

THIS PROGRAM IS INTENDED FOR INFORMATIONAL PURPOSES ONLY. NOTHING SHOULD BE CONSTRUED OR TAKEN AS LEGAL ADVICE. 2025 ELI WRITING CONTEST ESSAY WRITTEN BY MELANIE SALLIS:

BEYOND TAKEDOWNS: EXPANDING MUSIC MONETIZATION TOOLS TO SUPPORT ALL ARTISTS

I. INTRODUCTION

Imagine that you are an undiscovered artist, and you get a text from your friend with a link to a video on TikTok that a popular creator posted. When the video starts playing your jaw drops because your original song is playing in the background. At first, you are ecstatic! But you soon realize that nobody watching would know it's your song. There is no link to your profile or even a song title listed. Questions start popping into your head such as, "Is this influencer making money from my song?", "How can I get compensated?", "How do I get people to realize that I am the musician here?"

You then see that when you click the audio under the video it says, "Influencer's Original Audio." You also see that hundreds of other TikTok creators are using "Influencer's Original Audio" and posting their own videos with your song playing in the background. But alas, no credit to you. No credit to your song. No links to the rest of your discography. You frantically comment on the videos, trying to drive viewers to your Spotify page. But given the volume of comments, few people see your appeals. For the few who do, you face another challenge. Because you have less than 1,000 streams of your music on Spotify annually, you do not receive *any* compensation from the platform for your work.¹

When you contact the platform's administration about this problem, they offer you only one solution: to take down any videos using your unauthorized music.² Other than that, you will be on your own to try to negotiate with the original video creator.³ TikTok tells you that to claim an original song on TikTok, your music must be used in more than one thousand videos.⁴ "Influencer's Original Audio" has been used less than the required amount.⁵ As you still want people to hear your music, you have no choice but to allow the creators to use the song and simply hope that they will credit you. By the end of the viral wave, influencers have received millions of views for their posts, meaning thousands of dollars in revenue for them. But while you're glad it was your song that created the sensation, you're left with nothing to show for it.

This hypothetical scenario is not just fiction. Situations where small artists are taken advantage of by large creators is unfortunately the reality of the world that we live in today. Consider *Underwood v. Prince*, where an artist provided a song demo to influencers with millions

¹ *Modernizing Our Royalty System to Drive an Additional \$1 Billion toward Emerging and Professional Artists*, SPOTIFY FOR ARTISTS (Nov. 21, 2023), <https://artists.spotify.com/blog/modernizing-our-royalty-system>.

² *Copyright*, TIKTOK HELP CENTER, <https://support.tiktok.com/en/safety-hc/account-and-user-safety/copyright> (last visited Oct. 23, 2024).

³ *Id.*

⁴ *How Do I Claim My Song on TikTok if Someone Uses It as an Original Sound?*, DISTROKID HELP CENTER, <https://support.distrokid.com/hc/en-us/articles/360058416093-How-Do-I-Claim-My-Song-on-TikTok-if-Someone-Uses-It-as-an-Original-Sound> (last visited Oct. 27, 2024).

⁵ *Id.*

of social media followers and subscribers, to use as a potential new theme song.⁶ The influencers used the artist’s demo on hundreds of videos that were viewed over a billion times, generating more than \$5 million in profit.⁷ However, the artist did not consent to, nor receive credit or compensation for this use.⁸ Also, in *Freeplay Music, LLC v. Dave Arbogast Buick-GMC, Inc.*, a general manager of a car dealership asked his interns to look for free music and use it to create YouTube videos advertising the business.⁹ They used music from freeplaymusic.com (FPM).¹⁰ FPM sued the car dealership, alleging hundreds of instances of copyright infringement in its YouTube videos, involving dozens of FPM’s sound recordings and compositions.¹¹

Scenarios like these show artists’ need for new and innovative solutions to the present issues surrounding music licensing in the United States. One proposed solution stems from YouTube’s Content ID program. While YouTube’s Content ID program is an innovative solution, allowing rights-holders to monetize their work rather than proceed through a process of removing all infringing content, its limited accessibility to established rights-holders creates inequity in copyright protection.¹² This paper proposes expanding Content ID-style systems to offer inclusion of all copyright owners. It also proffers an amendment to the Digital Millennium Copyright Act (DMCA)—requiring online service providers (OSP) offer monetization options alongside standard takedown procedures.¹³

II. CURRENT TIKTOK POLICY ON UNAUTHORIZED MUSIC USAGE

Today, TikTok primarily relies on takedowns to address unauthorized music usage, rather than monetary routes for rights-holders.¹⁴ TikTok urges rights-holders to either message the infringer or alleged infringer directly in an effort to resolve the dispute, or “submit a Copyright Infringement Report” requesting removal.¹⁵ This model falls in line with the DMCA limitations on liability, known as, “safe harbor” provisions.¹⁶ OSPs can claim safe harbor protection from copyright infringement liability by removing infringing content upon notice.¹⁷ Platforms can go beyond this minimum requirement; but as of today, the law requires nothing beyond takedown in order for OSPs to claim protection.¹⁸

A faulty foundation belies objections characteristic of platform executives, arguing against the need for added monetization options: that musicians who opt out of the company’s takedown procedure, still benefit from the exposure that videos provide to artists. Such critics may argue that viewership drives traffic to other platforms the artists use to earn money. However, Spotify pays

⁶ Underwood v. Prince, No. CV 22-1884-DMG (ASx), 2023 U.S. Dist. LEXIS 53294 (C.D. Cal. Jan. 26, 2023).

⁷ *Id.* at *3.

⁸ *Id.*

⁹ Freeplay Music, LLC v. Dave Arbogast Buick-GMC, Inc., No. 3:17-cv-42, 2019 U.S. Dist. LEXIS 163383, at *2 (S.D. Ohio Sep. 24, 2019).

¹⁰ *Id.*

¹¹ *Id.* at *4.

¹² Overview of copyright management tools, YOUTUBE HELP,

<https://support.google.com/youtube/answer/9245819?sjid=6386052099916605639-NA> (last visited Oct 25, 2024).

¹³ EVAN ENGSTROM & NICK FEAMSTER, *The Limits of Filtering: A Look at the Functionality & Shortcomings of Content Detection Tools*, 1, 2 (2017).

¹⁴ Copyright, *supra* note 2.

¹⁵ *Id.*

¹⁶ 17 U.S.C. § 512.

¹⁷ *Id.*

¹⁸ *Id.*

only approximately 0.004 cents per stream.¹⁹ This normally does not go straight to the creator. Royalties are often fractioned out between the label, the artist, rights organization, etc. Even more challenging, artists that have received less than 1000 streams in the past 12 months, like many new artists, do not receive any compensation from Spotify for streams.²⁰ Even more worrisome, “to earn the equivalent of a minimum wage in the U.S., an artist would need over a million streams per month.”²¹

In response to such issues, TikTok announced its “SoundOn” program in 2022, allowing independent artists to earn royalties through uploading their music directly to the music library, where users can select them for their videos.²² SoundOn employs cutting-edge technology for royalty tracking. According to TikTok, when distributing through SoundOn:

*TikTok has two categories of monetized content on their platform: Playlist-Generated Content (PGC) and User-Generated Content (UGC). PGC is content that uses your music where the content creator did not select your specific song clip from the audio library.*²³

Artists who distribute through SoundOn can earn royalties, both when creators select their songs from TikTok’s audio library and when their technology detects protected music in user-generated content:

*You get paid based on the pro rata share of your songs' creations . . . the more videos created with your tracks, the higher the creation proportion possibly would be, resulting in increased royalty.*²⁴

However, despite TikTok’s optimism, SoundOn is far from the silver bullet to address unauthorized music usage. SoundOn’s Commercial Music Library (CML), which allows songs to be used in advertisements on TikTok, currently requires artists to have 100% ownership of their publishing rights and be the sole songwriter.²⁵ This may work for independent artists, but any artist that works with a publisher or co-writes songs, would be prohibited from submitting their music to the CML.²⁶ Labels can submit entire catalogues to SoundOn, but the individual artists

¹⁹ *How Much Does Spotify Pay Per Stream in 2024*, (2023), <https://dittomusic.com/en/blog/how-much-does-spotify-pay-per-stream> (“Spotify pays artists between \$0.003 - \$0.005 per stream on average.”); *see also* Kristelia Garcia, James Hicks & Justin McCrary, *Copyright and Economic Viability: Evidence from the Music Industry*, 17 J. EMPIRICAL LEGAL STUD. 696, 712 (2020) (“Spotify’s average payout is currently around \$ 0.00437 per stream”).

²⁰ *Modernizing Our Royalty System to Drive an Additional \$1 Billion toward Emerging and Professional Artists*, *supra* note 1.

²¹ *The Impact of Streaming Services on Music Royalties*, ROYALTY EXCHANGE (2024), <https://www.royaltyexchange.com/blog/the-impact-of-streaming-services-on-music-royalties>.

²² *SoundOn: the new platform for TikTok music marketing and global track distribution*, NEWSROOM:TIKTOK (2019), <https://newsroom.tiktok.com/en-us/sound-on-the-new-platform-for-tiktok-music-marketing-and-global-track-distribution> (last visited Oct. 23, 2024).

²³ *How Does Monetization on TikTok Work?*, DISTROKID HELP CENTER, <https://support.distrokid.com/hc/en-us/articles/30785053437331-How-Does-Monetization-on-TikTok-Work> (last visited Oct. 23, 2024).

²⁴ *Get your earnings*, SOUNDON HELP CENTER, <https://us.soundon.global/knowledge/faq?group=publishing&lang=en&question=> (last visited Nov 5, 2024).

²⁵ *Id.*

²⁶ *What is the Commercial Music Library?*, SOUNDON, https://www.soundon.global/knowledge/faq?group=publishing&question=what_is_the_commercial_music_library_cml&lang=en (last visited Nov. 5, 2024).

within that catalog cannot submit their own work and are thus subject to the decisions of the label.²⁷ Moreover, TikTok's SoundOn policies are vague and rarely updated. The terms of usage, last updated in 2022, do not make clear the procedure for monetization of unauthorized music usage.²⁸ Certainly, for small artists, the process remains largely opaque.

Perhaps even more importantly, the program doesn't seem to address unauthorized use of previously released content. If an artist has not already submitted their music to the SoundOn program, but discovers its unauthorized usage, it appears that her only option remains the takedown function, rather than retroactive monetization. SoundOn's current policies are insufficient, ignoring the realities emerging artists face. The current system forces artists to make the choice between exposure or compensation when artists should be entitled to both.

III. YOUTUBE'S COPYRIGHT MANAGEMENT TOOLS

An alternative to SoundOn has been utilized by YouTube. The popular video upload platform offers four tools "designed for different types of creators, from occasional uploaders to established media companies."²⁹ The tools include: a copyright takedown webform, a Copyright Match Tool, a Content Verification Program, and a Content ID solution.³⁰

YouTube's Emmy-award winning Content ID program is an example of an ingenious, voluntary initiative that allows copyright owners to identify and manage their protected work on YouTube's platform.³¹ In 2016, Google spent \$60 million developing this system which ended up paying copyright holders \$2 billion for allowing use of their intellectual property (IP) to remain on the platform.³² In 2018, Google invested over \$100 million toward developing Content ID, their "industry-leading rights management tool."³³ This led to YouTube paying over \$3 billion to rights holders opting to monetize the "use of their content in other videos through Content ID".³⁴

The Content ID system creates ID files for copyrighted audio and video material, storing them in a database. When a video is uploaded, it checks against the database for matches. Acoustic fingerprinting is basically like a watermark on a photograph, this gives Copyright owners and digital platforms the ability to track songs on the Internet and identify what the audio recording's information is like who the singer is, who owns the copyright, who posted the content, how many plays it has, etc.³⁵ Through YouTube's Content ID program, copyright holders have the choice to

²⁷ SOUNDON HELP CENTER, *supra* note 24 ("US: For catalogues with up to 500 tracks, labels receive 100% of the royalty payments for the first year and 90% thereafter. For catalogues with more than 500 tracks, please reach out to us for further information.").

²⁸ *Terms of Service*, SOUNDON (2022), <https://us.soundon.global/legal/terms-of-service?lang=en> (last visited Oct 25, 2024).

²⁹ *Overview of copyright management tools*, *supra* note 12.

³⁰ *Id.*

³¹ Google, *Highlights from the YouTube Copyright Transparency Report*, GOOGLE TRANSPARENCY REPORT, <https://transparencyreport.google.com/youtube-copyright/summary> (last visited Oct. 23, 2024).

³² Ben Popper, *YouTube to the Music Industry: Here's the Money*, THE VERGE (2016), <https://www.theverge.com/2016/7/13/12165194/youtube-Content-ID-2-billion-paid>.

³³ *Protecting what we love about the internet: our efforts to stop online piracy*, GOOGLE (2018), <https://blog.google/outreach-initiatives/public-policy/protecting-what-we-love-about-internet-our-efforts-stop-online-piracy>.

³⁴ *Id.*

³⁵ Intellectual Property Licensing § 8.02.

monetize, block, or track videos illegally using copyrighted material.³⁶ This program provides copyright owners with three options once unauthorized usage is detected. One option is for artists whose work is infringed upon to request monetary funds garnered from the infringing content creator's profits.³⁷ This system creates a solution to artists presented with scenarios like the hypothetical and cases described above.

YouTube's Content ID program's success proves the utility of monetary alternatives to traditional takedown procedures. As of December 2022, YouTube paid over \$9 billion in ad revenue to rights-holders who claimed and monetized their IP through Content ID.³⁸ In the months between July-December of 2023 alone, over one billion Content ID claims were made and "fewer than 1% have been disputed."³⁹ In response to critics, such as Universal Music Publishing Group claiming Content ID is inefficient in a 2015 filing to the U.S. Copyright Office, Google countered with facts.⁴⁰ In 2016, Content ID detected over 98% of known copyright infringement on YouTube.⁴¹ Google further noted that "the music industry opts to monetize more than 95 percent of its copyright claims" and "half of the music industry's YouTube revenue comes from fan content — covers, remixes, dance versions, etc. — claimed via Content ID."⁴² The success of YouTube's Content ID program demonstrates that the benefits outweigh the upfront development costs. Not only has Content ID generated billions in revenue for rights-holders, unavailable under traditional takedown procedures, it has also reduced litigation costs, creating additional economic incentives for video creators, rights-holders, and platforms.

Despite industry acclaim, Content ID is imperfect. Critiques include false-positive matches and cases of fraud where users make frivolous copyright claims and reap illegal profits. For example, in 2023, a man was sentenced to serve 70 months in prison due to fraudulent monetization claims for over 50,000 songs that he had no lawful rights to, resulting in stealing over \$23 million in royalties from the rightful owners.⁴³ YouTube has addressed these challenges by implementing verification processes, a claim dispute process, an appeal system, and account blocking features.⁴⁴

Another drawback is Content ID access is restricted to "copyright owners with the most complex copyright management needs, such as record labels or movie studios."⁴⁵ YouTube only grants Content ID to "copyright owners who meet specific criteria."⁴⁶ In order for artists "[t]o be approved, they must own exclusive rights to a substantial body of original material that is

³⁶ *How Content ID works*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2797370?hl=en> (last visited Oct. 16, 2024).

³⁷ *Network-1 Techs., Inc. v. Google LLC & Youtube, LLC*, 2024 U.S. Dist. LEXIS 76545, at *9 (S.D.N.Y. Apr. 24, 2024).

³⁸ Google, *supra* note 31.

³⁹ *Id.*

⁴⁰ Universal Music Group, Comment Letter on U.S. Copyright Office Section 512 Study: Notice and Request for Public Comment (Apr. 1, 2016), <https://www.regulations.gov/document?D=COLC-2015-0013-90321>

⁴¹ Popper, *supra* note 32.

⁴² *Id.*

⁴³ U.S. DEP'T OF JUST., *MEDIAMUV L.L.C. PRINCIPAL GUILTY OF STEALING MILLIONS IN MUSIC ROYALTIES SENTENCED TO 70 MONTHS* (2023), <https://www.justice.gov/usao-az/pr/mediamuv-llc-principal-guilty-stealing-millions-music-royalties-sentenced-70-months>.

⁴⁴ *Dispute a Content ID claim*, YOUTUBE HELP, https://support.google.com/youtube/answer/2797454?hl=en&ref_topic=9282678&sjid=542268245533514463-NA (last visited Oct. 23, 2024).

⁴⁵ *Overview of copyright management tools*, *supra* note 12.

⁴⁶ *How Content ID works*, *supra* note 36.

frequently uploaded by the YouTube user community.”⁴⁷ This limitation excludes independent artists and smaller rights-holders access to these powerful monetization tools, even when their works are infringed upon. Monetization remains inaccessible to emerging artists unable to meet the high bar to qualify for Content ID’s stringent eligibility requirements. As Bailey highlights, “[g]etting your work into Content ID without the aid of a major backer is famously difficult.”⁴⁸ This was highlighted in the recent case *Schneider v. YouTube LLC*, where seven time Grammy award winning artist, Maria Schneider, Uniglobe Entertainment, and AST Publishing assert that “YouTube is a known hotbed of copyright piracy but denies most copyright owners access to its premier anti-piracy tool, known as Content ID.”⁴⁹

In an attempt to address issues for independent content creators, YouTube has created an option for artists that may not have a big corporation helping them gain eligibility to the Content ID program called, “Copyright Match.”⁵⁰ However, Copyright Match shares the fatal flaw of many such programs: it does not provide a monetization option, merely a takedown function. Why do major record labels and corporations have the choice to monetize infringing activity, but small creators, arguably the most vulnerable artists, do not? This glaring omission emphasizes the gap in the OSP/music creator industry that needs reform to protect all artists, not just artists who have already achieved major commercial success.

Despite these drawbacks, YouTube’s approach to copyright infringement is still beneficial for influencers, rights-holders, and OSPs. Content creators can keep their videos on the platform while maintaining potential revenue streams, musicians are able to receive compensation and exposure instead of removal, and OSPs are able to keep videos driving user engagement on their platform that otherwise would have had to have been removed under the traditional DMCA takedown framework. Thus, YouTube’s Content ID program using acoustic fingerprinting should be a best practice for other networks in encouraging adherence to copyright law while keeping compensation for those works exploited and infringed upon by other users.

IV. PROPOSAL FOR LEGISLATIVE REFORM OR AN EXPANDED USE OF YOUTUBE’S CONTENT ID PROGRAM FOR ALL CREATORS AS A BEST PRACTICE FOR ALL OSPs

The success of YouTube’s Content ID program and the limitations of TikTok’s SoundOn program reveals a need for DMCA reform which would expand the DMCA to create a monetization alternative to all copyright holders. Currently, the DMCA only requires OSPs remove infringing content upon notice to maintain safe harbor protection. In *The Emperor’s New Copyright*, Professor García determined Content ID to be a voluntary initiative by YouTube,

⁴⁷ *Id.*

⁴⁸ Jonathan Bailey, *YouTube Beta Testing Content ID for Everyone*, PLAGIARISM TODAY (May 2, 2018), <https://www.plagiarismtoday.com/2018/05/02/youtube-beta-testing-content-id-for-everyone/>.

⁴⁹ *Schneider v. YouTube, LLC*, 674 F. Supp. 3d 704, 711 (N.D. Cal. 2023); see *Artist Maria Schneider*, GRAMMY AWARDS, <https://grammy.com/artists/maria-schneider/6153> (last visited Nov. 6, 2024); see also Isaiah Poritz, *YouTube Copyright Case Over Content ID Withdrawn on Eve of Trial*, BLOOMBERG LAW (Jun. 2023), <https://news.bloomberglaw.com/ip-law/youtube-copyright-case-over-content-id-withdrawn-on-eve-of-trial> (“Schneider, who has been a strong advocate for musician’s rights, argued in her 2020 lawsuit that YouTube’s Content ID system is available only to large movie studios and record labels, while independent artists like herself are left with few options to combat piracy on the platform.”).

⁵⁰ *Use the Copyright Match Tool*, YOUTUBE HELP, https://support.google.com/youtube/answer/7648743?hl=en-GB&ref_topic=9282364&sjid=6386052099916605639-NA (last visited Oct. 25, 2024).

innovating beyond legal requirements.⁵¹ The DMCA's limitation of relief to takedowns, as required under the current safe harbor provisions, is a threat to both independent artists and large records labels.

A novel approach would be for the DMCA to require OSPs to offer monetization options for artists in order to claim safe harbor against copyright infringement claims. Such a requirement would better serve copyright law's purpose of protecting all original works, regardless of the current commercial success of the victimized artist. This solution would also preserve the promotional value of social media for emerging artists while creating clear standards across OSPs regarding copyright violation. Indeed, the technology exists to implement such a requirement already. YouTube's Content ID program has proven effective, with "98% of known copyright infringement detected" and "over \$9 billion paid to rights-holders."⁵² TikTok likewise already employs acoustic fingerprinting technology, scanning content users upload for matches.⁵³ Expanding monetization tool access requires added cost, but the potential for compensatory earnings for the platform, creators, and rights-holders creates significant incentive.

The challenge here is not technical, it is structural. Current law allows platforms to restrict these tools to major rights-holders while limiting others to takedown notices. Critics may argue implementing monetization options are costly, as Google invested over \$100 million toward developing Content ID.⁵⁴ However, YouTube's experience proves return on investment as they continue generating billions in revenue while reducing copyright litigation. For OSPs like TikTok, who already use acoustic fingerprinting to issue takedowns, adding a DMCA requirement for monetization options simply builds on their existing infrastructure.

V. CONCLUSION

To ensure equal protection for all artists, this article has proposed the widespread use of Content ID-style programs on social media platforms. This solution gives artists control over how their work is being used, provides fair compensation for their intellectual property, allows valuable content to remain on platforms, and creates a clear and automated process for handling copyright claims. It has also proposed revision of the DMCA to require monetization options under current safe harbor provisions. However, as a legislative solution is less likely to be implemented, OSPs should endeavor to apply such programs of their own volition in the interest of both emerging artists and the overall health of their platforms. As OSPs continue to drive music discovery and consumption, they must evolve beyond simple takedown systems. Programs that provide monetization options, such as YouTube's Content ID program, provides a proven model that other platforms should adopt as a best practice, creating a more equitable solution for artists, creators, and OSPs alike.

⁵¹ Kristelia Garcia, *The Emperor's New Copyright*, 103 B.U. L. REV. 837, 861 (2023) ("Monetized noninfringement is made possible by powerful platforms such as YouTube, or mobile apps such as UppstArt, using their market position to override statutory law via private ordering that effectively makes new policy for content owners and content users alike.").

⁵² Popper, *supra* note 32; Google, *supra* note 31.

⁵³ *Video Sound Copyright Check Before Posting*, TIKTOK SHOP ACADEMY (2023), https://seller-my.tiktok.com/university/essay?knowledge_id=6837846988130050&default_language=en (last visited Nov. 6, 2024) (The Video Sound Copyright Check "function will allow you to detect if there is any copyright infringement present in the audio clip within your edited short video").

⁵⁴ *Protecting what we love about the internet*, *supra* note 33.