

K

# AUTOMATIC COPYRIGHT DETECTION: A TOOL FOR INEQUALITY



José Luis  
Peñarredonda  
Martínez

# Fundación Karisma

## Research by Fundación Karisma Democratization of Knowledge and Culture

**José Luis Peñarredonda Martínez**, Researcher and creator on digital content. Journalist. MA Digital Culture and Society. King's College London. jose@noalsilencio.co

In an effort to make knowledge accessible to everyone, Karisma Foundation is working to make its documents accessible. This means that its format includes metadata and other elements that make it compatible with tools such as screen readers. The purpose of accessible design is that all people, including those who have some kind of disability or difficulty in reading and understanding, can access the contents. More information on the subject is available at <http://www.documentoaccesible.com/#que-es>



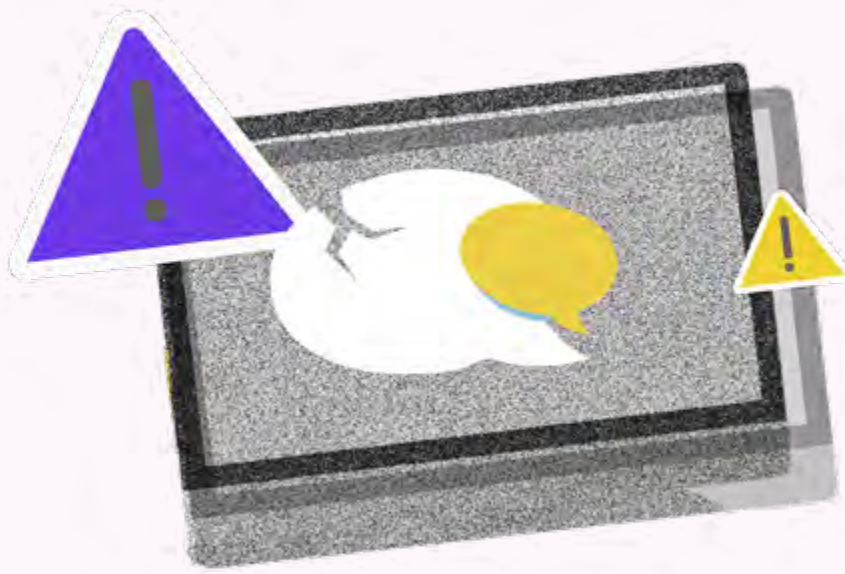
This material is licensed under a Creative Commons CC BY-SA 4.0 license. You may remix, re-touch and build upon the work, even for commercial purposes, as long as you credit the author and license the new creations under the same conditions.

To view a copy of this license visit:

<https://creativecommons.org/licenses/by-sa/4.0/deed.es>

# CONTENT

<b>Executive Resume .....</b>	<b>4</b>
<b>Introduction.....</b>	<b>5</b>
<i>Erroneous Notifications.....</i>	<i>6</i>
<b>Types of illegitimate notifications.....</b>	<b>7</b>
<i>Notifications for content that belongs to the public domain.....</i>	<i>7</i>
<i>Notifications for copyright content created by the supposed infractor or licensed by them.....</i>	<i>8</i>
<i>Notifications of protected content whose protection is problematic .....</i>	<i>9</i>
<b>Problems with the appeal process .....</b>	<b>11</b>
<b>Damages caused by espurios notifications ... ..</b>	<b>12</b>
<i>Disincentive .....</i>	<i>13</i>
<b>Conclusion: an unequal system .....</b>	<b>15</b>
<b>Bibliography.....</b>	<b>17</b>



## EXECUTIVE RESUME

Research done during the 2020 Coronavirus pandemic in Colombia shows how tools developed for the automatic detection of infringement of copyrighted materials produce illegitimate notifications which impair the ability of local independent producers of digital content to grow an audience, generate revenue and gain digital interactions. This research found multiple cases of unjustified notifications of supposed violation of copyright directed at content that is either part of the public domain, original content, or instances of judicial overreach of copyright law. The digital producers that are the target of these unjust notifications affirm that the appeal process and counter-notification procedures don't help them protect their rights. The appeals interface of the different platforms that were taken into account did not help resolve the cases, which leaves digital creators defenseless with no alternative other than what they can obtain from their contacts. This system damages the capacity of these producers to grow, maintain and monetize an audience at the same time that it affects the liberty of expression of independent producers as it creates a strong disincentive for them. On the contrary, this system incentivizes the bigger production companies to claim copyright on content to which they hold no rights.



# INTRODUCTION

The tools of automatic detection of copyright infringement have become a part of the ecosystem for digital creators who publish their work on Facebook or Youtube. This type of tool was first unveiled in 2007 when Google announced the launch of Content ID, “An advanced technology for the identification of video clips in a video website”<sup>2</sup>, was how this new technology was reported at that time.

Facebook adopted its own in 2016<sup>3</sup>. Other platforms like Twitch<sup>4</sup> or Vimeo<sup>5</sup> also have similar technology, while Twitter has one for live streaming and Tik Tok doesn’t have one at the moment<sup>6</sup>.

All these platforms allow for a massive detection of supposedly copyrighted content by using samples of content uploaded by the alleged legitimate proprietor, these are known as the “digital fingerprint”. Hence they ask the supposed legitimate proprietor to define a policy concerning what to do in the case the content uploaded to the platform coincides with the digital fingerprint: To delete material, to demonetize the video (allocates the money made from advertisement to the supposed proprietor), or to do nothing. If an uploaded video includes content that coincides with one of these digital fingerprints then it’s considered infringement and the chosen policy by the alleged proprietor is applied to that video.

On Youtube, the content creator that receives a notification for an alleged infringement of copyright can either accept and assume the policy of the original owner of the proprietary rights, or they can appeal on the same platform. If they decide to appeal the alleged owner has 30 days to answer, if they don’t, the notification is removed<sup>7</sup>. If the proprietor chooses to confirm an infringement, then the content creator is then sanctioned. This can be followed by a counter-notification, in which the content creator must demonstrate their right to publish the content which is in review and has the right to an answer in seven days by the claimant. If no answer comes at the end of that time, then the notification is void. In the response by the claimant, it must prove that the alleged proprietor of the content is taking legal action to avoid this content from being uploaded again to the platform<sup>8</sup>.

The content creator found guilty of these infringements receives a sanction known as a strike. If an account accumulates three strikes the user is kicked out of the platform and their contents are no longer available to the public. For the conglomerates that own copyrighted material, this mechanism is an attractive alternative because it allows for the systematic management of infringements, at the same time that it generates revenue while offering real-time information on their content on popular platforms. This provides the necessary insight to make data-based marketing decisions on the fly.

2. Delaney, “YouTube to Test Software To Ease Licensing Fights”.

3. Contine, “Facebook launches video Rights Manager to combat freebooting”.

4. McWhertor, “Twitch implements a YouTube-like system for blocking copyrighted audio”.

5. Welch, “Vimeo rolls out Copyright Match to find and remove illegal videos”.

6. Interview with TikTokers, August 2021.

7. Google, “Impugnar una reclamación de Content ID”.

8. Google, “Submit a copyright counter notification”.

Google developed the automatic detection tool as a solution to what seemed like an existential problem for YouTube: Various corporations in the field of marketable content, like Viacom, had legal processes against Google for facilitating piracy. The executive chairman of Google at the time, Eric Schmidt, was explicit when he said: “The technology behind video detection is key to help resolve copyright battles between media and streaming technology”<sup>9</sup>. A 2018 report said Google has invested 100 million dollars in Content ID, which is used by more than 9000 “partners” (recent data not available) and it resolves 98% of “copyright related problems”<sup>10</sup> on their platforms. Google only permits access to a small number of partners to Content ID, selected on the company’s judgment of their need and capacity to use this system<sup>11</sup>. For the rest of creators, Google offers other tools for copyright management that automate detection but that do not permit the optimization of what to do in case there is a match (for example the proprietor of copyright can’t choose to take down all of the videos that are presumably pirating their content). It also allows the manual management of infringement notification of copyright, as it’s required by U.S. DMCA law.

### **Erroneous Notifications**

Google states that “at least one percent of copyright claims that are done through Content ID are appealed”<sup>12</sup>. However, the platform that manages erroneous notifications has been criticized by activists, academics and creators of digital content as, in their words, it creates an unbalanced monitoring of copyright, for it privileges big content creators that have access to it in contrast to the small ones that don’t.

For some legal experts the appeal process of Content ID “has created a system in which you are guilty until proven otherwise”, which certainly changes the burden of proof<sup>13</sup> to the alleged infractor instead of the supposed proprietor of the copyright. This critique can be extrapolated to other tools for automatic detection since they are susceptible to making mistakes, and the victims of these errors start from a disadvantaged position as they have to prove their innocence. On one side they must face a process inside the platform to prove they didn’t do anything illegal, which contravenes the presumption of innocence. On the other hand, they must face the consequences that they receive from these notifications: Losing income or even losing their own channel, which in many cases is a source of income and a business in which they invest time, work and money. This situation is aggravated by the fact that taking the appeal process to the last consequences could be a lot more costly for a small content creator when compared to a big production company, the same type of companies that have access to the tool in question, according to a recent report about Content ID from the Electronic Frontier Foundation (EFF)<sup>14</sup>.

Google states that when an appeal process is put forward, the supposed proprietor of the contents should prove that they effectively have the rights over that content and the claim loses validity if they don’t. But, for the content creators that receive these notifications, the process is still complicated. When appealing a notification, the EFF says: “there exists a possibility that legal action could be taken in effect that reveals personal information, as there is also the possibility of losing one’s account and having all content erased. It’s for this reason that content creators try to avoid this si-

9. Delaney, “YouTube to Test Software To Ease Licensing Fights”.

10. Google, “How Google Fights Piracy”, 23.

11. Interview with Google spokespeople, September 2021

12. Google, “How Google Fights Piracy”, 28

13. Salas, “Analysis of YouTube’s Content ID System Through Two Different Perspectives”, 23.

14. Salas, “Analysis of YouTube’s Content ID System Through Two Different Perspectives”, 23.

tuation at all costs<sup>15</sup>. That's why many decide to "accept the notification and the penalization or they edit the video, that is the safest route<sup>16</sup>".

Journalists and content creators have been receiving erroneous notifications by automatic detection tools for several years. On November 18, 2018, CNN Chile interviewed "Luisito Comunica", a very popular Mexican youtuber, whose channel has 37 million followers. Some of his content was used as background material for the interview, which was published on Youtube. A couple of weeks later, on December 4th, "Luisito" published a video in which he accused CNN Chile of "stealing his revenues" because they emitted Content ID notifications for the clips of his own videos that appeared in the interview, and had decided to keep the income generated by the adds on "Luisito"'s original videos<sup>17</sup>. That same day, the channel apologized in a Youtube video: "That was never our intention... we understand your anger<sup>18</sup>". "Luisito accepted the apologies in a tweet: "I know it wasn't intentional and I'm glad that it has been resolved<sup>19</sup>".

In Colombia, the journalist Gustavo Gómez published in July 2021 a video made on his cellphone in the streets of Bogotá complaining about noise pollution. Then he published on his Instagram account the following: "The Twitter tarambanas have suspended my account in that excess zeal that is their cowardly policy of legal matters because the owner of the song that was playing in the background thinks that I'm profiting from it<sup>20</sup>". Twitter spokespeople said they contacted the journalist to tell him what he could do to remedy the situation but didn't share any other details about that case in an interview held for this report<sup>21</sup>.

Given the frequency of the reports of these types of cases, and because of the consequences they have for content creators and the risks to their human rights and their freedom of expression, we decided to investigate the role that automatic detection tools play in these erroneous notifications against content creators in Colombia, as well as the repercussions they generate.

For this we conducted semi-structured interviews with seven content creators and representatives of three different platforms: TikTok, Twitter and Google. (Facebook didn't answer our request for an interview.)

The interviews with the creators were analyzed to understand the types of harm that is generated not only by the notifications themselves but also by the changes in their production routines that are generated by the risk of receiving them.

The following section is a classification of the types of legitimate notifications. The third section exposes the different challenges that the interviewees reported in the appeal and counter-notification processes. The fourth section outlines the damages that the content creators have suffered by account of these unjust notifications or from the risk of receiving them. Lastly, the fifth section advances an argument on how automatic detection tools generate an unjust situation for small content creators.

15. Trendacosta

16. Trendacosta

17. Luisito Comunica, "NO dejaré que me roben de esta manera! [Video]".

18. CNN Chile, "Respuesta a Luisito Comunica: Lo sentimos [Video]"

19. @LuisitoComunica, "Me pone feliz comunicarles que hemos recuperado la monetización de los videos! Vaya que levantando la voz se pueden agilizar las cosas! Gracias @CNNChile por devolverme los derechos de mi contenido - Sé que no fue malintencionado, y me alegra que se hay".

20. Gómez, "Mi pecado: grabé un video en la calle de una persona con música a todo volumen y pedí pusieran en cintura a este contaminador auditivo. Y...".

21. Interview with Twitter spokesperson, September 2021

# TYPES OF ILLEGITIMATE NOTIFICATIONS

In our investigation, we found that content creators have received illegitimate notifications for three types of content: (1) Content that belongs to the public domain, (2) content created or owned by the notified party, (3) content in which a strict application of copyright law generates unjust situations. In the first and second cases, the existence of a supposed infraction is out of doubt, while in the third one it's debatable, but as it has been recognized thoroughly by international organizations that work on the protection of intellectual property, it is necessary to elucidate regulation to avoid unequal access.

## *Notifications for content that belongs to the public domain*

The first type of illegitimate notifications that we found are the ones that affected the transmission of content, content whose transmission and reproduction is allowed by copyright law in Colombia, be it because its period of exclusivity expired or that it is public by nature.

The 7 of August of 2018, the journalist Ricardo Galán decided to transmit the Colombian presidential inauguration in his youtube channel, Libreta de apuntes. He didn't consider it possible to have problems with copyright law, because it's a public event and Colombian law states that these transmissions can be published without the need of authorization. In an abundance of caution, Galán asked the Institutional Channel (A television channel that transmits official events of the state and institutional content of gubernamental entities) for the signal feed, which was granted without problems. Yet, when the transmission started, the content disappeared from his channel and it was eliminated.

**"I posted it on my *Libreta* when, Zas! Blocked by Youtube. (...) because I had violated a Youtube guideline that states that you can't transmit a live event that has copyright."** <sup>22</sup>

The journalist assures that the first notification didn't say who was the supposed owner of the copyright of the presidential inauguration, but Galán could establish that Caracol Television, one of the private national broadcasting companies, had registered the transmission of the inauguration as their own on Youtube. In the end the journalist could lift the sanction that caused this notification.

Another similar case happened at the Universidad Central Film Club, in Bogotá. After the suspension of on-site activities because of the pandemic, the club decided to share the matinées on Facebook Live. The organizer of the cineclub, Johana Botero, assured that they took into account the copyright situation when picking the films they showed and that they were "careful to only share content that was at least liberated to the public domain so we wouldn't run into trouble"<sup>23</sup>

At first the sessions worked out fine, but when they presented the film *October: Ten Days That Shook the World* (1917), directed by Sergei Eisenstein, published more than 100 years ago and therefore exempt from copyright protection. This is how Botero describes what occurred that day:

**"The transmission stops[...] and then the people, everyone. I was in effect watching the film with people and they started talking there, 'like what happened, the transmission is down'. It simply went away, like the screen faded to black, I didn't say anything[...] And then we got a message that said that the content was blocked for infringement on the rules."** <sup>24</sup>

22. Interview with Ricardo Galán, August 2021.

23. Interview with Johana Botero, June 2021.

24. Interview with Botero.



As will be discussed below, Botero couldn't appeal the notification, which among other problems, caused a serious detriment to the film club.

### **Notifications for copyright content created by the supposed infractor or licensed by them.**

The second type of illegitimate notifications that we identified is mistaken identity by automatic tools of detection, of content created by the supposed infractor or content explicitly licensed by their legitimate proprietor.

In May 2021, in the middle of a wave of protest and unrest known as Paro Nacional, the digital journal Cuestión Pública, interviewed House Representative Ángela María Robledo and shared the transmission on Facebook Live. She had also been invited that same day to other digital media. The transmission started with no setbacks, but in a given moment the views dropped and the transmission stopped.

**“When we went to see what was happening inside of Facebook, what was happening in the platform, it said that copyright was solicited and it was Blu Radio that had launched the alert claiming that the content in question belonged to them<sup>25</sup>.**

It seems the Facebook Rights Manager algorithm identified it as the same footage because Robledo was using the same clothes and the same framing from a previous interview on Blu Radio.

During the course of this investigation, we also obtained evidence of another similar situation with another media outlet in Colombia, to which Blu Radio also complained about another interview with a parliamentarian (see image 1).



**Image 1:** “Details of the video with coincidences” Screen capture of a complaint of Facebook Rights Manager for a spurious notification emitted by Blu Radio.

The Universidad Central Film Club also had a similar case of this type. In another occasion they decided to program a transmission of the Colombian documentary, *La Selva Inflada* (2015), commented by its' producer and director. Botero explains what happened next.

**“We had already paid for those rights. The people who owned those copyright rights of the film were right there in the transmission, and they blocked the content.”**

This didn't only take Botero and her colleagues by surprise, but also the producers of the film:

**“We had obviously done a contract for the transfer of the rights for that day, in that transmission, at that time, right? Like we had everything very organized in that sense and we're all like...They were even more surprised [...]. Because, clearly the film was theirs. They said “but wait a minute”, “Could it be possible that someone else had claimed their film's rights without them knowing it”<sup>26</sup>.**

### ***Notifications of protected content whose protection is problematic***

Finally, we found another case in which a strict application of copyright law generates a situation of discrimination and injustice even though the protection of said content presumably has a legal case. This is the case of youtuber Bellini Zúñiga. Even though his channel has modest numbers of traffic and interactions, he is recognized inside the community of the hearing impaired in Colombia because he translates pop songs into Colombian sign language. Bellini has received various notifications that he considers arbitrary, sent by the companies that own the rights to the songs he translates.

**“At this moment I´m not making any original content, but instead what I´m doing is a translation to sign language of that content. I'm not saying it's mine, but that [...] I'm making it accessible; they didn't understand [...] I wasn't even charging for what I was doing. It was a translation so a minority community could access the information”<sup>27</sup>.**

This is a particular case because it shows the excesses enabled by a rigorous Copyright enforcement made possible by automatic detection tools. The content that is translated by Zúñiga is protected, but stopping circulation for this reason reinforces an access inequality that is in itself problematic. That is how it's described by a report by the World Intellectual Property Organization (WIPO). In fact, “more than half of member states (WIPO), have some type of exception for disability as stated in their copyright legislation and one third of those members foresees exceptions for all types of disabilities”<sup>28</sup>.

These exceptions make it possible for people with disabilities to have access to a bigger quantity of content and as the aforementioned WIPO report mentions, “It's necessary to guarantee that people with disabilities can fully participate and contribute to their societies<sup>29</sup>. In fact, these exceptions and limitations of the law for people with disability guarantee that people and institutions that offer access to information and culture to people with disabilities can do it with judicial safety<sup>30</sup> and without fear of reprisals, such as the ones that Bellini suffered.

In some cases the same proprietor of the copyright recognises and even celebrates Bellini's work. The artist Manuel Medrano, who had one of his songs translated by Bellini, authorized its use, which does not only let him keep the song published on his channel, but highlights the inconsistencies in the policing of infractions of copyright that are the heart of automatic detection tools.

28. Reid y Ncube, “Estudio exploratorio sobre el acceso a obras protegidas por derecho de autor para las personas con discapacidad.”, 2.

29. Reid y Ncube, 2.

30. Compare with Guzmán Mejía, “Excepciones y limitaciones al derecho de autor para las bibliotecas y los archivos en Colombia: update & upgrade más que necesarios”.

**“I told Manuel Medrano, I sent him a letter and informed him, he himself shared the information on his social media. And that song has been a hit, because a lot of people have liked it, have shared it, and it stays on Youtube. In theory it satisfies copyright. Youtube apparently pays me for the song. It’s like Manuel Medrano authorized on the platform so I don’t get that content blocked. But other songs, keep on being blocked.”<sup>31</sup>**

These exceptions make it possible so people with a disability can have access to the biggest quantity of possible informative and cultural content. As stated by the mentioned WIPO report, “it is necessary to guarantee that people with disabilities can fully participate and contribute to their societies<sup>32</sup>”. These exceptions and limitations guarantee that the people and institutions that offer access to information and culture to people with disabilities can do it with certain judicial safety without fear of reprisals, such as Bellini had to endure.

All of the content creators that received notifications here mentioned put forward appeal processes on the platforms. The limitations and difficulties that they found suggest systematic problems in the mechanisms of appeal, which in part widens inequality between small and big producers, creating new inequalities.

## PROBLEMS WITH THE APPEAL PROCESS

The platforms know about the possibility of wrongful notification in the process of automatic detection. It’s for this reason that the supposed infractor is allowed to appeal the notifications, which obligates the counterpart to justify the reclamation or to waive it. Nonetheless, the testimonies collected in this report show that frequently the platforms don’t offer complete information: Who is the supposed claimant or what is the regular channel to appeal the notification. Simon Posada, a journalist that managed the digital format of Semana (a national news print and digital media company) and had as one of his responsibilities the resolution of notifications from automatic detection tools on Youtube and Facebook, he said in a interview for this investigation: “Sometimes it shows who is the claimant and their email contact, and at other times no information is available<sup>34</sup>”.

Galán and Botero also manifested that the platforms didn’t give them information on who was the counterpart for their received notifications. This last fact is very important, because the tools for automatic detection are really tools to help manage and accelerate a matter between private parties.

The platforms facilitate notifications and counter-notifications between users and supposed proprietors of content because according to U.S. law if they don’t do it, they are co-responsible for the infractions committed by their users. But aren’t the owners of the rights in any way. A Youtube spokeswoman told us that “A dispute or any other legal case, must be between the owner of the copyright and the content creator [...] We are really an intermediary<sup>35</sup>”. When platforms such as Youtube or Google don’t inform the supposed infractor of who is accusing them they aren’t behaving as a impartial intermediary. On the contrary, they put the receiver of the notification at a disadvantage (which tends to be the party with less resources) since they don’t count with the complete information to decide how to proceed in an eventual legal case.

Furthermore as the EFF explains in a report, “The few video creators that bother to even resort to appeal notifications find that the interface is difficult, because it changes frequently and without previous notice<sup>36</sup>”. Platforms make it relatively easy to emit these spurious notifications, but their resolution is often time consuming. In the Bellini Zúñiga case we see this illustrated very clearly:

**“When we speak of Copyright and we explain that it’s a translation, that it is a creation based on accessibility in one or two weeks they answer. (Later) It’s a new process, a few emails, explain again. There is like a hindrance, a resistance to any explanation.”<sup>37</sup>**

In various cases documented in this investigation, submitting to the process doesn’t guarantee a response. This occurred among others, to the Universidad Central Film Club.

**“I started to take screenshots and to register and to write [...] to Facebook, básicly commenting on my case. [...] Nevertheless I never received a response. They never answered the messages that I sent them. With screenshots, with arguments...”<sup>38</sup>**

It’s for this reason that some content creators try to solve the situation outside of the regular channel that is offered by these platforms. After Galán sent an appeal, he waited for some time and an answer never came.

**“They took like two weeks and I was worried [...] these guys aren’t going to understand (the appeal), so I talked to Youtube. I called the person in charge of Youtube’s public relations here.”<sup>39</sup>**

In Posada’s case, he had to look into Semana’s Facebook contacts to start to process the appeal.

**“If you don’t have a partner inside Facebook that can help you with that, good luck. So thankfully I had that partner and that’s how I got the email of the person that had flagged us, but only after a month of practically begging Facebook”<sup>40</sup>**

The journalist from Cuestión Pública started to search for contacts with their colleagues from Blu Radio and Facebook representatives to help solve the unjustified notification, which allowed them to get rid of the notification.

**“On the other hand I was talking to Blu Radio [...] And they said that this is a Facebook algorithm and that it’s a recurrent Facebook problem that didn’t only ocurre to us, it has happened to a plethora of media organizations”.<sup>41</sup>**

The result is contrary to what occurred on the appeal interface on the platforms, this irregular channel does work when it comes to processing unjust notifications. This generates an inequality between those that can access these contacts inside the platforms and in the big corporations that are proprietors of content and those that like Bellini or the majority of content creators who don’t and must settle with “the robotic or automatic response<sup>42</sup>” that are given by these appeals responses.

36. Trendacosta, “Unfiltered: How YouTube’s Content ID Discourages Fair Use and Dictates What We See Online”.

37. Interview with Zúñiga

38. Interview with Botero

39. Interview with Galán

40. Interview with Posada.

41. Interview con Báez

42. Interview with Zúñiga

## DAMAGES CAUSED BY ESPURIOS NOTIFICATIONS

A notification of this type generates damages to the creators that go far further than just losing some content. This investigation found that the consequences of receiving these sanctions are profound and that in some cases it affects the future viability of the creator's channels. They undermine the capacity and the motivation of the creators to create and maintain an audience for their content, lessening their options of obtaining compensation for it and adversely affecting their freedom of speech in that they create a dissuasive incentive for experimenting with new formats and covering journalistically certain topics of general interest.

In the case of journalistic content affected by a spurious notification, proving that there is no infraction does not revert the damage caused, this happens because when the contents do return to the platform they aren't pertinent journalistically speaking. When a claim is lifted such as the case with the congresswoman, it wasn't relevant or wasn't interesting for the audience that went to the event; and the transmission of the presidential inauguration is almost irrelevant two weeks after it happened, especially when every other media company has talked profusely about it.

In the case of content that is not journalistic in nature it is possible that reestablishing the disponibility of the content helps remedy the damage, but either way, other types of harm do occur. Many of the content creators interviewed said that after they have received the reclamations, they perceive that the platform algorithm took decisions against them that made them progressively lose their audience. As Zuñiga recounts:

**"I saw the content was there, but many people couldn't see the content, like they placed a wall so they couldn't see it. Hence there was a drop in followers and views."<sup>43</sup>**

In this case it was a factor for him losing interest in making song translations. He didn't obtain an economical retribution because of the notifications and he still had to assume the cost of making the videos.

**"You can't do it in two days, [...takes] a month, two sometimes[...] and the remuneration is done, but when the song is blocked, well you can't recibe that remuneration. Same, I had to pay for the work equipment, time, effort [...] but there is no recognition of the work that it takes."<sup>44</sup>**

In the bigger operations, like a news site, this supposed algorithmic punishment causes consequences that impinge directly against the commercial viability of the communication media, since it affects the statistics of traffic and hence the price of its ad space in the market. Posada explains:

**"The problem is that Facebook, besides being a video platform, is also a traffic referent; that is, Facebook gives you a lot of traffic. So if you are wrongly screwed over for a video and you are penalized, your traffic is also getting screwed over."<sup>45</sup>**

In the case of the film club, Facebook's recurrent behavior made them leave and move to Twitch, a decision that also created a new roadblock for consolidating their audience:

**"Because Facebook is a social network, let's say, more massive, then, obviously a lot of people were watching in the beginning, right? There was a higher probability of reach there and that made us more visible. On Twitch, the audience dropped substantially, let's say, the reach that we had in our transmissions was lower because Twitch is not as massive as other social networks."<sup>46</sup>**

43. Interview with Zuñiga

44. Interview with Zuñiga

45. Interview with Posada

46. Interview with Botero



But beyond that, the main harm done to the film club was the loss of credibility that its community had placed in it. With two live events abruptly canceled, some people began to express reservations:

**“That was like the greatest affliction, the doubts that were built on the project as people were puzzled by the fact that they were taking down the transmission from one moment to the next. There was no way to explain very well why it happened, right? And then that, of course, let’s say that discouraged people.”<sup>47</sup>**

For all these reasons the film club had their future viability compromised, since it had difficulties attracting a new audience and having an impact that justifies its existence. More so, this happened in a period where Colombia was facing massive lockdowns, making most cultural consumption only available online.

**“I mean we could at least exist and be there, but we were already very much underground, and it was very difficult to reach, let’s say, the people and above all to achieve other financing possibilities.”**

### **Disincentive**

The tools for automatic detection don’t only generate negative consequences for the content creators that receive espurious notifications.

To quote the EFF report, “Content ID dominates their creative experience, as does the belief that the only option creators have is to be on YouTube.<sup>48</sup>” Thus, the harm caused by spurious notifications, and the certain risk of receiving them despite taking every precaution to avoid copyright infringement, creates a disincentive among creators, which has consequences on their creative processes and, ultimately, on their freedom of expression.

Content creator Juan Carlos Rincón has not received these notifications. Even so, he claims that YouTube’s strict copyright policy has negative consequences for *La Pulla*, a popular Colombian political and current affairs channel where he is a presenter and co-director.

**“It limits us creatively, a lot. That is, the fear of using videos that can be flagged and using songs, and even memes. Also, that constant uncertainty limits us in the way we present things; and ultimately, the format ends up stagnating a bit. It is not because of a lack of ideas, but because many ideas get into territories that could generate problems.”<sup>49</sup>**

Automatic detection tools discourage the use of content that, in the opinion of the content creators, may cause a possible notification, regardless of the use that they employ for it if that use is protected by Colombian regulations or even by fair use doctrine in the United States.

In this environment, creators are subjected to a discipline whose limits are unclear, and whose transgressions have disproportionate consequences. The choice they are left with, in the end, is between two types of censorship: immediate self-censorship or permanent, potentially catastrophic censorship regulated by the platforms.

47. Interview with Botero

48. Trendacosta, “Unfiltered: How YouTube’s Content ID Discourages Fair Use and Dictates What We See Online”.

49. Interview Juan Carlos Rincón, septiembre de 2021.

## CONCLUSION: AN UNEQUAL SYSTEM

As we saw, automatic detection tools are a burden for small creators: They arbitrarily generate notifications that are difficult to respond to, causing harm to their work and the future viability of their activity as content creators. This section will argue that automatic detection tools are unfairly benefiting large content producers who have access to tools such as Content ID.

This tool was explicitly created with the “Viacom” and “Time Warner’s”<sup>50</sup> of the world in mind, as a Google executive admitted in 2007. And Google spokespeople explicitly admitted that “copyrights owners want the most automatic mechanism possible to manage their rights.”<sup>51</sup> Indeed, the 2018 document cited above promotes it, “not only as an anti-piracy solution, but also as a resource-generating tool”<sup>52</sup> for big production companies.

In fact, Content ID is a crucial piece of YouTube’s viability as a global video platform: It allows it to detect copyright infringement on a scale sufficient to meet its legal requirements. As some academics have argued, “YouTube is unlikely to revert to a case-by-case detection system for copyright infringement, because it would cost too much”<sup>53</sup>. Presumably, the same is true of other platform’s automatic detection tools.

In the interview given by Google spokespersons for this investigation, one of them stated that YouTube has “a mechanism to exclude those who do not use the system in the right way”<sup>54</sup> and acknowledged that “abuse of these tools can cause significant damage to the ecosystem”.<sup>55</sup> However, they did not provide details on how that mechanism works, or how it verifies how many unjustified notifications Content ID issues.

This last issue has led some legal scholars to suggest that “platforms should be required to report the accuracy of their notifications [...] in order to create an incentive for digital service providers to reduce false positives”<sup>56</sup>. Platforms, however, would presumably seek to lobby against such a regulatory measure, as it would force them to disclose parts of the workings of one of their competitive tools in attracting large corporations, the content source crucial to their proper functioning.

For these reasons, automatic detection tools allow large producers to act as gatekeepers on the platforms, since they give them the real and efficient power to “control, regulate and influence the digital circulation”<sup>57</sup> of content. In other words, they give them an unfair power over the distribution of content from other producers that they have no way to counteract. This, according to some academics, results in “transformative works such as remix, parody or satire, among others, being in an unbalanced position from the beginning”<sup>58</sup>.

50. Li y Auchard, “YouTube to test video ID with Time Warner, Disney”.

51. Interview with Google.

52. Google, “How Google Fights Piracy”, 25.

53. Bartholomew, “The Death of Fair Use in Cyberspace: Youtube and the Problem with Content ID”, 84

54. Interview with Google.

55. Interview with Google.

56. Lester y Pachamanova, “The Dilemma of False Positives: Making Content ID Algorithms More Conducive to Fostering Innovative Fair Use in Media Creation”, 72.

57. Edwards, “Circulation Gatekeepers: Unbundling the Platform Politics of YouTube’s Content ID”, 63.

58. Edwards, 68.

That imbalance does not only occur with that type of content. As it has been repeatedly expressed in the academic literature on this topic, Content ID, and presumably other automatic detection tools, “drives copyright owners to take advantage of the hard work and creativity of youtubers by taking away all of their monetary incentives”<sup>59</sup>.

The price of HDAs being viable and useful tools for large content corporations and platforms are all the negative consequences that have been described throughout this report. Small and independent creators, many times, end up being victims of unfair decisions made by other actors through a power that is a product of the balance of economic and political forces that influence the operation of the platforms. For that reason, these forces do not have an efficient counterforce.

59. Boroughf, “The Next Great Youtube: Improving Content ID to Foster Creativity, Cooperation, and Fair Compensation”, 95.

# BIBLIOGRAPHY

- @LuisitoComunica. “Me pone feliz comunicarles que hemos recuperado la monetización de los videos! Vaya que levantando la voz se pueden agilizar las cosas! Gracias @CNNChile por devolverme los derechos de mi contenido ♥ Sé que no fue mal intencionado, y me alegra que se hay”, 2018. <https://twitter.com/LuisitoComunica/status/1070137346786557952>.
- Bartholomew, Taylor B. “The Death of Fair Use in Cyberspace: Youtube and the Problem with Content ID”. *Duke Law & Technology Review* 13 (2014). <https://heinonline.org/HOL/Page?handle=hein.journals/dltr13&id=66&div=&collection=>.
- Boroughf, Benjamin. “The Next Great Youtube: Improving Content ID to Foster Creativity, Cooperation, and Fair Compensation”. *Albany Law Journal of Science & Technology* 25, núm. 1 (2015): 95–127. <https://heinonline.org/HOL/Page?handle=hein.journals/albnyst25&id=103&div=&collection=>.
- CNN Chile. “Respuesta a Luisito Comunica: Lo sentimos [Video]”. CNN Chile, el 4 de diciembre de 2018. <https://www.youtube.com/watch?v=A2WgUaULq5w>.
- Contine, Josh. “Facebook launches video Rights Manager to combat freebooting”. *Techcrunch*. el 12 de abril de 2016. <https://techcrunch.com/2016/04/12/content-fb/>.
- Delaney, Kevin. “YouTube to Test Software To Ease Licensing Fights”. *The Wall Street Journal*. el 12 de junio de 2007. <https://www.wsj.com/articles/SB118161295626932114>.
- Edwards, Dustin W. “Circulation Gatekeepers: Unbundling the Platform Politics of YouTube’s Content ID”. *Computers and Composition* 47 (2018): 61–74. <https://doi.org/10.1016/j.compcom.2017.12.001>.
- Gómez, Gustavo. “Mi pecado: grabé un video en la calle de una persona con música a todo volumen y pedí pusieran en cintura a este contaminador auditivo. Y...”. Instagram, el 20 de julio de 2021. [https://www.instagram.com/p/CRkL9SEr84g/?utm\\_source=ig\\_embed&utm\\_campaign=loading](https://www.instagram.com/p/CRkL9SEr84g/?utm_source=ig_embed&utm_campaign=loading).
- Google. “How Google Fights Piracy”. Mountain View, noviembre de 2018.
- . “Impugnar una reclamación de Content ID”. Ayuda de YouTube. Consultado el 5 de diciembre de 2021. <https://support.google.com/youtube/answer/2797454?hl=es>.
- . “Submit a copyright counter notification”. YouTube Help. Consultado el 5 de diciembre de 2021. <https://support.google.com/youtube/answer/2807684>.
- Guzmán Mejía, Luisa Fernanda. “Excepciones y limitaciones al derecho de autor para las bibliotecas y los archivos en Colombia: update & upgrade más que necesarios”. Digital Rights LAC, el 11 de julio de 2011. <https://digitalrightslac.derechosdigitales.org/es/excepciones-y-limitaciones-al-derecho-de-autor-para-las-bibliotecas-y-los-archivos-en-colombia-update-upgrade-mas-que-necesarios/>.
- Lester, Toni, y Dessislava Pachamano. “The Dilemma of False Positives: Making Content ID Algorithms More Conducive to Fostering Innovative Fair Use in Media Creation”. *UCLA Entertainment Law Review* 24 (2017). <https://heinonline.org/HOL/Page?handle=hein.journals/uclaetr1r24&id=55&div=&collection=>.
- Li, Kenneth, y Eric Auchard. “YouTube to test video ID with Time Warner, Disney”. *Reuters*. el 12 de julio de 2007. <https://cn.reuters.com/article/idINIndia-30267920070612>.
- Luisito Comunica. “NO dejaré que me roben de esta manera! [Video]”, 2018. <https://www.youtube.com/watch?v=X6R6yzGiiVA>.
- McWhertor, Michael. “Twitch implements YouTube-like system for blocking copyrighted audio”. *Polygon*. el 6 de agosto de 2014. <https://www.polygon.com/2014/8/6/5976565/twitch-music-content-id-dmca>.
- Reid, Blake, y Caroline Ncube. “Estudio exploratorio sobre el acceso a obras protegidas por derecho de autor para las personas con discapacidad.” En *Comité Permanente de Derecho de Autor y Derechos Conexos Trigésima octava sesión Ginebra, 1 a 5 de abril de 2019*. Ginebra:

Organización Mundial de la Propiedad Intelectual, 2019. [https://www.wipo.int/edocs/mdocs/copyright/es/sccr\\_35/sccr\\_35\\_3\\_rev.pdf](https://www.wipo.int/edocs/mdocs/copyright/es/sccr_35/sccr_35_3_rev.pdf).

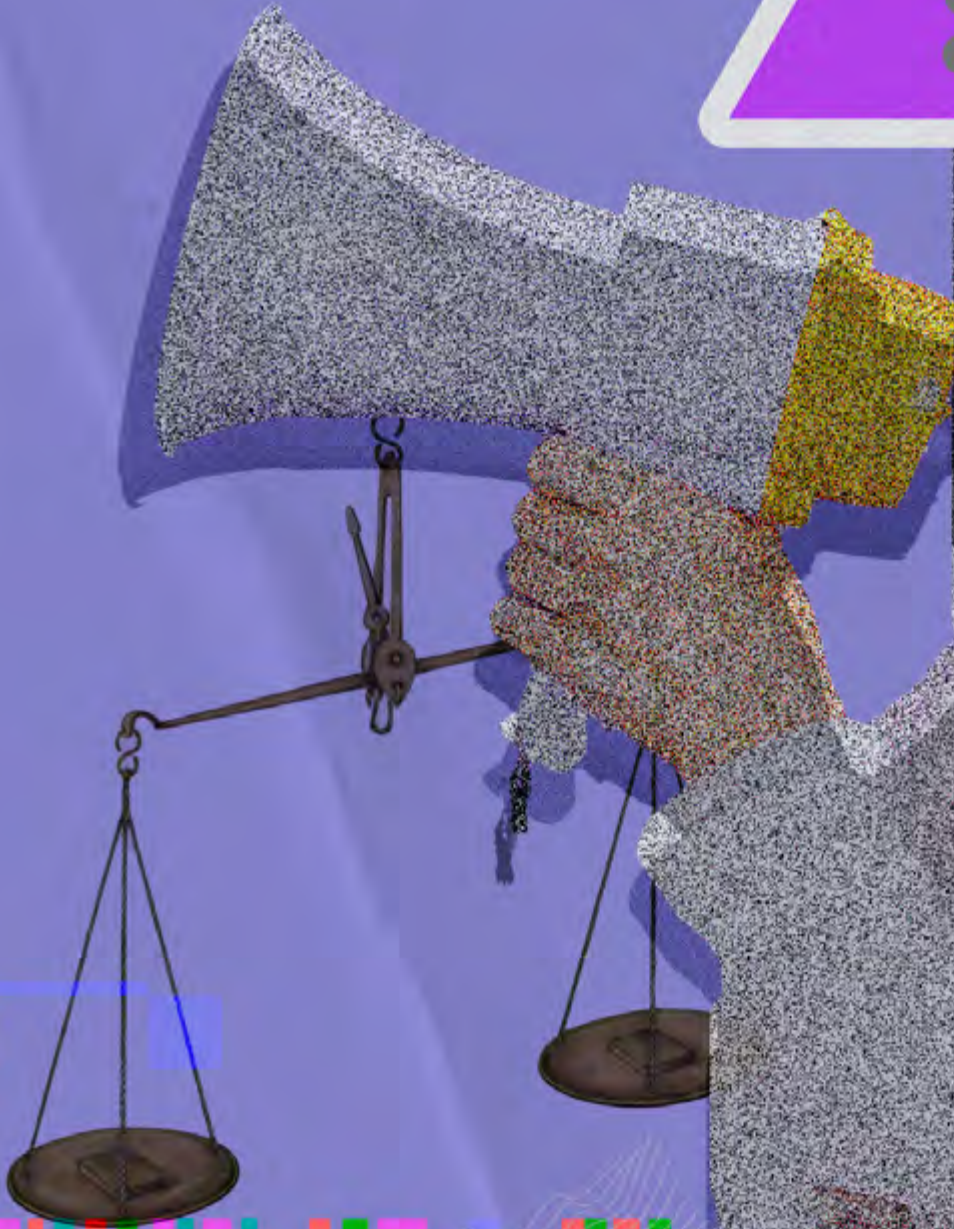
Salas, Liliana P. "Analysis of YouTube's Content ID System Through Two Different Perspectives". *Lecture Notes in Computer Science (including subseries Lecture Notes in Artificial Intelligence and Lecture Notes in Bioinformatics)* 12051 LNCS (el 23 de marzo de 2020): 227–34. [https://doi.org/10.1007/978-3-030-43687-2\\_18](https://doi.org/10.1007/978-3-030-43687-2_18).

Trendacosta, Katharine. "Unfiltered: How YouTube's Content ID Discourages Fair Use and Dictates What We See Online". San Francisco, el 10 de diciembre de 2020. <https://www.eff.org/es/wp/unfiltered-how-youtubes-content-id-discourages-fair-use-and-dictates-what-we-see-online>.

Welch, Chris. "Vimeo rolls out Copyright Match to find and remove illegal videos". *The Verge*. el 21 de mayo de 2014. <https://www.theverge.com/2014/5/21/5738584/vimeo-copyright-match-finds-and-removes-illegal-videos>.



K



[KARISMA.ORG.CO](http://KARISMA.ORG.CO)