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# Uploaders' perceptions of the German implementation of the EU copyright reform and their preferences for copyright regulation

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**Abstract:** The adoption of the EU copyright reform was controversially discussed by the public, leading to protests across Europe, especially against the introduction of upload filters. This interdisciplinary study examines how differently organised uploaders perceive copyright regulation at a time when the reform is being transposed into national law, and what further demands on regulation they have. The analysis combines qualitative interviews (n = 19) with a content analysis of comments submitted on the national draft law (n = 17). Our findings show that uploaders consider state regulations through upload filters to be restrictive toward freedom of expression. They appreciate the intention behind the implementation of the German law to prevent upload filters, but they do not consider the measures effective in practise, and demand more participation and transparency in the legislative process.

## Introduction

Video platforms have fundamentally changed the traditional division of roles into that of producer and user. Anyone can now easily switch between these roles (Cha, 2014; Ding et al., 2011), and media content producers further lose control of how their content is used, leading to copyright conflicts. Those conflicts occur in “a triangular relationship” (Shepard, 2014, p. 731). Uploaders want to use as much content as possible, platforms favour maintaining a “neutral” position and rights holders (e.g., musicians or media companies) prefer to engage platforms as debtors for liabilities (Holznagel, 2020). Under the previous legal situation in the European Union, the standard case was that the platforms were excluded from liability for their users’ copyright violations, with exceptions set by the case law of the European Court of Justice (ECJ) (Frey, 2022, p. 97). However, the European Union’s new Directive on Copyright in the Digital Single Market (DSM Directive) incorporates a direct liability of platforms for giving access to copyright infringements constituted by their users as the standard case (Gielen & Tissen, 2019). The platforms can be exculpated from this liability by concluding license agreements, or by making sure that questionable content is inaccessible (Art. 17 para. 4, DSM Directive), which means the de facto use of upload filters (Spindler, 2019, p. 286).

The DSM Directive has caused protests across Europe. Content producers were convinced that it would mark “the end of the Internet”, endanger freedom of expression and lead to overblocking (Brost et al., 2019). Moreover, critics asserted that the DSM Directive – despite protests and controversial public discussion – was voted on “behind closed doors” (Sagatz, 2019), and that the demands of the (often weakly organised) content creators were not considered in the legislative process. Our study takes up this point and asks how content creators on YouTube perceive the current copyright regulations, the implementation of the reform in Germany and what further needs for regulation they see.

That said, the contributions of our study are threefold. First, previous literature focuses on different forms of content creation activities (further called usage practices), their popularity, and their acceptance in the community (Ding et al., 2011; Erickson et al., 2013; Hui, 2021; Werner, 2012; Xie et al., 2011; Xu et al., 2016). Second, previous literature has discussed uploaders’ evaluations of copyright regulatory frameworks; however, considering the low impact of state regulation, studies have focused on private copyright-related content moderation systems, such as YouTube’s Content ID (Gray & Suzor, 2020; Hui, 2021; Kaye & Gray, 2021). Third, there is a lack of research dealing with current changes in the copyright context that takes into consideration the (missing) perspective of active content creators.

Linked to that, our study fills a gap in public discussions of the Act on the Copyright Liability of Online Content Sharing Service Providers (Urheberrechts-Diensteanbieter-Gesetz, UrhDaG), which transposes the DSM Directive into national law<sup>1</sup> by giving a voice to users who actively engage in the participatory culture on video platforms, but did not take part in the process of submitting public comments during the consultation procedure on the draft of said law. Finally, despite the focus on Germany, our study contributes to the global copyright discourse by identifying potential challenges in copyright regulation on video platforms, providing possible solutions and insights for future research.

After reviewing previous literature, in the context of the mentioned contributions, we conducted a qualitative content analysis of comments on the draft of the UrhDaG (n = 17) and additional qualitative interviews (n = 19) with active uploaders, aiming to fill the gap in the public discourse. Based on the results of our analysis, we discuss the perceptions and demands of uploaders on copyright regulation with regard to the implications for further copyright regulations.

## **Determinants of the perception and evaluation of copyright law and its future requirements**

### **Different types of content uploaders, their usage practises and the relevance of these practises for potential copyright infringements**

The majority of users on video platforms only use them passively to watch content. Only 1 percent of YouTube users upload videos and can thus be described as “active uploaders” (Ding et al., 2011, p. 361). As the aim of our study is to obtain a deeper knowledge of the perceptions and needs of these active users regarding copyright regulations, we concentrate on this group of uploaders.

The uploaders on video platforms vary regarding their degree of professionalisation (e.g., individuals vs. media companies). In this vein, the degree of professionalisation of uploaders can be conceptualised as a combination of their degree of organisation and the outreach they gain with their channels, that is, the number of subscribers they have (Marek, 2013, p. 48; Zabel et al., 2017, pp. 132–133). Both aspects have a direct influence on how uploaders deal with copyright regulations, as they increase the available knowledge regarding copyright regulations, the resources for content production and the available legal advice. The payments YouTube grants to its uploaders are generated by displaying advertisements be-

1. An English version of the Act can be found on the website of the German Federal Ministry of Justice.

fore, during or after the videos. However, only those uploaders who are part of YouTube's partner program receive a share of the advertising revenue. The requirement for membership is a minimum of 1,000 subscribers (Google, 2021b).

In addition, there are also differences in the aspect of various usage practises regarding their relevance for potential copyright infringements. Scholars classify the content on YouTube in three main categories: "copied", "appropriative" and "original" (Hilderbrand, 2007, p. 56). First, the *user-copied content* includes videos initially produced outside of the platform and uploaded by users without any permission from the rights holders. The second category, *appropriative content*, includes content that is based on the copyright-protected work of others. In contrast to *user-copied content*, *appropriative* video productions provide new but derivative works. For example, the established remix culture on YouTube includes several creative forms of appropriative content, such as political remix videos, parodies, memes and mash-ups (Conti, 2013; Henriksen & Hoelting, 2016; Xu et al., 2016). Lastly, the "*original*" *user-generated content* category includes video clips that do not contain any copyright-protected work and are often uploaded by amateur users (Hilderbrand, 2007). Based on the reviewed literature, we consider uploaders' activity on YouTube (i.e., their usage practises), the type of content they upload and whether their livelihood depends on their YouTube activity (i.e., the financing aspect) as the most crucial aspects for shaping their perceptions and demands of copyright regulations. How the uploaders deal with copyright enforcement, how they evaluate the reform proposal, as well as which further regulatory needs they have depend in turn on their actual knowledge of, and experiences with, the existing regulations.

## **Uploaders' knowledge, experience and evaluation of copyright regulations**

A leading example of automatic copyright detection technology is YouTube's Content ID system. Its main aim is to scan user uploads for infringements and enforce copyright claims (Boroughf, 2014, p. 2). The system compares uploaded videos against a database with reference files provided by the rights holders (Google, 2021a). When Content ID identifies a copyright match, rights holders can either block the matched video, monetise it or track its views (Google, 2021a; Kaye & Gray, 2021, p. 2). One of the main reasons for tolerating infringements is that the economic interest of copyright holders can benefit from the popularisation of their content (Boroughf, 2014, p. 10). Gray and Suzor (2020) analysed Content ID removals to better understand copyright enforcement on YouTube and found that certain video content on the platform is more likely to be removed than other con-

tent (see also Kaye & Gray, 2021). For instance, film piracy, i.e. copies of full movies uploaded on the platform, are more likely to be removed from YouTube than gameplay streams (Gray & Suzor, 2020, p. 6), although all three usage practises can – depending on the circumstances – violate copyright (Wu, 2008, p. 2).

Furthermore, the option to block content that is considered unlawful gives copyright holders power, which can be misused and lead to restrictions on free speech (Urban et al., 2016, p. 116). One of the main challenges to these private copyright regulations on video platforms is the lack of transparency, which is the reason why some uploaders consider themselves disadvantaged by YouTube's automatic content moderation and perceive it as unfair (Kaye & Gray, 2021). Uploaders point out that due to the sensitivity of the Content ID system, they estimate a high risk of a claim being made, even when their content is not infringing on copyright (Kaye & Gray, 2021). This is especially serious for professional uploaders who earn their living from YouTube videos and are therefore dependent on the platform's policy. Uploaders further argue that copyright regulations hinder the participatory YouTube culture (Sganga, 2015).

Because uploaders are directly affected by the copyright policy, our first aim is to examine their knowledge, their experiences and their evaluation of current copyright regulations. Additionally, for the evaluation of upcoming copyright law, it is crucial to analyse whether uploaders believe that the current private regulation is fair for all participating parties. Furthermore, in the context of the German implementation of the copyright reform, we want to analyse how different types of uploaders evaluate the law transposing the DSM Directive into German law, and how effective they consider the new government regulations of the UrhDaG in the light of their experiences with private copyright enforcement. The UrhDaG focuses on mitigating the effects of upload filters, thus avoiding overblocking through procedural mechanisms (Sections 9–12, UrhDaG). These procedural measures include the so-called “de minimis limit” (Section 10), which allows the use of up to 15 seconds of video or sound, 160 characters of text or 125 kilobytes of images, as well as the flagging procedure (Section 11). Here uploaders can mark their content as a use authorised by law. The de minimis limit and the flagging procedure are only applicable if less than half of another person's work is used. When there is either a minor use or the content has been flagged, the content can be publicly reproduced as an instance of presumed authorised use until the conclusion of the complaint procedure that can be initiated by the rights holder (Section 9). Additionally, especially trustworthy uploaders are equipped with a “red button” (Section 14 para. 4), preventing public reproduction, for cases in which the presumably permitted use

could lead to considerable economic damage. In the context of the different sides among copyright conflicts, a central question is whether uploaders consider the new regulations to fairly balance competing interests. Based on content producers' knowledge and evaluations of the UrhDaG, we finally aim to investigate what demands uploaders have of copyright regulation, and to what extent the current copyright regulation meets their needs.

## Methods

### Sampling

Based on the two aspects of professionalisation – organisational level and reach – we identified nine different types of uploaders with different degrees of professionalisation (Table 1). We distinguish, regarding the degree of organisation, between strongly organised content producers (e.g., companies, organisations and institutions), moderately organised content producers (e.g., a loose coalition of two or more people who run a channel together) and weakly organised content producers (e.g., individuals). Concerning the number of subscribers, our differentiation is in line with Zabel et al. (2017), between channels with high reach (> 5,000 subscribers), medium reach (501 to 5,000 subscribers) and low reach (< 500 subscribers).

**TABLE 1:** Typology of uploaders

REACH	ORGANISATIONAL LEVEL		
	STRONGLY ORGANISED UPLOADERS	MODERATELY ORGANISED UPLOADERS	WEAKLY ORGANISED UPLOADERS
HIGH REACH	Type 1 (n = 5)	Type 2 (n = 2)	Type 3 (n = 4)
MEDIUM REACH	Type 4 (n = 7)	Type 5 (n = 2)	Type 6 (n = 5)
LOW REACH	Type 7 (n = 3)	Type 8 (n = 4)	Type 9 (n = 4)

Additionally, in this study, uploaders are defined as people who own a YouTube channel and have at least some activity on YouTube, that is, they have uploaded at least one video during the sampling month (February 2021; Zimmermann et al., 2020).

## Procedure and Materials

To investigate the different copyright-related usage practises, and to analyse how different types of uploaders evaluated the new regulations, as well as their demands of copyright law, we combined a qualitative content analysis of submitted comments on the draft of the UrhDaG, including qualitative interviews with uploaders.<sup>2</sup> The German legislative process provides interested parties with the op-

2. The UrhDaG came into full force on 1st of August 2021. Both the content analysis and the following interview study were conducted on the basis of the current drafts of the law. Nevertheless, the regulatory mechanisms in question have been passed and entered into force in an almost identical form as they were originally formulated in the drafts. The exceptional cases in which changes were made are highlighted in the results section.

portunity to submit comments on draft laws and thus take part in the lawmaking process. These parties submitted 107 comments on the proposal concerning the German implementation of the copyright reform, and these comments were published on the website of the Federal Ministry. The most comprehensive comments came from established and strongly organised players (e.g., Twitter, Facebook and Google) and primarily shed light on legal details rather than on the social impact of the proposal. Even though there were comments by active uploaders in the consultation procedure, they were underrepresented and lacked detailed (expert) knowledge of the reform proposal. Since we were interested in the perspective of active uploaders, we only selected those that met these criteria ( $n = 17$ ). To these, we added 19 interviews with moderately and weakly organised uploaders to include all types of uploaders (see Table 1). The interviews were conducted online between April and June 2021. In the selection of interview partners, we attempted to achieve a broad variance across the genres.

To structure the interviews, we developed an interview guide following five dimensions derived from previous literature (see above):

- **Financing:** YouTube activity as a hobby, or a part-time or full-time job, taking part in and evaluating the YouTube partners program.
- **Copyright-related usage practises:** the genre and type of content YouTubers upload on the video platform. Based on this information, we categorised the uploaded content according to our scale of lawfulness.
- **Knowledge, experience and evaluation of previous copyright regulations:** general considerations on copyright when producing and uploading content, personal experience with existing copyright regulations (Content ID) and the perceived necessity and fairness of copyright regulations.
- **Knowledge and evaluation of the copyright reform regarding the four concrete implementations:** introduction of upload filters, the de minimis limit, the flagging procedure and the red button.
- **Demands of copyright regulation:** needs and requirements of copyright regulation.

After the interviews were conducted, they were transcribed manually. For the qualitative content analysis of the interviews and the comments, a coding scheme (see Appendix) was developed and applied to both document types. The categories were developed deductively based on the identified a priori dimensions and determinants of how different actors perceive copyright laws, as well as which demands they have for regulation (Mayring, 2000).

## Findings

### Financing and copyright-related usage practises

As several uploaders in our sample report that their YouTube activity is not only a hobby, but an important source of income, the upcoming copyright reform has a significant impact on their work and can endanger their livelihoods (P3). One of the major concerns is the impossibility of monetisation of some videos due to copyright-related reasons, that is, a Content ID match. Uploaders report that they are often disadvantaged due to mistakes in the automatic system, in contrast to rights holders, who can benefit from the uploaded work (P3, Z6). Since potential mistakes in the automatic recognition of copyright infringements lead to rejected monetisation, and hence financing issues, uploaders consider the rights holders and the video platform to be beneficiaries within the partner program.

In regard to uploaders' usage practises, several YouTubers produce appropriative content ("let's play" videos, reaction videos, reviews, etc.), which might be controversial in a copyright-related context. Some of them explain that their work is based on the reuse of existing content; therefore the use of it is unavoidable (J2). "Let's play" videos are a special case. Since video games usually provide music and images, uploaders producing these videos do not need to search for further existing content to reuse. Moreover, these videos are often licensed, or the use of the work is tolerated by the rights holder for marketing reasons (Beyvers & Beyvers, 2015, p. 797). Nevertheless, some gamers share negative copyright-related experiences:

*(...) background music in video games is the only thing that's included, and that sometimes causes problems in a way. I have a project that involves Lego Lord of the Rings, and it plays the official music by Howard Shore, and of course, it's copyrighted. And that's why I couldn't monetise such videos, (...) because I don't have the rights of the music. (U9)*

This means that even though the uploader had a license to publish content, including parts from the video game, they either erred about the scope of the license, which did not include the music played in the game, or Content ID was not able to recognise that the game and the music fall under the same license. In the last case, the rights holders of the music could benefit twice – on the one hand through the already concluded licensing agreement and on the other hand from monetisation. In contrast, content creators are at a disadvantage; although they

have contractual permission to use the works, they do not participate in the advertising revenue generated by the video.

## Knowledge, experience and evaluation of previous copyright regulations

### General considerations regarding copyright regulations

Uploaders who produce and upload appropriate content stated that they are particularly aware of potential copyright issues because they want to monetise their videos. Some of them admitted that they started to think about copyright when they became part of YouTube's partner program – thus, their channel and their activity on the platform became more professionalised (L3). Similarly, some of the uploaders stated that they were concerned about copyright because they want to be on the “safe side” and do not want to get any strikes against them.<sup>3</sup> The third reason for copyright considerations given by the interviewed content creators is of a rather value-driven nature. Some of the YouTubers put themselves in the position of the rights holders and admitted that they would also not like their content to be “stolen” (K8, J2):

*I don't want anyone to just take my videos and then upload them and make money with them. As an author, I would find that unacceptable, and I think it is perfectly okay if the videos are taken down and, in a worst-case scenario, such channels disappear from the platform. (J2)*

In addition, some YouTubers emphasised that reusing already existing content and creating new works from it is part of the culture on the video platform. One participant who has run his channel for eight years, uploading mostly reaction videos, stated:

*I think that's the beauty of YouTube, even with reaction videos (...) you can probably ask a lot of YouTubers and most likely 90 percent will have absolutely no problem with people reacting to their video and the others also making a profit with the video because it's simply a matter of giving and taking. (L3)*

This so-called “give and take culture” was also mentioned by other uploaders who

3. A strike is a “copyright warning” that is automatically issued by Content ID when a video is deleted due to a copyright infringement. Three strikes result in the corresponding channel being deactivated.

claimed to reuse existing content, such as memes and music, but as a reward they tag the initial authors and thus help them become more visible (K8). Nevertheless, this noninstitutionalised culture can lead to copyright conflicts. In this sense, several content creators consider YouTube's regulatory initiatives too strict and feel that they restrict their creativity (M3, N9, L3):

*YouTube used to be called "YouTube Broadcast Yourself" and I think that's the principle behind which YouTube should still stand ... Everyone can do what they want. (L3)*

In general, everyone we interviewed agreed that copyright is important due to the aspect of fairness:

*I think that's important, especially on the Internet. For example, I do not work in the music industry, but I know some people there. And these people not only put a lot of energy and passion into their music but sometimes also a lot of money and should be paid fairly. (O6)*

Even though uploaders consider copyright regulations to be generally important, they point out that these should not be too strict or unfair, as they otherwise might endanger the participatory culture, which is a core characteristic of YouTube and significantly determines its appeal.

### **Experience with and evaluation of content ID**

All uploaders had some experience with previous copyright regulations to share since all of them had at some point been notified that Content ID matched their uploaded content. In this vein, the question about their experience with *previous* copyright regulation was directly associated with YouTube's private regulation due to the absence of adequate state regulation.

Some uploaders stated that for them it was never quite clear how exactly Content ID works, or how their video is verified. Similar to the results in Kaye and Gray's study (2021), a lack of detailed knowledge leads to speculations about the efficacy of YouTube's automatic management system. Based on her/his observations, one of the participants claimed that uploaders could theoretically trick the system if they turned the music down very low or talked very loudly during the video (U9). Another participant believed that the Content ID system varies in terms of its effectiveness depending on the content type:

*I think when it comes to music and sound, these algorithms or whatever is behind these systems are very efficient. (...) I think it's much more difficult with visual material because you can choose a different frame, you can somehow cover or change it, and I think it's much more difficult to find out whether you're using someone else's visual material (...). (S6)*

Similarly, some of the content creators considered the susceptibility to errors as the automatic system's most significant risk, which often favours the interests of big production companies and publishers, leading to overblocking and restrictions on creativity (J2, H6). One of the participants added that a possible solution to this problem could be the manual verification of content by humans. When individual case decisions are necessary, human intervention is especially recommended (P3).

Nevertheless, other uploaders emphasised the opportunities that Content ID offers, claiming that the system helps them to identify inconsistencies in their content (K8, L3). However, uploading an entire film, self-recorded in the cinema, is perceived as unacceptable and unfair to the rights holders. Hence, in such cases, it is particularly important that systems such as Content ID check the videos for copyright infringements (N9).

The enforcement of copyright regulation, and thus the concrete implementation of the Content ID system by YouTube, evokes criticism. Some of the content creators consider themselves underprivileged within the triangular relationship, claiming that there is a power imbalance between the uploaders and the bigger companies in their role as rights holders, and in case of doubt, the uploaders are the disadvantaged side of the conflict (P3). Many YouTubers identified this issue when they appealed against a Content ID match. They perceived this process as nontransparent (H6, K8, P3, R5, Z6) but also saw themselves as structurally inferior to the rights holders in this context (P3, L3, J2, R5).

All uploaders have diverse experiences with YouTube's Content ID. The evaluations of the system are ambivalent. It is striking that – even though all interviewees had already come into contact with Content ID – only few details were known about how the system works. This lack of detailed knowledge leads to the perception that the system is very opaque and sometimes unfair.

## **Knowledge and evaluation of the copyright reform**

Even though they had heard of the protests against Article 13 (later Article 17) of the DSM Directive, or even participated in them, the majority of the interviewed

uploaders did not feel well-informed regarding the transposition of the directive and the existence of the new regulatory mechanism. Nevertheless, all interviewees had at least some basic knowledge regarding the planned regulatory measures.

### **Perception and evaluation of upload filters**

The strongly organised players argue that in contradiction to the promise of the German government<sup>4</sup> to transpose the Directive without implementing upload filters, the UrhDaG does not prevent them (F4). Furthermore, they are concerned that the upload filters will lead to an overblocking and thereby limit freedom of speech (C1). They are also afraid that the implementation of upload filters will constitute entry barriers for new platforms (G4). In this context, some of the strongly organised uploaders focused their comments on the technical capabilities of the platforms, and expressed doubts that platforms could filter all the content uploaded. In addition, some comments emphasised that live streams are particularly jeopardised by this filtering process (H4).

The moderately and weakly organised uploaders who were interviewed do not categorically deny the necessity of upload filters to enforce copyright online. While they recognise the rights holders' intention to protect their copyrights (L3, Q3, R5), they see problems in the "grey areas" (J8) of copyright-related decisions and doubt the technical maturity of upload filters to make correct decisions in cases where the classification of content as copyright infringement is unclear (L3, M3, T6). Some uploaders see the danger that, once implemented, upload filters can go beyond copyright and stop uploads for other reasons (O8).

Asked how the implementation and enforcement of copyright through upload filters could be optimised, two central demands are identified based on the interviews. On the one hand, there is a call for more human engagement in the filtering process, at least in the form of a quick and simple human decision-based appeal procedure in cases of content blocked by upload filters (X5, K8, H6). On the other hand, the second demand calls for YouTube to enter into more license agreements with the rights holders (R5, O6) to make the upload filters redundant, or at least to limit their area of application. Nevertheless, uploaders understand that it is not possible to conclude license agreements with all rights holders (M3).

### **Perception and evaluation of the de minimis limit**

While the introduction of the de minimis limit is partly met with understanding

4. The positive vote of the German government for the DSM Directive was accompanied by a protocol declaration to transpose the Directive without implementing upload filters.

and recognised as a compromise to combine the interests of uploaders and rights holders (O6, S6, T6), this regulatory instrument has been partly criticised. For instance, one participant believes that “it complicates the work, (...) if you have to look out for such details (I8)” to not overstep the 15-second boundary. The chosen limits of: 15 seconds per audio or video clip, 160 characters per text and 125 kilobytes per picture are considered arbitrary, that is, not evidence-based and unsuitable for practice (J2, P3). One participant, for example, stated that for him this is “the embodiment of legislation that misses the point” (P3).

Furthermore, the limits are considered too short to be of significant use for the uploaders (L3, N9). For example, the unit of the kilobyte for pictures, is seen as inexpedient for determining whether a picture is a de minimis use, since the file size of a picture is dependent on the resolution (J2, M3). This point of critique is also shared by the strongly organised uploaders in their comments (I4, F4). However, they disagree whether the de minimis limit is a burden for the rights holders. While one side argues that those simple clips can be considered free advertising and marketing for the rights holders (G4), the other side sees it as an economic strain for the rights holders that primarily favours the platforms because they experience greater benefits when there is more content accessible on their platform (M7). Moreover, some of the strongly organised uploaders argued that the de minimis limit goes against the trend that “short, concise content is increasingly consumed” (E1).

### **Perception and evaluation of the flagging procedure**

The strongly organised uploaders were also critical of the flagging procedure. Some of them admitted that there is a risk of abuse (D1, E1, F4). Moreover, they do not believe that an amateur user is capable of correctly assessing whether his or her upload is a copyright infringement. Therefore, they propose limiting the flagging procedure to so-called “trusted flaggers” (E1). Furthermore, the uploaders who submitted their comments on the draft law argued that in cases of dispute, whether an upload was flagged correctly, the platforms have the power of temporary judgement, and consequently the final decision about the content. This leads to private companies being responsible for the protection of human rights (H4).

In addition, one of the comments drew attention to the fact that the flagging procedure is not applicable in certain cases of overclaiming by a rights holder – for example, when a rights holder claims works of public domain that are not (any longer) protected by copyright. In this case, the uploader cannot flag the content as “not protected by copyright”, which creates gaps in the protection at the ex-

pense of the uploaders (F4). Weakly or moderately organised uploaders perceived the flagging procedure as complicated, but in general they evaluated it positively. Several YouTubers argued that it is a first step to limit the application of upload filters and to prevent overblocking. In this context, some of them emphasised the importance of the flagging procedure, since the video is immediately uploaded and they do not have to first unlock a blocked video in a complicated process (O6, L3, R5, Y8, J2). Furthermore, some of the interviewed uploaders compared the flagging procedure with the de minimis limit and found flagging more useful (N9), especially in the grey area where a case-by-case decision is necessary (S9).

Nonetheless, it is important to note that a few of the stated demands (in their comments) from the group of strongly organised uploaders have been incorporated into the law. In the comments on the first draft of the law, it was originally argued that the flagging procedure did not include a stay-up obligation in case the rights holder appealed the flagging (F4, G4, M7). This stay-up obligation has been integrated into Section 9 para. 1 of the UrhDaG. It states that the questionable content has to be on public display until the end of the appeal procedure. In addition, some of the uploaders mentioned the risk that platforms would tend to rule in favour of the rights holders to avoid any liability. This concern has been weakened by the inclusion of a release of liability for decisions made in the appeal procedure by the platforms in Section 12 para. 2 of the UrhDaG. Furthermore, the risk for abuse of the flagging procedure by the uploaders has been diminished by the introduction of the so-called red button in Section 14 para. 4 of the UrhDaG.

### **Perception and evaluation of the red button**

The red button was introduced as a reaction to the criticism by the rights holders and strongly organised uploaders regarding the risk of abuse carried by the flagging procedure in the last version of the draft. Several weakly and moderately organised uploaders evaluated the regulatory instrument positively since they considered it fair towards rights holders who can therefore better protect their copyright (J2, K8, Q3, R5, S6, W9, V3). Moreover, the uploaders perceived it positively, as it can prevent so-called “spoilers” that they do not want to be exposed to (R5). However, some of the interviewed content producers consider the red button a valued addition to the law, as long as its area of application is limited. In this vein, they argued that the term “especially trustworthy” is not adequately defined; thus, this regulatory measure opens up the application area too wide and carries the risk of abuse (L3, O6, P3, Q3, T6). Additionally, one of the participants argued that the evaluation of this regulatory instrument depends on “in which cases this will be applied and how often it will be used” (K8).

In conclusion, the different mechanisms are evaluated differently by the uploaders. While some are perceived as helpful for maintaining creative content production (e.g., the *de minimis* limit), others are seen more critically (e.g. upload filters) as they strengthen the position of the platforms.

## **Demands on copyright regulation**

A central demand of copyright regulation, voiced by the interviewees, is the call for more transparency regarding the legislative process, where “the impression arises that the rights holders, who perhaps have the most resources behind them, are actually in a better negotiating position from the outset” (H6), but also concerning the mode of operation of some regulatory mechanisms, as well as YouTube’s communications. Uploaders want to know exactly which kind of content is harmless in terms of copyright infringements and which is not (K8, P3, R5, S6, W9, Z6). Likewise, several YouTubers expressed a demand for the introduction of a fair use clause into German, or rather, European copyright law, similar to the concept used in the United States. A fair use clause would lead to more transparency and would make producing and uploading videos less complicated (N9). Whether the uploaders did not realise that Section 24 of the UrhG (old version) already had a narrower general clause in the form of “free usage” (Peifer, 2014, p. 89), or whether they did not consider this to be broad enough, unfortunately, did not become clear in the interviews.<sup>5</sup>

Furthermore, uploaders wished to have the option to negotiate more easily with the rights holders within YouTube’s infrastructure – for example, to conclude individual license agreements (J2, R5): “If I want to use a song in one of the videos, I would like to have a direct dialogue with that person” (R5).

At the same time, some uploaders believe that platforms like YouTube should take more responsibility, and that their interests should be favoured too, similar to the interests of the rights holders. Because platforms provide the digital space where content can be used, they should be responsible for all security aspects on their website, making sure that no rights are infringed upon (H6, I8, N9). Nevertheless, one of the participants highlighted one of the risks of making platforms more accountable for the content:

5. Section 24 of the UrhG expired simultaneously with the entry into force of the German transposition law for the DSM Directive. However, the reason for this was not the Directive, but the case law of the European Court of Justice (ECJ) (C-476/17).

*Yes, I think that making the platform completely responsible bears the great risk for me that the platform takes the only logical step and says, “OK. Then we’ll implement such rigorous filters that somehow, a priori, anything that only appears to possibly violate copyrights may not be uploaded because, in the end, we bear the responsibility for it. (P3)*

## Conclusion

Since the adoption of the DSM Directive has brought European-wide protests against the introduction of upload filters, in this study we aimed to determine how differently organised uploaders perceive copyright regulation at a time when the reform is being implemented and what further demands on regulation they have. Through the combination of qualitative interviews and a content analysis of comments submitted on the draft law, we can provide a comprehensive picture of uploaders’ perceptions and demands of copyright regulation. Moreover, by interviewing moderately and weakly organised uploaders who did not have the legal expertise to take part in the consultation process on the draft law, we fill a gap in the public discussion on the German Act by giving voice to the people who are an active part of the YouTube community.

Our findings show that the majority of uploaders recognise copyright regulations as important and necessary. Copyright conflicts are an issue on YouTube, and therefore uploaders are concerned about it when they produce and upload their content. In contrast, uploaders also emphasise that copyright regulations must be designed sensitively so that the participatory culture and artistic creativity, which are core characteristics and form the central appeal of online video platforms, are not restricted.

However, the boundaries of the “triangular relationship” seem to blur. Uploaders also take the role of rights holders regarding their creations and therefore want to protect their content on the platform. In this vein, similar to the idea of a privacy paradox (Barnes, 2006), a so-called “copyright paradox” might emerge on video platforms. This means that uploaders want to use as much content as possible, but at the same time, they do not want their content, for which they are the rights holders, to be used for free.

When asked about their experience with regulations, uploaders directly referred to YouTube’s private regulations and did not mention any of the regulatory measures in force. According to our findings, private measures to protect copyright, intro-

duced and implemented by private actors, such as platforms, are perceived as less problematic than the upcoming legislative measures in the wake of the copyright reform, even if they are based on technically identical filter mechanisms.<sup>6</sup> The de facto implementation by legislators that obliges the platforms to use upload filters is considered restrictive toward freedom of expression, while filtering measures introduced by private actors on their own accord are perceived as a condition to participate on the platform and benefit from the YouTube partner program. Surprisingly, uploaders do not see a problem with the fact that in the latter case the power to decide about the application of copyright regulations lies solely in the hands of major platform companies (see also Schillmöller et al., 2022). Since upload filters bear the risk of overblocking due to restrictively programmed filters, uploaders demand more investment in automatic filtering systems and/or human intervention, which can help to avoid technical errors. Also, some of the uploaders seem to think that a “fair use” clause – oriented on the US model – could lead to more transparency and would increase the efficiency of the uploading process. However, this conclusion fails to recognise that in this case the interpretation and definition of the term “fair use” would still be completely unclear, and would probably have to be shaped by case law in a lengthy process. In the meantime, it would not offer sufficient protection. Moreover, it seems questionable whether the upload filters – in their current state of development – would be able to recognise whether a case falls under the “fair use” clause. It is unclear if a “fair use” clause will really lead to less overblocking, or if the uncertainty that accompanies such a blanket clause will even increase the danger of overblocking.

Consistent with previous literature, YouTube’s internal appeal procedure and its impact on the perception and enforcement of users’ rights seem to need further investigation. The procedure is considered unfair and could produce chilling effects (Hui, 2021; Kaye & Gray, 2021; Soha & McDowell, 2016), particularly because it not only influences the financial and professional opportunities of users, but also because it can have an indirect impact on freedom of expression. To resolve this, regulation needs to pay more attention to safeguarding procedural rules to ensure a fair trial.

Regarding the implementation of the DSM Directive into German law and the concrete measures that follow from it, it seems important to observe to what extent overblocking can be prevented through the regulatory mechanisms in the UrhDaG.

6. The DSM Directive’s open-ended formulation that platforms should use “industry standards” to prevent uploads means that existing technologies developed by large corporations must be used. In the end, this means the use of Content ID technology (Spindler, 2019, p. 286; Beuth, 2019).

It also remains debatable whether the red button criticised by users is as vulnerable to abuse as feared. To prevent abuse, one option would be to define the vague term “particularly trustworthy rights holders” more precisely in the law. Finally, taking into consideration the uploaders’ needs, more participation and transparency, both in the legislative process and in concrete copyright regulation, would be desirable. A first approach could be to classify the most common usage practises according to their lawfulness and for them to be communicated clearly, either by the platforms themselves or by administrative bodies. In addition, more information about the algorithms used to filter uploaded content could increase their transparency. However, the uploaders are also obliged to inform themselves about existing regulations, their applications and planned reforms. Furthermore, direct contact and dialogue with rights holders would eventually help to restore balance along the conflict lines.

Of course, our study has limitations. Against the background that active uploaders who took part in the protests against the DSM Directive were silent in the public discourse, our analysis solely took their perspective. Since the rights holders and the platforms are considered powerful and influential during the lobbying process (Beisel, 2019), their stakeholders should also be included in the research to clarify and contextualise the political decision-making process at the EU level. Furthermore, the study focused on the *German* example, shedding light on the perception and demands of *German* uploaders. Due to the specific topic and the nationally binding nature of law, focusing on only one country was necessary to provide an in-depth analysis of the different regulatory measures and their implementation in national law. However, cross-national comparative studies could widen the evaluative perspective and the spectrum of copyright regulation options.

In sum, the present findings confirm the need to narrowly observe and evaluate the implementation of copyright reforms. Nevertheless, it is crucial to adapt copyright regulation to the current digital dynamics while protecting both democratic values and the interests of different conflicting parties. Future interdisciplinary research could contribute to identifying potential challenges regarding the concrete implementation of reform at an early stage, developing evidence-based regulatory measures or adapting the current ones.

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## Appendix

**TABLE 2:** Coding scheme

CATEGORY	DEFINITION	EXAMPLES
CT1: ID	The ID of the document (interview or a comment on the draft law).	Z6, X8, etc.
CT2: DATE	Date of the accomplished interview/ submitted comment.	dd.mm.yy
CT3: TYPE	Identification of the uploader type according to the criteria for categorization <i>range</i> and <i>organization level</i> .	A type number between 1 and 9

CATEGORY	DEFINITION	EXAMPLES
C1 - COPYRIGHT-RELATED USAGE PRACTISES AND MOTIVES		
C14: GENRE	The genre of the uploaded videos according to the uploader and to the YouTube genre categorization. Maximum one genre category – the one that represents the majority of uploaded videos.	Gaming, Beauty & Fashion, Lifestyle, etc.
C1-A: YOUTUBE EXPERIENCE	Since when has the uploader (or the group of uploaders) had their own YouTube channel? The definition of YouTube experience covers solely the period from the first uploaded video (when the channel was created) until the interview and does not include the “basic” user experience as “nonuploader” on YouTube.	“Hm, for about two and a half years – soon it will be time for me to celebrate my anniversary” (Q3).
C1-B: EXISTING CONTENT REUSED	This category describes whether uploaders reuse any existing content in their videos, such as pictures, music or parts of other videos which were produced by other uploaders/artists.	“I definitely don’t do that. I take the game music the way it is. Unless it’s copyrighted music, of course, that’s a completely different issue. But I play the games that don’t have copyrighted music mostly” (K9).
C1-C: SEARCH PROCESS FOR CONTENT TO REUSE	This category describes the search process for content to reuse.	“When I’m looking for a very specific topic or very specific statements, (...) I use various combinations of terms on Google and YouTube. Sometimes I also find a lot on Twitter, but most of it comes to my mind during the research” (S6).
C1-D: TYPE OF USE	This category describes the type of video content uploaders produce. Examples for types of video content are memes, reaction videos, covers, remakes, etc.	“The only things we usually use are memes or music from people who give us free access if we tag them” (W8).
C2 - FINANCING AND MARKETING		

CATEGORY	DEFINITION	EXAMPLES
C2-A: YOUTUBE AS A PROFESSION	This category is used to identify whether the uploaders operate their YouTube channel on a full-time or part-time basis, as a profession. The main factor is whether they earn money from the uploaded videos.	“For me, this is a profession that is now absolutely equivalent to what I do in a 30-hour job in academia. I earn money with it and it is just as much a professional activity for me” (R3).
C2-B: MEMBER OF THE YOUTUBE PARTNER PROGRAM AND EVALUATION OF THE PROGRAM	YouTube offers the so-called YouTube Partner Program, in which YouTube creators receive a commission on ads placed in their videos. This category identifies whether the uploaders are members of the YouTube Partner Program and how they evaluate this program.	“Yes, I am part of the program and this is also my income opportunity via YouTube. Hm, I can't really evaluate it, because in the end there is no real alternative to YouTube directly, apart from secondary sources of income like Patreon or other crowdfunding platforms” (R3).
C3 - KNOWLEDGE, EXPERIENCE, AND EVALUATION OF PREVIOUS COPYRIGHT REGULATIONS		
C3-A: GENERAL CONSIDERATIONS ON COPYRIGHT	This category includes uploaders' answers to the question as to whether they think or even worry about copyright when they are producing and uploading their video content.	“relatively little I must say though” (Q3). “I think the first question is actually: Is the game already causing me problems? This is actually less significant in the gaming sector, at least I have the feeling, than perhaps in the music or film business, where there are YouTubers who somehow also produce content for music or films. But there are game publishers or developers, who prohibit games – well, you can take videos of how you play the game, but you're not allowed to monetise them, at least that's what they say” (R3).
C3-B: PERSONAL EXPERIENCE WITH THE EXISTING COPYRIGHT REGULATION ON YOUTUBE	Uploaders were asked about their personal experience with the existing copyright regulation on YouTube.	“In the past, I just used music that I thought was cool, even music that was currently on the radio, which doesn't make much sense, of course, because all the record companies behind it then immediately claim the video. Sometimes videos were completely deleted because of that” (V3).

CATEGORY	DEFINITION	EXAMPLES
C3-C: COPYRIGHT CONSIDERATIONS FOR MONETISATION REASONS	When submitting videos for monetisation on YouTube, creators are obliged to clear the rights to commercial use of all content in the video. Uploaders were asked if they have any experience with the issue of monetisation in relation to copyright regulations and to what extent they ensure that their content complies with copyright regulations so they do not lose any commission.	“It’s not a really serious issue; I hardly ever have any big problems or concerns about it” (Q3).
C3-D: EXPERIENCE WITH CONTENT ID	YouTube introduced the Content ID system in 2007 to check video content for copyright infringement. Uploaders were asked whether they have any experience with the Content ID system. Experience here is any case of claimed or deleted video content for copyright infringement reasons. Uploaders were asked if any of their videos were claimed or deleted for these reasons.	“Only once so far...that was a video about races, because in the series there are many different mythological races and it was claimed because of the music from another anime that I used for the first time. As a result, I also got a strike” (Q3).
C3-E: EVALUATION OF THE EFFECTIVENESS OF CONTENT ID	Uploaders were asked to evaluate how effective the Content ID system is in their opinion.	“Well, it’s a very good upload filter on the one hand – sometimes I ask myself how much they recognise, how much detail they recognise, and I’m a bit impressed. On the other hand, they also miss a lot. But I don’t think the purpose is to say, ‘Everything has to be checked with the filters,’ but rather to oblige YouTube to monitor more closely and perhaps also manually” (S6).
C3-F: ADVANTAGES AND OPPORTUNITIES OF CONTENT ID	Uploaders were asked what advantages and opportunities they see regarding the Content ID system.	“I believe that if such a content ID system is well programmed, it definitely has the chance to reduce considerable manpower, let’s say, simply human effort, when it comes to checking content that is questionable in terms of copyright” (R3).
C3-G: RISKS OF CONTENT ID	Uploaders were asked what risks they see regarding the Content ID system.	“From a journalistic point of view, we always, of course, fall quickly into this ‘citation situation’, so what about the videos that react to content that has already been produced by others? At that moment your own content is created, but it is based on content from others. I could imagine that of course deletions also occur that have no legal validity at all but are simply due to the automatism that occurs at that moment” (X8).

CATEGORY	DEFINITION	EXAMPLES
C3-H: APPEAL	This category refers to the appeal procedure under which uploaders can appeal against Content ID decisions. Uploaders were asked whether they have ever appealed any copyright claims on their video content.	“No, I didn’t, because I also understood it. So in my eyes they are right. Most of what they claim is justified, only in rare cases it is not” (Q3).
C3-I: EVALUATION OF THE APPEAL PROCEDURE	If uploaders have already appealed a copyright claim on their content, they were asked to evaluate the appeal procedure, considering its efficiency and how fast they received an answer from the YouTube team responsible for the Content ID system. They were also asked how the Content ID system could be improved to protect users’ rights in cases of system-related mistakes.	“It works, but it generally takes too long (...) One of my videos was demonetised and then released for monetisation again at some point afterwards (...) If a video is not monetised, it is not ranked nearly as well or suggested for other users, and that is usually very bad. If it’s a long video you’ve put a lot of effort into, and then there’s a little thing like that and the video is already uploaded, then you can’t reupload it by changing a small detail, because it doesn’t have a good effect on the algorithm” (Q3).
C3-J: REPORTED COPYRIGHT INFRINGEMENT	This category relates to the question as to whether uploaders have ever reported copyright infringement on YouTube.	“not that I can remember, no” (R3).
C3-K: NEED FOR COPYRIGHT REGULATION	This category relates to the general question as to whether copyright regulations are necessary at all. The coded answers represent the uploaders’ perspectives on the need for copyright regulation.	“They are necessary and I think it is good and reasonable in general to have copyright regulations” (Z6).
C3-L: FAIRNESS TOWARDS UPLOADERS	This category entails the uploaders’ perceptions about the existing copyright regulations, taking into consideration how fair they are towards uploaders and their YouTube activity.	“I think the intention behind it is actually good and that something like this exists is also right. It’s just the implementation that sometimes fails” (V3).
C3-M: FAIRNESS TOWARDS COPYRIGHT HOLDERS	This category entails the uploaders’ perceptions about the existing copyright regulations, taking into consideration how fair they are towards copyright holders whose content is shared on the video platform. Uploaders were asked if the interests of the copyright holders are sufficiently protected by the existing copyright regulations.	“I think so, because when you use things in your videos, you can do it in different ways. And if, for example, you do it in such a way that you clearly and visibly state who the material comes from, then that is basically advertising for them, for the rights holders” (Z6).

CATEGORY	DEFINITION	EXAMPLES
C3-N: FAIRNESS TOWARDS PLATFORMS	The category describes uploaders' perceptions about the existing copyright regulations, considering how fair they are towards video platforms, such as YouTube. Uploaders were asked if they share the opinion that platforms should be liable for the copyright infringements of their users.	"They should take a bit of responsibility; after all, that's their website. But the way they are handling it right now, I think it's actually quite alright" (T9).
C4 - KNOWLEDGE AND EVALUATION OF THE COPYRIGHT REFORM		
C4-0: PREVIOUS KNOWLEDGE ABOUT THE REFORM	This category describes uploaders' general knowledge about the EU copyright reform and the German implementation of the reform. The category serves as an orientation as to what extent explanations of certain regulations are necessary during the next part of the interview.	"Hm, actually I don't know a lot, apart from what you read on the media. As I said, I know that at some point it was said that there would never be an upload filter and now somehow there is supposed to be a version of the upload filter..." (R3).
C4-A - UPLOAD FILTER		
C4-A1: GENERAL ASSESSMENT OF UPLOAD FILTERS AS A REGULATORY MEASURE	This category describes uploaders' opinions about the idea of upload filters in general.	"Unfortunately, they are very, very inaccurate. They can't distinguish between a parody, a quote or simply a copy" (Q3)

CATEGORY	DEFINITION	EXAMPLES
<p>C4-A2: IMPLEMENTATION AND ENFORCEMENT OF UPLOAD FILTERS</p>	<p>This category describes the implementation of this measure. Uploaders were also asked whether they think that copyright can be protected without upload filters.</p>	<p>“Yes, upload filters are unavoidable, with this legal situation. And in individual cases, people will probably always have to decide if the content should stay online (...). Well, the problem I see with the upload filters is that if I want to do something that’s permitted, for example, quotation, the upload filter maybe won’t identify that this is a quotation and that this is permitted. Sometimes we need people, well-educated people who check the content manually” (Z6).</p> <p>“Upload filters are justifiably accompanied by the concern that freedom of expression in the form of, for example, the (permitted!) quotation of copyrighted works, satire, caricature, parody, or simple criticism is filtered out at the same time. The directive prohibits this. The practise is different. Even the best upload filters cannot do this. One example out of thousands is the copyright lecture by a Harvard professor, which was incorrectly sorted out by YouTube filters because of the exemplary fragments of protected music it contained” (D1).</p>
<p>C4-B - DE MINIMIS LIMIT</p>		
<p>C4-B1: GENERAL ASSESSMENT OF THE DE MINIMIS LIMIT AS A REGULATORY</p>	<p>This category refers to the so-called “de minimis” exception to copyright infringement. Uploaders evaluate the exception in general. Uploaders also evaluate if the exception is an opportunity to avoid overblocking.</p>	<p>“That is completely irrational. For me, this is the very definition of jurisprudence that misses the point. So it’s a bit of this pressure to somehow set a framework that says, ‘Yes, it was a 17-seconds video and that’s bad’ – it’s this classic German ‘we have to have it written down somewhere’ but who says that 17 seconds are bad and 14 and a half are okay? So the process – I can’t understand it at all” (R3).</p>
<p>C4-B2: IMPLEMENTATION AND ENFORCEMENT OF THE DE MINIMIS LIMIT</p>	<p>This category describes uploaders’ opinions about the implementation of the “de minimis” exception. Uploaders discuss if the limits for marginal use of video content are sufficient for protecting uploaders’ rights.</p>	<p>“So I think a 15-second clip is probably less likely to be uploaded to YouTube, and 15 seconds is probably a bit too short, I would say” (T9).</p> <p>“Nevertheless, such an exception does not only entail legal but also technical problems. The length of content, the number of characters, or even the file size are not characteristic values that all service providers can recognise without problems” (I4).</p>

CATEGORY	DEFINITION	EXAMPLES
C4-C: FLAGGING PROCEDURE	This category refers to uploaders' opinions about the flagging procedure. Uploaders evaluate if the flagging procedure is an opportunity to avoid overblocking.	<p>"48 hours is quite a long time, that's two days. That means you have enough time to check and to protect your work and to say, 'OK, I know what's going on. I'm going to do it this way and I can keep my video the way it is now'" (W8).</p> <p>"In particular, it must be ensured that the upload remains available while the appeal procedure is underway ("stay-up-obligation")" (G4).</p>
C4-D: RED BUTTON	Uploaders were asked to evaluate the red-button option for "trusted rights holders".	"So I would say that from the perspective of the YouTuber, it would be a bit stupid, I would say, if you uploaded a video, the filter indicated that the video infringed copyright, but it is uploaded anyway and then it is deleted afterwards. I think that's a bit stupid" (T9).
C4-E: SUGGESTIONS FOR IMPROVEMENT	Uploaders were asked if they would change some of the regulations in the German implementation of the reform if they could, and what their suggestions for improvement are.	"I would recommend the government to think again about the exceptions for pictures. That doesn't really make sense. Otherwise, I find the compromise acceptable (...). The authors must be sufficiently protected, but it shouldn't lead to overblocking" (S6).
C4-F: FAIRNESS OF THE REFORM	Considering the conflict lines and the different interests of uploaders, right holders and platforms, uploaders should evaluate if and to what extent the German implementation of the EU copyright reform is fair to all sides of the conflict. Do they have the impression that the new regulations equally account for the rights of the various parties?	"I think it's very much in support of the rights holders, which is somehow not a criticism in the first place. It's good if they can protect their rights" (X8).
C5 - DEMANDS ON COPYRIGHT REGULATION		
C5: NEEDS AND DEMANDS ON COPYRIGHT REGULATION	This category refers to the needs and demands on copyright regulation from the uploaders' perspective. Uploaders were encouraged to share and clarify their requirements for regulation.	"So specifically for us, it would be good to make fairer deals for, like, 'I've used other people's material and actually it's not a problem, but the right holder wants to be involved'. I think it would be cool if there was a solution for that, because then we would not have this problem" (Y2).

CATEGORY	DEFINITION	EXAMPLES
C99: ADDITIONAL REMARKS	This category summarises the uploaders' opinions on topics and questions that cannot be classified under any of the other categories in this coding scheme.	

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