Response to consultation by the US Copyright office docket 2021-10

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About the Author

Andrew “K`Tetch” Norton is a P2P researcher that has worked on copyright infringement cases since the late 90s. Starting at a small record label in the late 90s, he did initial investigations into commercial copyright infringement on behalf of the label. Due to fundamental differences between himself and the label over the response to Napster and the rise in MP3s, he quit the label, and stopped working on detecting infringement. Instead he worked on a number of TV shows in both the US and UK, before turning to full-time investigation of the methods used to detect infringement around 2005 following the launch of the Industry Trust for IP Protection and their “Piracy is a crime” campaign (with its instantly recognizable ‘you wouldn’t download a car’ commercial)

In 2007 he joined the staff of TorrentFreak.com as both researcher and occasional writer, and led the team that exposed Comcast using Sandvine technology to breach the FCC’s 2005 Net Neutrality rules. Following independent verification by both the Electronic Frontier Foundation and the Associated Press in late 2007, the FCC opened an investigation into Comcast which has led to litigation and a Net Neutrality fight that is ongoing to this day.

He also worked extensively covering copyright trolls – entities that exist solely to claim infringement and extort settlement fees despite no harm, and often no infringement. He was the defense expert in AF Holdings V Patel[1] which exposed the plaintiffs as extortionists using the current enforcement system, and eventually led to a federal prosecution for Wire Fraud and other crimes.

He is also an author, artist and videographer, so understands the creative side of the industry, and has worked on TV shows ranging from the BBC in London, to Comedy Central in San Francisco

1 AF Holdings v Patel 2:12-CV-00262-WCO Northern District of Georgia

Summary

The question arises over the role of technical measures to detect and protect online content.

While there are a number of questions put to us to answer, I will answer those that apply .

Question 1.

Rightsholders: Please identify any technical measures currently used or in development by you, your organization, company, industry, or sector to identify or protect copyrighted works online. How do these technical measures affect your ability to protect your copyrighted works online?

As a rightsholder (note, we are ALL rightsholders, every single person responding to this is a rightsholder, as they hold the rights to their response, and so trying to portray this term as being only for the major media conglomerates is misleading and improper), I do not currently use any technical method. Mainly because they usually don't work, they lack nuance, and because actual damages from infringement is always near-zero, so why would I pay thousands of dollars to 'protect' from something that doesn't cost me anything?

Technical measures put in place by others have on occasion significantly impacted the use of my own works, through both misidentification, and through a completely lack of ability for automated systems to account for Fair Use[2] which is not an infringement. When Fair Use is ignored, it does so contravening Lenz[3] which states that any claim of infringement under the DMCA should take into account Fair Use BEFORE a claim is made.

So in multiple instances, these technical measures make claims that are not supported by the law, and make improper (and perjurous, under the DMCA [4]) claims of infringement.

2 17 U.S. Code § 107
3 Lenz v. Universal Music Corp., 801 F.3d 1126 (9th Cir. 2015)
4 17 U.S. Code § 512 (c)(3)(v) and (vi)

Question 2 – Does Not Apply

Online service providers: Please identify any technical measures currently used or in development by your organization, company, industry, or sector to identify or protect copyrighted works online. How do these technical measures affect your ability to provide services to your users?

This does not apply.

Question 3

Users: How are you, or your organization, company, industry, or sector affected by technologies implemented by rightsholders and service providers to identify or protect copyrighted works online?

Speaking broadly as a researcher in this field, and as a user, we are all extremely negatively impacted by these technologies.

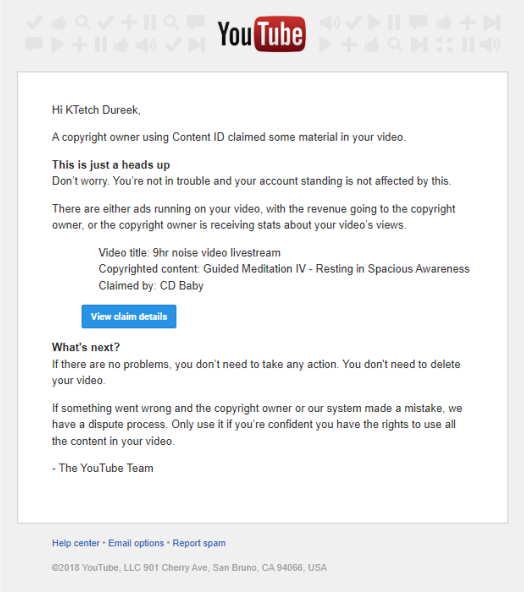
Copyright is a hammer; but, it's not a 16oz claw hammer, essential to build things, its the 5ft mallet beloved of comic-book antihero Harley Quinn, and useful only to inflict injury on victims.

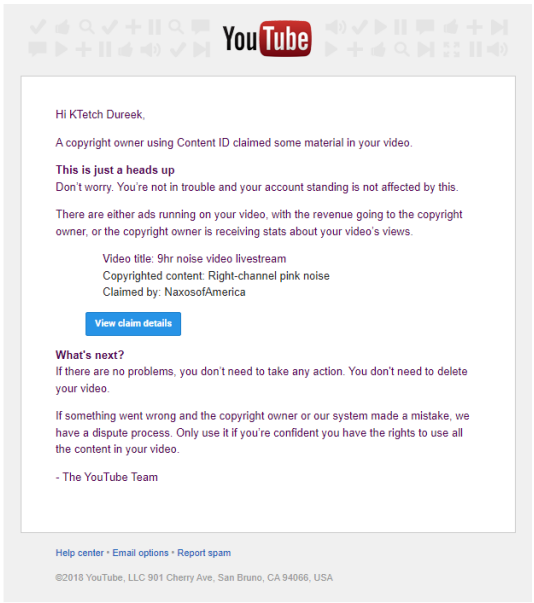
These technologies are rarely used intelligently, or in accordance with the law, most are used to circumvent the law, and gate keep against any potential competition.

Example 1 – Generated noise and YouTube

Following news reports of a 10 hour white noise video being hit with multiple copyright complaints[5], I attempted to duplicate his test.

I created a video[6] containing 3 hours of white noise, 3 hours of pink noise and 3 hours of brown noise[7]. All 9 hours were computer generated by the audio editor Goldwave, and being proceedurally generated, without human input, are not eligible for copyright[8]. Nonetheless, It got two claims.





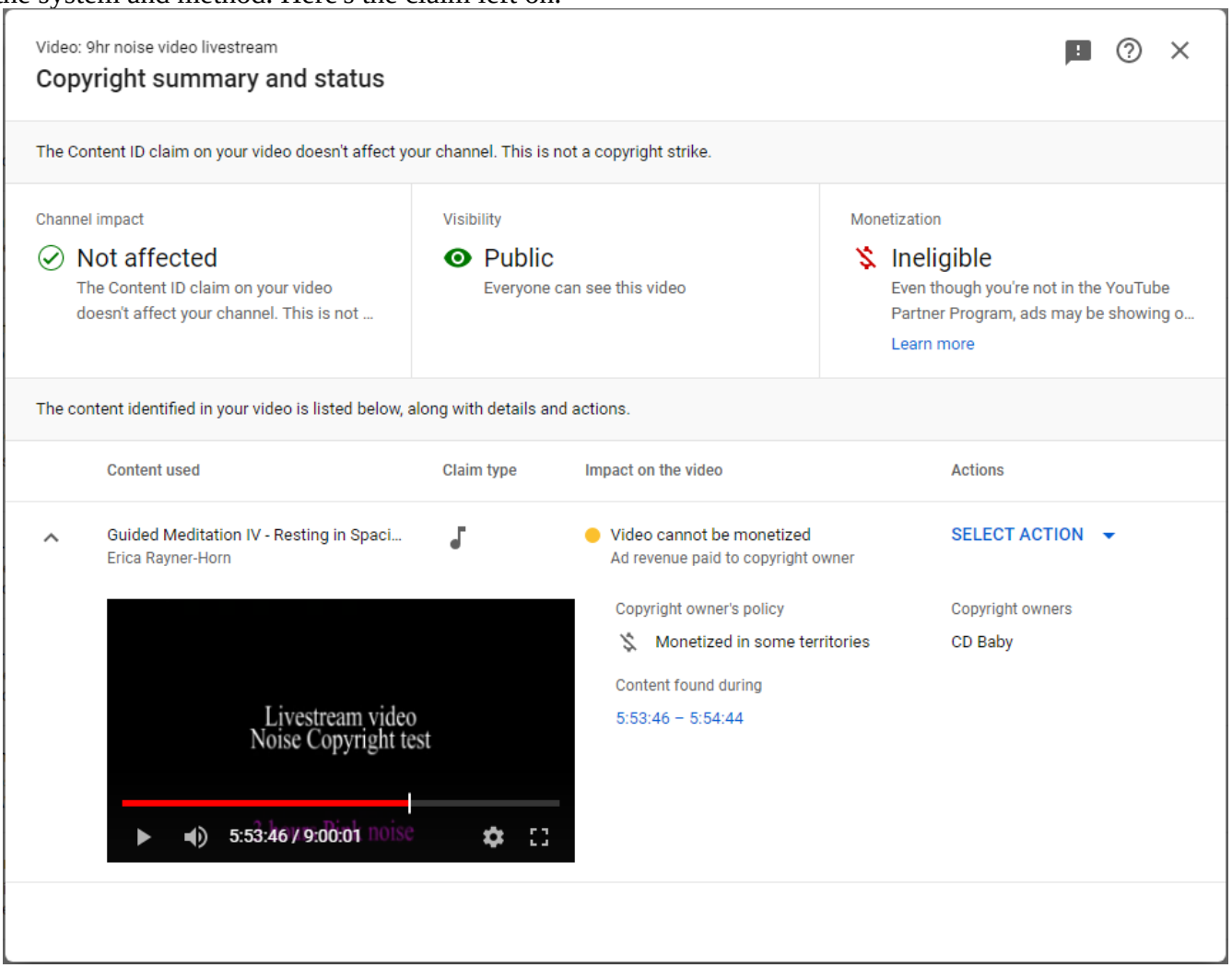
5 https://torrentfreak.com/musicians-white-noise-youtube-video-hit-with-copyright-complaints-180105/

6 https://www.youtube.com/watch?v=0vgEjmbwhbI "9 hr noise video livestream" by K`Tetch

7 White noise is a random signal that has equal intensity at all frequencies, pink noise has its power spectral density inversely proportional to the frequency, and brown (or Brownian or Red noise) is inversely proportional to the square of the frequency.

8 See https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf "313.2 Works That Lack Human Authorship" page 21

While one was disputed, to show I could, I left the other on, just as a demonstration of the stupidity of the system and method. Here's the claim left on.



It claims 58 seconds, of a work that is generated noise, where either the work claimed actually matches, thus it’s not eligible for copyright, or it doesn’t match and the claim of a match is a lie.

Either way, someone else is claiming and making money off my video, and preventing me from doing it.

There are few – if any – penalties for falsely claiming infringement, especially using automated systems like this.

Example 2 – Artist Confusion

Not all claims are malicious either. For one video of an oil slick in the rain[9], an audio track was added by me. This track was a piece of music called Give In To It, by Sideway. The track was released under a Creative Commons CC-BY-NC-SA license[10], and my video complied with that, thus the audio was a licensed use.

It still got a claim.

A December 2012 video[11] covering the developments of a distributed project to design particle accelerators (the Muon1 Distributed Particle Accelerator Design Project, based out of the UK's Rutherford Appleton Lab) got a claim in December 2019. The track was for the Creative Commons licensed track Urban Interlude (released under a CC-BY-NC-ND license) by JCRZ[12].

In conversations with the artist, he told me that he wasn't given proper information to understand what he was doing, and that Jamendo misrepresented the law to him, to get authorization to made ContentID claims. This was after it got the PUR label from the french agency HADOPI. So here it uses ContentID as a shakedown service, taking 35% of the ad revenue for works that are usually properly licensed by their end users.

It had become a recurring problem with Jamendo, misrepresenting copyright licensing to artists to get them to sign up their works for ContentID through them and earn them money. To the artist, it's a simple checkbox, and then a multi-page agreement of legalese, including indemnification from Jamendo's own violations of copyright law by the artist.

To bring back the discussion back to the initial allegory of Harly Quinn's Mallet, it's as is Harley has passed a homeless person, and asked if they want a dollar, then on a nod, gone and robbed a bank, and when caught blame the homeless person for making them attack the bank because they'd like a dollar.

Automated tools like this are tools for abuse, with no consequences for the abuser.

Example 3 Viacom Vs Youtube

Perhaps the most telling example of the poor use of automated bots is the rather well known Viacom-YouTube legal battle[13]. In it YouTube was accused of massive infringement (mainly secondary) of Viacom shows. During the case, it came out that many of the claimed infringements were not infringements at all, but were uploaded by Viacom, its subsidiaries, or one of the 18 marketing companies employed by them. To the bot, it's all the same, it didn't care if it was licensed content or not, and neither did the legal team, a point reiterated again later in the aforementioned Lenz case.

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9 Timelapse of oil https://youtu.be/wSZlgoH5ivo

10 https://www.jamendo.com/track/1361433/give-in-to-it

11 Muon1 Linac900Ext7Xc2 Best Design https://youtu.be/3x2tC9N01eg

12 http://www.jamendo.com/en/track/210515/urban-interlude

13 No. 07 Civ. 2103, 2010 WL 2532404 (S.D.N.Y 2010)

Even the legal team involved didn't know what was and wasn't licensed, and so how could the bots know? And that's before we get to the whole fair use debate.

The problem is exacerbated because the default position for most of these bots is to impose an infringement claim automatically – to strike first and if there's push-back later, then look at it. That's not rational or legal in ANY other area.

If a homeowner fired their gun towards any person that attempted to approach their front door (via an implied right of access) on the theory that they 'might' be attempting to attack the homeowner, but if the people knock at the door and are not, then the homeowner will apologize – would this be considered reasonable? Absolutely not. An act has been undertaken with an unstated threat of further action right at the start, with the obvious chilling effect that follows. And for there to be no consequences, just a brief meaningless 'sorry' (if you get that) would also not happen. There would be consequences for the legal activities and threats that have happened.
Except not in the copyright world. Using bots, they have automated the threats, and avoided any consequences. Whats more, any process that follows it only ever has consequences for the user, and never the claimant. Here's the YouTube pages for dealing with a clai

What happens after you dispute

After you submit your dispute, the copyright owner has 30 days to respond. There are a few actions the copyright owner can take:

- **Release the claim:** If they agree with your dispute, they can release their claim. If you were previously monetizing the video, your monetization settings will be restored automatically when all claims on your video are released.
- **Reinstate the claim:** If they believe their claim is still valid, they can reinstate it. If you feel it was mistakenly reinstated, you can appeal their decision.
- **Take down your video:** They can submit a copyright takedown request to remove your video from YouTube, which means you'll get a copyright strike on your account.
  - **Note:** A video can get more than one Content ID claim or takedown request, but can only get one copyright strike at a time.
- **Do nothing and let the claim expire:** If the copyright owner doesn't respond within 30 days, their claim on your video will expire, and you don't need to do anything.

If you had ads running on the claimed video, you may want to learn more about monetization during Content ID disputes. If the copyright owner selected a policy to block or track your video, the policy may not apply while the dispute is resolved.

What can I do if my video has a Content ID claim?

Depending on the situation, you have a few options to choose from if you get a Content ID claim:

If you agree with a claim:

- **Do nothing:** If you believe a claim is valid, you can leave it as is. You can also change your mind later.
- **Remove the claimed content:** If you believe a claim is valid, you can remove the claimed content without having to upload a new video. If done successfully, any of the 3 options below will automatically release the associated claim:
  1. **Trim out a segment:** This option removes just the claimed segment from your video. Learn more.
  2. **Replace the song** (audio claims only): If the music in your video is claimed, you may be able to replace your audio track with free-to-use music from the YouTube Audio Library. Learn more.
  3. **Mute a song** (audio claims only): If the music in your video is claimed, you may be able to mute the claimed song. You can choose whether to mute just the song or all audio in the video. Learn more.
- **Share revenue:** If you're in the YouTube Partner Program and your video's music is claimed, you may be able to share revenue with the music publisher. Learn more.

If you disagree with a claim:

- **Dispute the claim:** If you believe a claim made on your video is invalid, you can dispute it. Learn how to dispute a Content ID claim.

⚠ If you dispute a claim without a valid reason, the content owner may request a takedown of your video. If we get a valid takedown request for your video, your account will get a copyright strike. Learn more about copyright strikes.

As you can see in these screenshots from the YouTube claim process, If Party A wants to make a claim against a video by Party B using an automated method, then it's considered automatically valid, and B has to respond. But if A wants to they can impose punishments while taking money from B, entirely on their whim. However, if A made a mistake, they get no punishment, no penalty. They've threatened and caused distress (and yes, it does cause both stress and distress) and made money off doing it, but they face no consequences.

Also note that if they release the claim (either actively, or by letting is expire after 30 days) the target of the claim doesn't get the money that the claimant was getting because of their false claim. They get to keep that money. They've profited from that false claim.

When there are not only no consequences, but a financial gain from filing false, inaccurate or fraudulent claims of infringement using a mass automated system, it's going to be abused beyond belief, and it has been.

In December 2021, two men – Webster Batista Fernandez, and Jose Teran – were indicted by a federal grand jury on fraud charges, after claiming the rights to over 50,000 pieces of content for 4 years, and using the ContentID system to pocket more than $20M.

This is but the tip of the iceberg, as the first case exposes what most have known for years.

Individual cases of abusive and excessive claims have come about for years.

- In 2014, two music artists attempted to claim public domain audio of President Kennedy's "The President and the Press" speech[14].
- In 2018, Banksy published a video showing the behind the scenes of the shredding of the work now known as "Love is in the Bin" was taken down after a claim by Canal+, Canal+ was reusing Banksy's video in part of their work (a valid fair use) and then used that to take down the original.[15]
- In December 2021 the Totally Not Mark youtube channel got hundreds of automated claims against reviews. In using the ContentID system, the agreement states that those using it for enforcement, in this case Toei, are to consider fair use before using it. Unsurprisingly, as with everything else to do with automated content tools, there's no punishment for anyone except the tools targets. Toei is using ContentID to take down hundreds of videos because such claims would not be viable under the DMCA. As such it has used the tool as an end-run around the law, in an attempt to impose Japanese law (where there is no fair use) on a US service (youtube) used by a US national (Mark Fitzpatrick)[16]
- Montreal hip-hop artist Jonathan Emile worked on a track with Kendrick Lamar contributing a small bit to a track, but Lamar's label decided to claim the entire track, and take it down from all services. Any attempt to put it back up was thwarted by automated tools. Emile prevailed in a copyright case in a Canadian court[17]

It's not surprising that there's so much abuse, because there's so many claims.

14 https://torrentfreak.com/music-distributor-claims-right-to-monetize-jfk-speech-140511/
15 https://torrentfreak.com/banksys-own-video-shredded-by-youtube-following-canal-copyright-claim-181205/
16 https://torrentfreak.com/toei-youtube-blitz-shows-that-law-of-content-id-can-trample-fair-use-211209/
17 https://torrentfreak.com/court-awards-damages-following-bogus-dmca-takedowns-161130/

The 2021 YouTube Copyright Report

In a report published late last year[18], 722,649,569 ContentID claims were made between Jan 1 2021 and June 30 2021 (about 46 per second) with another 1,676,292 claims made via the automated Copyright Match system.

Of those 722.6 million claims, 3.6M were disputed. While that's 0.5% of the number of claims, the fact that claims can be disputed at any time after its been made does limit a direct correlation.

More importantly, the aforementioned chilling effects mean that those that were disputed tended to be cases where the target (and let's be fair, they are 'targets') feel they have an extremely strong case for it not being infringement – they have the option of winning and going back to the status quo, or losing and being penalised.

Of those 3.6M disputed cases, 60% or 2.2 Million claims were dropped, or every 7 seconds over that 6 month period a ContentID claim is dropped as false. That's a startling and chilling statistic, that just on YouTube an automated system falsely claims copyright infringement every 7 seconds.

Of the remaining 1.48M claims where the claimant has decided to go with the bots claim in their favor (because what's the downside? They're not going to lose out in any way if they do) the target has another chance to appeal. At that point, the claimant has the choice of actually filing a takedown under the DMCA (of which there were just 38,864, although Youtube doesn't give a number for how many of the 1.48M declined ContentID disputes that comes from). Yes, it's only at this stage, after 2 stages where claimants can assert [fact free] copyright claims and intimidate targets from asserting their rights, do we even get to a legal stage. That 38,864 number isn't just disputes though, it's ALL dmca takedown claims.

So that's 38,864 actual DMCA claims, with 9% getting a counter-notice, for a total of 3,471 and of those 9%, less than 1% they claim go to actual lawsuits (meaning at most, 34%)

But let's look more closely at the figures. Through their other automated system (Copyright Match) they show a 5% improper claim figure. That's populated mainly with internal reuse content from partners, and yet there's still some abuse, where people are using copyright to be anti-competitive or impersonating someone else for instance.

On the manual side, they are also two webforms, one is limited access (the Enterprise webform) which has almost no abuse but still a not insignificant number of invalid requests considering that this is supposed to be restricted to professional copyright representatives for brands. If this manual submission method can't even reach 99.9% accuracy despite it being manually generated and manually processed, then how can any automated tool hope to be accurate? With an actual accuracy rate of 99.3% that means that over that period, there were approximately 20,100 invalid claims made by the 2,307 entities that used the form, who are all part of the 'Content Verification Program" and are antipiracy companies and major rightsholders.
Again, thats one false claim by seasoned professionals and 'experts' every 10 minutes when making manual claims. That's just not acceptable.

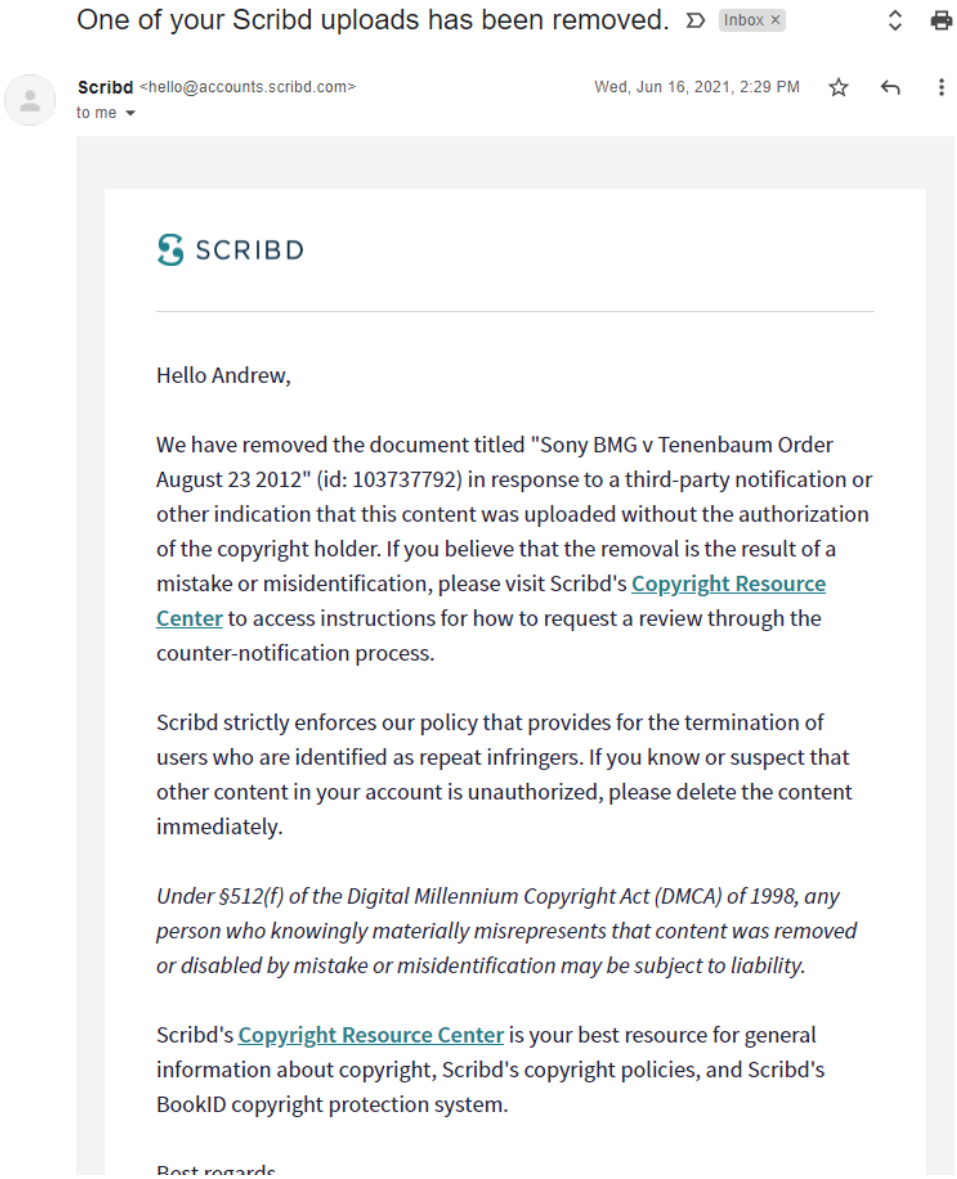
18 YouTube Copyright Transparency Report - https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-22_2021-1-1_2021-6-30_en_v1.pdf

Example 4 Scribd

Whlie a lot of focus until now has been on Youtube (ten pages worth) it's because it's the 900lb gorilla in the room. But it's not the only one who seems to be incompetent and indifferent to copyright law. Scribd's BookID is mentioned as well, and should, in theory work better, because words are far easier to parse, and strings of words are more easily identifiable and differentiate than images or sounds.

My experience is that this is not the case, and that those in charge of copyright enforcement at Scribd don't seem to have the slightest clue about copyright law, even on manual claims, which means any automated system under their purview can't possibly come close to functioning at even an adequate level.

In June of 2021 I got the following lovely email.



One of your Scribd uploads has been removed. Inbox ×

Scribd <hello@accounts.scribd.com> Wed, Jun 16, 2021, 2:29 PM

to me

SCRIBD

Hello Andrew,

We have removed the document titled "Sony BMG v Tenenbaum Order August 23 2012" (id: 103737792) in response to a third-party notification or other indication that this content was uploaded without the authorization of the copyright holder. If you believe that the removal is the result of a mistake or misidentification, please visit Scribd's Copyright Resource Center to access instructions for how to request a review through the counter-notification process.

Scribd strictly enforces our policy that provides for the termination of users who are identified as repeat infringers. If you know or suspect that other content in your account is unauthorized, please delete the content immediately.

Under §512(f) of the Digital Millennium Copyright Act (DMCA) of 1998, any person who knowingly materially misrepresents that content was removed or disabled by mistake or misidentification may be subject to liability.

Scribd's Copyright Resource Center is your best resource for general information about copyright, Scribd's copyright policies, and Scribd's BookID copyright protection system.

Best regards

All the warmth of a thrown brick.
But notice the title of the document they removed. "Sony BMG v Tenenbaum Order August 23 2012"

As the name implies, it is a copy of a court document, specifically one in well known copyright infringement case, which I'd uploaded there to host for a news report.

Now, as anyone who has the most basic knowledge of copyright law knows, US court documents are public domain, they can't be the subject of a copyright claim, because there is no copyright. Still, must be a silly automated error, right?

Wrong.

When I responded, it turned out that this was a manual claim, filed by a company called musicnote, according to the following email

> Good afternoon, Andrew:
>
> Thank you for bringing this to our attention. Your document, among many others, was removed in response to a lengthy notification that we received from Musicnotes, Inc. Musicnotes is a publisher of sheet music, and we frequently process DMCA notifications from them without any subsequent indication of error. The remaining documents in the notification in question appear to be sheet music and so I am sufficiently confident that your document was flagged in error.
>
> I have restored the document based on this analysis. I will reach out to Musicnotes and let them know that I have restored the document.
>
> You can learn all about Scribd's copyright policies at https://scribd.com/copyright.
>
> Best regards,
> Jason Bentley
> Copyright, Abuse, and Privacy Manager
> Scribd, Inc.

Jason Bentley is in charge of copyright at Scribd, and is their designated Copyright Agent. So he should know what he's talking about eh?

Wrong

In response to this, I asked to see the copyright claim (since they don't participate in the Lumen directory) and what their policy was on abusive copyright claimants (those that file false or inaccurate claims), since they make a massive deal about a repeat infringer policy under 17 USC 512(f)(2) but don't seem to mention one for abusive infringement claims as listed under 17 USC 512(f)(1).
Section f reads

> (f)**Misrepresentations**.—Any person who knowingly materially misrepresents under this section—

(1)that material or activity is infringing, or

(2)that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

So it would seem that it would be rather one-sided and prone to abuse to not have a policy to deal with such abuse. Yet, according to Jason, they don't have one, which is weird because you'd want one, unless abuse is non-existent so pointless, or so rampent that you'd end up having to ban every claimant and they then start throwing tantrums. Since we know there is abuse, the only reason not to have such a policy is because abuse is so common.

And how do know there's abuse? Because Jason sent the copyright claim[19] from Musicnotes' Grayson Vaughan.

> From:
> "Grayson Vaughan" <gvaughan@musicnotes.com>
> To:
> "copyright@scribd.com" <copyright@scribd.com>
> Subject:
> CEASE AND DESIST NOTICE: VIOLATION OF MULTIPLE FEDERAL COPYRIGHTS PROTECTED WORLDWIDE VIA COPYRIGHT TREATIES AND WIPO
> HTMLTextSource
>
> Attn: Copyright Agent
>
> Pursuant to 17 USC 512(c)(3)(A), this communication serves as a statement that:
>
> 1. I, Grayson Vaughan, am the duly authorized representative of the exclusive rights holder for products of Musicnotes, Inc. (https://www.musicnotes.com/). I am writing this on behalf of Musicnotes, Inc., the rights holder for digital sheet music products of thousands of music copyright owners throughout the world.
>
> 2. These exclusive rights are being violated by material available upon your site at the following URL(s):

It wasn't all that big in fact, with 315 claims. And it seems that unlike Jason, I went ahead and checked the claims made, which was hard since Jason had deleted 314 of them due to this claim. Yet I'm nothing if not competent, and the phrase 'once it's on the internet its there forever' is more true than most would think. As it had been less than 48 hours, the files would still be in places like Google and Bing's search

19 Both the musicnotes claim, and the analysis of the works claimed are available on request.

cache, as well as occasionally the Internet Archive wayback machine, as well as embedded in websites., and so I managed to identify the contents of 270 of the 315 claims.

Remember Jason's statement "The remaining documents in the notification in question appear to be sheet music"? It was a lie. Of those 270 works identified 62 of them were works ineligible for copyright protection at all; mostly they were court or government documents, with a few that appear to have aged out into the public domain. Another 71 were clearly and obviously not sheet music and their rights belonged to others. These ranged from "Journal of the viuola da Gamba society Vol 48 2013-14", through "Directions in music - Did Miles Davis' Bitches Brew Change the generic contract for Jazz" (an academic article by Ramond Sookram[20] to the owners manual for the Roland D-05 linear synthesizer.

It would appear that while the first one or two claims may have been looked at, Mr Bentley then failed to properly investigate all the other manual claims. Since manual claims are dealt with in such a sloppy, incompetent manner, even after claims have shown to be made in error, AND with a claim that he says he checked the rest but didn't. When almost 20% of what you've claimed to have checked and all been sheet music was clearly public domain material, and another 22.5% is obviously belonging to another rightsholder, then you have a problem with your system, and part of that problem is the honesty of the person operating it. Because I know I wans't the only person that filed a counter-notice about this. Two other experts in C/P/T law also filed counter-notices on this set of claims. Mark Jaffe, a Berkley-based copyright lawyer had a court document included in that takedown, as did Martin Schwimmer of the Trademark Blog.

So we've established that there's little-to-no oversight, or accuracy checking in manual copyright takedowns performed by Scribd's chief copyright enforcer, even after 3 separate experts in the field (from New York, California and Georgia) have told him he was wrong, and he insists that there was just the one error in a list we absolutely know had 3, and where we've discovered over 130 obvious errors (or 45% of the total, or 50.3% of those checked).

With that in mind, how can anyone possibly expect their automated system, with no manual oversight, to do any better? You can't. And if Grayson Vaughan of Musicnotes can do a single keyword search, and then send all those search results to Jason Bentley and he just blindly take them down, despite two people who clearly should have known that over 40% of the links were not musicnotes sheetmusic, how can any process where Grayson just puts that keyword into an automated task and it does it all without any human oversight be better?

Conclusion to question 3

All automated enforcement systems at best work no better than their human colleagues, because that's who programed them. They can just handle 'more' claims. But absent any penalties for abusing the automated systems, they are far far worse, because abuses are hidden in the volume, and the automation makes it easy to ignore; effectively encouraging abuse.

So how are we impacted?

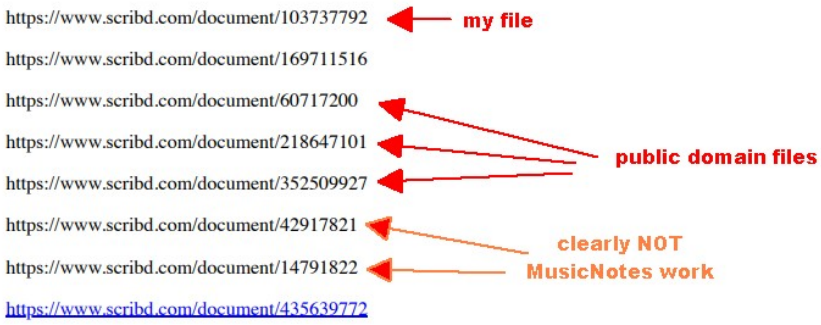
20 A copy of this is available here https://www.academia.edu/27907311/Directions_in_Music_Did_Miles_Davis_Bitches_Brew_Change_the_Generic_Contract_for_Jazz

We're impacted in a significantly negative way. And the reason for that impact is usually given as millions and billions and trillions lost to the economy and industry, via the lost-sale fallacy. A particularly vacuous theory that implies that if X money isn't spent on that one specific product for which it was destined to be spent on, it vanishes entirely and is gone from the economy forever. The only thing more amazing than the idea that someone thought that people would believe that risible claim, is that there are actually dunderheads that believe it.

$10 not spent on a DVD is not $10 vanished, its $10 spent elsewhere, perhaps on a different piece of media.

And additionally, automated tools are utterly incapable of making any sort of value judgment to even begin evaluating any fair use claim, especially when automated tools create incentives against admitting fair use, by making it financially beneficial to make claims.

Whats more, the use of bots removes what little oversight there is. Bots can't make claims under penalty of perjury that they're accurate as Grayson did, not that she'd be held to account for it.



3. I have a good faith belief that the use of this material in such a fashion is not authorized by the copyright holder, the copyright holder's agent, or the law; , and, as such, constitutes infringement of copyright pursuant to Title 17, United States Code, which violations are punishable by, among other things

1. Injunction
2. Assessment of damages, including without limitation actual damages and profits
3. Attendant interest charges
4. Statutory damages of as much as $150,000 per infringement
5. Multiple criminal remedies under Section 2319 of Title 18, United States Code, including, without limitation, fines, imprisonment, forfeiture and destruction

6. Assessment of legal fees on behalf of Musicnotes, Inc.

4. Under penalty of perjury in a United States court of law, I state that the information contained in this notification is accurate, and that I am authorized to act on the behalf of the exclusive rights holder for the material in question;

5. I may be contacted by the following methods: By mail at 901 Deming Way Ste. 100, Madison, WI, 53717 United States of America, by telephone at +01-6159538405, and via email at gvaughan@musicnotes.com

6. This notification should be of extreme concern to your company and to its officers and directors, affiliates and others acting in concert with your company, and I suggest that you engage an attorney familiar with these matters to resolve Musicnotes, Inc.'s claims. In the meantime, this notification is intended to demand that your company, and its officers, directors, and affiliated companies, and others acting in concert with your company, **cease and desist** from committing the violations indicated above by immediately removing all infringing materials from your website(s) everywhere they appear everywhere in the world.

As can be seen, Not accurate, but because they represent a 'rightsholder' the perjury claim is meaningless, as no-one will be prosecuted for filing false legal documents if they're a major rightsholder enforcing copyrights they don't have.

Question 4

To what extent are any of these technical measures being adopted or discussed as part of any within-industry or cross-industry endeavors, initiatives, or agreement(s)?

To my knowledge, these tools are mainly discussed inside the User Generated Content (UGC) Host community, to a small degree, and by major rightsholders and their chosen elected representatives.

The UGCH's talk of them to stave off the ignorant attacks by politicians, while major rightsholders (who, lets not forget, between them represent less than 0.1% of copyrights) talk of them as the way to solve all their problems. However, as we've now established, most of that cure is through abuse of process and using said tools to falsely claim enrichment, and avoid any accountability for their mistakes, errors, incompetence, greed, or basic laziness.

More importantly, these 'agreements' ignore the vast majority of copyright holders – the general public. They act as an elitist club, acting to keep the elite above the rest by giving them special powers and access, verging towards an apartheid system.

Question 5

Are there any other processes that are ongoing for identifying voluntary solutions or to identify and implement technical measures? Are there alternative processes, other than those that may currently be in place, that would better identify and implement technical measures? Please be specific, as different technical measures may have different solutions in different industry sectors

There's plenty of processes, but most involve either lying to people, lobbying (lying again) or throwing darts at pieces of paper. They all make the same fundamental assumption – that the power of the incumbent powerful has to be protected at all costs, and their copyright is the most precious commodity possible, and that not being able to milk every possible cent from those exclusivity rights is a one of the worst crimes imaginable.

It's time to get a real grip on the reality of the industry and the marketplace. For under $1000 I have all the equipment needed to make a film, shot in 4k, and then give it a worldwide distribution. Unlike even 30 years ago, you no longer need access to expensive cameras, keep buying film for it (Kevin smith's debut masterpiece Clerks was shot in black+white purely because it was cheaper, now my 2yo cellphone can shoot 4k HDR footage at 60fps, which I can edit on a 4 year old PC. Music is no different (I have helped shoot a number of music videos, and again, I used to work for a record label) and I have written and produced books which have been sold around the globe.

The days of needing big seed capital for equipment to produce is over. Major entities now exist not to produce, but to market and (more commonly) to be a parasite on the creative artists.

The real solutions now would be to stop copyright abuse, which has delegitimized it in the eyes of many, with constant expansions and desperate pandering to these incumbent behemoths of old. They have enough money to throw around to get what they want, and use the courts to intimidate others, but face no consequence for being wrong. They push for ever heavier penalties, and the rare occasion someone can afford to hold them to account, they've been able to pay that from what they've taken from others. And all while extending copyright term length and adding greater complexities.

Jan 1 was public domain day, a tradition that has just restarted, as we had a 20 year break due to the Sonny Bono Copyright Term Extension Act, which gave big companies another 20 years of free-riding off the everyday person.
When the works now coming into the public domain were made, the deal was that they got exclusive distribution rights for 28 years, with maybe another 28 if they wanted to make the effort. Now stuff from 1926 just entered, and instead of 28 years or even 56, they got 95, which means another 39 years stolen from the public.

With this attitude, is it any wonder that the general public tends to see copyright as contemptible, and that infringement is fair, because these obsolescent freeloaders keep breaking the deals that were made to enrich themselves further.

The absolute best solution of all is to stop bullying the little guy and excusing the bully, it's to hold the big companies to at least the same standard as they want to hold others to, if not to a higher standard, since they're experts and it's their business.

Question 6

To what extent would the adoption and broad implementation of existing or future technical measures by stakeholders, including online service providers and rightsholders, be likely to assist in addressing the problem of online copyright piracy? What are the obstacles to adopting and broadly implementing such existing or future technical measures? Would the adoption and broad implementation of such existing or future technical measures have negative effects? If so, what would be the effects, and who would be affected?

How likely would broad implementation assist in addressing the ‘problem of online copyright piracy’?

It Won’t

It won’t address it because the problem isn’t one of not enough enforcement, it’s one of unequal enforcement improperly targeted and justified by lies.

You might as well ask to what extent will broad implementation of broad and systemic whipping of teenagers be likely to assist in addressing the problem of rampant homosexuality.

It’s a nonsensical question because it assumes a problem that’s mainly fictional[21]. There is no ‘problem of online copyright piracy’, not as portrayed. If there was, those same industries currently crying wolf would be showing economic turnover that varied in proportion to new infringement methods/technologies and enforcement methods. They don’t. They show a general direct correlation to economic activity.
What’s claimed to be a problem of piracy, is a problem of quality, a problem of competition, a problem of greed, and a problem of gullibility.

Piracy is the blame now whenever a product doesn’t make its projected sales target. It’s never that it was a bad product, that people didn’t like it and it reviewed badly, that there were better choices at the time, or that the targets were simply stupidly high. Most of the time now, the difference between what it did, and what they wanted it to do is just claimed as ‘piracy’, and accepted unquestionably by everyone else.

As already noted, $10 not spent on the latest film at the cinema isn’t $10 lost, it’s $10 spent on a burger, or it’s $10 spent on a computer game on Steam, or on a kickstarter, or to some artist via patreon. It’s this competition that is their source of their projected losses, not piracy. And that money spent elsewhere often does more for the economy, as small artists cycle money more, rather than have it pad a bank account before buying a yacht in the Netherlands.

Every independent study has found that piracy losses are negligible. If people were going to pirate they weren’t going to pay for your product anyway, because its too expensive for what it is, or because it often is a far inferior product that has actively dissuaded the consumer (often by putting arbitrary restrictions, or frustrating the customer like mandatory unskippable adverts at the start of a DVD, or a game that requires a 24/7 connection to a server to play even offline).

No automated system can do anything about this because it’s not a case of not enforcing enough. It’s a problem of too much enforcement and no accountability. Automated tools will only make the problem WORSE not better, as it drives growing consumer disgust and contempt for copyright.

21 Sky is Rising report https://www.techdirt.com/skyisrising/

Question 7

Is there a role for government to play in identifying, developing, cataloging, or communicating about existing or future technical measures for identifying or protecting copyrighted works online? Can the government facilitate the adoption or implementation of technical measures, and if so, how? Are there technical measures or other standards used to protect copyrighted works online of which the government should be aware when implementing statutory or regulatory provisions, such as requirements for procurement, grants, or required data inventories?

There is a definite theme to these questions. It is less of a consultation and more of a ‘please help us create a justification for this plan we have by’

Yes, the only major role the government has is enforcing equality in enforcement. That those that make false claims are made to take responsibility, and that they have penalties commensurate with their resources. Current financial penalties for civil willful infringement are $750-$150,000.

For normal people, thats 103 hours (13 eight-hour days) at minimum wage, to 4x the median annual US wage, and that doesn’t count the cost of an attorney to defend you which is another $10,000. regular workers can’t afford to fight a copyright claim, while major players like Disney, viacom, EMI, etc. Find that a rounding error, especially as they have already paid for the copyright attorney, so to NOT use them would be a waste of money.

And cases currently last so long, that no normal person wants to spend 3-4 years on a case. I understand that’s why the CASE act was passed, but it made the same mistake of thinking more enforcement is the same as better, more equitable, and cheaper enforcement.

With penalties for false claims, it will also help remove the chilling effects of trying to fight a case. Fee sifting is rare, and so pro bono lawyers, and those willing to take cases on contingency are also rare. So it’s an unequal justice issue.

Question 8

Please identify any other pertinent issues not referenced above that the Copyright Office should consider in these consultations.

One of the biggest problems not referenced above is the constant revolving door between pro-copyright lobbyists and the Copyright Office. The Current Director of Copyrights, Shira Perlmutter, used to be Executive Vice President for Global Legal Policy at the International Federation of the Phonographic Industry, and was one of those strongly pushing for SOPA/PIPA – the deeply unpopular attempts to hand control over free-speech to major entertainment corporations. Before that she was Vice President and Associate General Counsel for Intellectual Property Policy at Time Warner.

The prior register, Karyn Temple previously served as Vice President, Litigation and Legal Affairs for the Recording Industry Association of America (RIAA) where she managed a wide variety of anti-piracy litigation matters on behalf of RIAA member companies, such as the Grokster and Limewire cases, and is now back at a lobby group, as a senior vice president at the MPAA.

Before Ms Temple was Maria Pallante, who is now the CEO and President of the Association of American Publishers, the authors lobby group.

These registers all have one thing in common, something that they share with their predecessors Marybeth Peters, Ralph Oman, and David Ladd in that they felt copyright should exist to serve the major entities, and so have consistently sided with large corporations and their interests over those of the 300 million+ regular Americans whose rights and interests are seen as inconvenient at best.

This constant bias to the rich and influential has to stop. It's not the job of governments to service lobbyists , it's the job of the copyright office to look out for the interests of ALL Americans, as with any government office.

In forgetting that it has denigrated the public's view of copyright and the copyright office to that of a corrupt sinecure.

At the risk of getting [another] inaccurate BookID automated copyright claim, I'll remind you of a classic line from a classic movie that has made many hundreds of millions more than it ever cost to make, but still inexplicably claims to have lost money (and yes, they blame piracy)

> The more you tighten your grip, Tarkin, the more star systems will slip through your fingers

The problem is not one of too little enforcement, the problem of piracy now is caused by too MUCH enforcement, and any attempt to ratchet it up more, will increase piracy, not reduce it.

You can't dig your way out of the very hole your dug, by digging faster, not even if you, as Chief Wiggum put it "Dig UP, stupid"[22]

22 Simpsons, Episode 92 "Homer the Vigilante"

Followup notes

I am willing to consider participation in a roundtable, or other consultation. My name is Andrew Norton, and I represent both myself as a researcher in the copyright infringement field, as an independent copyright rightsholder, and as an expert in copyright infringement technologies. My contact details are ktetch@ktetch.co.uk

The same is true for any further followups or discussions on the topic.