

The Ethics of Viewing Unlicensed YouTube Videos

Isaac Serafino

Assignment 10.2 - Project Final

Bellevue University, CIS 436

Abstract

The purpose of this document is to address the ethical quandary of whether it is right to watch Copyrighted videos on YouTube without a license. The paper introduces the issue by defining what YouTube is and what unlicensed videos are. Next, a brief summary of background information is presented, including the basics of how YouTube works, and how copyright licensing works for YouTube videos. After the introduction and background information, the paper addresses counterarguments before presenting the main points of the paper's arguments. Counterarguments that are addressed include the value of copyright laws and the question of following laws that a person does not agree with. Other counterarguments include who has the responsibility to ensure that people have the proper rights to the video, and whether the viewer can blame the artist, the host (YouTube), or the uploader. Finally, the paper succinctly presents a few of arguments against viewing unlicensed YouTube videos, including the unlawfulness of such an activity, and the real harm that it does to the artist's income. The paper concludes with a summary that ties everything together.

Keywords: Copyright, Intellectual Property, Licensing, YouTube, Ethics

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The Ethics of Viewing Unlicensed YouTube Videos

The ethical quandary related to information technology that I would like to resolve, is “Is it right to watch unlicensed videos on YouTube?” The YouTube dilemma presents many interesting ethical nuances. Through research gathered from authoritative sources, and careful consideration of many major factors, it becomes clear that the complicit viewing of unlicensed videos through the YouTube service, is not ethically or morally acceptable.

Many factors come into play when considering the ethical implications of unlicensed YouTube viewing, including: considering several advanced topics in copyright licensing, reviewing at least some of the basic technical inner-workings of YouTube’s video service, and attempting to address some common excuses with some common sense. Copyrights themselves are a disputed topic, as some people believe that there should not be such a concept as *intellectual property*, because they believe that all information should be *free*. The application of copyrights to YouTube videos is complicated by questions like which of the parties involved would responsible for the copyright infringement.

Background

Copyrights are a subset of intellectual property rights, which also include phonetic rights, patents, trademarks, service marks, and trade secrets. The concept of intellectual property is to provide a commercial incentive to promote the advancement of quality and creativity from authors and inventors. Copyrights accomplish this by temporarily reserving certain exclusive rights to the authors and inventors. These rights include the exclusive rights to make copies, broadcasts, and public exhibition of the author’s works of authorship.

Intellectual property restrictions are limited to prevent unjust monopolies from going to far. The first thing is that all intellectual property rights are temporary, so the exclusions expire at a certain date. (But the current term for copyrights is now more than 100 years, so technology content becomes obsolete far before it has the opportunity to reach the public domain, which is a point of contention against the current copyright laws).

Secondly, not all materials are subject to intellectual property rights. The only materials that are covered by copyrights are original, non-obvious works of authorship, fixed in a tangible medium. In other words, intellectual property does not mean that someone can own an idea. The works need to be original and non-obvious, so people cannot own rights to trivial information like common phrases, words, or simple numbers. Other works that are excluded from copyrights include works of the United States government, and works specifically dedicated to the public domain (such as with a written notice, “This work is dedicated to the Public Domain”).

Despite a common misconception, materials do not need to have a copyright notice in order to be copyrighted. Thus, unless the author specifically dedicates the work to the public domain, materials that qualify to be copyrighted are automatically copyrighted without any

additional action on the part of the author. Copyrights can be registered, and this is helpful for legal purposes such as court cases, but works do not need to have registered copyrights in order to be copyrighted.

One very common and popular vehicle for infringing on the constitutionally protected intellectual property rights of creative people, is the Internet. In particular, YouTube is a web site owned and operated by Google, that allows anyone to freely and easily upload all kinds of electronic videos. Practically all electronic audio and video recordings are covered by copyrights. That is because electronic recording technology was invented so recently, and copyright terms last so long. No online videos could have been created long enough ago, that the copyrights covering them could have expired yet. YouTube, the largest free video sharing site on the Internet, hosts uploaded videos on its own infrastructure. It provides free public viewing (and, in some cases, possible downloading,) to anybody in the world, at the click of a button (Newkirk and Forker, 2007). This makes YouTube a very relevant venue for considering the subject of ethics and intellectual property rights.

Addressing Counterarguments

A popular argument against applying intellectual property rights to viewing YouTube videos, is the question of whether video material is technically copied during viewing. That is not a very strong argument, because, for one thing, copyrights can also restrict other types of usage besides copying. Copyrights also restrict types of usage including distribution, broadcasting, public exhibition, storing the works or any part of them in an electronic storage and retrieval system, and transmission over different types of electronic communications media. Furthermore, computers must make many copies of video materials to stream and display the videos, including copies in hardware and software cache, video memory, video processing chips, system memory, central processing units, and, possibly virtual memory on hard disk drives or other “permanent storage” devices.

Streaming is not fundamentally different from downloading, because streaming simply consists of downloading a little bit at a time. Some optional software tools also provide the ability to download copies of entire YouTube videos, at the click of a button (Soghoian, 2008). These tools download files in a way that clearly and undeniably makes copies of the videos. Even without additional software, the YouTube video player uses “buffering,” which seeks ahead and downloads as much of the video as possible into a “buffer” on the local computer, so that it will be ready to play at a moment’s notice. Viewers can buffer entire video clips before they view them, to enhance their viewing experience.

Some people may argue that it is ethical to watch unlicensed YouTube videos, from a legal standpoint. It may or may not be legal, but that is a different question. That does not determine whether or not it is ethical. Some actions are legal that are not ethical, and some actions are ethical that are not legal.

Furthermore, some actions are illegal, but the law against them is rarely enforced, so most offenders of those laws escape prosecution. However, the ability to get away with doing something, does not mean that it is an ethical or legal thing to do. Therefore, unlicensed YouTube viewing can still be unethical, regardless of whether or not it may be legal, or legally enforced.

Some people may argue that it is OK to watch the videos because the existing copyright laws are faulty. However, there is an ethical way to behave in regards to disagreeable laws. If a law is inadequate, or even somewhat detrimental, that, in itself, is usually not enough to justify breaking the law. Occasionally, there may be certain critical issues that would be appropriate to address through some form of protest, perhaps even including civil disobedience. However, most people view YouTube for entertainment, as a luxury. It would not be ethical to flagrantly disregard the law just because it causes inconvenience. It would be more ethical for people to exercise the patience and humility, to do the best they can, to submit to the laws the way they are, whether or not the people personally, entirely agree with all of the details and inner-workings of those laws at the time. Then, there are proper channel that should be used for petitioning the government to reform the law.

Besides, copyright laws are not harmful or worthless. They are good and important laws that have been helping people for a long time. Intellectual property is not a new concept. The original United States constitution included the concept, right in Article I: “The Congress shall have Power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Since the time that the constitution was written, the congress has followed their responsibility in continuing to develop more modern, specific, and practically applicable laws, pursuant of this initial directive, for example, the DMCA (Digital Millennium Copyright Act) (Flax, 2010). By pursuing these laws, these elected representatives indicate a popular conviction that intellectual property is important, in order to reward innovation.

Intellectual property helps creative people to earn money by selling copyright *licenses*. Consumers are allowed to use creative works if they have written permission from the copyright holder. A copyright license provides that written permission under the condition that the licensee will pay the appropriate *license fees*. Authors usually monetize their copyrights by charging license fees to each party who will use the work (by broadcasting it, copying it, etc.). Thus, using works of authorship without first obtaining an adequate license, robs the authors of the payment that they deserve for the work that they did to create the materials.

Even acknowledging that using copyrighted videos without a license may indeed be illegal *and* unethical, some people may yet argue that the infringement is simply not their fault when they choose to view YouTube. First of all, is the user free from responsibility for watching illegal videos, as long as the copyright holder has not done what is necessary to remove the videos?

Artists should not have to be held responsible for personally preventing every case of infringement of their own materials, because that is just not reasonable. If they do not prevent a case of infringement, that does not constitute implicit permission. We have previously established that it is not ethical to say, “it must be OK because they don’t stop me.”

YouTube does have a process for copyright holders to report videos that infringe their rights, so that YouTube can remove the infringing videos. However, in practice, the reporting process is an arduous sham, inaccessible to anybody but the copyright holders themselves (Bloomberg, 2006). This forces a dilemma on copyright holders, that they would need to either expend the time and effort necessary to maintain their own roving posses to patrol the entire Internet for illegal copies of their materials, or to let some “tolerated use” slip through the cracks (Masnick, 2006).

By no means would this tolerance constitute permission from the copyright holders, to use the materials. Though the artists may have chosen not to (or were unable to) report and pursue these instances of tolerated use, the materials are still an infringement of copyrights. Because of this dilemma, and continued problem with infringement, several copyright holders have sued YouTube for facilitating copyright infringement. Therefore, obviously, the videos do not continue to be hosted on YouTube just because the copyright holders want them to be.

So, how do we know that YouTube is not the party who is responsible, when people upload unlicensed copyrighted videos? If YouTube provides the service for uploading, hosting, and playing the videos, then they must be solely responsible for ensuring that they do not allow any infringing uploads, right?

Apparently, despite YouTube’s reporting process being ineffectiveness at truly curbing the problem of illegal videos, it was sufficient to satisfy the technicalities of the law. From a legal standpoint, YouTube has definitely been found to not be responsible for the actions of their users (Masnick, 2006). When copyright holders have sued YouTube for illegal videos, the courts have exonerated the YouTube service, making the users themselves responsible. The DMCA has a clause called the “safe harbor provision” that protects content providers like YouTube from liability when users upload and view infringing videos, as long as YouTube promptly removes infringing videos when they are reported (Flax, 2010).

Therefore, even if the artists have not caused the violating videos to be remove, then copyrights are still violated when they are viewed. And, the YouTube service is not the responsible entity, when it allows its users to infringe copyrights. Then, some may conclude that the people who upload the videos bear the sole responsibility for any copyright infringement involving the videos. However, the fact is that the viewers also share some responsibility for violating copyrights, when they view videos that have been uploaded illegally.

Corynne McSherry, a staff attorney at the at the Electronic Frontier Foundation, said that it would be quite possible, under existing copyright law, that the RIAA and MPAA would be

legally permitted to pursue downloaders, not just uploaders (Soghoian, 2008). Viewers should realize that, when they view copyrighted videos without legally obtaining a license to do so, they themselves are responsible for the ethical implications of infringing the copyrights of the videos.

So, the artists cannot be expected to personally prevent all illegitimate viewing of their own materials. The hosting service is not liable for the actions of its users. And, uploaders do not bear the sole responsibility for illegally uploading videos that other people may view. Therefore, viewers are ultimately responsible for their illegitimate usage of materials on YouTube. The law also bears this out.

Main Arguments

Chris Soghoian of CNET News magazine interviewed several industry and legal experts about the state of user liability when viewing Copyrighted videos on YouTube. Soghoian reviewed a paper called "Copytraps," written by Ned Snow, a law professor at the University of Arkansas. Snow argued, in part, that end users are exposed to significant liability from copyright law, just by copying or downloading a copyrighted work. Snow said that it is irrelevant whether the user paid the site from which they downloaded the work, because it might still be an illegitimate site. Snow also said that it is irrelevant whether the user realized that they were doing something wrong or not.

Soghoian also pointed out that users can be fined \$750 per video they view, even if they did not know that they were breaking copyright laws, and even if the copyright holders could not actually show that damage was done to their income (Soghoian, 2008). Therefore, unlicensed viewing of YouTube videos is an illegal infringement of copyrights, on the part of the viewer.

We have established very well, by now, that it is illegal to view unlicensed YouTube videos. Going even further, however, even if it were legal, or if those law were not relevant somehow, it would yet be unethical to harm artists' income by using their work without payment.

There is a multitude of examples of how copyright infringement harms the copyright holders, and we do not have time to consider very many of those here. However, for one particular example, an article in the Businessweek news magazine discussed the implications of bootleg copies on YouTube, of a famous video involving Mentos and Coke. The creators of that apparently took eight months to mastermind the video, creating intricate fountains of soda with hundreds of Mentos and 2-liter bottles of coke. One of the creators of the video, a civil litigation lawyer named Stephen Voltz, complained that it was an onerous task to try to remove pirated clips from YouTube, because as new copies kept reappearing he had to constantly keep contacting YouTube to take down each new version. While they made \$30,000 on the 5.5 million views of the video on their legitimate website, Voltz estimated that they lost another \$30,000 to the illegal copies (Bloomberg, 2006).

In conclusion, it is illegal and unethical to view videos on YouTube, for which the viewer has not legally obtained any specific license to do so. Even if the laws are not often enforced,

that does not make it OK to break the law. Even if someone does not personally agree with all of the details of a current law, then the ethical course of action would still be to make a reasonable effort to submit peacefully to the law, at the time. Even if it were legal to use the copyrighted materials without a license (and it certainly is not), then it would still not be ethical. Copyright laws are good and important laws to promote creativity by securing a commercial incentive to authors. Ethical people understand that they should take responsibility for the effects of their own actions. Therefore, when people view unlicensed copies of videos on YouTube, they are responsible for breaking copyright laws and defrauding artists of the income that they deserve for their hard work.

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