The rapid advancement of technology since The Copyright Act of 1976 has introduced new concerns about fair use that didn't exist when the law was written. P. Bernt Hugenholtz argues that "a major cause of this crisis in copyright is the increasing gap between the rules of the law and the social norms that are shaped, at least in part, by the state of technology."⁴² As technologies and their use change, the laws of copyright that affect technology must also change. Since fair use was first conceived in 1976 (at least in the United States), the rules governing fair use need to be revised for the current times, particularly in the age of YouTube. Some past research has viewed YouTube content creators' modification and edits of preexisting media from film, television, or other forms of media as a form of "co-authorship."⁴³ This validates the ideas of criticism and commentary as they pertain to fair use and suggests that original content can still be created on YouTube while also crediting the sources of the original work. In other words,

³⁹ Kevin L. Chin, "The Transformative Use Test Fails to Protect Actor-Celebrities' Rights of Publicity," *Northwestern Journal of Technology and Intellectual Property* 13 (2015): 198

⁴⁰ Ibid.

⁴¹ Patricia Cohen, "Photographers Band Together to Protect Work in 'Fair Use' Cases," *The New York Times*, February 22, 2014.

⁴² P. Bernt Hugenholtz, "Fair Use in Europe," *Communications of the ACM* 56, no. 5 (May 2013): 26-28.

⁴³ Marta Dynel, "Participation Framework Underlying YouTube Interaction," *Journal of Pragmatics* 73 (November 2014): 37-52.

YouTube content creators are not infringing on the copyrighted text, rather, they are creating their own work through use of existing materials.

Additionally, fair use and copyright laws differ from country to country, which only further complicates how works on the Internet are protected by copyright law. Many countries don't even include fair use within their copyright legislation. Since YouTube is accessible all around the world and has its own guidelines for copyright law and fair use, video content is then susceptible to both federal legislation and YouTube's own regulations and standards. Some scholars have argued that companies like Google and YouTube are ultimately more influential at shaping discourses concerning copyright than governments as they are free to enforce their guidelines and standards on their users as they see fit.⁴⁴ Yet, issues of free speech and copyright on the Internet are most often rooted in the American free speech doctrine. This is because lawyers at tech companies are typically educated in American law schools resulting in American ideals concerning free speech becoming the norm for global companies like Google and YouTube.⁴⁵

With the rise of the Internet for public and commercial use in the 1990s, new amendments to The Copyright Act of 1976 were introduced to properly regulate copyrighted material in cyberspace. The first such act was the No Electronic Theft Act (NETA) which was enacted in 1997. One of the most notable changes NETA made to the existing copyright law is that copyright infringement was extended to other circumstances beyond using copyrighted

⁴⁴ Ammori, "Freedom of the Press: The 'New' New York Times: Free Speech Lawyering in the Age of Google and Twitter," 2261.

⁴⁵ Ibid., 2283.

material for commercial use or financial gain.⁴⁶ NETA also introduced new punishments for digital copyright infringement. The law states:

A person who electronically reproduces or distributes copyrighted works having a retail value of \$1,000 or more may be convicted of a misdemeanor, and someone who commits the same offense where the copyrighted works have a retail value of \$2,500 or more may be convicted of a felony.⁴⁷

On October 12, 1998, The Digital Millennium Copyright Act (DMCA) was passed to address new concerns over copyright presented by the Internet and other new technologies. Specifically, the act introduced new penalties for copyright infringement online. The most pertinent section of the DMCA in relation to YouTube is the “notice and take down” procedure. According to the law,

If a content owner “reasonably believes” that an online service provider is misusing copyrighted material and notifies the provider according to statutory procedures, or if the provider becomes aware of an infringement in any other way, then the provider must expeditiously remove the material or disable public access to it or face severe penalties.⁴⁸

Under the DMCA, an individual can be fined up to \$500,000 or face up to five years in prison for a first-time offense.⁴⁹ However, the DMCA also limits websites’ liabilities for hosting

⁴⁶ Andrew Grosso, “The Promise and Problems of the No Electronic Theft Act,” *Communications of the ACM* 43, no. 2 (February 2000): 23-26.

⁴⁷ Ibid.

⁴⁸ Royal Van Horn, “The Digital Millennium Copyright Act and Other Egregious Laws,” *Phi Delta Kappan* 84, no. 3 (November 2002): 248

⁴⁹ “17 U.S. Code § 1204 - Criminal Offenses and Penalties,” Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/1204>

user content that infringes copyright. Section 512 of the DMCA has safe harbor provisions that protect websites from being liable for user infringements if the websites remove the infringing content when notified.⁵⁰

Participatory Culture on YouTube

Henry Jenkins first popularized the concept of participatory culture in 1992 with his book *Textual Poachers*. The book was largely concerned with analyzing fandom, particularly female fans of science fiction television programs, and looking at fan communities not simply as consumers but as creators who appropriate and remix texts as part of their own creative culture.⁵¹ Jenkins borrows from Raymond Williams who saw culture as “ordinary,” the “sum of total human experience,” and ranging from the everyday experiences of our lives to thoughtful means of artistic expression and deeply held beliefs.⁵² The digital age of Web 2.0 has created many additional opportunities for participation and, as Williams suggested, the use of modern technology like smartphones, laptops, and tablets has become quite ordinary for a significant population of the world.

Jenkins outlines a few key characteristics of participatory culture. These factors include: a culture with low barriers of entry for expression and engagement, support from the community for creating and sharing one’s work, an “informal mentorship” where the more experienced members of the culture share their knowledge with novices, and each member’s contributions to the culture are important with a degree of social connection among members.⁵³ Each of these

⁵⁰ “17 U.S. Code § 512 - Limitations on Liability Relating to Material Online,” Legal Information Institute. <https://www.law.cornell.edu/uscode/text/17/512>

⁵¹ Henry Jenkins, Mizuko Ito, and danah boyd, *Participatory Culture in a Networked Era*, (Cambridge: Polity Press, 2016), 1-2.

⁵² *Ibid.*, 2.

⁵³ *Ibid.*, 4.

characteristics can be applied to YouTube to gain a greater understanding of how participatory culture functions on the platform. YouTube meets the criteria of having a low barrier of entry for expression and engagement in three distinct ways. First, anyone can create an account on YouTube and it is free to do so. Were YouTube to require its members to pay a monthly fee to use the service, it's likely that fewer users would submit their videos to YouTube and would favor uploading to other free services such as Vimeo, Facebook, or Twitter. This is especially true of users who do not frequently use YouTube to upload videos and would have difficulty justifying paying money for an account that is used infrequently.

Second, YouTube's original slogan of "Broadcast Yourself" appeals to content creators by suggesting equal access to a platform where users can broadcast a message to the entire world. In this way, YouTube can be viewed as a democratic platform where everyone has an equal opportunity to have their voices heard regardless of gender, race, income, etc. Cutting through the economic divide and ensuring that all users have equal opportunities to share content is especially important when considering video content. The price, quality, and type of video recorders can vary greatly from a cellphone camera to a webcam to a professional-level camcorder. Yet, on YouTube, it doesn't matter what kind of access users have to video recording devices. In this sense, a teenager recording a video from their webcam has the same opportunity to have the content they create viewed by millions of people on YouTube as a Hollywood filmmaker with access to high-end video equipment.

Third, YouTube encourages engagement from its users in different ways. YouTube co-founder Jawed Karim identified four key features that increased user engagement on the site: the inclusion of a "related videos" tab that suggested new videos for visitors to help increase user retention, e-mail links that made sharing videos with friends easier, a comment section that

allowed both the audience and the content creator to interact with one another, and a video player that could be easily embedded into other social networking sites, blog posts, and news articles.⁵⁴ While these may seem like obvious features to be included on every social networking platform, they were vital for establishing YouTube as an environment that encourages participation and sharing from its audience.

Having support from the community for creating and sharing work can have two different implications on YouTube. First, that support is coming from the audience who spends time on YouTube to view videos and, second, that content creators are supporting one another to create and share. Both implications are valid when considering how members of the community support one another. Jenkins notes that one of YouTube's functions is to serve as a "site of exchange" for various subcultures who use video to continue the group's existing conversation.⁵⁵ In this example, the community is functioning as both viewers *and* content creators.

Having an "informal mentorship" where the more experienced members of a culture share their knowledge with novices is perhaps the most difficult feature to immediately identify, but one that can be clearly observed on YouTube, nevertheless. One way this is observed is through the popularity of do-it-yourself (DIY) videos on YouTube that are created specifically to teach other members of the community new skills or too enhance their existing knowledge of a subject. These can range to everything from videos on home repairs, computer troubleshooting, makeup tutorials, recipes for food dishes, and walkthroughs for video games. The addition of the

⁵⁴ Jean Burgess and Joshua Green, *YouTube: Online Video and Participatory Culture*, (Cambridge: Polity Press, 2010), 2.

⁵⁵ Jenkins, et al., *Participatory Culture in a Networked Era*, 18.

comment section also allows “novices” to communicate directly with the more experienced members of the community to ask additional questions and leave feedback.

The final feature of a participatory culture states that each member’s contributions to the culture are important with a degree of social connection among members. In terms of member’s contributions being important, this is perhaps the most easily visible feature that YouTube has because it simply would not exist without contributions from its members. While it can be argued that YouTube is merely a platform to sell advertising (which is a valid criticism as that’s how the company makes money), advertisers want to reach a broad audience and the near-endless amount of content available on YouTube allows advertisers to target a diverse audience. This would not be possible if it wasn’t for each individual’s unique contributions to the site.

However, it’s also important to acknowledge one significant limitation to participation on YouTube that has direct implications on the #WTFU movement. As the Content ID System scans every video uploaded to YouTube, content creators’ activity is consistently monitored on the site. Some creators may feel limited in what they can upload and if they fear their content might receive a copyright claim, this can act as a deterrent for creators to express themselves. This phenomenon is known as the “chilling effect” where the fear of legal repercussions constrains expression.⁵⁶ This is particularly relevant to the #WTFU movement as the group is concerned that their fair use works are being viewed as copyright infringements by YouTube’s systems.

Since Jenkins first coined the concept of participatory culture in 1992, the many advancements in technology since have allowed for even greater opportunities for participation.

⁵⁶ Don R. Pember and Clay Calvert, *Mass Media Law*, (New York: McGraw-Hill, 2013), 47.

Where Jenkins identified the more social features of a participatory culture, Madhavi Sunder identifies the technological features. One of the most crucial distinctions made by Sunder is the feature of “many-to-many interactivity.” Prior to the Internet, traditional media were limited to either one-to-one interactivity (two people talking on the phone) or one-to-many non-interactivity (a radio or television broadcast). The Internet allows many people to communicate with many others simultaneously.⁵⁷ The most important aspect of many-to-many interactivity on the Internet is that it democratizes the speech of users in a way that traditional forms of media (such as television, radio, and newspapers) weren’t capable of. Such traditional forms of media tended to privilege access to those in power without giving equal access to citizens.

Many-to-many interactivity is perhaps most easily observed in chat rooms or group messengers where users can instantly send and receive messages to other users, but it’s important to consider YouTube’s potential for many-to-many interactivity, specifically within the #WTFU movement. As #WTFU functions as a group with a collective set of goals and ideals, it promotes the idea of many people coming together to send a message. While these messages are targeted to specific entities (namely, YouTube and media corporations), the message has the potential to be received by millions of people who watch the videos. However, user engagement does not end with simply watching the video. From there, viewers can leave comments on the video that also have the potential to be seen by millions of users and can supplement the information contained within the video. For example, a comment might direct users to another video or even a petition concerning fair use on YouTube. The use of the hashtag in the group’s name

⁵⁷ Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice*, (New Haven, CT: Yale University Press, 2012), 69.

encourages users to share videos on other social media platforms to achieve even greater visibility.

Jack Balkin argues that digital technologies have changed the nature of free speech and society must adapt to a more democratic culture where everyone has equal opportunities to both participate in and produce culture. Balkin states that freedom of speech is both interactive and appropriative. It's interactive as speech involves listeners and speakers (with people alternating between the two roles) and is appropriative because people use existing cultural resources to express themselves.⁵⁸ For instance, film reviews on YouTube that use clips from movies are appropriating an existing cultural artefact to provide their own unique criticism and analysis of the text. Balkin views this kind of participation as being essential to culture because “we are made of culture” and to participate means to shape the world around us and solidify our own identities.⁵⁹

Two of Balkin's key concepts are strategies for users to have their voice heard on the Internet in a world that is dominated by messages from the mass media. This section of Balkin's work is dated somewhat as the major social networking services of today that allow users to reach a wide audience were either not yet developed or, in the case of Facebook, only available to a small audience. Nevertheless, the strategies put forth by Balkin remain relevant for how users engage in different forms of participation on the Internet today. Balkin states that the Internet offers two different strategies for reaching a large audience online: “routing around” and “glomming on.”

⁵⁸ Jack M. Balkin, “Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society,” *New York University Law Review* 79 (April 2004): 4-5.

⁵⁹ *Ibid.*, 6.

Routing around means to reach an audience directly “without going through a gatekeeper or intermediary.”⁶⁰ Balkin offers the example of a band being able to independently distribute copies of their music using the Internet.⁶¹ Balkin’s assertion here is that the Internet provides the opportunity for artists to distribute their work online without being signed to a record label or having another entity distribute their music for them. In this case, the record company would be serving as the intermediary as they are the link that would allow a band to distribute its music. YouTube offers everyone the same opportunity to have their music heard whether it’s multi-platinum artists like Taylor Swift or Beyoncé or a group of high school students playing music in their parents’ garage.

Balkin predicted that mass media would likely be the dominant source of entertainment for the foreseeable future as its production costs allowed for “much more impressive and entertaining content than most individuals can.”⁶² This is where YouTube has proven to be most successful at routing around. Even in the early years of YouTube, some critics were quick to recognize the service’s potential and hypothesized that YouTube could soon replace television as a primary source of entertainment for teenagers and young adults.⁶³ While it may not have entirely replaced people’s desires to watch television shows, YouTube did change the way in which we consume video content, specifically, by streaming it online through our computers and other portable devices rather than through a television set. In February of 2017, Google

⁶⁰ Ibid., 10.

⁶¹ It’s worth distinguishing whether YouTube can be classified as part of the mass media in the context of Balkin’s argument. While it might be easy to classify YouTube as part of the mass media (especially since it’s owned by Google, one of the largest corporations in the world), Balkin seems to be referring to a much more exclusive group of mass media, specifically, large broadcasting corporations, Hollywood film studios, and publishing houses. Indeed, one of the central arguments of Balkin’s article is that the majority of mass media are owned by a select few corporations resulting in fewer unique voices and limited participation for citizens. So, while YouTube could be considered a form of mass media, it doesn’t have the same qualities that Balkin cites when he uses the term.

⁶² Ibid.

⁶³ Quinn, “Video Could Kill the TV Too.”

announced that a billion hours of video were watched every day on YouTube.⁶⁴ This statistic shows that a site built around the idea of user-submitted content can be just as, if not more, popular than the types of mass media Balkin references.

The other strategy for dealing with the mass media is glomming on. Glomming on means to appropriate things from the mass media by providing commentary, criticism, and ultimately creating new texts out of existing ones.⁶⁵ The strategy of glomming on is very similar to the concept of fair use. Once again, YouTube has proven to be a strong venue for glomming on and innovation from its users. Whether this is through parodies of songs, using clips from films for reviews, or the popular genre of “let’s play” videos which provide reactions and commentary to video games.

Similar to the concept of a participatory culture is Lawrence Lessig’s idea of a free culture. Lessig defines a free culture as one that “supports and protects creators and innovators” where content creators are free to appropriate and build on the culture of the past without being limited or controlled by intellectual property rights.⁶⁶ This is not to suggest that Lessig is opposed to intellectual property rights and copyright law; rather, that the existing laws have far too often been used to hinder others’ creativity and freedom of speech. Lessig says that the opposite of a free culture is a “permission culture” wherein creation is only possible with permission from those in power or the creators of the past.

⁶⁴ “You Know What’s Cool? A Billion Hours,” Official YouTube Blog, February 27, 2017. <https://youtube.googleblog.com/2017/02/you-know-whats-cool-billion-hours.html>

⁶⁵ Jack M. Balkin, “Digital Speech and Democratic Culture,” 11.

⁶⁶ Lawrence Lessig, *Free Culture: The Nature and Future of Creativity*, (New York: Penguin Press, 2005), xiv.

One of Lessig's central arguments for a free culture is that humans learn by tinkering. As Lessig notes, "Just as kids learn how to write by writing lots of terrible prose, kids learn how to write media by constructing lots of (at least at first) terrible media."⁶⁷ Yet, as Lessig states, learning by tinkering with past artifacts isn't just a useful method for learning, it has also been an integral part of popular culture. Lessig refers to the works of Walt Disney who often took the ideas for stories and characters from fairy tales and folklore and simply updated them for a modern audience. This sort of "Walt Disney creativity," as Lessig refers to it, is something to be celebrated as it encourages people to express their creativity while also celebrating the history of past cultures.⁶⁸ Lessig has similarly argued for the importance of "remix culture" which sees culture as being enriched by users who create new works by sampling and modifying previous works.⁶⁹

Dissent in a Networked Age

In important ways, the #WTFU movement represents a form of dissent. Cass Sunstein defines dissent simply as the "rejection of the views that most people hold."⁷⁰ For Sunstein, dissent is best viewed as being an opposition to conformity or doing as others do. Although Sunstein argues for the necessity of dissent in society, he acknowledges that conformity can often be a logical course of action. If a person isn't sure what to do or lacks sufficient information on an issue, it is often easiest to simply follow the crowd and form a more informed opinion later. Furthermore, if conformity is producing positive results in society, then there may

⁶⁷ Ibid., 36.

⁶⁸ Ibid., 24.

⁶⁹ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, (New York: Penguin Press, 2008).

⁷⁰ Cass R. Sunstein, *Why Societies Need Dissent*, (Cambridge: Harvard University Press, 2003), 7.

be no need to dissent. Yet, Sunstein concludes that societies need dissent and are far more likely to prosper from having a diverse set of views with citizens who don't isolate themselves from opposing points of view.⁷¹ A specific type of dissent is classified as "resistance." While dissent can refer to taking an opposition view to that of the majority, resistance is an active stance against sources of power by way of social activism.⁷²

Using the Internet to organize and engage in dissent dates to the 1990s when activists began creating websites and using e-mail to communicate. However, while these websites provided details for others interested in participating in a cause, they generally lacked more interactive features to effectively engage with the public due to the limitations of Web 1.0 applications.⁷³ By contrast, today's social media platforms (like YouTube, Facebook, and Twitter) effectively use a model of horizontal communication, meaning that all users belong to the same level of hierarchy and are thus able to communicate more efficiently with one another. The result is a network-based form of organization that establishes direct lines of communication between users.⁷⁴

The networked age has facilitated a new era of activism (often referred to as "hashtag activism") that has enabled social movements to raise awareness for an issue by using social media to reach millions of other users and allows protesters to organize more efficiently. Compared to other social media sites, Twitter is perhaps most associated with using hashtags. However, the hashtag was not originally included as a feature on Twitter and was first used in

⁷¹ Ibid., 210-211.

⁷² John Michael Roberts, "Public Spaces of Dissent," *Sociology Compass* 2, no. 2 (March 2008): 654.

⁷³ Yannis Theocharis, "The Wealth of (Occupation) Networks? Communication Patterns and Information Distribution in a Twitter Protest Network," *Journal of Information Technology & Politics* 10, no. 1 (January 2013): 38.

⁷⁴ Ibid., 50.

August of 2007. Moreover, the feature was not introduced by a Twitter employee, rather, it was Twitter user Chris Messina who first suggested using the pound sign for grouping topics together. After sending out his original Tweet that proposed the idea of the hashtag (“how do you feel about using # (pound) for groups. As in #barcamp [msg]?”), Messina stated that he was inspired by the use of the pound symbol in Internet Relay Chat (IRC) to denote the name of a chat room.⁷⁵ Although the use of hashtags quickly caught on after Messina’s tweet, Twitter didn’t fully adopt and implement the feature until 2009 when text that came after a pound sign functioned as a hyperlink and made it easier for users to browse trending topics.⁷⁶

One of the earliest noteworthy uses of hashtags came in October 2007 during California’s wildfire season. The wildfires were particularly bad in Southern California and the San Diego region, prompting the use of the hashtag “#sandiegofires.” Twitter proved to be a more useful resource than the “official updates” coming from the government and weather alerts as residents could receive instant updates on the wildfires from other users in the area.⁷⁷ Yet, as hashtags began to grow in popularity, misuse of the feature also started to spread, particularly with using hashtags to disperse spam messages. Twitter’s terms of use state that any account that “post[s] multiple unrelated updates to a topic using #, trending or popular topic, or promoted trend” is subject to permanent suspension.⁷⁸

⁷⁵ Chris Messina, “Groups for Twitter; or a Proposal for Twitter Tag Channels,” *Factory Joe*, August 25, 2007. <https://factoryjoe.com/2007/08/25/groups-for-twitter-or-a-proposal-for-twitter-tag-channels/>

⁷⁶ Kate Scott, “The Pragmatics of Hashtags: Inference and Conversational Style on Twitter,” *Journal of Pragmatics* 81 (2015): 8-20.

⁷⁷ Mark Gibbs, “Giving Tweets More Context; Hashtags are a Major Advance in Providing More Context to Twitter Postings,” *Network World*, June 25, 2008.

⁷⁸ “The Twitter Rules,” accessed December 12, 2016. <https://support.twitter.com/groups/56-policies-violations/topics/236-twitter-rules-policies/articles/18311-the-twitter-rules>

The use of hashtags has been an important tool for protest movements, ushering in the era of hashtag activism. While the term “hashtag activism” wasn’t coined until 2011 when an article in *The Guardian* used it to describe the Occupy Wall Street protests, the principles of hashtag activism date back to 2009 with protests in Moldova and later that year in Iran.⁷⁹ On June 12, 2009, it was announced that incumbent Iranian President Mahmoud Ahmadinejad had secured his re-election with a majority vote of 63%. Within hours after the results were announced on the Iranian Islamic Republic News Agency, protesters took to the streets of Iran to dispute the results after Ahmadinejad’s opponents, Mir-Hossein Mousavi and Mehdi Karroubi, suggested the election was rigged.⁸⁰ This led to many protesters utilizing Twitter and other social networking services to help organize protests and send live updates from the streets using the hashtag #IranElection. Others created accounts on Twitter that provided links to images and videos of what was happening in Tehran and other major cities, such as the “mousavi1388” account which encouraged protesters to remain vigilant and keep fighting. As a company, Twitter was aware of the importance of their service to the Iranian people and postponed scheduled maintenance that would have shut down the site for an entire day. Twitter said it was providing “an important communication tool in Iran.”⁸¹

Nevertheless, the practice of hashtag activism has been the subject of criticism with some labeling it “slacktivism,” or, “slacker activism.” Some critics argue that social media and hashtag activism have only “deadened the passion for actual activism and caused many people to simply

⁷⁹ Eric Augenbraun, “Occupy Wall Street and the Limits of Spontaneous Street Protest,” *The Guardian*, September 29, 2011.

⁸⁰ Philipp S. Mueller and Sophie Van Huellen, “A Revolution in 140 Characters? Reflecting on the Role of Social Networking Technologies in the 2009 Iranian Post-Election Protests,” *Policy & Internet* 4, no. 3-4 (December 2012): 184-205.

⁸¹ Brad Stone and Noam Cohen, “Social Networks Spread Defiance Online,” *The New York Times*, June 15, 2009.

rely on their sometimes anonymous clicks to speak for them.”⁸² An example of hashtag activism that received criticism was #BringBackOurGirls. After 276 schoolgirls were kidnaped in Chibok, Nigeria, in April 2014, First Lady Michelle Obama initiated the hashtag when she tweeted a photo of herself on May 7, 2014, holding a sign that read “#BringBackOurGirls.” Since the First Lady’s original tweet, #BringBackOurGirls has been retweeted more than 6 million times and has attracted the attention of politicians and celebrities all over the world.⁸³ However, a Fox News panel was particularly critical of the hashtag as being a futile “exercise in self-esteem” with panelist George Mill adding, “Are these barbarians in the wilds of Nigeria supposed to check their Twitter accounts and say, ‘Uh oh, Michelle Obama is very cross with us, we better change our behavior?’”⁸⁴

While there’s some validity in these criticisms (a hashtag alone won’t rescue kidnapped girls), it’s nevertheless important to acknowledge the positive effects of online dissent and hashtag activism. A 2010 study by Georgetown University’s Center for Social Impact Communication found that those who engage with hashtag activism and other forms of social media protest were more likely to take action to help a cause, specifically by donating money, volunteering their time, and recruiting others to sign a petition.⁸⁵ One of the main purposes of activism and protests is to raise awareness about an issue and start a dialogue in society. With a

⁸² Craig A. Thompson, “Commentary: So You Clicked ‘Like,’ but Then What?” *The Daily Record*, September 27, 2012.

⁸³ Christina Lamb, “A Fight for the Soul of the World,” *The Sunday Times*, March 20, 2016.

⁸⁴ Catherine Taibi, “Fox News Panel Slams #BringBackOurGirls Hashtag Activism,” *The Huffington Post*, May 11, 2014.

⁸⁵ Katya Andresen, “Why Slacktivism is Underrated,” *Mashable*, October 24, 2011.
<http://mashable.com/2011/10/24/slactivism-cause-engagement/#9moN142zRqqU>

platform that has users watching a billion hours of video a day, YouTube offers dissenting messages a wide audience.

Another important method of expressing dissent online is known as “hacktivism.” While hacktivism is used for many different purposes, in the broadest sense, hacktivism is about hacking technology to promote some form of social change.⁸⁶ Although its members are not explicitly hacking YouTube’s technology, the #WTFU movement parallels the ideals of hacktivism in several ways. The term “hacking” was originally used to describe “an innovative use of technology to solve a problem.”⁸⁷ By using YouTube videos to protest the site’s copyright systems, the #WTFU movement effectively uses the site as a platform to address issues of fair use and free speech online. This practice is similar to the hacktivism technique of “site defacements” which alter a website’s content to express a message.⁸⁸

Technology and the Public Sphere

YouTube offers the #WTFU movement the opportunity to express dissent and engage with other users within a new type of public space. Jürgen Habermas influenced much of the modern scholarly discourse about the public sphere with his 1962 book *The Structural Transformation of the Public Sphere*. Habermas uses the term public sphere to mean “a domain in our social life in which such a thing as public opinion can be formed” and access is open to all citizens.⁸⁹ Habermas traces the origins of the public sphere to the 18th century as it was the first time people began to distinguish between personal (or private) opinion and public opinion due to

⁸⁶ Noah Hampson, “Hacktivism: A New Breed of Protest in a Networked World,” *Boston College International and Comparative Law Review* 35, no. 2 (2012): 514-15.

⁸⁷ *Ibid.*, 516.

⁸⁸ *Ibid.*, 519-20.

⁸⁹ Jürgen Habermas, “The Public Sphere,” in *Media Studies: A Reader*, ed. Sue Thornham, Caroline Bassett, and Paul Marris, 3rd ed. (New York: NYU Press, 2009): 45.

the increased presence of the daily press. This increased access to information lead to public places becoming the sites of important political discourses between private citizens and those in power.⁹⁰ Habermas identified coffee houses, salons, and table societies as particularly important early sites for public discourse.⁹¹

Within the public sphere also exist what has been referred to as “counterpublic spheres.” These counterpublic spheres offer subordinated social groups the opportunity to engage in dissent and “circulate counterdiscourses to formulate oppositional interpretations of their identities, interests, and needs against mechanisms of governance and/or types of grievances.”⁹² Yet, these counterpublic spheres are often highly regulated by governments as a means of controlling dissent. This is done through the redesign and redevelopment of urban spaces, the use of government surveillance (such as CCTV), or stop and search laws.⁹³

As technology and mass media developed over the course of the 20th century, scholars began identifying ways in which the public sphere changed since Habermas wrote about the subject. In 2002, Kevin Michael DeLuca and Jennifer Peeples posited that technological and cultural changes have moved discourse from the public sphere to the “public screen.” While DeLuca and Peeples acknowledge the importance of Habermas’ work, they recognize its limitations in the modern context. They suggest the concept of the public screen which recognizes that modern discourses happen over “screens” such as computers and televisions. They argue that new technologies, like the Internet, have fundamentally shaped society,

⁹⁰ Ibid., 48-49.

⁹¹ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger and Fredrick Lawrence (Cambridge: Massachusetts Institute of Technology, 1989), 30.

⁹² Roberts, “Public Spaces of Dissent,” 656.

⁹³ Ibid., 659-668.

producing new forms of social organization and increasing the speed of communication. Perhaps most significantly, they argue that new technologies “obliterated space as a barrier to communication.”⁹⁴

Participation on the public screen, however, is not always readily accessible. DeLuca and Peebles identify three constraints of the public screen: large media corporations’ private ownership of the public screen, news that filters what is presented to be both entertaining and informational, and “the need to communicate in the discourse of images.”⁹⁵ The first constraint is of particular concern when considering citizens’ access to the public screen. With big media companies being driven by profit, ordinary citizens and activist groups may simply lack the necessary economic resources to buy time on a television network. Furthermore, while news broadcasts may cover rallies and protest movements, the groups themselves are not in control of how the media present their messages. As DeLuca and Peebles concede, the use of the word “public” in the public screen is somewhat problematic as the airwaves are property of the public but are very much controlled by the media companies that rent them.

The rapid change in technology since DeLuca and Peebles’ article was published in 2002 has greatly impacted citizens’ ability to access the media and reach a wide audience. The rise of social media warrants a reconceptualization of the public screen to the digital democracy of the “virtual public sphere.” Modern scholarly research accepts that social media plays a pivotal role in how social movements organize both online and offline.⁹⁶ New theories argue that social

⁹⁴ Kevin Michael DeLuca and Jennifer Peebles, “From Public Sphere to Public Screen: Democracy, Activism, and the ‘Violence’ of Seattle,” *Critical Studies in Media Communication* 19, no. 2 (June 2002): 131.

⁹⁵ *Ibid.*, 136.

⁹⁶ Jeffrey S. Juris, “Reflections on #Occupy Everywhere: Social Media, Public Space, and Emerging Logics of Aggregation,” *American Ethnologist* 39, no. 2 (May 2012): 260.

media create a networked space between public and digital spaces that allows for more autonomous communication that is free from the control of large media corporations. Ideally, the social movements of today would utilize both digital communications and the more traditional public sphere to create a networked space.⁹⁷

The modern discourse around social media in the public sphere is mostly concerned with how social networking sites offer increased opportunities for political participation and engagement. The use of hashtags on platforms like Twitter has been particularly effective in this regard in forging a shared sense of temporality for users to discuss a specific topic.⁹⁸ Others have suggested that social networking sites are designed with the individual user at the center of their community, meaning that the content a user interacts with is entirely up to them. Because of this, many don't use social networking sites to network with new people and instead use the platforms to communicate with their existing social networks.⁹⁹ This suggests some limitations on the idea of social media as the Habermasian ideal of the public sphere.

Prior research argues for YouTube's relevance in the public sphere, particularly with videos posted during elections that allow users to form more informed opinions on pressing issues by interacting with other users. Such activity is indicative of cultural citizenship and enables encounters with people from different cultures and belief systems.¹⁰⁰ Additionally, as YouTube was founded with the intention of users being able to offer an unfiltered glimpse into their daily lives, it serves as an effective platform for citizens to present their own authentic

⁹⁷ Manuel Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age* (Cambridge: Polity Press, 2015), 9-11.

⁹⁸ Brian D. Loader and Dan Mercea, "Networking Democracy? Social Media Innovations and Participatory Politics," *Information, Communication & Society* 14, no. 6 (September 2011): 764.

⁹⁹ Tatiana Mazali, "Social Media as a New Public Sphere," *Leonardo* 44, no. 3 (2011): 290-291.

¹⁰⁰ Burgess and Green, *YouTube: Online Video and Participatory Culture*, 77.

views on a subject.¹⁰¹ Furthermore, YouTube provides identity-based communities (those that are connected by members' shared identities of gender, ethnicity, sexuality, etc.) with a platform to discuss personal issues with a supportive network of users. The use of vlogs in these communities allows for a space where intimate and difficult personal issues are discussed which helps forge a greater sense of identity and understanding of oneself and others.¹⁰²

YouTube's comment sections are another important factor when considering its place in the public sphere. Content creators are continuously striving to grow their audience and, as such, often urge viewers of their content to "comment, 'like,' and subscribe." Yet, to get users to do this, content creators must engage their audience emotionally. Social issue "rant" videos are effective at eliciting an emotional response to provoke further engagement from viewers.¹⁰³ Indeed, rant videos tend to produce high levels of participation in comment sections with most commenters expressing their beliefs of why they agree or disagree with the points stated in the video. As Lange contends, "By posting statements of agreement, disagreement, or engagement with rant topics, commenters co-construct a public sphere in which these issues may be identified and discussed among video makers with a range of statuses."¹⁰⁴

The inclusion of the comment section is crucial in establishing YouTube's role in the public sphere. While comment sections can include unfortunate instances of flame wars and trolling, the ability to praise or dismiss a video in a comments section allows for greater public

¹⁰¹ Ibid., 79.

¹⁰² Ibid., 79-80.

¹⁰³ Patricia Lange defines a "rant" video as one that uses emotional messages to express anger and/or frustration about a current issue. In her study on rant videos, videos discussing YouTube's copyright policies frequently came up after searching Google for "rant on YouTube." For more see, Patricia G. Lange, "Commenting on YouTube Rants: Perceptions of Inappropriateness or Civic Engagement?," *Journal of Pragmatics* 73 (November 2014): 53-55.

¹⁰⁴ Ibid., 61.

discussion – a vital factor of a functioning democracy.¹⁰⁵ Prior research indicates that videos that deal with social and political issues produce comments that are influenced by a number of factors including a person’s cultural background, the legality of the issue(s) being discussed, and the commenter’s own personal values.¹⁰⁶ This suggests that the #WTFU movement will produce a diverse set of comments that will offer valuable insight into the discourse surrounding YouTube as a site for participation and creativity.

Research Method

To better understand the #WTFU movement and the methods they use to express dissent, this thesis examines content produced over a weeklong period and analyzes seven videos along with their respective comment section. Specifically, the first week of the movement is studied, beginning with Doug Walker’s original video posted on February 16, 2016 and ending on February 22, 2016. The first week of the movement was deemed most relevant for this study as past research on online protest movements has indicated that while user engagement is high in the initial month of a movement, participation gradually begins to decrease after this initial period.¹⁰⁷ The seven analyzed videos were also selected based on the number of comments they received to ensure an adequate sample size.

To study the necessary texts, this thesis uses textual and discourse analysis to analyze the content produced by the movement. Textual analysis is best suited for analyzing different types

¹⁰⁵ Stephanie Edgerly, Emily Vraga, Timothy Fung, Tae Joon Moon, Woo Hyun Yoo, and Aaron Veenstra, “YouTube as a Public Sphere: The Proposition 8 Debate,” (Paper presented at the Association of Internet Researchers conference, Milwaukee, Wisconsin October 8-10, 2009): 8.

¹⁰⁶ *Ibid.*, 15.

¹⁰⁷ Michael Conover, Emilio Ferrara, Filippo Menczer, and Alessandro Flammini, “The Digital Evolution of Occupy Wall Street,” *PLoS One* 8, no. 5 (May 29, 2013).

of communication and identifying a text's message(s).¹⁰⁸ As part of this thesis is concerned with the method of communication a specific movement uses to send messages, a textual analysis will allow me to effectively assess how video and user comments are used to express dissent online. For this research, the content of the videos and the comment sections are what's being studied. Video allows people to express themselves differently from the text-based updates found on social media like Facebook and Twitter, so it's important to consider how YouTube videos are used to express dissent. Analyzing how content creators express themselves through vlog style videos (speaking directly to the camera), photos and video from other sources combined with their own voiceover, or some combination of the two, will give a better sense of how videos function as a mode of dissent. In analyzing the comments, the names of commenters are withheld to avoid concerns of privacy implications. As the content of the comments is what is being studied, withholding the names will not implicate my findings.

Using discourse analysis will help to better understand the specific motives that influence each member of the #WTFU movement to express their dissent as well as how they justify the importance of recognizing fair use. Furthermore, analyzing the comment sections of each video will necessitate identifying recurring themes users' discourses. A discourse analysis is particularly useful when it comes to studying issues of power and control in society and how marginalized groups react to those in power. Michel Foucault dismissed Enlightenment-era ideals that saw knowledge as empowering and able to free society from the constraints of religion. Instead, Foucault argued that knowledge was linked with power and control. As he wrote, "In modern societies, discourses create knowledge that defines what is right and wrong,

¹⁰⁸ Norman Fairclough, *Analysing Discourse: Textual Analysis for Social Research*, (New York: Routledge, 2003), 6.

and rigidly determines behavior.”¹⁰⁹ As the #WTFU movement is concerned with the ethical issue of YouTube and media companies not recognizing fair use, a discourse analysis will help identify what the group considers “right” and “wrong” and how they think YouTube ought to handle issues of fair use and copyright. Users in comments sections often express differing views from the video creators and, as such, necessitate the issue to be examined from multiple perspectives.

Following that methodology, Chapter 3 presents an analysis of the seven videos. Each video’s content is reviewed individually, and the chapter ends with an analysis of the most prominent themes in the videos. Specifically, this chapter examines how the medium of video functions in expressing dissent, how the movement discusses fair use, and what these videos say about the nature of participatory culture on YouTube.

Chapter 4 analyzes the discourses of comment sections on the videos. Instead of reviewing each video’s comment section individually, this chapter frames the key discourses that emerged across the movement. In addition to analyzing how commenters discuss fair use and participatory culture, this chapter also examines how the discourses presented in the videos and the comments often differed.

Chapter 5 provides my conclusion on the topic. Additionally, this chapter also examines YouTube’s response to the movement and their attempts to improve the site as a platform for content creators. Finally, the chapter discusses the thesis’ limitations and how future research can expand on this work.

¹⁰⁹ Michael Heller, “Foucault, Discourse, and the Birth of British Public Relations,” *Enterprise & Society* 17, no. 3 (2016): 662.

CHAPTER III

“WHERE’S THE FAIR USE?” EXPRESSING DISSENT IN YOUTUBE VIDEOS

This chapter reports and reviews the content of seven different videos posted during the first week of the #WTFU movement. Each video review begins with a brief description of the channel that uploaded the video and information about the video itself, such as the number of views, likes, and comments. Each video is then reviewed individually and the chapter concludes with an analysis of how the movement uses video to express dissent, the discourse concerning fair use on YouTube, and the nature of YouTube as a participatory culture.

Video 1: “Where’s the Fair Use? – Nostalgia Critic”

The first official video in the #WTFU movement was uploaded on February 16, 2016, by “Channel Awesome.” The channel is most notable for its *Nostalgia Critic* series with Doug Walker performing as the titular character in addition to writing and directing. The series, which began in July 2007, features Walker reviewing films with famously bad reputations with his style of satirical-rant comedy mixed with thoughtful film criticism and analysis. The series has garnered a loyal following from fans over the course of its ten-year run with the channel having more than 1 million subscribers and 449 million views as of December 2017.

Prior to launching the #WTFU movement, Walker received numerous copyright strikes on his account, causing him to leave YouTube in favor of other online video services. Walker created his own website (“ThatGuyWithTheGlasses.com”) in 2007 to host his videos without the fear of them being removed from YouTube. In 2008, Walker partnered with Blip, a new video streaming service that offered an alternative to content creators outside of YouTube. Unlike much of YouTube’s content at the time, which featured an excess of homemade videos, Blip

focused on producing regular series with higher production values. Walker continued hosting his videos on Blip until the site was ultimately shut down in 2015.¹¹⁰

Like many other content creators who moved to Blip, Walker returned to YouTube after the site was shutdown.¹¹¹ As Walker revived his YouTube channel, his content continued to receive copyright claims. On January 28, 2016, Walker uploaded a video titled “What the Hell YouTube?” discussing YouTube’s recent mishandlings of copyright claims on his own channel and several other popular channels.¹¹² He was concerned YouTube suddenly, and without explanation, refused to allow some users to monetize their videos. Three weeks prior to posting the video, Walker’s channel received a copyright strike from the Disney-owned animation company Studio Ghibli for his review of their film *My Neighbor Totoro*. This copyright strike prevented the channel from monetizing any of their videos and restricted them from uploading any videos longer than 15 minutes.¹¹³

Walker explains that he and several other members of his channel repeatedly attempted to contact YouTube and appeal the strike but were unable to get any response from someone working at YouTube. On several occasions, Walker simply received error messages when attempting to use YouTube’s support features. For Walker, that lack of communication

¹¹⁰ Mat Greenfield, “Where’s the Fair Use?” *Huffington Post UK*, February 18, 2017.

¹¹¹ Blip was officially shut down on August 20, 2015. While it was initially a popular platform for vloggers, Blip ultimately struggled to compete with YouTube, particularly after Google acquired the latter in late 2006. Just a month before Blip was shutdown, Maker Studios, the company that acquired Blip in 2013, urged content creators to make backups of their videos and move their content to YouTube. Maker also encouraged users to apply to its YouTube network to help monetize their content. For more, see Janko Roettgers, “Maker Studios is Shutting Down Blip Next Month,” *Variety*, July 20, 2015.

¹¹² Channel Awesome, “What The Hell YouTube?” YouTube video, January 28, 2016.

https://www.youtube.com/watch?v=bC3NIIdiZF_E

¹¹³ *Ibid.*

necessitated creating a video talking about the issues his channel experienced, with the hope of getting YouTube's attention. As he states in the video:

YouTube's system right now is run on automation – everything from small complaints to stuff that can shut a channel down. No human being is looking at them until it's escalated. So that's why we're *forced* to talk about this.¹¹⁴

As of December 2017, the video has over 1.5 million views, 68,000 likes, and 11,000 comments that include several well-known users expressing their support. The high level of engagement with Walker's video, coupled with a large public outcry from other content creators, seemingly got YouTube's attention. The next day, Walker posted a follow-up video stating that monetization and other features were returned to his account just hours after posting the original video. He asserts that this small victory was just the beginning of speaking out about the issue and that content creators must band together to raise awareness.¹¹⁵

Walker's "Where's the Fair Use?" video was the next step in bringing more content creators together. Though Walker's Nostalgia Critic character presents the video, much of the video is expressed using Walker's own personality with only a few hints of the character's signature brand of comedy.¹¹⁶ The video also features two other prominent content creators: Adam Johnston from "YourMovieSucks" and Alex Bolton from "I Hate Everything."¹¹⁷ The

¹¹⁴ Ibid.

¹¹⁵ Channel Awesome, "What The Hell YouTube? Part 2" YouTube video, January 29, 2016. <https://www.youtube.com/watch?v=xFlgx2LTdeY>

¹¹⁶ The Nostalgia Critic's sarcastic personality is most visible early in the video when discussing Hollywood studio's attempts to control online content. For example, "Oh, poor Hollywood! Look at all the box office records you're breaking in the past ten years! Look at all the new film makers that wouldn't exist without online media! Look at all the digital commercial tie-ins and trailers that you're exploiting the hell out of! You're killing them, Internet! You're strangling them like a new born unicorn who just wants to give you rainbows!"

¹¹⁷ Like Walker, Johnston and Bolton use their own comedic approaches to criticize films. Unlike Walker, Johnston and Bolton seldom appear on camera in favor of using more footage from the films with their own voiceovers. The amount of copyrighted footage used in their videos has made them highly susceptible to YouTube's Content ID

majority of the video features Walker speaking directly to camera with Johnston and Bolton's segments (consisting of their voiceovers played over images and other clips) serving as supplemental material to expand on Walker's points.

Although the #WTFU movement is primarily concerned with YouTube's handling of copyright claims, large media companies are also criticized for not recognizing fair use or abusing the DMCA's takedown procedure. As Walker, Johnston, and Bolton's content focuses heavily on film criticism, Hollywood studios are a central focus in their video. Walker points to a repeated pattern of hostility from Hollywood studios against new technologies (such as the VHS, DVR, DVD rippers, and the Internet) and their attempts to exert control over them.

Walker identifies the Stop Online Piracy Act (SOPA) as a recent attempt by Hollywood (and other industries) to control online content. Introduced in October 2011, SOPA aimed to thwart online piracy by requiring Internet Service Providers to block access to websites hosting unauthorized copyrighted material and preventing search engines from linking to these sites. Critics of SOPA saw the bill as an extreme extension of the provisions put in place by the DMCA and a threat to free speech and creativity.¹¹⁸ Representatives for Hollywood studios expressed their support of SOPA by linking online piracy to job losses in the entertainment industry.¹¹⁹ Walker notes that online protests were effective in raising public awareness and ensuring that SOPA never passed. Even major websites, like Google and Wikipedia, protested

System. Each of Johnston's videos begin with a message that quickly flashes across the screen reading, "NOTE: Unfortunately, a significant amount of copyright holders are clueless to the fact that my usage of copyrighted clips and music are Fair Use under copyright law. This video is NOT an infringement on copyright: <http://www.copyright.gov/title17/92chap1.html#107>. Any missing videos can be found at YourMovieSucks.org."

¹¹⁸ Greg Sandoval, "Hollywood's SOPA Testimony Links Job Loss to Piracy," CNET.com, November 16, 2011.

¹¹⁹ Ibid.

SOPA by blacking out their homepages for a day and linking visitors to sign petitions and contact their elected representatives.¹²⁰

Hollywood studios are not the only ones attempting to control film-related content online. Individual directors, producers, and writers also use the DMCA's takedown procedure and YouTube's copyright systems to silence creators. Alex Bolton of "I Hate Everything" details his interactions with a film director who issued a copyright strike to his channel in the video. Bolton reviewed the film *Cool Cat Saves the Kids* in his "Search for the Worst" series and the negative review subsequently caught the attention of the film's director, Derek Savage.¹²¹ Bolton reveals interactions he had with Savage via e-mail which include threats of legal action and attempting to bully Bolton into making an apology video.¹²²

Bolton appealed the copyright strike and his channel was eventually restored to normal after Savage failed to refute the appeal within 30 days. As Bolton argues, this situation exemplifies how weighted YouTube's copyright system is against content creators. As a claimant, Savage offered no evidence to his case that Bolton violated copyright law. Savage's claim was simply taken as truth without an impartial third party investigating the claim. Yet, unlike a court of law, Savage faced no repercussions for making a false claim and causing

¹²⁰ Eric Engleman, "SOPA Bill Petition Collects 7 Million Signatures, According to Google," *The Washington Post*, January 19, 2012.

¹²¹ Bolton's "Search for the Worst" series reviews films featured on IMDB's list of the 100 lowest rated films and aims to determine which one is the worst. Bolton notes, however, that he did recommend *Cool Cat Saves the Kids* in a "so-bad-that-it's-good way."

¹²² Part of Savage's e-mail to Bolton reads as follows. "Now that we have your IP address from your email, we'll be able to discover who you are and where you live, so please be a 'man' and submit your full legal name and address, as this will save my legal team a few minutes of hunting it down. And yes, we will find you. Today, you better delete everything that mentions me and the Cool Cat character, then you are going to make a very short video where you publicly apologize to me and Cool Cat... And the video better be short, sweet, and damn sincere. IF this doesn't happen today, then tomorrow I'll be contacting the producers of other films that you blasphemed and copyrighted infringed against, and you will be receiving numerous legal complaints coming your way."

Bolton's channel to lose its monetization. The month spent arguing with Savage and appealing to YouTube was, as Bolton says, "a colossal waste of time and energy for everyone involved."¹²³

Adam Johnston expands further on the flaws of the appeals system outlined by Bolton. YouTube only permits a channel to file a maximum of three appeals at a time. Despite this, as Johnston explains, a channel can receive an unlimited number of claims at a time. Just as Savage's copyright strike was issued without any evidence or investigation, Johnston sees this as yet another way YouTube provides more leverage to claimants over creators. Walker argues that YouTube operates with more of a guilty until proven innocent philosophy that equates content creators using fair use with people who upload entire copyrighted works for profit.¹²⁴

Walker cites the lack of penalties for those making false copyright claims as one of the most significant issues. This is particularly important when a video is monetized.¹²⁵ When a copyright claim is filed against a video, the claimant can claim that video's monetization unless the video uploader files a counter-claim. At that point, the video will not generate monetization for either party until YouTube finalizes the dispute. However, the system allows the claimant to make money from the video until a counter-claim is filed and the claimant keeps the previously earned ad revenue regardless of whether the claim is found to be false.

As stated in the introduction of this thesis, the video ends with Walker calling for viewers and other content creators to take action. Walker also stresses the importance of recognizing fair use not just as a law, but as freedom of speech. Piracy is a legitimate concern that copyright holders are justified in trying to stop.¹²⁶ However, deeming transformative works, like Walker's

¹²³ Channel Awesome, "Where's The Fair Use – Nostalgia Critic."

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

content, as piracy also means restricting the creator’s freedom to express their opinion in a creative manner.

Video 2: “VERY IMPORTANT! PLEASE WATCH! – Where’s the Fair Use?”

The next video was posted February 17, 2016, and was uploaded by the channel “Anime America.” The channel, run by Robyn Barry-Cotter, covers all things anime with a focus on reviews and top ten lists. The channel launched in September 2008 and has over 463,000 subscribers and 53 million views as of December 2017. Their #WTFU video has over 221,000 views, 17,000 likes, and nearly 3,500 comments as of December 2017.

Like Walker, Barry-Cotter emphasizes the significance of wrongful claims that go unpunished and calls the system “a new form of highway robbery.”¹²⁷ Unlike Walker, however, copyright claims have not always been a pressing concern for Barry-Cotter’s channel. She explains that the premium cable network Starz previously owned the channel. During this time, the channel never worried about copyright claims as Starz protected them. Once the channel’s contract with Starz ended, however, claims became a regular occurrence.¹²⁸

Most of Anime America’s claims come from two different companies. The first is Audiam, a music royalty collection agency.¹²⁹ Barry-Cotter states that she always uses royalty-free music in her videos, but continues to receive claims from Audiam. The second is a company called YAM11200, an anime distributor located in Italy. When she began receiving claims from

¹²⁷ Anime America, “VERY IMPORTANT! PLEASE WATCH! Where’s the Fair Use?” YouTube video, February 17, 2016. https://www.youtube.com/watch?v=xYL_eLZLfw8

¹²⁸ Ibid.

¹²⁹ According to the company’s website, “Audiam finds videos on YouTube using your compositions without a license, authorizes YouTube to place ads on them and gets you back your percentage of the revenue. It also makes sure the data in the YouTube database remains clean and accurate to assure the pipeline of money flows to you.” See www.audiam.com for more.

YAM112003, Barry-Cotter resolved the disputes by e-mailing the company and the claims would often be gone within one day. However, at the time the video was posted, she states the company no longer responds to her emails and won't remove their claims.¹³⁰

She states that many of the claims she receives are against content that is purely her own creation. She notes one egregious example where YAM112003 claimed five seconds of copyrighted footage in her video "Top 10 Weirdest Weapons in Anime." The five seconds claimed were Barry-Cotter's own avatar talking without any copyrighted sound or video accompanying it. She also notes that her "Top 10" videos receive the most views as well as the most copyright claims. She believes the popularity of top 10 videos on YouTube has caused companies to unfairly target the genre with claims.¹³¹

Barry-Cotter says that the number of claims she receives also affects her life outside of YouTube. Although she had been a content creator full-time for several years, she began working a part-time day job to compensate for the loss of income. Because of this, she states, "My dreams for my production to thrive and make better content for everybody to enjoy is in danger."¹³² To reduce the number of claims, Barry-Cotter tested a theory that would make her videos less likely to be claimed. As YAM112003 is an Italian company, she tested blocking her videos in Italy. She reports that the method works but is not eager to use it further as it would be unfair to her Italian fans.¹³³

The video ends with Barry-Cotter reaffirming much of what Walker stated. She expresses her support for Walker's proposal for monetization to be placed in a separate account when a claim is filed. She declares:

¹³⁰ Anime America, "VERY IMPORTANT! PLEASE WATCH! Where's the Fair Use?"

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

We here at Anime America will no longer stand for it. Along with Doug Walker and other YouTube creators, we are raising awareness to fight back against these greedy companies. They are clearly violating our rights and not getting punished for it. Nothing will change unless we stand up against it. The internet is for everyone to have an equal chance to make a name for themselves with reviews, parodies, and documentaries. We know our rights and we will band together demanding change.¹³⁴

Video 3: “RE: Where’s the Fair Use? #WTFU”

The next video was uploaded February 18, 2016, by the channel boogie2988. The channel, run by Steven Jay Williams, uses vlogs to discuss topics in the video game industry as well as personal updates from Williams. The channel is perhaps best known for the character “Francis,” played by Williams, who parodies cultural stereotypes about “nerds” and video games. The video has over 442,000 views, 36,000 likes, and 4,300 comments as of December 2017. Williams’ channel has over 4.3 million subscribers and 716 million views as of December 2017.

Williams begins by stating that his video is a response to Walker’s and will cover topics that Walker didn’t. Specifically, Williams aims to address certain inequalities in YouTube’s copyright system that favor larger channels over smaller ones. As he states, “There are a good number of very, very large YouTubers, and even smaller YouTubers, that are in a secret super special club where they do not have to deal with copyright issues.” Though he has over 4 million subscribers, Williams states that he does not belong to this elite club. He recalls uploading paid

¹³⁴ Ibid.

promotional gameplay footage to his account a year prior that the Content ID System detected and removed.¹³⁵

The favored channels Williams refers to belong to a multi-channel network (MCN) and are considered “managed status.” Managed status channels are those with a large number of subscribers who are protected from copyright by their MCN and are immune to the Content ID system. As Williams states, “Managed status...gives you access to something everyone on YouTube should have access to and that is fair use.”¹³⁶ Much like the Content ID System, MCNs were created partly in response to YouTube being sued by Viacom for copyright infringement. MCNs work as a buffer between creators and YouTube to help fight copyright claims and, ideally, avoid further litigation against YouTube. MCNs also work to manage and promote channels in exchange for a cut of the channel’s earned revenue.¹³⁷ YouTube trusted MCNs to handle copyright disputes so much that channels with an MCN were immune to the Content ID System. However, in 2014, YouTube seemingly stopped protecting MCNs as many networks began receiving automated claims. This led to an uproar in the YouTube community with content creators making videos expressing their frustrations with both YouTube and the MCNs who were no longer protecting them while still claiming large portions of their revenue. MCNs responded in kind by making a deal with YouTube that would allow them to have a smaller number of “managed status” channels.¹³⁸

¹³⁵ boogie2988, “RE: Where’s the Fair Use? #WTFU,” YouTube video, February 18, 2016. https://www.youtube.com/watch?v=9-O7WANBW_Y&t

¹³⁶ Ibid.

¹³⁷ Williams notes, however, that many MCNs are “predatory” in this regard and will claim as much as 40% of a channel’s revenue.

¹³⁸ Ibid.

However, having managed status doesn't always protect channels. Williams cites the case of Michelle Phan, a popular beauty and fashion blogger on YouTube who was sued for using copyrighted music in her videos.¹³⁹ Although Phan's case was ultimately settled out of court, Williams argues her case was largely helped by the amount of money she makes for her MCN who supported her legal defense. For smaller YouTubers, however, this support and protection is nonexistent. As Williams contests, "If you are making a lot of money on YouTube, or, more importantly, making YouTube a lot of money, then you get access to fair use. Simple as that."¹⁴⁰

Williams then notes that YouTube took a step in the right direction in November 2015 with the announcement of their Fair Use Protection Program. The program protects a handful of YouTube channels by setting aside a legal fund of up to \$1 million to fight claims that neglect creators' fair use rights. Google expressed its enthusiasm for the program by stating, "We believe even the small number of videos we are able to protect will make a positive impact on the entire YouTube ecosystem, ensuring YouTube remains a place where creativity and expression can be rewarded."¹⁴¹ However, Williams believes this program is just further evidence that fair use protection on YouTube is granted to only a small percentage of users. As he states, "That's great for those YouTubers. It's not so great for me because seven years later, I'm still afraid to put a picture of fucking Mickey Mouse on the screen."¹⁴²

¹³⁹ Ultra Records sued Phan in July 2014 and alleged that she earned millions of dollars from her videos by exploiting copyright. In a counterclaim, Phan argued that she reached out to Ultra's media manager for permission to use the music if she credited the artist and provided an iTunes purchase link. The case was settled out of court in August 2015. For more, see Eriq Gardner, "YouTube Star Michelle Phan Settles Dispute with Dance Label Ultra Records," *The Hollywood Reporter*, August 13, 2015.

¹⁴⁰ boogie2988, "RE: Where's the Fair Use? #WTFU."

¹⁴¹ Fred von Lohmann, "A Step Towards Protecting Fair Use on YouTube," Google Public Policy Blog, November 19, 2015. <https://publicpolicy.googleblog.com/2015/11/a-step-toward-protecting-fair-use-on.html>

¹⁴² boogie2988, "RE: Where's the Fair Use? #WTFU."

Like the previous videos, Williams closes his video with a mission statement and a call to action:

I'm not happy... watching some very talented and wonderful smaller YouTubers who take critical looks at things or make comedic commentary about things and trying to do that within fair use and [YouTube] shooting them out of the water every single day... And YouTube if you feel the same way, do something. And viewers if you feel the same way, share some of the [#WTFU] videos... Share the Nostalgia Critic's video. Use that hashtag, tweet it to YouTube. Get them involved because I gotta tell you something, until we awaken the sleeping giant, nothing's going to change.¹⁴³

Video 4: "Where's the Fair Use? #WTFU"

The next video was also posted on February 18 by "TheMysteriousMrEnter." The channel is run by Jonathan Rozanski and is dedicated to reviewing and analyzing animated television shows. As of December 2017, his channel has over 257,000 subscribers and 101 million views. His #WTFU video has over 118,000 views, 8,000 likes, and 1,600 comments as of December 2017.

Rozanski's video begins with a title card showing the date of January 12. As he explains, the date is significant as it was the day Viacom had his channel shut down for fifteen days in 2015. On that day, Rozanski received nine copyright strikes from Viacom within just one hour. Several of the videos being claimed were months old and one video was simply Rozanski's commentary for an old review. Unlike creators like Walker or Barry-Cotter, these strikes did not affect Rozanski's earned income. When his channel was shut down, Rozanski was not

¹⁴³ Ibid.

monetizing any of his YouTube videos and was only making money through a Patreon account.¹⁴⁴ However, Rozanski has since monetized his videos and YouTube has become his primary source of income.¹⁴⁵

Out of his 326 posted videos, Rozanski states that 136 are matched with copyright claims. Though Viacom caused his channel to shut down, they aren't the only company to continually issue claims. Hasbro and Turner Broadcasting both frequently claim videos while Fox has claimed every video featuring one of their shows. Both Hasbro and Turner Broadcasting issued claims on Rozanski's videos five times – once for each region the company is located. Additionally, after Rozanski successfully appealed the copyright strikes that ultimately shut his channel down, Viacom claimed monetization on the same videos they issued a strike against previously.¹⁴⁶

Despite these negative experiences, Rozanski maintains that starting his channel was one of the best decisions he ever made. He states that interacting with others online helped his social anxiety, meeting new friends, and “getting over his past.”¹⁴⁷ Rozanski ends his video with words of encouragement for new content creators while expressing his support for the #WTFU movement:

What I have seen in the past two weeks is astounding in all the right ways. A community is coming together and fighting back against this broken system and the corrupted people

¹⁴⁴ Patreon allows content creators to make money directly from their supporters, or “patrons.” Patrons pledge a set amount of money each month to support creators and receive perks in return based on the amount they pledge. Patreon was founded by a former YouTube star, Jack Conte, who was looking for a new way to make money from his videos while also giving back to his fans.

¹⁴⁵ TheMysteriousMrEnter, “Where’s the Fair Use? #WTFU,” YouTube video, February 18, 2016. <https://www.youtube.com/watch?v=0W-360iRCz4&t>

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

and companies behind them... To those who've had their videos falsely claimed or channels falsely deleted, you are not alone. And now there are so many people who are not just taking a stand, they're taking a stand for you. As a community we are all asking, "YouTube, where's the fair use?"¹⁴⁸

Video 5: "Youtube's Copyright System can be ABUSED by Anyone, Here's How | #WTFU Where's the Fair Use"

The next video was posted February 19 by user "It's Becky Boop." Becky's channel covers news relevant to YouTube and internet culture. As of December 2017, her channel has over 19,000 subscribers and 2 million views. Her video has over 13,000 views, 900 likes, and 300 comments as of December 2017.

For Becky, the biggest flaw with YouTube's copyright system is that anyone can abuse it. As she demonstrates, anyone can request a DMCA takedown of a video without providing any proof of copyright ownership. A content creator's account could easily be terminated if three of these takedowns are issued consecutively. Perhaps worse yet, the takedown procedure can be used as a form of targeted harassment. As she explains, Becky has a second YouTube channel dedicated to gaming videos. She created the channel around the time the Gamergate controversy started and quickly became a target for harassment. In one case, she received a takedown notice that she perceived as a serious threat. As she explains,

I received a DMCA takedown notice from a claimant who listed his name as "Ruslan Tsarni" and his e-mail as "uncleruslanboston@gmail.com." Now, at the time, I lived in Boston but hadn't revealed that as any of my personal information to the public through

¹⁴⁸ Ibid.

my YouTube channel. And as you can see with a quick Google search, Ruslan Tsarni was the uncle of one of the Boston bombers. So, this DMCA claim was not only bogus but it was also a terroristic threat made to let me know that, (1) these people know where I live and (2) they don't want me on YouTube.¹⁴⁹

Yet, the harassment Becky received did not end there. She submitted a counter-claim which required her to fill out a form containing personal information such as her legal name, address, and phone number. As YouTube notes, this information is forwarded to the claimant once the counter-claim is submitted. As Becky states, “[I]f you want to protect the channel you've worked so hard for, you have to reveal your personal information which can be used by people to stalk you, to dox you, and to harass you which is exactly what happened in my case.”¹⁵⁰

Video 6: “On Fair Use #WTFU”

The next video was also uploaded on February 19 and was posted by Chris Stuckmann. Stuckmann is a film critic on Rotten Tomatoes and his channel focuses on reviewing new-release films, in-depth analysis videos, and retrospectives of classic films. As of December 2017, his channel has over 1.1 million subscribers and nearly 300 million views. His video has over 275,000 views, 19,000 likes, and 2,300 comments as of December 2017.

Like Williams, Stuckmann sees YouTube as disproportionately favoring larger channels over smaller ones. Apart from the large number of false claims, Stuckmann believes that one of YouTube’s primary problems is that it only listens to creators when a large creator speaks out

¹⁴⁹ It’s Becky Boop, “Youtube's Copyright System can be ABUSED by Anyone, Here's How | #WTFU Where's the Fair Use,” YouTube video, February 19, 2016. <https://www.youtube.com/watch?v=u6SUapTpHh0&t>

¹⁵⁰ Ibid.

against them. As he points out, Walker’s channel was restored to normal only after he posted a video that received millions of views and initiated a large outcry against YouTube. Yet, Stuckmann notes that many YouTube channels encounter these same problems and ultimately disappear because they don’t have an audience large enough to get YouTube’s attention.

Perhaps the most significant problem for Stuckmann, however, is how the system limits creativity. He believes that YouTube has provided a platform for people to express themselves creatively, but the current copyright system seemingly punishes that creativity. He states that the most important thing people should take away from his video is that,

[b]eing creative is a great thing. It's what I love. I love watching films. I love watching well-made videos. I love reading good books or looking at great art because these are people who are being creative who are creating content, who are really allowing themselves to shine through their art or their material and that is something that should never be hindered... So please, don't lose that creativity. If you're afraid of fair use, learn about it. Educate yourself on it.¹⁵¹

Video 7: “Where’s the Fair Use? – LiberalViewer #WTFU”

The final video was also posted on February 19 and was uploaded by the channel “LiberalViewer.” The channel is run by Allen Asch, an attorney from California who specializes in intellectual property law. His channel primarily covers American politics and social issues. As of December 2017, his channel has over 118,000 subscribers and 59 million views. His video has over 163,000 views, 6,000 likes, and 400 comments.

¹⁵¹ Chris Stuckmann, “On Fair Use #WTFU,” YouTube video, February 19, 2016. <https://www.youtube.com/watch?v=I55seO4d1Kw&t>

At the start of the video, Asch states that he wanted to get involved with the #WTFU movement and create his own video to add to the discussion from the “perspective of history and from the perspective of actual solutions.”¹⁵² Having been active on YouTube since 2006, Asch details his long history of fighting for fair use on the site. Like many other channels at the time, Asch received numerous DMCA takedown notices from Viacom. Asch repeatedly contacted YouTube to resolve the issue and reveals an e-mail conversation with a YouTube employee who stated the company would need “an army of lawyers” to protect users from such claims.¹⁵³

While other videos in the movement focused on the legality of false claims, Asch is more concerned with the legality of YouTube’s Content ID System. Asch proposes that one solution to fair use disputes is to pursue litigation against YouTube. Asch believes the Content ID System is flawed in such a way that it violates multiple California state laws. One California law, the “Unfair Competition Law,” allows citizens to sue companies for false statements and poor business practices.¹⁵⁴ As Asch explains, YouTube has previously stated on their blog that videos claimed by Content ID will be restored immediately after filing a dispute. However, Asch notes he recently disputed a Content ID claim, but the video was still blocked worldwide. Furthermore, he then received a message from YouTube stating his channel would lose features if he received another Content ID claim. Asch also cites “Negligent Interference with Prospective Economic

¹⁵² LiberalViewer, “Where’s the Fair Use? – LiberalViewer #WTFU,” YouTube video, February 19, 2016.

<https://www.youtube.com/watch?v=WittWGWbEWo&t>

¹⁵³ Ibid.

¹⁵⁴ California’s Unfair Competition Law is, in many ways, an extension of the principles established in The Federal Trade Commission Act. Specifically, to protect consumers from unfair and deceptive business practices. However, The California Courts of Appeal’s broad definition of “unfair practices” has been heavily criticized by businesses who claim it’s unclear what specific practices the law forbids. For more, see Alexander N. Cross, “Federalizing ‘Unfair Business Practice Claims’ under California’s Unfair Competition Law,” *University of Chicago Legal Forum* 2013 (2013): 489-529.

Relations” as a possible reason for litigation.¹⁵⁵ In this case, YouTube would be liable for creators’ lost income that was caused by the Content ID System neglecting to recognize fair use.

Discussion

This section presents an analysis of the most common themes presented in the videos. Specifically, this section analyzes how video functioned in expressing dissent, the discourses about fair use, and the nature of participatory culture on YouTube.

Expressing Dissent through Video

Although each of videos discussed in this chapter were created by people who produce their own content, it’s interesting to see that each of the videos has a similar presentation style. In fact, six of the seven videos are filmed in a traditional vlog style with the uploader speaking directly to the camera. Even the one video not in this style, uploaded by Rozanski, adheres to a similar structure as the other videos, but uses images and text instead of appearing in front of a camera. While this conformity to a specific style can make the videos appear visually unremarkable when viewed back-to-back, the similarity in style helps to create a narrative flow from one video to the next. Indeed, each video includes citations and references to other videos in the movement that establishes a strong sense of unity in the movement. This is most easily observed with Walker’s video being referenced in each of the subsequent videos analyzed in this chapter. While each reference Walker’s video by name, others, like Barry-Cotter, purposefully continue the visual messages Walker established (Figure 1).

¹⁵⁵ As Asch explains, the law protects individuals and businesses from losing money due to a third party’s negligent interference in a business transaction. If taken to court, however, the plaintiff must “present facts indicating the defendant’s interference is somehow wrongful—i.e., based on facts that take the defendant’s actions out of the realm of legitimate business transactions.” See, “2204. Negligent Interference With Prospective Economic Relations,” Justia. <https://www.justia.com/trials-litigation/docs/caci/2200/2204.html>



Figure 1: Doug Walker (left) and Robyn Barry-Cotter (right) displaying the movement's hashtag in their videos.

The visual style used throughout the movement functions similarly to the way television news presents stories. Specifically, by framing subjects as speaking from a place of credibility and authenticity. This is obtained by using three cinematic techniques. First, by placing the camera “head-on” with the subject the replicate the authenticity of speaking eye-to-eye with another person.¹⁵⁶ Alternate perspectives can distort the viewer’s perceptions of the events depicted and cause a loss of authenticity.¹⁵⁷ Second, the fixed-point perspective creates a shared sense of time and space.¹⁵⁸ The third technique concerns the space between the subject and the camera. Television news reporters are typically filmed to appear at a “touching distance” from the viewer and frame the reporter’s head and upper-half of their body.¹⁵⁹ This establishes that the subject is neither too close nor too far from the viewer to maintain a sense of credibility and

¹⁵⁶ Gaye Tuchman, “The Technology of Objectivity: Doing ‘Objective’ TV News Film,” *Urban Life and Culture* 2, no. 1 (April 1973): 7.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, 9-10.

¹⁵⁹ *Ibid.*, 17-18.

authenticity. Ultimately, this authenticity is obtained by matching “everyday conditions of multidimensional perception” and space to maintain credibility.¹⁶⁰

Figure 1 illustrates Walker and Barry-Cotter using these three techniques and the other videos are filmed in a similar style. But it’s important to consider how the perception of credibility shapes the videos’ discourses. While each video details the creator’s personal experiences with fair use and copyright on YouTube, maintaining credibility helps establish that the individual stories are representative of a larger problem that affects the entire YouTube community. In doing so, the videos aren’t attempting to elicit an emotional response where users merely sympathize with the video’s creator, but, instead, are being informed about YouTube’s structural inequalities. This lends a greater sense of credibility to the information provided in each video.

The shared sense of space, established by the fixed-point perspective, is particularly important for the movement. As the literature review discussed, the “virtual public sphere” is in part characterized by a shared sense of temporality. While each video exists within the larger digital space of YouTube, the visual references to previous videos and the fixed-point perspective creates a space that seemingly connects the content creators and viewers to a shared space. This shared space parallels John Michael Roberts’ idea of the counter-public sphere where social groups engage in dissent against their own government.¹⁶¹ For the #WTFU movement, YouTube as a company takes the place of a government that restricts citizens’ rights. Instead of picketing outside a capitol, #WTFU stages its protest within YouTube’s public sphere.

¹⁶⁰ Ibid., 24.

¹⁶¹ Roberts, “Public Spaces of Dissent,” 656.

It's also important to consider how vlogs helped the movement grow. Prior research has suggested that vlogs, particularly those posted on YouTube, are effective at encouraging participation and interaction with viewers.¹⁶² The videos of the #WTFU movement promote engagement and interaction from viewers in a few key ways. First, one of the movement's primary intentions is to encourage further participation. This participation could come in the form of sharing the videos on other social media sites, contacting YouTube directly about its copyright policies, or creating a video as part of the movement. Williams encourages participation by telling his viewers to "share some of the videos down below. Share the Nostalgia Critic's video. Use that [#WTFU] hashtag, tweet it to YouTube."¹⁶³

Secondly, vlogs, perhaps more than any other genre of web video, invite feedback.¹⁶⁴ Vlogs are often a form of direct response to other videos and allow the uploader to effectively address a specific audience.¹⁶⁵ The #WTFU videos directly address three specific audiences: the channel's regular viewers, other content creators, and YouTube as a company. Although channels can view statistics on the demographics of their viewers, the YouTube audience itself is very broad and not always easy to categorize.¹⁶⁶ It is perhaps because of this ambiguity in who a channel's regular viewers are that the discourses surrounding fair use and copyright are rather general and don't assume that viewers have extensive knowledge on such topics. Regular viewers are primarily addressed in a way that educates them about fair use and how YouTube's

¹⁶² Maximiliane Frobenius, "Audience Design in Monologues: How Vloggers Involve Their Viewers," *Journal of Pragmatics* 72, (October 2014): 69-70.

¹⁶³ boogie2988, "RE: Where's the Fair Use? #WTFU."

¹⁶⁴ Burgess and Green, *YouTube: Online Video and Participatory Culture*, 54.

¹⁶⁵ *Ibid.*

¹⁶⁶ This is not surprising as the site reports to have over 1 billion users and is accessible to 95% of internet users around the world. There are a few distinctions to be made in terms of YouTube's demographics, however. While the user base is almost equally male and female, the type of content most frequently viewed by males and females differs greatly. Females tend to spend more time viewing fashion, beauty, and lifestyle content while males make up the majority of the audience for sports and gaming videos. For more statistics on YouTube demographics, see "The Top 9 User Statistics Marketers Must Know."

policies affect their creativity. As such, creators often take a pedagogical approach where the videos are as much about educating their audience about fair use and copyright as they are about expressing dissent. In doing so, content creators get viewers involved with the issues affecting their channels. In turn, this prompts a larger social discussion concerning fair use and creativity on YouTube. In speaking to other content creators, the #WTFU movement is concerned with growing its community to help raise awareness. As Walker states in his video, “[W]hether you make a living at this or you just watch for entertainment, this is something we all need to stick together on.”¹⁶⁷ As a company, YouTube is addressed critically with the hope that the videos will demonstrate problems that need to be fixed. Williams is particularly explicit in directly addressing YouTube:

Because you know what, YouTube? I'm fine doing this. Just one man and his camera and his microphone. I'm happy doing this. What I'm not happy with is watching some very talented and wonderful smaller YouTubers who take critical looks at things or make comedic commentary about things and trying to do that within fair use and you shooting them out of the water every single day. I'm sick as shit of watching these channels that I love disappear.¹⁶⁸

Vlogs also allow users to express themselves using other media that's edited with their own recorded footage. Whether through images, video clips, or sound recordings, using secondary media enhances the narrative presented in the video. The #WTFU movement effectively incorporates images to provide greater context for the issues discussed in each video. Throughout the seven analyzed videos, the use of secondary images served three distinct

¹⁶⁷ Channel Awesome, “Where’s The Fair Use – Nostalgia Critic.”

¹⁶⁸ boogie2988, “RE: Where’s the Fair Use? #WTFU.”

purposes: to inform viewers about fair use and copyright, to expose the flaws of YouTube’s copyright system, and to cite sources of information.

As previously stated, one of the primary functions of #WTFU videos is to educate viewers about fair use and copyright. The history of copyright law in America is long and difficult to effectively summarize in the length of an average YouTube video. To abbreviate this history, members of the #WTFU movement often included images in their videos that provide greater context for fair use and copyright issues. Each video incorporates images differently. Becky’s video uses a green screen that allows her to speak directly to viewers while the background contains information on laws such as the DMCA (Figure 2). Others, like Asch, include screenshots from law websites to show legal precedents that could be used for litigation against YouTube.

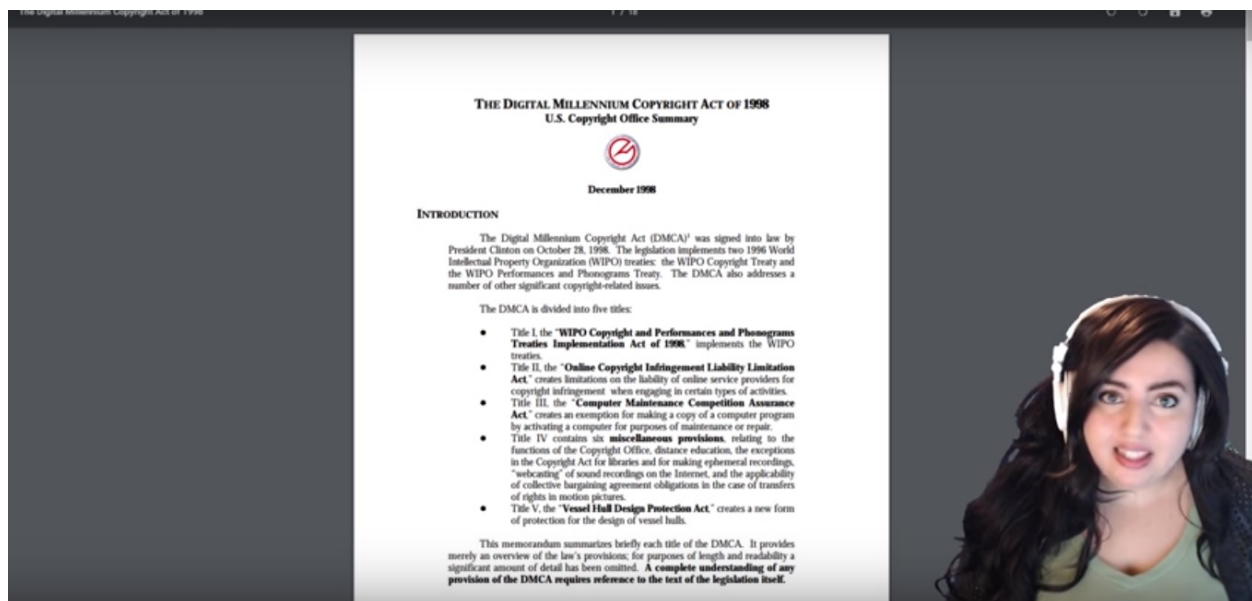


Figure 2: YouTube user “It’s Becky Boop” speaks to viewers while using a green screen backdrop to display information about the DMCA.

Perhaps the most effective images were those that exposed the flaws of YouTube’s copyright system. These images are particularly effective as they serve as visual proof of how companies exploit content creators. As he never appears in front of camera, Rozanski’s video relies heavily on the use of such images. Many of the images included in his video detail the various claims received on his account. Others show specific instances of companies exploiting YouTube’s claims system. One such image shows copyright claims Rozanski received for his “Top 25 Modern SpongeBob Episodes” video. Rozanski explains that the video was previously removed from YouTube after receiving a takedown notice from Viacom. Rozanski successfully appealed the claim and the video was restored to his channel. However, the video was then claimed for monetization from two separate Viacom accounts (Figure 3). As Rozanski notes, “Even though this system allows companies to abuse it by default, companies are still coming up with loopholes to abuse it further. Yes, the same company can hit the same videos repeatedly.”¹⁶⁹.

Copyright details

CONTENT	CLAIMANT	POLICY
Visual content Manually detected	Viacom_Vobile	Cannot be monetized
Visual content Manually detected	B_Viacom	Cannot be monetized

Figure 3: The same company can reinstate their claim on a video using multiple accounts even if the creator has successfully appealed previous claims.

Finally, many videos included images to cite secondary sources. Some, like Williams, used images from web articles to validate their arguments. In his video, Williams uses an image

¹⁶⁹ TheMysteriousMrEnter, “Where’s the Fair Use? #WTFU.”

from an article that discusses Ultra Records' lawsuit against Michelle Phan (Figure 4). The image functions to support Williams' claim that MCNs provide legal support for large YouTube channels. Other videos include images of email conversations, such as Bolton's interactions with Derek Savage who attempted to coerce Bolton to issue a public apology for using footage from one of his films.



Figure 4: Steven Jay Williams cites an article to support his arguments about fair use on YouTube.

The Fair Use Discourse

This section presents a discourse analysis of fair use arguments presented in #WTFU videos. As the literature review explored, what constitutes fair use is decided on a case-by-case basis in court and, as such, has caused the law to be interpreted in many different ways. This section examines the movement's ideas about fair use and the changes its members suggest to protect content creator's fair use rights.

Walker sets the tone for the movement's discourse by providing a concise definition of fair use early in his video. As he states,

fair use is the doctrine that states excerpts of copyrighted material may, under certain circumstances, be quoted verbatim for purposes such as criticism, news reporting, teaching, and research without the need for permission from or payment to the copyright holder. So, that means if you use copyright material for, say a review or satire or education, it's completely legal.¹⁷⁰

Notably, Walker does not include the four factors (the purpose of the use, the nature of the copyrighted work, the amount of copyrighted material used, and the potential market effect of the use) stated in The Copyright Act of 1976 that determine if a work is fair use. The phrase “under circumstances” suggests the limitations of fair use, however, without further context, fails to properly identify how his work meets these factors. However, this omission suggests that Walker and the #WTFU movement believe in a more liberal definition of fair use similar to Lessig’s ideas of a free culture that supports creators.

Although Lessig is never directly referenced, many of the ideals he expresses in *Free Culture* are echoed in these videos. Much of Walker’s argument concerns how much of American copyright law was written in a pre-Internet era and, as such, don’t accurately reflect how copyrighted works are used today. Lessig similarly argued that “with the birth of the Internet, [the] natural limit to the reach of the law has disappeared. The law controls not just the creativity of commercial creators but effectively that of anyone.”¹⁷¹ Walker targets Hollywood studios specifically for their history of media panic over new technologies like the VCR, DVR, and the Internet. In each case, Hollywood attempted to use copyright law to restrict technologies they perceived as a threat to the film industry. In other cases, they sponsored new laws, such as

¹⁷⁰ Channel Awesome, “Where’s The Fair Use – Nostalgia Critic.”

¹⁷¹ Lessig, *Free Culture*, 19.

SOPA, that would introduce further restrictions to online content.¹⁷² As Lessig notes, Hollywood's staunch stance against piracy and copyright infringement is rather hypocritical as he argues the industry was built by "fleeing pirates" looking to escape patent controls.¹⁷³

Videos in the movement frequently cited the case of *Lenz v. Universal Music* as precedent for protecting fair use on YouTube. The case concerned the use of a Prince song that was used in the background of a YouTube video posted by Stephanie Lenz. Universal Music issued a DMCA takedown notice. However, Lenz submitted a counterclaim, citing fair use, and had the video restored. Lenz then sued Universal for misrepresentation in their takedown. Lenz argued that fair use law protected her work, however, Universal argued that Lenz's use was not protected by fair use as it didn't transform the original work. The case eventually went to the Ninth Circuit Court of Appeals where the court ruled that copyright holders must take fair use into consideration before issuing a takedown notice.¹⁷⁴

Becky's video includes the most discussion of the case's implications. In one section of her video, Becky questions the legality of the Content ID System's practices. She recalls uploading a video of her reaction to a clip from *Late Night with Seth Meyers* that was matched by the Content ID system while the video was processing. This stalled the video from being uploaded to the site and NBC Universal blocked the video before it was made public. As her video was blocked before it could be viewed, Becky believes this was a clear violation of fair use rights that ignored the precedent set by *Lenz v. Universal* that ruled fair use must be considered

¹⁷² Channel Awesome, "Where's The Fair Use – Nostalgia Critic."

¹⁷³ *Ibid.*, 53-55.

¹⁷⁴ Lance Koonce, Marshall J. Nelson, and Nicolas A. Jampol, "The Dancing Baby Grooves to Mixed Victory in the Ninth Circuit: Court Holds That DMCA Takedown Notices Require Consideration of Fair Use," *Intellectual Property & Technology Law Journal* 27, no. 12 (December 2015): 9-11.

before issuing takedown notices. Becky even contacted a copyright lawyer, Leonard French, who also creates YouTube videos. Becky includes a video from French who believes that NBC Universal violated the law.¹⁷⁵

Some of the videos included proposals to better protect fair use on YouTube. Walker's video outlines three such changes. First, fixing monetization so claimants can't immediately monetize videos after issuing a claim. Walker proposes establishing a side account when a claim is made that would allow channels to reclaim lost ad revenue after successfully disputing a copyright claim. Second, changing the restrictions that a single copyright strike has on a channel. As it stands, just one copyright strike prevents a channel from disputing future copyright claims until the strike is removed. Walker suggests a three-strike rule, much like baseball. He states:

If we were going by baseball rules, does one strike limit the batter's ability in any way? Oh, one strike that means you can always swing half way! Oh, two strikes! That means you can only swing at balls on certain sides of the plate!¹⁷⁶

Third, introducing penalties for false claims. Walker states that people can lose money or have their channels shut down over claims. These are YouTube's penalties for violating copyright. Yet, YouTube has no penalties in place for ignoring fair use and claiming money from another's work.¹⁷⁷

While some creators, like Barry-Cotter Stuckmann, agreed with Walker's proposals, others suggested additional ideas. Becky's video ends with two additional potential improvements. First, she believes copyright strikes should not be placed on a channel

¹⁷⁵ It's Becky Boop, "Youtube's Copyright System can be ABUSED by Anyone, Here's How | #WTFU Where's the Fair Use."

¹⁷⁶ Channel Awesome, "Where's The Fair Use – Nostalgia Critic."

¹⁷⁷ Ibid.

immediately after a takedown notice is received. As a strike limits what a channel can post, she suggests a grace period that would allow creators time to dispute claims before being punished. Second, YouTube's Fair Use Protection Program should also take steps to defend creators who received wrongful claims from the Content ID System. As Becky notes, YouTube only announced that the program would defend those who were subjected to wrongful DMCA takedowns but nothing regarding Content ID claims.

Finally, Asch suggests a technical solution that would improve the Content ID System to better recognize fair use. He cites suggestions originally put forth by the Electronic Frontier Foundation (EFF) and the American Civil Liberties Union (ACLU) that believed filtering technologies, like Content ID, should meet certain requirements before removing content. Asch believes the most useful requirement is the "90% ratio test" where videos can only be claimed if they match at least 90% of the copyright holder's reference file. As Asch notes, the Content ID System currently has a similar system put in place that allows copyright holders to automatically issue claims if a video contains a set percentage of their copyrighted work. However, Asch suggests that it should be up to YouTube, not copyright holders, to determine the percentage of use that constitutes an infringement.¹⁷⁸

These proposals all serve to address another one of the movement's concerns; copyright limiting freedom of expression. Interestingly, the proposals are not about changing or dismantling copyright law, but, rather, changing YouTube's policies so freedom of expression is not limited by copyright. Walker and Rozanski address this issue directly in their videos. Walker believes copyright often conflicts with freedom of speech with rights holders using copyright as

¹⁷⁸ LiberalViewer, "Where's the Fair Use? – LiberalViewer #WTFU."

a means to silence and control new creators. He states that copyright protection should not come “at the cost of freedom of speech, and fair use is freedom of speech.”¹⁷⁹ Rozanski believes that YouTube’s copyright system relies too much on the judgement of the corporations submitting claims and these same companies want to “restrict freedom of speech, expand copyright restrictions, and control the Internet as much as possible.”¹⁸⁰ These statements reflect established concerns that media companies’ drive for profits by pleasing advertisers and copyright owners often comes at the cost of restricting citizens’ voices on public screens.¹⁸¹

Threats to Participatory Culture

Many of the videos in the #WTFU express concern over how YouTube’s copyright system limits creativity and participation. While the literature review discussed ways YouTube exemplifies the characteristics of a participatory culture, these videos provide an opposing discourse about how YouTube limits opportunities for participation. This section analyzes the movement’s key concerns about participation on YouTube.

One of the recurring themes in #WTFU videos is a sense of fear. Multiple factors produce this sense of fear. For some, like Walker and Rozanski, it was the fear of constantly dealing with copyright claims. Walker notes that fighting claims is not a rare occurrence but, rather, something the channel deals with every day. Although he has created online content professionally for nearly a decade, Walker states, “I have never had a day where I felt safe posting one of my videos, even though the law states I should be safe posting one of my videos.”¹⁸² As a result, Walker’s content has changed from his original creative vision. *Nostalgia*

¹⁷⁹ Channel Awesome, “Where’s The Fair Use – Nostalgia Critic.”

¹⁸⁰ TheMysteriousMrEnter, “Where’s the Fair Use? #WTFU.”

¹⁸¹ Deluca and Peeples, “From Public Sphere to Public Screen: Democracy, Activism, and the ‘Violence’ of Seattle,” 136.

¹⁸² Ibid.

Critic episodes now feature fewer clips in favor of reenactments of scenes. Yet, even these changes haven't prevented videos from being claimed. Walker cites a series called "Midnight Screenings" that reviews films in the reviewer's car after viewing a newly released movie. The reviews use no copyrighted footage but still receive claims from Hollywood studios. Walker believes that "what started out as a means to protect studios and content creators is now being used as a means to silence and steal. We're at a point now where not only is this becoming more and more wrong, it's becoming illegal."¹⁸³

In this sense, the fear of posting content has become a significant barrier of entry and shows how the chilling effect influences creators. Indeed, as Walker previously left YouTube to avoid copyright claims, YouTube is in danger of turning content creators away. If content creators fear that posting videos is a greater risk than reward, this limits the incentive to create content for YouTube. In *Free Culture*, Lessig also acknowledges content creators' fear of posting content. He believes this fear is directly tied to the ease of tracking users' online activity. As he states, "Never in our history has a painter had to worry about whether his painting infringed on someone else's work; but the modern-day painter, using the tools of Photoshop, sharing content on the Web, must worry all the time."¹⁸⁴ As the Content ID System scans every video uploaded to YouTube, the fear of being tracked on YouTube is a justifiable concern.

Rozanski also express fear that his channel could once again be shut down from copyright claims. As he states, "Every day that goes by, I have to be prepared for some random copyright strike because it happens frequently and I have to know that any day my channel could be gone and I have to be ready for a fight."¹⁸⁵ Rozanski also speaks about the chilling effect and

¹⁸³ Ibid.

¹⁸⁴ Lessig, *Free Culture*, 186.

¹⁸⁵ TheMysteriousMrEnter, "Where's the Fair Use? #WTFU."

how it limits incentives to create for YouTube. He notes, “I know people who are scared to start posting on YouTube, fearing that copyright can take everything down, and I want to say this to them: don't be scared. Be cautious, but don't be scared. Keep backups of your videos. Fight fraudulent claims and post with confidence.”¹⁸⁶

For others, like Williams and Stuckmann, fear came from speaking out against YouTube. Both creators expressed concern that speaking out against YouTube could potentially jeopardize their status on the platform. Stuckmann acknowledges that the problems he discusses were present for many years on YouTube. As he notes:

I still deal with copyright claims every few weeks and I've dealt with them for the past seven years.... There isn't a day that goes by when I feel like maybe I shouldn't use that one picture [in my video] ... but I shouldn't have that feeling because I know what I'm doing is legal.”¹⁸⁷

Stuckmann adds that he never spoke publicly about these issues previously because he didn't feel support from the YouTube community. However, the #WTFU created a space where he felt supported and free to share his thoughts on the issue.¹⁸⁸

Likewise, Williams feared that simply uploading his #WTFU video was a risk. As much of his video focused on how YouTube protects certain channels from copyright claims, he worried that openly discussing such information could make him more susceptible to YouTube's copyright system. He articulates this fear at the end of his video:

¹⁸⁶ Ibid.

¹⁸⁷ Chris Stuckmann, “On Fair Use #WTFU.”

¹⁸⁸ Ibid.

I'm really scared that the wrong person at YouTube is going to see this video and then they're going to change my standing in the algorithm and everything's going to go to shit. Nobody's going to see my videos anymore. I'm terrified to upload this, but I'm going to fucking do it.¹⁸⁹

Whether Williams' fears of his channel being shutdown are logical, much of his video illustrates how the freedom to create without a fear on YouTube is largely determined by one's status. If some channels are immune to the Content ID System as Williams argues, this suggests that YouTube is not truly a participatory culture where each member's contributions are valued equally.

Finally, it's important to examine the movement's concerns over monetization and how it relates to YouTube as a platform for participatory culture. Much of the movement's discourse surrounding monetization suggests that making videos is not simply an act of creativity and expression, but also one of labor that deserves proper compensation. As Stuckmann states in his video, the movement is not just concerned with creators' lost revenue, however, it is an important issue for them. As he notes, "Why in the world would you want to work hard on something that you deserve to earn something for and then have some faceless person out there at some studio sitting behind a computer make money off of you?"¹⁹⁰ In this sense, capitalism plays a crucial role in encouraging participation on YouTube.

Furthermore, prior critical studies discourses have argued that loosening copyright restrictions in favor of an open-ended system that promotes fair use would reduce creativity as

¹⁸⁹ boogie2988, "RE: Where's the Fair Use? #WTFU."

¹⁹⁰ Chris Stuckmann, "On Fair Use #WTFU."

there would be less incentive to create. Such discourses view creative expression solely as an economic activity.¹⁹¹ Interestingly, the #WTFU movement simultaneously affirms and rejects this belief. On the one hand, the movement often expresses that their incentive to create is reduced when they aren't able to monetize their videos. Barry-Cotter notes that her “dreams for my production to thrive and make better content for everybody” is at risk because of losing monetization rights for many of her videos.¹⁹² However, the movement also argues that a less restrictive copyright system will incentive more people to be creative. As Walker notes, less copyright restrictions on YouTube would create a “more stable environment for new creators to produce great work.”¹⁹³

Conclusion

The seven videos analyzed in this chapter offer valuable insights about how video functions in expressing dissent, fair use rights on YouTube, and what motivates participation on YouTube. The movement used vlog style videos to effectively create a shared space of discussion. The visual style of the videos borrowed from the cinematic techniques of television news to maintain a sense of credibility and authenticity. The discourses on copyright and fair use often targeted big media companies for exploiting YouTube's copyright systems to make money from content creators' works. The movement's ideas about the importance of recognizing fair use often paralleled Lessig's ideal of a free culture. Furthermore, the discourses around fair use often emphasized that copyright was being used to restrict freedom of expression. The videos also provided valuable insight into how YouTube functions as a site for participation. Most often, participation was motivated by two factors; fear and money. Fear limits participation and

¹⁹¹ Jenkins, et al., *Participatory Culture in a Networked Era*, 139.

¹⁹² Anime America, “VERY IMPORTANT! PLEASE WATCH! Where's the Fair Use?”

¹⁹³ Channel Awesome, “Where's The Fair Use – Nostalgia Critic.”

creates a chilling effect where content creators constantly worry that copyright holders will claim or block their videos. Money can incentivize participation, however, not earning monetization for what creators consider an act of labor reduces the desire to participate.

CHAPTER IV

“COPYRIGHT? MORE LIKE #COPYWRONG, AM I RIGHT?”¹⁹⁴ EMERGING DISCOURSES IN THE COMMENTS OF #WTFU VIDEOS

This chapter analyzes the emerging discourses in the comments sections of #WTFU videos. The comments sections provide YouTube users who don't create video content with a platform to express their opinions. As content creators are those most affected by YouTube's copyright policies, user comments reveal different perspectives than those expressed in #WTFU videos. Rather than reviewing the comments of each video individually, this chapter frames the most prominent discourses present across the seven analyzed videos. Specifically, this chapter examines how commenters addressed issues of fair use, YouTube's role in supporting large media companies at the expense of smaller content creators, and how YouTube might work to help mobilize users.

The Fair Use Discourse

The discussion about fair use provided perhaps the most significant distinction between the discourses presented in #WTFU videos and the comments sections. As the previous chapter discussed, Walker's definition of fair use as the use of copyrighted materials “for purposes such as criticism, news reporting, teaching, and research without the need for permission from or payment to the copyright holder”¹⁹⁵ was echoed by others in the movement, without any mention of the four factors that help determine fair use. However, comments on #WTFU videos often challenged this understanding of fair use. This section explores commenters' concerns about

¹⁹⁴ This quote comes from a comment left on Walker's #WTFU video.

<https://www.youtube.com/watch?v=zVqFAMotwaI&lc=UghRFi7B78EjrXgCoAEC>

¹⁹⁵ Channel Awesome, “Where's The Fair Use? – Nostalgia Critic.”

such an understanding of fair use. Specifically, discourses on what constitutes fair use, how content creators obtain copyrighted materials, and the ethics and legality of content creators profiting from fair use works.

Many commenters focused specifically on Walker's content and offered opinions on whether his work ought to be considered fair use. In doing so, commenters often expressed that Walker, and similar content creators, consistently violated two of the four factors of fair use: factors 3 (the amount of the work used) and 4 (the effect on the potential market). In his video, Walker notably remarked that he's never felt safe posting any of his content as YouTube's system has treated his work as if it were piracy.¹⁹⁶ One commenter addressed this remark directly by saying:

[You want to] feel safe posting your videos? Don't format your reviews in which it spoils the entire [film]! You're technically breaking one of the four factors that makes a video fair use and that could lead to breaking another factor which would impact the [company's] ability to make money.¹⁹⁷

Others remarked that “[v]ideos like [Walker’s] are not reviews. [They are] riffing on the movie and that's fine if [you’re] reenacting, but if you use clips, you're going to pay a licensing fee for that.”¹⁹⁸ Some were critical of Walker and the movement's focus on not being able to monetize their videos while not properly addressing how their works meet the four factors of fair use. As one commenter noted, “You keep talking about ‘monetization’ like it has ANY

¹⁹⁶ Channel Awesome, “Where’s The Fair Use? – Nostalgia Critic.”

¹⁹⁷ Reply to “Where’s The Fair Use? – Nostalgia Critic,” YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=zVqFAMotwaI&lc=UggirTR4ZJDKgngCoAEC>

¹⁹⁸ Reply to “Where’s the Fair Use? #WTFU,” YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=0W-360iRCz4&lc=Ugi2-HaO4voGaXgCoAEC>

BEARING on Content ID / fair-use rulings. It doesn't. If you want to avoid getting so many Content ID claims, consider using WAY less footage in your reviews.”¹⁹⁹ Another commenter felt that Walker should not be surprised by the amount of claims he receives:

If you use LARGE AMOUNTS of someone else's copyrighted material (like [Walker] frequently does), I think you HAVE to expect you'll have to deal with claims. I mean, he routinely incorporates 25+ minutes of someone else's material in his uploads. He could get away with MUCH less.²⁰⁰

In analyzing these comments, it's useful to first explore how the two previously mentioned factors of fair use have been understood by the courts and whether work like Walker's might reasonably satisfy these factors. One factor in determining fair use is the percentage of copyrighted material used in the new work.²⁰¹ One commenter suggested that Walker “routinely incorporates 25+ minutes of someone else's material in his uploads.”²⁰² Although the lengths of films can vary greatly, the average length of theatrically released films is typically between 90 and 120 minutes.²⁰³ If Walker used 25 minutes of a film with this average running time, he would still be using, at most, less than one third of the copyrighted work.

However, in reviewing content on Walker's channel, the percentage of copyrighted material used was relatively high when compared to the overall length of the videos. In his video “What the Hell YouTube?,” Walker cited receiving a copyright strike from the animation

¹⁹⁹ Reply to “Where's the Fair Use? #WTFU,” YouTube comment, last accessed December 4, 2017.

https://www.youtube.com/watch?v=0W-360iRCz4&lc=UggcKpvDz_kfyXgCoAEC

²⁰⁰ Reply to “On Fair Use #WTFU,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=I55seO4d1Kw&lc=Ugi8NxP-kfnVp3gCoAEC.8AUko0aNgZZ8AbZ9eXXSN6>

²⁰¹ Pember and Calvert, *Mass Media Law*, 545.

²⁰² Reply to “On Fair Use #WTFU.” <https://www.youtube.com/watch?v=I55seO4d1Kw&lc=Ugi8NxP-kfnVp3gCoAEC.8AUko0aNgZZ8AbZ9eXXSN6>

²⁰³ Kirsten Acuna, “Why Movies Today are Longer than Ever Before,” *Business Insider*, January 31, 2013.

company Studio Ghibli for his review of their film *My Neighbor Totoro*. As this copyright strike motivated Walker to speak out against YouTube and start the #WTFU movement, it's useful to consider this review with the fair use factors in mind. Unlike his usual "Nostalgia Critic" videos, Walker's review of *My Neighbor Totoro* does not feature him speaking to the camera nor does it contain any of his usual comedy sketches that parody the film. Instead, this six-minute review consists solely of footage from the film with Walker speaking over the footage throughout.²⁰⁴ While the amount of copyrighted work used here is high in relation to the length of the video, this factor alone would not necessarily preclude it from being considered a fair use. As Walker's voiceover is a crucial element present throughout the video, the review is meant to provide commentary and criticism and is representative of a transformative use in that regard.

The suggestion that Walker's content could potentially negatively impact the market value of the copyrighted work is also important to consider. U.S. Supreme Court Justice Sandra Day O'Connor considered this factor to be "undoubtedly the single most important element of [determining] fair use."²⁰⁵ Walker's review of *My Neighbor Totoro* generally praises the film and recommends it to viewers. If Walker's review helped garner renewed interest in the film, the copyright holders could potentially have difficulty arguing that the review adversely affected the market for their product.

Walker's content wasn't the only subject of criticism for not potentially meeting the factors of fair use. Commenters frequently questioned whether the genre of "reaction videos" are considered fair use. Reaction videos started gaining popularity around 2007 with YouTubers

²⁰⁴ Channel Awesome, "My Neighbor Totoro – Disneyember," YouTube video, December 7, 2015.

<https://www.youtube.com/watch?v=bwW6tVNFgWA>

²⁰⁵ *Harper & Row Publishers v. Nation Enterprises*, 471 U.S. 539 (1985).

filming their reactions to the infamous “2 Girls 1 Cup” web video.²⁰⁶ While these early reaction videos were meant to capture moments of surprise, modern reaction videos tend to focus on reactions to pieces of popular culture such as movie trailers, music videos, television shows, or other YouTube videos.²⁰⁷ A popular style for reaction videos typically includes the full clips of what’s being reacted to by using a split-screen to allow the viewer to see the uploader’s reactions in real time.²⁰⁸

Commenters often felt that the #WTFU videos neglected to mention reaction videos when touting YouTube as a platform for creative expression. For many viewers, reaction videos lacked the same kind of criticism and commentary to qualify for fair-use protection. The general criticisms concerning reaction videos are best summarized by the following two comments:

- “There [are] many YouTubers out there, particularly reaction YouTubers, who are abusing the hell out of the fair use policy, and have no penalties. They take entire videos from other channels, add nothing to them at all and they don't suffer any consequences.”²⁰⁹
- “So, WTF is up with reaction channels? They straight up take other people’s content and play the whole video! I once heard a ‘reactionist’ say ‘it’s not theft as it was a silent review.’ Are you freaking kidding me!?! It’s bullshit.”²¹⁰

²⁰⁶ Sam Anderson, “Watching People Watching People Watching,” *The New York Times*, November 25, 2011.

²⁰⁷ *Ibid.*

²⁰⁸ Jessica Voge, “Where's the Fair Use? The Takedown of Let's Play and Reaction Videos on YouTube and the Need for Comprehensive DMCA Reform,” *Touro Law Review* 33 (2017): 595.

²⁰⁹ Reply to “On Fair Use #WTFU,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=I55seO4d1Kw&lc=UggTniJeoGatIngCoAEC>

²¹⁰ Reply to “On Fair Use #WTFU,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=I55seO4d1Kw&lc=Ugh3KogaC0Vo3HgCoAEC>

Others have made similar criticisms of reaction videos and argue that there is no incentive to view the original work when reaction videos feature the entire original work.²¹¹ While such comments are reasonable in questioning reaction videos as fair use, they also make broad generalizations about the genre. Both of the previous comments suggest that reaction videos adhere to a strict formula that is inherently copyright infringement. However, not all reaction videos use full clips of copyrighted material and the genre itself is characterized by a variety of styles. Early reaction videos often featured no copyrighted material with the focus being on people reacting to events that were occurring around them. The most notable example of this is a 2006 video showing a brother and sister excitedly opening a Nintendo 64 game system on Christmas morning of 1998.²¹² Other reaction videos use little-to-no copyrighted footage and focus primarily on offering their own criticism and commentary of the given topic.²¹³

This is not to say that all reaction videos offer transformative amounts of criticism and commentary, however. Tyrone Magnus, a YouTube personality who specializes in reaction videos, has been criticized for providing a limited amount of commentary in his videos. In one case, Magnus uploaded a reaction video of another YouTuber's 16-minute-long video. The uploader of the original video, GradeAUnderA, submitted a claim that prevented Magnus from monetizing the video as it offered no substantial commentary. However, by the time GradeAUnderA filed the claim, Magnus' video had already received over 300,000 views, amounting to hundreds of dollars of earned monetization.²¹⁴ GradeAUnderA further noted that

²¹¹ Vogele, "Where's the Fair Use? The Takedown of Let's Play and Reaction Videos on YouTube and the Need for Comprehensive DMCA Reform," 596.

²¹² *Ibid.*

²¹³ *Ibid.*, 597-598.

²¹⁴ *Ibid.*, 599-600.

Magnus only spoke seven words while the 16-minute video played and neglected to offer any additional commentary once the video finished.²¹⁵

Yet, even reaction videos that heavily use clips of another's work without permission can meet the factors of fair use in the eyes of commenters. In April 2016, YouTuber Matthew Hosseinzadeh sued fellow content creators Ethan and Hila Klein (of the channel H3H3 Productions) for copyright infringement for uploading a reaction to one of his videos. Hosseinzadeh and his attorney argued that the Kleins' video was not a transformative use as it used over 70 percent of the original video "while contributing nothing substantive to it."²¹⁶ Other popular YouTubers quickly defended the Kleins and even started a legal-defense fund to help protect fair use on YouTube.²¹⁷ The Kleins ultimately won the lawsuit with Judge Katharine B. Forrest ruling that the video provided substantial commentary and was not a market substitute for Hosseinzadeh's video.²¹⁸ However, Judge Forrest noted that her ruling does not mean that all reaction videos should be considered fair use. While the Kleins provided an adequate amount of commentary in their video, she noted that other reaction videos "are more akin to a group viewing session without commentary."²¹⁹

Commenters also expressed concern with how content creators were obtaining the copyrighted materials used in their videos. In such instances, commenters were less concerned with identifying works as fair use and more concerned with the legality of how the copyrighted

²¹⁵ Ibid.

²¹⁶ Todd Spangler, "Legal Fund for YouTube's H3H3 Raises More Than \$145,000 to Fight MattHoss Copyright Lawsuit," *Variety*, May 31, 2016.

²¹⁷ Ibid.

²¹⁸ Anthony Ha, "Judge Sides with YouTubers Ethan and Hila Klein in Copyright Lawsuit," TechCrunch, August 26, 2017. <https://techcrunch.com/2017/08/23/judge-sides-with-youtubers-ethan-and-hila-klein-in-copyright-lawsuit/>

²¹⁹ Ibid.

material was obtained. As one commenter asked, “How do you get your clips in the first place? I understand fair use, but where [do you] legally get clips for movie reviews?”²²⁰ Others noted that “even if something were fair use, the way [it] was [obtained] could be in the wrong without the content holder’s express consent.”²²¹ Much like the discourse on reaction videos, these comments raise legitimate concerns about illegally obtaining copyright materials, yet they also, without evidence, suggest that content creators are potentially breaking the law. Such suggestions are somewhat ironic considering many #WTFU videos noted that YouTube operates with the standard of “guilty until proven innocent” in regard to copyright, and these comments make similar assumptions.

However, these comments are noteworthy in suggesting that obtaining copyrighted materials for fair use purposes is not always an easy task nor is it a practice that is readily and commonly understood. Typically, one would need to pay a licensing fee to use a portion of copyrighted material. Yet, obtaining a license is not always easy to do. For older works, it can be difficult to determine who to contact to obtain a license. If one does locate the copyright holder, they could simply refuse the licensing request or demand a fee that is out of the asker’s price range. This process is best summarized by Bill Ivey who states:

[I]t’s one thing to protect an author, painter, or songwriter from wholesale theft, quite another to make it extremely difficult to minimally quote existing work in a new creative project without first locating owners, securing permissions, and paying licensing fees.²²²

²²⁰ Reply to “On Fair Use #WTFU,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=I55seO4d1Kw&lc=UghLZJNoksdXPHgCoAEC>

²²¹ Reply to “VERY IMPORTANT! PLEASE WATCH! Where’s the Fair Use?” YouTube comment, last accessed December 4, 2017. https://www.youtube.com/watch?v=xYL_eLZLfw8&lc=UgjSjz8SpWb1j3gCoAEC

²²² Ivey, *Arts, Inc.: How Greed and Neglect Have Destroyed our Cultural Rights*, 74.

But, as fair use does not require permission from copyright holders, different steps are often taken to obtain materials. As one of the previous comments specifically mentioned movie reviews, let's consider the process of how one might obtain footage from a film to use for a YouTube review. One would first need to obtain the necessary video file to be edited into their review. It's easy enough to legally obtain a digital copy of a film by purchasing it through one of several vendors such as iTunes, Amazon, Google Play, etc., but these files are typically protected with digital rights management (DRM) technologies that control and restrict the user's ability to access and copy the software.²²³ To have full access to the video file to edit into a movie review, the DRM restrictions would need to be lifted using third-party software – an act that violates certain protections of digital copyrighted content as granted by the DMCA.²²⁴ In short, the digital age of copyright has made accessing certain copyrighted materials so difficult that there are few legal and easily accessible options available for creators to exercise their fair use rights.

Finally, commenters questioned the ethics and legality of content creators profiting from fair use works. As the subject of monetization was frequently addressed in #WTFU videos, it's perhaps not surprising that commenters had their own views on the subject. While #WTFU videos often made sure to express that their use of copyrighted content was perfectly legal, commenters suggested that their monetization of copyrighted material was illegal. As two commenters noted:

²²³ Dinah A. Vernik, Devavrat Purohit and Preyas S. Desai, "Music Downloads and the Flip Side of Digital Rights Management," *Marketing Science* 30, no. 6 (2011): 1011.

²²⁴ Alicia Hoffer, "A Matter of Access: How Bypassing DRM Does Not Always Violate the DMCA," *Washington Journal of Law, Technology & Arts* 7 (2011): 13-24

- “If you're making money from someone else's work by referencing it without permission, that's not fair use.”²²⁵
- “[E]xcuse me, [Mr. Walker], but what you are doing is [in fact] in violation of copyright law. [F]air use only applies in cases where the person is not profiting off the copyright material, but you directly profit off that material by putting ads on your videos... Your entire business is built around infringing copyright.”²²⁶

Others felt that videos using full clips of existing works and feature only occasional commentary were an example of “pure theft” as it potentially reduces the incentive to view the original works.²²⁷

The fair use doctrine does not explicitly prohibit one from profiting from fair use works, however, nonprofit uses are generally more likely to be considered fair use.²²⁸ Whether a commercial work is considered fair use is generally determined by the first factor of fair use, the purpose and character of the work. In 1994, the U.S. Supreme Court ruled that a nonprofit use does not exclude a work from being an infringement any more than a commercial use “bars a finding of fairness.”²²⁹ Furthermore, the previously mentioned court case that ruled in favor of the Kleins shows that YouTube videos can be considered fair use while still claiming monetization.

²²⁵ Reply to “RE: Where’s the Fair Use? #WTFU,” YouTube comment, last accessed December 4, 2017.

https://www.youtube.com/watch?v=9-O7WANBW_Y&lc=Ugj6hmijp2JzZngCoAEC

²²⁶ Reply to “Where’s The Fair Use – Nostalgia Critic,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=zVqFAMotwaI&lc=UgjSPEQ1dkK53HgCoAEC>

²²⁷ Reply to, “Where’s the Fair Use – LiberalViewer #WTFU,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=WittWGWbEWo&lc=UgjV0ramEYpp73gCoAEC>

²²⁸ Pember and Calvert, *Mass Media Law*, 539.

²²⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

Although these court decisions show that it is legal to profit from fair use works, perhaps these comments are best viewed as ethical judgments that making money from someone else's work is inherently wrong. This is especially worthy of consideration when viewing YouTube as a social network for fan communities. Those who view YouTube as a site to interact with others and discuss topics of fandom (movies, television shows, books, music, etc.) consider such participation as a "labor of love" and something that should not be monetized or commodified.²³⁰ Such a viewpoint suggests that fan participation should be separate from capitalist interests as to maintain a sense of purity within the community. However, it's often difficult to separate fandom from commercial culture. Fans are sharing their appreciation for commercially produced works, but this is done to enrich the shared culture of the community rather than for personal gains.²³¹ But these ethical arguments also speak to broader concerns about YouTube being used as a commercial platform rather than a site for individual users to express themselves. In this sense, commenters are making distinctions between "old" and "new" YouTube where the introduction of monetization has corrupted the nature of participation on the site.

It's also important to further acknowledge how commenters' various interpretations of fair use and copyright law largely dominated these discourses. The comments presented in this section often didn't respond to anything explicitly stated in the videos but, instead, offered their own interpretations of what the law says. Rather than using the law to have a broader discussion about how to improve fair use on YouTube, these comments made authoritative arguments to assert their interpretation of the law was correct. Commenters' often over-legalistic approach is similar to past theorists' suggestions that it's useful to view the law as a "culture of arguments"

²³⁰ Jenkins, et al., *Participatory Culture in a Networked Era*, 140.

²³¹ *Ibid.*, 141.

where our understanding of the law is largely shaped by the authoritative discourses that surround it.²³² In this sense, the law creates a community of discourse that is an “ethical and political activity” for members.²³³ Participation in the #WTFU movement might be seen as linked to this culture of arguments where discussion of the law prompts a variety of discourses.

YouTube Not Supporting Smaller Channels

This section identifies and analyzes three distinct discourses concerning YouTube favoring content produced by large media companies (*i.e.*, those companies that produce and own music videos, movie trailers, and television shows) over small content creators. Specifically, these discourses build on arguments that smaller channels aren’t being heard, that there is distinction between the “old” and “new” YouTube, and the idea that increasingly people fear starting a YouTube channel. While the #WTFU videos often addressed these issues, commenters often focused on how copyright claims affect channels differently based on the size of the channel. While much of Williams’ video focused on this issue, the other videos omitted such a discussion. The comments sections often featured comments from small channels who took the opportunity to share their own experiences on YouTube that were not addressed in the videos.

One commenter replied to Walker’s video to detail his/her experience of creating content on YouTube. The commenter uploaded a series of reviews for a television show that didn’t use any copyrighted material and consisted solely of the uploader’s commentary and royalty-free images. Once the channel started to receive more views, the uploader noted that he/she received copyright claims on seven videos. The uploader submitted a counter-notification explaining that the reviews consisted only of his/her voice to offer criticism and commentary, and the copyright

²³² James Boyd White, *Justice As Translation: An Essay in Cultural and Legal Criticism*, (Chicago: University of Chicago Press, 1990), xiii-xiv.

²³³ *Ibid.*

holders issued an apology and restored the videos. However, the same company issued claims on eight more of the channel's videos the day after apologizing and even issued two copyright strikes on the channel. The uploader decided to make all of his/her videos private to avoid an additional strike, but found that the channel had already been suspended. The uploader then attempted to contact YouTube several times to resolve the situation but only received automated responses explaining YouTube's copyright policies. As he/she explained:

Nobody from YouTube is helping me get my channel back. I have no clue what to do now, who to call for help. Bigger channels have fans who support them, but I don't even have that benefit; who will hear my voice?²³⁴

Other commenters noted that the Content ID System has continually restricted their uploads of song parodies. One commenter believes the parodies should be protected by fair use, but having to continuously fight copyright claims has reduced his/her desire to be creative. He/she notes that the Content ID System

makes smaller channels like ours want to stop making content altogether. And we have. Multiple times. But we keep coming back and trying because this is what we enjoy doing and where else can we go? But it is exhausting, and we have to continually ask ourselves, is it even worth it?²³⁵

Both of the previous comments discuss YouTube as a platform that embodies Lessig's idea of a permission culture where creativity is only possible with permission from those in

²³⁴ Reply to "Where's The Fair Use? – Nostalgia Critic," YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=zVqFAMotwaI&lc=Ugj2eC5Sh6zAAngCoAEC>

²³⁵ Reply to "RE: Where's the Fair Use? #WTFU," YouTube comment, last accessed December 4, 2017. https://www.youtube.com/watch?v=9-O7WANBW_Y&lc=Ugimf4fFK9hCO3gCoAEC

power.²³⁶ Both commenters provided examples of fair uses that simply commented on or parodied popular culture. Yet, in both cases, this creativity was hindered by not having the permission from those in power (*i.e.*, YouTube and copyright holders). As Lessig states, “The opportunity to create and transform becomes weakened in a world in which creation requires permission and creativity must check with a lawyer.”²³⁷ Williams’ video furthers the ideas of YouTube as a permission culture as a platform that only grants fair use to larger content creators who are protected by MCNs. Williams’ assertion that fair use is only granted to those who make YouTube money is reflected in comments from small channels.

Many commenters believe that YouTube’s copyright policies of favoring claims reflect how the company has shifted from promoting small-content creators to content produced by traditional media companies. As the literature review discussed, YouTube’s “Broadcast Yourself” slogan suggested the site was a platform where anyone with a video camera could become a star. Content creators did not need expensive filmmaking equipment to make a popular video; anyone with a webcam had the potential to create the next viral video. In the early years of YouTube, vlogs were one of the most popular genres on the site.²³⁸ However, commenters frequently addressed YouTube’s status as a platform that promotes content produced by large-media companies.

One user commented that the site was no longer YouTube but, instead, “Corporate Tube,” as Google has no incentive to make changes to what is already the most popular video-

²³⁶ Lessig, *Free Culture*, xiv

²³⁷ *Ibid.*, 173.

²³⁸ Burgess and Green, *YouTube: Online Video and Participatory Culture*, 43.

sharing service.²³⁹ Others argued that the growing trend of YouTube promoting traditional-media content was an attempt by media companies to seize control of the platform rather than compete with it.²⁴⁰ Another commenter summarized the division between independent content creators and content produced by traditional media:

Look at the front page of YouTube... It will primarily advertise shows already on TV (Jimmy Kimmel, Fallon, Ellen), and larger company videos. These channels paint the perfect picture of YouTube, despite being completely disconnected from YouTube. They don't do this for a living. They're already making a living. This is expanding their audience. They're not like the rest of YouTube. We are content creators. We create. We appreciate. We suffer. We struggle. And now...we stand. #WTFU²⁴¹

The tension between protecting the interests of content creators and media corporations is an essential part of YouTube's history. The tension, and commenters' distinction between "old" and "new" YouTube, was spurred by Google's acquisition of the service. To understand how this deal ushered in what commenters called the "new" era of YouTube, it's necessary to look back at one of the site's first successes. In December 2005, a clip of the *Saturday Night Live* sketch "Lazy Sunday" was uploaded to YouTube. The clip was widely shared and received over 1.2 million views in ten days.²⁴² NBC Universal, which owned the copyright of the sketch, demanded that the video, and an additional 500 clips of copyrighted material, be removed or

²³⁹ Reply to "Where's The Fair Use? – Nostalgia Critic," YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=zVqFAMotwaI&lc=Ugh3sSC-PcU-uXgCoAEC>

²⁴⁰ Reply to "RE: Where's the Fair Use? #WTFU," YouTube comment, last accessed December 4, 2017. https://www.youtube.com/watch?v=9-O7WANBW_Y&lc=UgiyIUcmcRhP6ngCoAEC

²⁴¹ Reply to "Where's the Fair Use? #WTFU," YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=0W-360iRCz4&lc=Ugi7m7dlhyx0pngCoAEC>

²⁴² Burgess and Green, *YouTube: Online Video and Participatory Culture*, 3.

YouTube would face legal action.²⁴³ The popularity of the video prompted two distinct reactions concerning YouTube's future. First, that YouTube had the potential for both advertisers and traditional media to effectively reach a younger audience.²⁴⁴ And second, that YouTube would become the next Napster and be shut down for copyright infringements.²⁴⁵ It was partly to prevent the latter from happening that YouTube sought to be part of Google's corporate empire. As YouTube co-founder Chad Hurley noted, the deal granted YouTube further copyright protection in the form of Google's financial and technological resources.²⁴⁶ Around this same time, YouTube also announced partnerships with NBC, CBS, Sony BMG Entertainment and Universal Music Group to host and promote their various content.²⁴⁷ In this way, YouTube's promotion of traditional media over independent-content creators is part of a larger effort to keep media companies happy, increase the site's revenue, and avoid future lawsuits,

Finally, the previous chapter identified fear and the chilling effect as recurring themes in #WTFU videos. This fear came from having to constantly deal with copyright claims, the possibility of suddenly losing one's channel, and the fear of speaking out against YouTube. Commenters echoed similar fears. One commenter detailed his/her desires to create YouTube content. As a fan of the anime genre, he/she decided to create a video discussing his/her top 25 favorite anime openings. After spending hours working on the video, he/she uploaded the video and was "immediately" hit with a copyright strike.²⁴⁸ The commenter contacted YouTube

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Michael Liedtke, "World of Sharing," *The Courier Mail*, April 26, 2006.

²⁴⁶ Paul R. La Monica, "Google to Buy YouTube for \$1.65 Billion," CNNMoney.com, October 9, 2006. http://money.cnn.com/2006/10/09/technology/googleyoutube_deal/index.htm?cnn=yes

²⁴⁷ Ibid.

²⁴⁸ Reply to "Where's The Fair Use? – Nostalgia Critic," YouTube comment, last Accessed December 4, 2017. <https://www.youtube.com/watch?v=zVqFAMotwaI&lc=Ugg-bgSMezba8XgCoAEC>

several times to get the strike removed, explaining how his/her work met the factors of fair use, but never received any response. The commenter soon deleted his/her channel. The commenter further noted that he/she would never create another video out of fear of being sued and not having the money to defend themselves in court. As he/she notes, “I don't know if it's what YouTube was going for, but they succeeded in silencing the little person.”²⁴⁹ Another commenter expressed similar fears and felt “intimidated” to share his/her thoughts because of YouTube’s restrictive copyright system.²⁵⁰

These fears suggest that the creativity of small content creators on YouTube is at risk due to excessive control by copyright holders. In one case, the prospect of a costly lawsuit largely motivated this fear. Yet, copyright law’s excessive control over their properties is also motivated by fear. Much of this fear can be attributed to the influx of piracy online and copyrighted holder’s fearing their works would lose value in the marketplace.²⁵¹ These fears have resulted in increased protection for copyright holders at the expense of limiting the creativity of others.

Taking Action to Improve YouTube

As the last chapter discussed, the videos often proposed different ways to improve YouTube as a platform for content creators. Many commenters echoed the concerns expressed in #WTFU videos and had similar ideas about how to improve YouTube. Some supported Walker’s idea of placing revenue earned through monetization in a side account when a claim is filed with the money granted to the winner of the dispute.²⁵² There was also strong support for YouTube

²⁴⁹ Ibid.

²⁵⁰ Reply to “On Fair Use #WTFU,” YouTube comment, last Accessed December 4, 2017.

<https://www.youtube.com/watch?v=I55seO4d1Kw&lc=Ugir7sUIaWkrXXgCoAEC>

²⁵¹ Lessig, *Free Culture*, 183-186.

²⁵² Reply to “VERY IMPORTANT! PLEASE WATCH! Where’s the Fair Use?” YouTube comment, last accessed December 4, 2017. https://www.youtube.com/watch?v=xYL_eLZLfw8&lc=Ugh3nz4vQIPpHngCoAEC

issuing penalties for companies issuing DMCA takedowns without first considering the work as fair use.²⁵³ Others affirmed Asch’s idea of pursuing legal action against YouTube in the form of a class-action lawsuit.²⁵⁴

However, perhaps the most important distinction between the videos and the comments sections came from commenters attempting to rally users to engage in further forms of dissent and activism. Although #WTFU videos often encouraged viewers to share the movement’s content, none of the seven analyzed videos suggested any additional actions for viewers to take. While much of the purpose of the videos was to get YouTube’s attention, it’s interesting to examine how the community helped the movement grow and achieve its goals through the comments sections. These comments help to further define YouTube not simply as a video sharing service, but as a social network that effectively uses videos to encourage further participation from its audience.

Commenters frequently suggested that both content creators and users boycott YouTube. Commenters reasoned that YouTube’s revenue would be adversely affected and prompt the company to fix the flaws in its system.²⁵⁵ Some suggested that content creators make all their videos “private” for one day to reduce YouTube’s ad revenue.²⁵⁶ As one commenter argued, this type of “blackout” protest was effective in stopping bills like SOPA from being passed.²⁵⁷ Others

²⁵³ Reply to “Where’s The Fair Use? – Nostalgia Critic,” YouTube comment, last accessed December 4, 2017, <https://www.youtube.com/watch?v=zVqFAMotwaI&lc=UghXO2W3sLTtB3gCoAEC>

²⁵⁴ Reply to “On Fair Use #WTFU,” YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=I55seO4d1Kw&lc=UghreEYDZr5D2XgCoAEC>

²⁵⁵ Reply to “RE: Where’s the Fair Use? #WTFU,” YouTube comment, last accessed December 4, 2017. https://www.youtube.com/watch?v=9-O7WANBW_Y&lc=Ughftqcv-V1AIXgCoAEC

²⁵⁶ Reply to “VERY IMPORTANT! PLEASE WATCH! Where’s the Fair Use?” YouTube comment, last accessed December 4, 2017. https://www.youtube.com/watch?v=xYL_eLZLfw8&lc=UgjCB1D9d7zcX3gCoAEC

²⁵⁷ Reply to “Where’s the Fair Use? #WTFU,” YouTube comment, last accessed December 4, 2017. <https://www.youtube.com/watch?v=0W-360iRCz4&lc=UgjFe8yyq940OHgCoAEC>

felt that it was time for creators to abandon YouTube entirely and move their content to a rival video-sharing website.²⁵⁸ However, others believed that a boycott conflicted with the movement's original ideology of protesting YouTube by using the site as the outlet for their dissent. As one commenter noted:

A lot of people think that if we all up and leave from YouTube the problem will go away. I disagree. In fact, it's all the more reason that we have to stay here and fight. Let's not let them silence [our] creativity.²⁵⁹

The Content ID System was also a frequent subject of debate among commenters. Those who opposed the system were primarily concerned that YouTube relied on automation to handle the majority of copyright claims without any human involvement. As one commenter noted, the ease of an automated system to handle copyright claims “has cost us our publishing freedoms, particularly when these computers haven't got the ability to determine context.”²⁶⁰ However, others responded to such criticisms and viewed the system as a necessity as it protects YouTube from being liable for hosting infringing content and would be difficult for YouTube's staff to police content on their own.²⁶¹

²⁵⁸ Reply to “Youtube's Copyright System can be ABUSED by Anyone, Here's How | #WTFU Where's the Fair Use,” YouTube comment, last accessed December 4, 2017.

https://www.youtube.com/watch?v=u6SUapTpHh0&lc=UgiFisy_Rud-UXgCoAEC

²⁵⁹ Reply to “Where's the Fair Use? #WTFU,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=0W-360iRCz4&lc=Ughdf-kU0u-eFHgCoAEC>

²⁶⁰ Reply to “Where's The Fair Use? – Nostalgia Critic,” YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=zVqFAMotwaI&lc=Ugj1LMObvSFJ-XgCoAEC>

²⁶¹ Reply to “RE: Where's the Fair Use #WTFU,” YouTube comment, last accessed December 4, 2017.

https://www.youtube.com/watch?v=9-O7WANBW_Y&lc=UgjV7JZqMiAibXgCoAEC.8AUyzUIJyzu8AWzGKn8ReG

Commenters also circulated various petitions that addressed the movement's primary concerns.²⁶² One commenter emphasized the importance of the various petitions by saying, "The only way this will ever be fixed, is to be as loud as possible."²⁶³ While petitions targeted YouTube directly, others felt that broader issues of copyright reform needed to be addressed first.²⁶⁴ Some believed that discussions on copyright needed to happen at a national level and urged others to contact their elected representatives.²⁶⁵

What's perhaps most noteworthy about these comments is that they aren't calling for the current systems of YouTube or copyright law to be radically overhauled or dismantled. Instead, these suggestions all maintain working within the existing systems to influence change. The last chapter noted that many of the movement's ideals about recognizing fair use were similar to Lessig's argument for a free culture. However, Lessig's vision for a free culture also involved subverting the systems currently in place. This need for restructuring prompted Lessig to establish the Creative Commons organization to promote the creativity of the digital age and allow others to freely sample and build upon works with a Creative Commons license.²⁶⁶ This desire to simply "stay and fight" might be attributed to the movement's capitalist interests of YouTube being a site where creators can make money. Lessig's Creative Commons is rather anti-capitalistic by comparison as it aims to promote participation and creativity over personal gains. By merely changing existing structures that would allow the movement to continue

²⁶² Reply to "RE: Where's the Fair Use? #WTFU," YouTube comment, last accessed December 4, 2017.

https://www.youtube.com/watch?v=9-O7WANBW_Y&lc=Ugj2b6AS1cfXgCoAEC

²⁶³ Reply to "Youtube's Copyright System can be ABUSED by Anyone, Here's How | #WTFU Where's the Fair Use," YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=u6SUapTpHh0&lc=UgjUDLd6m11syHgCoAEC>

²⁶⁴ Reply to "Where's the Fair Use – LiberalViewer #WTFU," YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=WittWGWbEWO&lc=UghCduNcXIvY63gCoAEC>

²⁶⁵ Reply to "Where's the Fair Use – LiberalViewer #WTFU," YouTube comment, last accessed December 4, 2017.

<https://www.youtube.com/watch?v=WittWGWbEWO&lc=UghdJv4Hc41VKXgCoAEC>

²⁶⁶ Lessig, *Free Culture*, 282-286.

earning money creating YouTube content, the movement is ultimately not influencing the possibilities of creativity on a broader scale. Instead, these proposed changes only help to ensure that content creators won't lose income from copyright claims.

Conclusion

The content of comments on #WTFU videos reveal three distinct discourses. First, comments expressed concerns about fair use that were not addressed in the videos. These comments often questioned the fairness of the works of Walker and other YouTubers in addition to questioning how content creators obtain copyrighted materials. Additionally, as videos often discussed the issue of monetization, commenters addressed the legal limitations of profiting from fair use works. In doing so, commenters were arguing for their own interpretations of the law instead of replying to specific concerns raised in the videos. Second, the comments sections offered small-content creators a platform to address different ways YouTube fails to support their content. Specifically, by only protecting the fair use rights of large channels, promoting the content of large-media companies over independent creators, and relying on a copyright system that creates a sense of fear that limits creativity. Finally, commenters promoted further activism in the community. In this way, the #WTFU movement effectively mobilized viewers to engage in further modes of dissent and participation by extending the movement's voice beyond YouTube and into the larger public sphere.

CHAPTER V

CONCLUSION

I started studying fair use and copyright issues on YouTube in the fall of 2015, months before the #WTFU movement began. As a frequent YouTube user, the topic resonated with me as many of my favorite content creators expressed how YouTube's systems limited their creativity. During my initial research, I even interviewed one of my favorite content creators about his experience with YouTube's copyright system. I can still recall being nervous before the interview, partly because I was a fan of the interviewee's work and partly because he lived in Australia and I dreaded the thought of Skype crashing halfway through our conversation. But most of all, I was nervous because I knew content creators were deeply concerned with the issue of fair use on YouTube and I wanted to effectively articulate why this topic was important.

In conducting this research, it was fascinating to see how similar feelings of nervousness and fear motivated the #WTFU movement. In one way, fear stymied participation on YouTube with creators worrying over the prospect of battling copyright claims that could potentially lead to a lawsuit. However, this sense of fear also motivated the movement's formation and brought a community of creators together to influence change. Although the issue of fair use is the movement's primary concern, the discourses about participation, freedom of expression, and creativity are perhaps more useful when analyzing YouTube as a site for participatory culture in the virtual public sphere.

While the literature review examined the features that characterize YouTube as a site for participatory culture, the various discourses presented by the #WTFU demonstrate ways participation is limited on the site. Whether it was the fear of constantly dealing with copyright

claims, smaller channels not feeling supported, or YouTube valuing traditional media over users' creations, these discourses show the limitations of participation on YouTube. However, these discourses also demonstrate the need to view participatory culture as a continuously evolving concept that is shaped by the norms of the present. Henry Jenkins argues that the norms of participatory culture are shaped by groups that "develop a shared vision of what a better society might look like."²⁶⁷

In this sense, the #WTFU movement perfectly embodies the changing nature of participatory culture in the digital age. While others have been quick to celebrate the era of Web 2.0 as shifting power to the users, it's important to recognize how participation online is influenced by a tension between users and the companies that host users' content.²⁶⁸ With YouTube, much of this tension comes from the site lacking a clear purpose of who and what it's for. The site's early slogan of "Broadcast Yourself" is not reflective of the company's later practices of promoting the interests of traditional media companies and copyright holders over individual content creators. Chapter 4 explored commenters' distinctions between "old" and "new" YouTube and this shift shows that looking at users' contributions alone is not enough when analyzing online participatory cultures. Instead, we must also consider how participation online is shaped by capitalist interests that often come at the expense of individuals' freedom of expression.

²⁶⁷ Jenkins, et al., *Participatory Culture in a Networked Era*, 186.

²⁶⁸ Perhaps the most notable example of celebrating this perceived shift of power came in 2006 when *Time* magazine named "You" as its Person of the Year. In this case, "You" referred to the collective millions of Internet users who contributed to sites like YouTube, Myspace, and Wikipedia. One of the central points the author makes is how users have "seized the reigns" of control from global media and created a digital democracy where everyone's contributions are important. See Lev Grossman, "You — Yes, You — Are TIME's Person of the Year," *Time*, December 25, 2006. <http://content.time.com/time/magazine/article/0,9171,1570810,00.html>

In this same vein, however, it's important to further acknowledge how the #WTFU movement was motivated by its own capitalist interests. Much of the discussion in both the videos and the comments concerned the issue of monetization. For some creators, their participation in the movement seemed largely motivated by their lost revenue due to copyright claims. In watching these videos, I often questioned whether the movement would have formed at all if copyright claims had no effect on creators' ability to monetize their videos. Granted, not every video focused on the issue of monetization. Some, like Williams and Becky, seemed more concerned with addressing the inequalities of YouTube's system and improving the site to become a freer and more open platform for participation and creativity. Nevertheless, many of the proposed "solutions" to improve YouTube and protect fair use only serve to protect creators' earned revenue and do nothing to address the larger and more problematic issues concerning copyright law.

However, fair use and copyright law were still significant points of discussion. Perhaps the most noteworthy part of this discussion is how the discourses on fair use varied greatly from the videos to the comments. The videos typically discussed copyright similarly to Lessig and argued that existing copyright laws are often restrictive to new creative forms of expression. In doing so, the movement was less concerned with interpreting the existing laws as it was arguing for how the laws "should" operate. Conversely, the comments often relied on users' overly-legalistic interpretations of the law that challenged creators' claims that their work was fair use. These two opposing discourses highlighted what the introduction identified as a tension between "cultural fairness" and "copyright fairness."²⁶⁹ While there is perhaps no way to adequately satisfy these two opposing viewpoints, these discourses stress the fact that existing copyright

²⁶⁹ Collins, "Digital Fair: Prosumption and the Fair Use Defence."

laws are outdated and fail to account for the creative possibilities of the Internet and future technologies.

Yet, the differences in the discourses expressed in the videos and the comments emphasize YouTube's importance in the virtual public sphere and as a site for protest movements. The inclusion of the comments section allows for further conversation and debate and for others to participate without creating a video. As the #WTFU movement shows, this is especially useful for protest movements as commenters can encourage further activism from the community by discussing additional acts of dissent or circulating petitions. However, this is not to suggest that YouTube comment sections are always used for constructive criticism or encouraging participation in a community. Comment sections often display incredibly poor behavior with commenters trolling or harassing other users. Such behavior was found in the comments of #WTFU videos as well.

Response from YouTube

As the #WTFU movement focused on changing specific YouTube policies, it's important to examine how the company responded to the movement's concerns. The first notable response came on February 24, 2016, from a member of YouTube's policy team in a post on YouTube's Help Forum. The post begins with the author discussing how feedback from the community has always played an integral role in improving YouTube. The post specifically addresses the issues of video takedowns and creators losing monetization. The author notes that YouTube will "roll out some initiatives in the coming months that will help strengthen communications between creators and YouTube support" in addition to being "more transparent" about the status of

monetization and claims.²⁷⁰ Two days later, YouTube’s CEO, Susan Wojcicki, shared the post on Twitter and added, “Thank you YouTube community for all the feedback. We’re listening.”²⁷¹ Notably, Wojcicki tagged Walker and Bolton in the tweet to show the response was motivated by their original video.

On April 28, 2016, YouTube announced a significant change to its Content ID System. The announcement states that Content ID claims no longer generate monetization for the claimant when a dispute is filed. Instead, money earned through ad revenue is held from both parties until the dispute is finalized. The winner of the dispute is then awarded the previously withheld money.²⁷² This is a particularly significant change as it was one of the most frequently suggested improvements across the movement. Furthermore, the site’s “Help Center” pages were updated to promote a greater understanding of fair use by providing examples of how creators can better help their work meet the four factors of fair use.²⁷³

Another frequent criticism was the lack of human interaction when disputing claims. Creators often noted receiving automated responses when contacting YouTube for support and felt that another human never reviewed their messages. On June 23, 2016, YouTube announced it would increase its creator support by “100x” with “a real person” responding to questions via e-mail.²⁷⁴ Another criticism concerned how copyright strikes restrict what creators can upload and their ability to dispute claims. In response, YouTube announced copyright strikes would be

²⁷⁰ “Note from YouTube’s Policy Team,” YouTube Help Forum, February 24, 2016.

https://productforums.google.com/forum/#!topic/youtube/x3aGmn_MsqI

²⁷¹ Susan Wojcicki, Twitter post, February 26, 2016. <https://twitter.com/SusanWojcicki/status/703349469677391872>

²⁷² David Rosenstein, “Improving Content ID for Creators,” YouTube Creators Blog, April 28, 2016.

<https://youtube-creators.googleblog.com/2016/04/improving-content-id-for-creators.html>

²⁷³ Ibid.

²⁷⁴ Sebastien Missoffe, “YouTube @ VidCon: New Support, New Features, a Better Creator Experience,” YouTube Creators Blog, June 23, 2016. <https://youtube-creators.googleblog.com/2016/06/youtube-vidcon-new-support-new-features.html>

less restrictive with one strike serving as a warning for the creator. However, a channel that receives three copyright strikes will have its account terminated.²⁷⁵

Notably, these updates address two of Walker's three proposed changes. Specifically, allowing creators to reclaim monetization that is lost when a claim is filed and reducing the restrictions a copyright strikes has on a channel's account. The one proposed change not addressed was a penalty system for issuing wrongful claims. However, YouTube's page for submitting copyright claims warns that submitting false claims may cause an account to be suspended or be liable for "other legal consequences" although it's not clear when this policy was last updated.²⁷⁶ Nevertheless, if the primary goal was to influence change on YouTube, then the #WTFU movement successfully used their platform to that end.

Limitations

This study has a few limitations. The first concerns the movement's use of other social media. This thesis focused solely on the group's YouTube activity, but videos often suggested that viewers use the movement's hashtag on sites like Twitter and Facebook. It's worth examining how online protest movements use multiple platforms to express their dissent and how this shapes a movement. Future research might consider how participation in online protest movements varies across different platforms and how the differing features of each social media site influence participation.

²⁷⁵ "Changes to Account Standing," YouTube Help, last accessed December 22, 2017.
<https://support.google.com/youtube/answer/2797387>

²⁷⁶ "Submit a Copyright Takedown Notice," YouTube Help, last accessed December 22, 2017.
<https://support.google.com/youtube/answer/2807622>

Another limitation was capturing the scope of the movement. As of December 2017, a YouTube search for “#WTFU” displays over 5,300 results.²⁷⁷ While every video that appears in this search may not be part of the movement, this number is still much higher than the sample size of this thesis. This was primarily to keep the thesis at a reasonable length, but it’s worth noting that the seven analyzed videos aren’t reflective of the discourses and cinematic techniques presented in every video using the movement’s hashtag. As this study used a qualitative approach to study the various issues that prompted the movement’s formation, future research may be able to capture the scope of a movement more effectively using a quantitative approach.

Finally, as previous chapters noted, the videos analyzed in this thesis were typically produced by creators with a relatively high number of subscribers. Of the seven videos analyzed, six were uploaded by channels with over 100,000 subscribers, five had over 250,000 subscribers, and three had over 1 million subscribers at the time of study.²⁷⁸ While Chapter 4 examined how smaller channels participated in the movement via comments section, such channels are less well represented in the analysis of videos. Although the seven videos analyzed adhered to similar presentation styles and expressed comparable opinions, it’s worth considering if smaller channels voiced their dissent in different ways.

²⁷⁷ https://www.youtube.com/results?search_query=%23wtfu

²⁷⁸ Becky’s channel had the fewest number of subscribers with over 19,000 at the time of study.

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