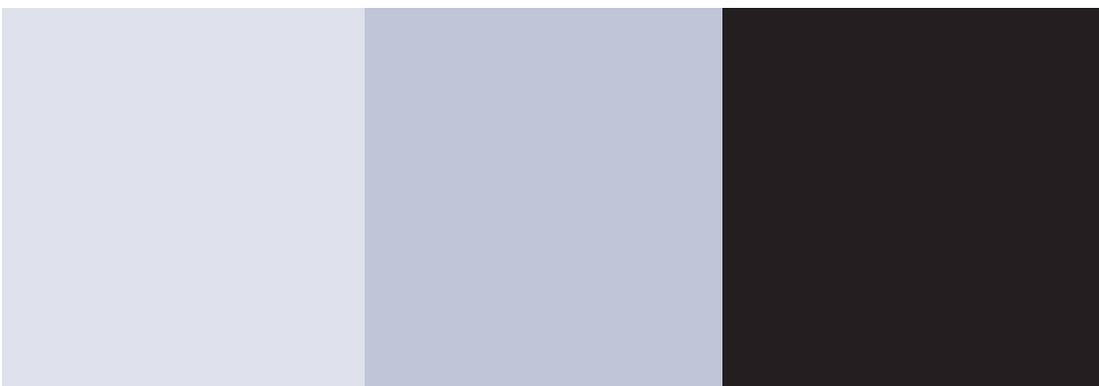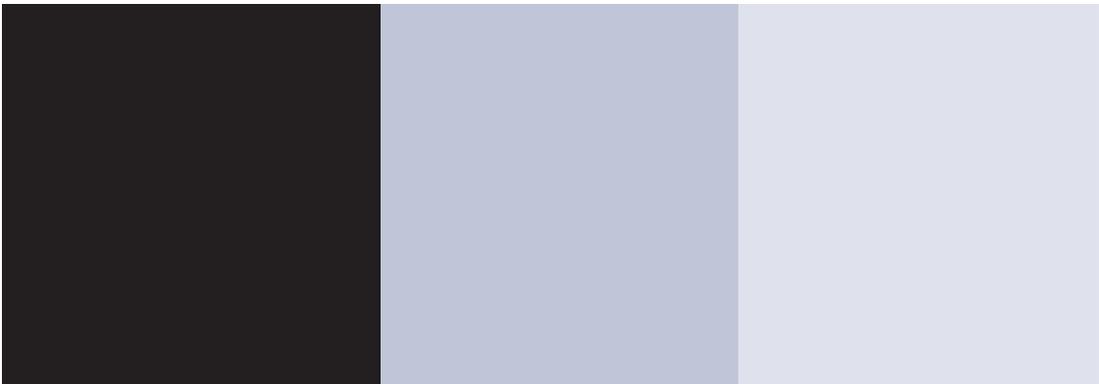# THE GOOD, THE BAD, AND THE CONFUSING:

User-Generated Video Creators on Copyright

Principal Investigators:
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centerforsocialmedia.org

THE GOOD, THE BAD, AND THE CONFUSING: USER-GENERATED VIDEO CREATORS ON COPYRIGHT

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In this study, undergraduate and graduate college students who upload online video were asked to describe their practices and attitudes on using copyrighted material to make new work and on the value to them of their own copyright. They showed themselves universally under-informed and misinformed about the law. Respondents often incorporated copyrighted material into their productions and rarely consulted owners for permission. They also expressed a variety of binary, good-bad categories within which to order their choices to use copyrighted material. They lacked the ability to discriminate situationally, apparently for lack of knowledge about the situations within which they legally can use copyrighted material without attribution.

INTRODUCTION

How do creators of content on the plethora of sites that accept online video understand their rights and responsibilities regarding intellectual property? Addressing this question is challenging, since the pool of creators is not only diffuse but constantly changing. The question is also challenging because creators may not want to divulge their actual practices or motives to unknown interviewers, especially in a climate in which large content-owning companies have menaced infringers with lawsuits.

The question matters not only to businesses attempting to find a stable revenue model in this emerging environment but also to the body politic and social. In a democracy founded on freedom of speech and access to knowledge in order for citizens to participate democratically, the question of how the balance between access and ownership is struck in intellectual property is critical. U.S. copyright law, grounded in the principle of encouraging cultural production, is a complex balancing act between protection of the rights of owners and of the rights of new users of existing intellectual property—all in the service of fomenting creative production.

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In this emerging environment of online video production, there are unprecedented opportunities for creative action on the part both of professionals and amateurs, of long-time makers and one-time makers, of those dedicated to craft and those driven by mission. One-time or newer filmmakers, like more seasoned professionals, draw upon the wealth of created culture—sound, image, text—in order to make their own work.

What within all this borrowing is appropriate within the law? The answer to this question could turn, in part, on custom in the field. But what constitutes custom in user-generated content (UGC) may be hard to determine. Unlike more seasoned professionals, many of the new makers are thinking about these questions for the first time, if at all. This burgeoning of free-speech opportunities occurs in a space where the customs are not yet established; worryingly, however, boundaries already are established by operators of UGC platforms, acting (at least in the past) in response to actual or threatened litigation by content owners. Their decisions may or may not be driven by considerations of freedom of expression—although this very consideration could be critical to emerging business models. For those interested in the health of the economic platforms and also those interested in the public health of the body politic and social, this is a critical moment, when new speech habits are being established.

> **This is a critical moment, when new speech habits are being established.**

This study investigates attitudes toward copyright, both from the owner and the new-user side, of a particular swath of producers: college-age students and recent graduates, many of them interested in a career in communication. These are people "in the middle," people with a stake in staying within social norms and also interested in working at the cutting edge of practice. The researchers probed with them the implications of their assumptions and knowledge about their use of others' intellectual property and their stake in their own.

METHODS

This study was conducted over five weeks in early 2007 in two parts: a survey using SurveyMonkey and a set of long-form, open-ended interviews conducted via phone and instant messaging. All interviewees were promised anonymity and signed informed consent forms.

The 51 survey participants and 15 interviewees (an overlapping pool) were obtained in several ways. Information about and a link to the survey was published four times in a daily e-mail newsletter sent out by American University to all of its students and in the American University Washington College of Law's equivalent e-mail newsletter. Within the AU School of Communication, faculty and graduate students were contacted via e-mail. Those willing

to participate were told to e-mail csmresearch@gmail.com for more information. Those who took the survey were also prompted on the front and back page of the survey to e-mail this address in order to participate in a qualitative interview, should they choose.

Information was also posted in forums outside of AU. These included several forums on YouTube and comments on the pages of individual video posters with either links to the survey or requests to interview the individual in question. Information was also posted in video forums on Vewgle.com and on MySpace.com in its video section. Individuals with top-ranking videos on MySpace were also contacted and asked to take the survey or participate in an interview.

Information was also spread by research coordinator Elizabeth Brown—a 24-year-old graduate student in communication at American University—to her personal networks. Links to the survey and requests for interview participants were posted on her Livejournal, MySpace, and Facebook profiles and her blog. Several of her friends with blogs also reposted her request. AU law students serving as interviewers for this project also reached out to their personal networks to publicize the survey and look for interview participants. Most of the qualitative interview participants—12 of the 15—were found through the research coordinator and law-student interviewers' personal networks.

RESPONDENT POOL

The 15 interviewees ranged in age from 20 to 32 years old, with most in their early to mid-20s. Six were female and nine were male. Of the nine interviewees whose race or ethnicity was known, eight appeared to be Caucasian and one African-American. Eight interviewees were students (two graduate students, four undergraduate, two status unknown). Of these students, three were studying film or video in school; two others were studying communication. Of the seven interviewees currently not in school, five had studied communication, film or video, or computer technology when they were students. Of the nonstudents, one is a journalist, two are filmmakers, one is a musician, one a stand-up comic, and two work in marketing or project management for D.C.-area nonprofits. The majority of respondents lived in Washington, D.C., or Ohio. The respondents are active users of multiple sites; YouTube (70 percent of survey respondents), MySpace (64 percent) and Facebook (50 percent) were the most popular, with large minorities having blogger sites.

> **Respondents demonstrated confusion, anxiety, and fear when asked about their copyright behavior.**

The pool of respondents was generated largely through trust networks—within a small university network or drawing upon personal connections of the researchers. Although impersonal networking was used, it netted few results. This may demonstrate the controversial nature of the subject matter and the fear that people could be "caught" for their illegal use of copyrighted material. This supposition is reinforced by experience within the online platform space. Several people responded to interview requests posted in forums on sites such as YouTube and MySpace. In all cases, these interviews did not work out. One respondent sent a message to the researcher via instant messenger after the researcher specifically messaged him on YouTube. The following instant-messaged conversation is revealing:

> Respondent: Hi, just got your message on youtube … (X) is my name on youtube.
> Researcher: Hi, thanks for im-ing me.
> Respondent: No problem.
> Researcher: Do you have a few minutes for me to ask you some questions?
> Respondent: Yes, sure.
> Researcher: So, how often do you upload videos to YouTube?
> Respondent: Every few days . . . almost every 2 days a new one
> Researcher: And you make all these videos yourself? Or do you upload clips from other things sometime?
> Respondent: They are all self made, sometimes I cut scenes from movies and put new audio on them
> Researcher: Do you ever worry about copyright issues when you use scenes from movies?

After that, respondent quickly signed off his IM name and did not sign back on for several hours. Likewise, several people responded to requests for interviewees on MySpace and Livejournal. The research coordinator sent these people information about the project and a list of sample questions via e-mail, with instructions to look over the questions and e-mail the researcher back with a time to be interviewed via phone or IM. None of these people ever responded to the e-mail.

Thus, a high degree of anxiety and fear was registered in the very process of collecting the information; a trust relationship was necessary even to initiate questions about copyright practices.

DISCUSSION

What kinds of videos are these people making? More than half of survey respondents (52 percent) combine their own videography with recorded music; nearly as many put together moving slide-shows of their own photos of family and friends (44 percent); nearly as many make a simple record of a family or friends event (39 percent); and about 30 percent record a public event they attended, perhaps a concert. Only 20 percent excerpt material from a television show or movie.

> **"We're very much a mixed-media generation."**

Interviewees who incorporated copyrighted material into their own work did so as part of routine creative practice. "I think part of our generation is that we take and mix things together," one respondent said. "We're very much a mixed-media generation." One respondent, for instance, said he makes slideshows of his art and sets them to others' music. Another said he and friends incorporate TV clips into their sketch comedy shows. They regard existing popular culture as available raw material for new work. This attitude extends to others' use of their own work. "If someone wants to use my work with theirs for the better, that's good," one respondent said. "I created it, sure, but beyond that, my feeling is that I want it to have a life of its own."

The motivation driving these creators to make their videos, according to their interviews, is both personal and social—that is, they are driven in part by the desire to create and maintain their personal identity through location of themselves in a social network. Part of the meaning that fuels their social network is shared experience of popular culture. For instance, one interviewee said that she records concerts and uploads them without guilt because she is "just allowing other people in the community to see the concert they would otherwise have missed." She sees herself, in other words, contributing to the public good within her networks by sharing information that carries the shared cultural identity of the group. Another interviewee included music from emerging bands in his personal videos and noted, "I also think it's a cool thing that somebody might stumble across my videos and accidentally get into one of the artists I really like." For him, the music acted as a potential link to new members of a personal network.

A large minority of these people—42 percent of survey respondents—believe that they have never incorporated any copyrighted material. This may reflect the importance of online video at this moment for personal life and the recording of personal events, and it may also have to do with ignorance about what is copyrighted. According to interviews, it may also in some cases reflect intimidation. One interviewee reported that copyright issues "have stopped him from making a video," although he did not specify in what way. Another said that he "would

never post a video" with copyrighted material to the Internet, and he and another interviewee cited their fear of being "caught." (On the other hand, several interviewees said that they were somewhat worried about getting caught but went ahead anyway because they believed their work was insignificant to major marketplace actors.)

Some preprofessional students have been taught— one student said that teachers have "ingrained that into my head"—that all copyrighted material must be cleared with owners, and for this reason he has never posted a video. This student has also

Is it up to YouTube to tell users what's possible?

been worried about uploading to YouTube for fear of having it be copied, because he is worried about whether the "little guy gets ripped off." For him, as for many more-seasoned filmmakers, hyperstrict compliance is a mark of professionalism.

What do the respondents actually do with copyrighted material? The overwhelming majority (87 percent) of the 58 percent of survey respondents who incorporate copyrighted material make no attempt to ask permission, even though the large majority of makers (74 percent) believe that it is fair to pay people for use.

This discrepancy may have to do with the ignorance and confusion about copyright demonstrated in the interviews and surveys. The majority of makers surveyed (54 percent) said that they did not understand when it was permissible to use copyrighted materials at all. This response may, sadly, demonstrate a high level of false self-confidence among these students. In interviews, the ignorance and confusion was manifest.

Most of the interviewees expressed anxiety about whether or not they were making the right decision about incorporating copyrighted material. Two expressed pride in the fact that they always either licensed copyrighted material or refused to make use of it, also describing themselves as in a minority.

In fact, respondents generally did not understand elementary facts about copyright, even though several noted that they had received both training and warning from professors about copyright use. For instance, several offered remarks suggesting that they did not know that copyright protection is now the general default setting for new content. One respondent meticulously puts "all rights reserved" on all his works, erroneously believing that this will provide him copyright protection. One believed that obtaining copyright would be prohibitively expensive and that therefore "getting a Creative Commons license" would be a good, and free, alternative. Creative Commons was a phrase that 58 percent of respondents recognized, and a handful of the respondents had used it, but most in interviews were unable to say what it was. One person demonstrated a typical confusion between copyright and trademark, suggesting that he would have to get approval from Mattel for using a Barbie doll in a film.

Although the great majority of survey respondents (76 percent) believed that the fair use doctrine permitted them to use copyrighted materials, none of the interviewees was able to describe this doctrine accurately. Two said that it stipulated a fixed amount of time, e.g., "over 15 seconds of someone else's song," or "less than 10 seconds." Another said that fair use is available "for purposes of public education," still another "if it's for a class project." The majority indicated that fair use would apply if there is no commercial transaction. "I believe in fair use laws," one said. "If I create something as an academic exercise, and never pursue monetary reward, then I believe I should be able to utilize other people's work." None of these beliefs is accurate. One person confused fair use and public domain. Several simply didn't know what fair use was: "I have no idea," "never heard of it."

> **No one was able to define fair use correctly, although many believed that the doctrine protects them.**

Respondents were invested in their own ownership of their material; some 74 percent of survey respondents said owning copyright was important to them. However, only 56 percent of survey respondents believed that they did own copyright to their online videos—perhaps because of their confusion over whether they had to register copyright, or perhaps because of inexpert reading of terms of service riddled with legal jargon. Few believed their own work had any commercial value, but several said they would be upset if, as one respondent said, someone used her videos and "ended up making a ton of money" from them (a situation she could not imagine).

How did respondents look upon their own copyright practices? Respondents uniformly expressed moral concern about what one respondent called "gray areas" and attempted to resolve this moral concern by establishing binary oppositions between good and bad behavior.

A distinction between public and private life was important to respondents. If they used material merely in order to fuel their friendship networks—even if those networks extended beyond their ability to know the person accessing the work—then they saw themselves as performing a generous and helpful act of providing useful information. One person even saw clipping out network programs of relevance to her personal network as a fair use, because it was merely showing others in a virtual "water cooler" environment what she was talking about and had found interesting.

Another distinction of importance to them was that between commercial and noncommercial purposes. They believed that it was morally acceptable to use copyright material "if it's not really for commercial purposes" or if the user "is not making a profit off

> **Under copyright, both owners and new creators using copyrighted material have rights.**

the use of the song"; as one said, "I don't worry about copyrighted music because I'm not making my videos to make a profit." Several respondents believed that if a copyright owner was already very successful—a large corporation, a big star—then the profit had already been made, so unpaid use would not hurt the owner. "Someone like Justin Timberlake doesn't need my dollar," said one.

Respondents also tended to divide the universe of uses into those that help and those that hurt the artists whose material is being quoted. One respondent posts bands' songs and believes that it is a valuable service that gives them exposure; "it's free advertising for the show." The majority of interviewees provided variants on the notion that their quoting of popular culture they favor or pay tribute to is an important free form of advertising. One interviewee said that quoting copyrighted material from an unknown is good because it draws attention to their work, and taking it from a very famous owner is harmless because so much profit has already been made, while in the middle ground "probably it leans toward hurting."

Yet another distinction on which respondents relied to justify or explain their practices was between an obligation to pay and an obligation to give credit or recognition. While payment was largely unjustified in their opinion, these users were very concerned about attribution as a sign of showing respect for artistry. One explained that using popular music as soundtrack or background in your video is not wrong because the attribution is implicit: "It's not like you are pretending you are Madonna." When asked how they felt about someone else using their work, several respondents said they were not worried about the idea of someone using their work, so long as it is properly attributed; then, as one said, it is a kind of compliment and even "free feedback." One respondent who makes audio-visual collages said, "I just always credit the original composers and stay away from any RIAA-affiliated labels and bands."

These different distinctions do not, obviously, always fit well together. A claim to be operating in a noncommercial environment clashes with one claiming to act as a free advertiser, for instance. What they demonstrate boldly is an attempt to provide moral resolution about a problem that troubles them. One interviewee summed up the problem well in saying, "I do worry about copyright issues. I guess I rationalize it by saying that I'm not making any money off these videos." The choice of the word "rationalize" is apt in two

senses: the interviewee is trying to make a rational, i.e., reasoned, approach by creating good-bad binary distinctions about behavior. At the same time, he believes this is "rationalizing," i.e., creating a spurious justification.

One interviewee also expressed exasperation at being put in the position of finding moral solutions to an unclear problem. She argued that it was up to providers of online video platforms to say clearly what was acceptable or not. She was calling for guidance and expecting the framers of the service to provide it.

CONCLUSIONS

The respondents to this two-part study were overwhelmingly, judging by their responses and comments, educated people—most of them with hopes of professional communications careers—with a strong commitment to staying on the good side of the law and also to upholding their good reputations. At the same time, they found themselves in a difficult position. Without really understanding the requirements of law or having had access to public discussion of emerging custom, they were making up rules themselves about what kind of existing intellectual property it was appropriate to use in their own creation. They brought to the task a number of categories that helped them sort behaviors into good and bad.

They also brought in a shared but unarticulated assumption about copyright: that copyright is a near-absolute ownership right. They did not use the situational logic available to them in many other situations, because of a combination of ignorance, misinformation, and this belief.
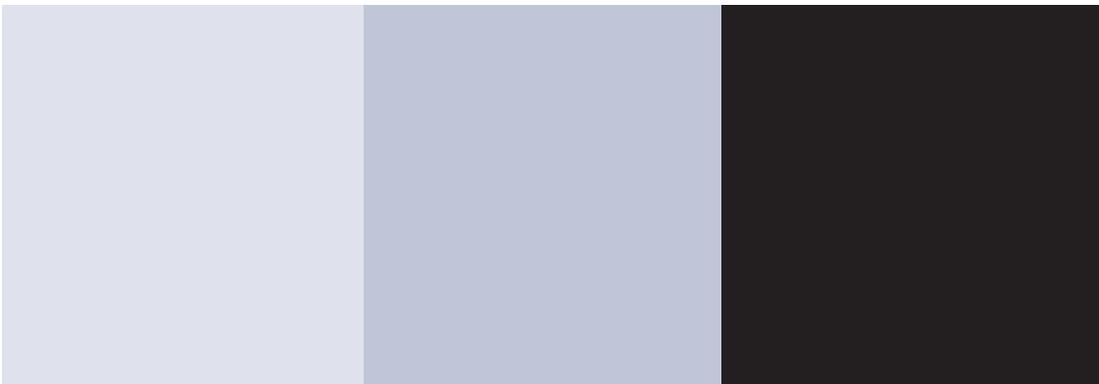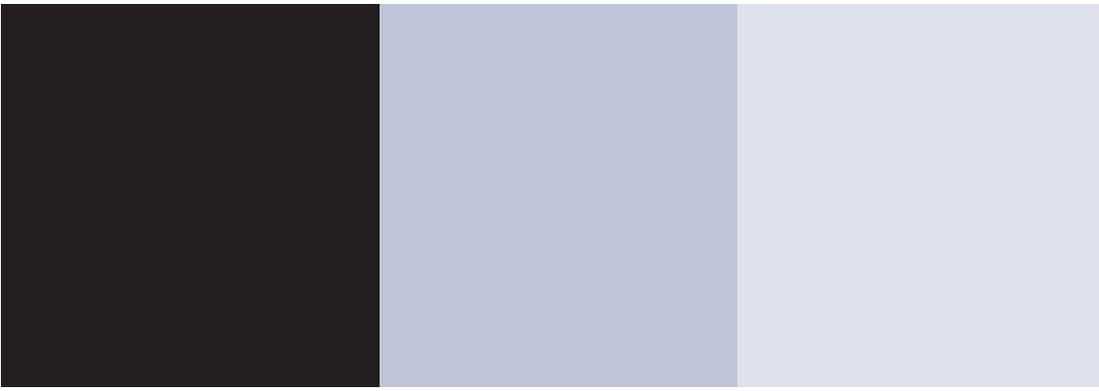
Copyright law treats both owners and users as vital to the social goal of creative production. Both are citizens of copyrightland. These interviewees, in spite of their entitlement in many other ways in this society, lack a sense that the user is an entitled citizen of this domain, with rights and responsibilities. They intuit that new users deserve such status as new creators, but they lack support for this belief. So they struggle to lift the ethical fog around their practices with conventional but not very useful or stable binary categories.

This study thus shows the need for better general understanding of the use rights of creators, in order to create a more stable and useful framework within which new creation can flourish. Both media producers and providers of online platforms for user-generated production need to participate in this broadening of understanding of the use rights of creators.

For more information, visit centerforsocialmedia.org or contact socialmedia@american.edu.

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