

## Open Letter to YouTube, “Pushers” of Piracy by Maria Schneider

[Hank Green's recent open letter](#) in support of YouTube (that was in response to [Irving Azoff's open and scathing letter against YouTube](#)) deserves a strong response from musicians and other creators. I appreciate YouTube's illegal business model might yield a few anecdotal success stories like Mr. Green's and his videos of opening beer bottles with antlers, but for the vast majority of the artistic community, including me, and every musician I know (and I know thousands), YouTube is a resounding disaster.

There's no use in beating around the bush, so I'm going to cut to the chase – I'm of the firm opinion that YouTube should immediately lose its DMCA “safe harbor” status. And I'm of the further opinion that YouTube is guilty of racketeering. Let me explain:

### **YouTube is Not Entitled to “Safe Harbor” Status**

YouTube and its parent Alphabet have obliterated the original meaning of the “safe harbor” law with their bullying and coercive schemes to get their users to disrespect and ignore copyright.

YouTube squeaked past its litigation with Viacom by settling their case after a four-year mutual war of attrition. But what came out of that litigation was the best measuring stick for whether YouTube is still entitled to the protections of the “safe harbor.” The most important directive from the court in those Viacom decisions goes something like this: **If YouTube is “substantially influencing their user behavior” toward infringing, then YouTube is not entitled to the safe harbor.** It's that straightforward. And without doubt, since 2014, YouTube has substantially influenced the behavior of hundreds of millions of its users toward infringement, fermenting a veritable pirate orgy. YouTube goes way beyond turning a blind eye to the marauding masses; it actively seduces its users into illegal behavior, and has even managed to make its users believe pirate behavior is beneficial to creators. Hank Green's latest letter illustrates that perfectly, by explaining how YouTube's Content ID scheme has been building and morphing since its inception, further contributing to making YouTube and Google a global empire, causing a seismic, cataclysmic shift in creative culture in our country and the world at large.

The vast majority of music on YouTube is uploaded by people with no legal right to do so – users whom YouTube has carefully molded and brainwashed. And I'm meeting more and more young musicians who feel a growing resentment at being duped into being a part of cannibalistic behavior that is destroying their own financial future to the benefit of a corporate giant.

Here are a few things that the Viacom judges never got to hear – things that in my opinion should immediately kick YouTube out of the “safe harbor.”

### **Ways in Which YouTube “Substantially Influences User Behavior”**

- A. YouTube allows infringers to “monetize” illegally uploaded work, encouraging a culture of piracy. And even after a takedown, YouTube and the infringers keep their past illegal profits for themselves.
- B. YouTube has created technologies that allow lightning fast uploads of full tracks and albums, with no questions asked of the uploader, with no checkpoints of any kind. YouTube knows full well there is almost never “fair use” for full tracks and albums. So, to encourage this type of uploading can only be seen as blatant encouragement of out and out infringement.
- C. YouTube is using Content ID to make users feel good about themselves as they upload work that they don’t own. YouTube baits users to upload to their hearts content and feel helpful to copyright owners. But for those of us who weren’t accepted into YouTube’s Content ID protection program, or didn’t agree to drink the purple Kool-Aid of licensing our entire catalogue to YouTube for monetization, tough luck – you’re left with an anemic takedown remedy. YouTube should proactively direct users to a library of licensed music *before they upload*, rather than perpetuate the notion that one can upload anything, without inquiry and responsibility. As it stands, YouTube emboldens users to assume it’s OK to upload indiscriminately.
- D. YouTube has publicly offered to pay attorney’s fees up to a million dollars of some users who feel they’ve wrongly received takedown notices. This publicity stunt emboldens all users to feel that YouTube has their back. What a way to intimidate the creator and stir up the infringer.
- E. YouTube consistently demonizes and intimidates musicians in the takedown process, publicly posting our names and making public apologies for our takedowns accompanied by a sad face. And inversely, they protect the identity of the user who has infringed the creators work. This public demonization of creators, contrasted by protection of the user, is unbalanced, and empowers the user to feel they are in the right. The public apology should be from YouTube itself.
- F. YouTube turns a blind eye to beyond-obvious-infringement, and users know that YouTube purposely looks the other way. Go to YouTube and search “*no infringement intended*,” “*I don’t own this, but...*,” “*I just want to share this music*,” and millions of examples instantly appear where users openly admit to not owning the music or having the rights, but simply want to share it. Google, the indisputable “king of data” certainly has the analytics to search this stuff and inform those that are breaking the law.
- G. YouTube intentionally confuses and misleads users about the importance of copyright rights, offering utterly inane “educational videos.” Watch [Copyright Basics](#) or [Copyright School](#) to see how YouTube completely downplays creators’ rights, and overplays the impact of fair use without clarification. And YouTube’s legal eagle, Fred von Lohmann, even lectures creators about censoring negative commentary in *Copyright Basics*, so his hypocrisy at having disabled the public’s

comments on these pathetic videos was not lost on me. Any judge would be repulsed by YouTube's hubris and arrogance displayed in these ghastly videos. Considering that "music" is the most popular category of content on YouTube, it stands to follow that any educational video should at very least say to all users, "full tracks and albums" almost never qualify as "fair use."

For years, YouTube has been a "pusher" of pirate activity on its unsuspecting "users." The sweeping influence of their scam has succeeded in dismantling copyright from the inside, like a flesh-eating virus, influencing citizens to destroy themselves. Any company influencing behavior like this, especially for the purposes of eroding Constitutional rights, should lose their safe harbor.

### **Withholding Content ID from Creators is Outrageous.**

There are other grounds for kicking YouTube out of the 'safe harbor.' To be in it, the law (section 512(i) which is written in terms even a non-lawyer like me can read) requires that YouTube make available to "any person on reasonable and nondiscriminatory terms" "standard technical measures" to identify or protect copyrighted works. Well guess what: YouTube has completely ignored that requirement, and struts around like a banty rooster while doing it. Content ID is pretty standard "fingerprinting" stuff, and there are other companies that have similarly effective fingerprinting technologies like Audible Magic. Fingerprinting has become standard, and YouTube certainly uses it very effectively when it comes to monetizing mountains of licensed works. The DMCA makes it very clear YouTube needs to make that technology available to ANY (the word "any" is in the law) musician, not just the big powerful companies. And certainly the technology shouldn't be able to be used to instead coerce copyright holders into monetizing their catalogues instead of protecting them. The scheme is clear: *wear copyright owners down, and then they'll be on their knees for any scraps at all.* I'm so sorry that so many big companies caved in to that pressure. YouTube has brought nearly everyone in our business to our knees.

You won't see me drinking YouTube's purple Kool-Aid. They refused me Content ID without any real explanation, but it doesn't take a rocket scientist to figure out the truth. This truth about fingerprinting is exposed in Hank Green's own letter. The truth even more came to light in [Zoe Keating's Billboard article](#). Clearly, after training their unsuspecting users to be pirates, the next tactic is to muscle the weak copyright holders into an all-or-nothing chokehold. They never wanted creators "protecting" their work with Content ID at all – they want them monetizing their work, for YouTube's benefit. (And by the way, YouTube keeps about 2/3<sup>rd</sup>s of the gross ad revenue – [read East Bay Ray's helpful explanation](#).) Clearly, the only companies that get some protection from the Content ID service are ones licensing huge amounts of music, and then they probably get to offset a certain amount of work to be protected from upload at all. I'm guessing a few big artists get to use Content ID as intended – the ones that YouTube would want to keep quiet. It's hard

to know the whole ugly truth that YouTube hides from us behind the NDAs Keating spoke about.

### **The Emperor (or Data Lord) Has No Clothes**

So if we take away YouTube's "safe harbor," what do we have left? It's standing there naked, exposed for what it is – a huge pirate schemer, manipulating and using a lot of vulnerable people in order to feed their own greed, while intimidating and controlling the rest of the people that don't feed their needs – the people that need to be kept out of YouTube's way. In my opinion this scheme is an old-fashioned *racket*.

### **YouTube is Guilty of Criminal Racketeering**

YouTube has thoroughly twisted, contorted, and abused the original meaning of the outdated DMCA "safe harbor" to create a massive income redistribution scheme, where income is continually transferred from the pockets of musicians and creators of all types, and siphoned directly into their own pockets. Congress seems to be too hypnotized by Alphabet lobbyists, swarming like locusts, for the lawmakers to stand up straight with a firm sense of right and wrong, and defend the Constitution and the citizens of this country.

When we analyze the bullying behavior of YouTube, in my opinion YouTube has created an illegal business through intimidation – the classic Webster's Dictionary definition of racketeering.

***Racketeer: a person who makes money through illegal activities; one who obtains money by an illegal enterprise, usually involving intimidation.***

So let's look at just a few examples of intimidating behavior YouTube shoves at us in the back alleys of its monstrous empire.

A. YouTube's first intimidation is that you can't join Content ID, unless you fit its special secret criteria, which we don't know what it really is, but which appears to be that you must offer up your whole catalogue for monetization, in order to get the benefit of the technology. And it must be a big catalogue, clearly bigger than mine.

B. YouTube's second intimidation is making the musician sign on YouTube's/Google's terms in order to do a takedown. ([See Stephen Carlisle's article](#)) It is abusive of the law, self-serving, and intimidating, as there are limits of liability, place of jurisdiction and various legalese that one shouldn't have to agree to in order to do a take-down. None of that is in the DMCA. That's YouTube's own special sauce.

C. YouTube's third intimidation is to reveal to the whole world, the identity of the person exercising their Constitutional right, while protecting the uploader's identity. That's not in the DMCA. It's YouTube's special spin.

D. YouTube's fourth intimidation is to offer a permanent public apology for me and a sad face (or "frownie face" as YouTube general counsel, Katherine Oyama, corrected me at the Section 512 Hearings before Congress in 2014. (YouTube and Google love "cute" words, "*Alphabet, Google, YouTube, Frownie...*" it creates an illusion of being harmless.) Many rights-holders have told of bullying and threats that have resulted from exposure of their identity. This demonization and intimidation makes many creators reticent to assert their Constitutional right. That's not in the DMCA. That was YouTube's grand idea.

E. YouTube's fifth intimidation is to throw a whole lot of questions at the copyright holder, and even a threat about attorney's fees, whereas none are posed to the user at the point of upload. That's not in the DMCA. Only YouTube could be so cunning.

F. The sixth YouTube intimidation is the publicity stunt of offering a million dollars to defend a user against a wrongful takedown. That's scary. What if I make a mistake? And why aren't they offering a million dollars to me against the endless infringements on my work on their site? That confusing dynamic of YouTube throwing around their power to embolden their well-trained users is beyond intimidating. It makes creators just give up, while it inversely cranks infringers up. Sure, there are wrong takedowns, but there's no comparison to the incalculable volume of infringement. This scheme isn't in the DMCA. That must have come from YouTube's goons.

G. The seventh intimidation is that though they have what's now a standard finger-printing technology to keep content down, they force musicians like me into an endless whack-a-mole game that eventually wears out even the fiercest of us. I personally know the feeling of giving up, and the resentment that builds when you feel manipulated into helplessness by corporate manipulation.

H. And just because they're a different head of the same ugly monster, the eighth intimidation is specifically Google's - Google and their special 46-step path to a takedown (cited by [Stephen Carlisle](#)) that again, ends in having to sign on to those nasty terms and condition just like YouTube. What an abuse of the DMCA.

It's almost impossible to believe that any group of human beings could have been so bold as to dream up and implement such a sick plan as all of this. Even Google itself initially expressed that YouTube was dirty. As we know, they eventually bought YouTube, so I guess Google finally decided that its inspired motto of "do no evil" was just too high of a bar to live by. The following statements/admissions by Google employees were taken from the Viacom/YouTube case, and were made before Google acquired YouTube:

*"A large part of their traffic is pirated content."*

*YouTube is a "rogue enabler of content theft."*

*"YouTube's business model is completely sustained by pirated content."*

*"It's a video Grokster."*

*"I can't believe you're recommending buying YouTube . . . they're 80% illegal pirated content."*

*"...it crosses the threshold of Don't Be Evil to facilitate distribution of other people's intellectual property."*

Google thoroughly recognized this was criminal activity. But when Google bought YouTube in 2006 for 1.65 billion, their tune suddenly changed.

### **Copyright Infringement + Intimidation = Racketeering**

Since Google bought YouTube, the Alphabet empire folded their new piracy factory into the world's most powerful company, the world's richest company, and the world's most secretive company. Alphabet encourages, for their own gain, a "free" and "open" society, where all "content" is free and accessible, as though that is some sort of measure of a free society. But when it comes to their own "content" in the form of its database and algorithms, they choose to guard it like Fort Knox.

The recent dustup at Facebook, with the political influence wielded behind their wizard's green curtain, is just a small example of the sort of power data lords can have over us ordinary folks. Alphabet's influence, control, and domination will only grow exponentially as the value of its "trade secret" database continues to balloon to unimaginable proportions. Thank God the EU is holding companies like Alphabet responsible, as we in this country all seem to be asleep at the switch, so long as YouTube is there to serve us up some edifying viral videos of somebody lighting their crotch on fire.

What is especially scary about this corporate power is that YouTube is now starting to inject itself into the very manner in which art is created. Do we really want YouTube controlling the funding of music? How terrifying – they destroy our creative culture, and now "they" want to save it by helping to create it themselves? Oh my God! That brings me to my final revelation:

### **YouTube Suffers from Munchausen's Syndrome By Proxy**

I was thinking about this whole convoluted scheme YouTube has cooked up with its Content ID program, when something popped in my mind, *Munchausen Syndrome by Proxy*. That's that disease you hear about sometimes on the local news where some sicko caregiver induces an illness to their own patients, so they can then turn around and quick save them and be the hero. I suddenly realized, *oh my God, that's YouTube!* YouTube has Munchausen by proxy! I see now – they're not only evil, they're sick. Too bad it's the most powerful company in the world that has the Munchausen affliction, and the entire world of music, film, and creative arts are the unsuspecting victims. We, like the unsuspecting patient, can all feel grateful that YouTube, our savior, has come up with the life-saving solution of helping us monetize our pirated work, and they'll further save us by letting some of us be "the chosen" YouTube artists they'll produce.

## **Common Sense Solutions**

I asked YouTube nicely to reform its ways when I testified before Congress, offering several key ways to even the playing field and stop destroying musicians and other creators. But they've not only ignored me (and many others like me), they've since turned up the heat and made an even greater mockery of the "safe harbor" rules.

Recently I had the opportunity to participate in four of the seven roundtables held by the U.S. Copyright Office on the DMCA's Section 512. I offered the following common-sense solutions:

- A. Takedown should mean stay-down.
- B. There should be mandatory checkpoints and education on the upload, with language created by the U.S. Office of Copyright, as well as a required signed perjury statement on the upload. Parity between upload and takedown is only logical and only fair.
- C. All sites with uploaded content should have to use the latest fingerprinting technology where creators can enter their work for the purpose of protecting it, not for the purpose of being muscled into monetizing it to the benefit of the hosting company.
- D. Stop the public display of the copyright holder's identity when they do a takedown.

For starters, YouTube, would you please consider these four steps as a first, good-faith step in the right direction?

## **Perspective is Everything**

I appreciate that YouTube might work for a select few folks including Mr. Hank Green, but it is not in any way representative of the breadth of the arts in America – musicians, authors, filmmakers, photographers, poets, artists and more. Alphabet is systematically leeching away our diverse and rich culture in order to become the most powerful and wealthy corporate empire the world has ever known. And it's just getting started.

The Internet has brought the world together in many wonderful ways. I appreciate that as much as anyone, having been the first Internet-only, fan-funded GRAMMY-winner. But the arts have connected people far more, and for far longer, than the Internet. The arts have connected us in times of war, brought healing through times of suppression, brought inspiration in times of need, and expression when weak voices needed to be heard.

The Internet and the arts could be powerful if they worked to help one another, but as it stands, the Internet is being used by corporate giants to gut the arts for their own gain – and they are destroying our culture. I heard an extremely powerful quote yesterday from the great American author, T.J. Stiles, (where he paraphrased

Professor Jane Ginsburg from Columbia University) saying: “*the worst form of censorship is poverty.*” YouTube/Google, and other data lord companies are absolutely “silencing” and thereby “censoring” the arts – just ask the 80% of Nashville songwriters who have had to leave the profession in the last decade.

Jaron Lanier, who wrote *Who Owns the Future*, describes musicians as the canary in the coal mine. While YouTube has the canary’s feathers sticking out of its mouth, we’re not dead yet. Temporarily dazed by YouTube’s cunning bite, and drowning in its greedy drool, we are slowly coming to our senses. Musicians and artists of all types, as well as record companies, publishers and agents (who only exist because of music creators), need to unite and stand up for our Constitutional right to own our copyrights, and to force data lords like YouTube out of the lucrative “safe harbor” that it has used to exploit us.

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