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Governed by Google: Private copyright rule-making and algorithmic enforcement. In
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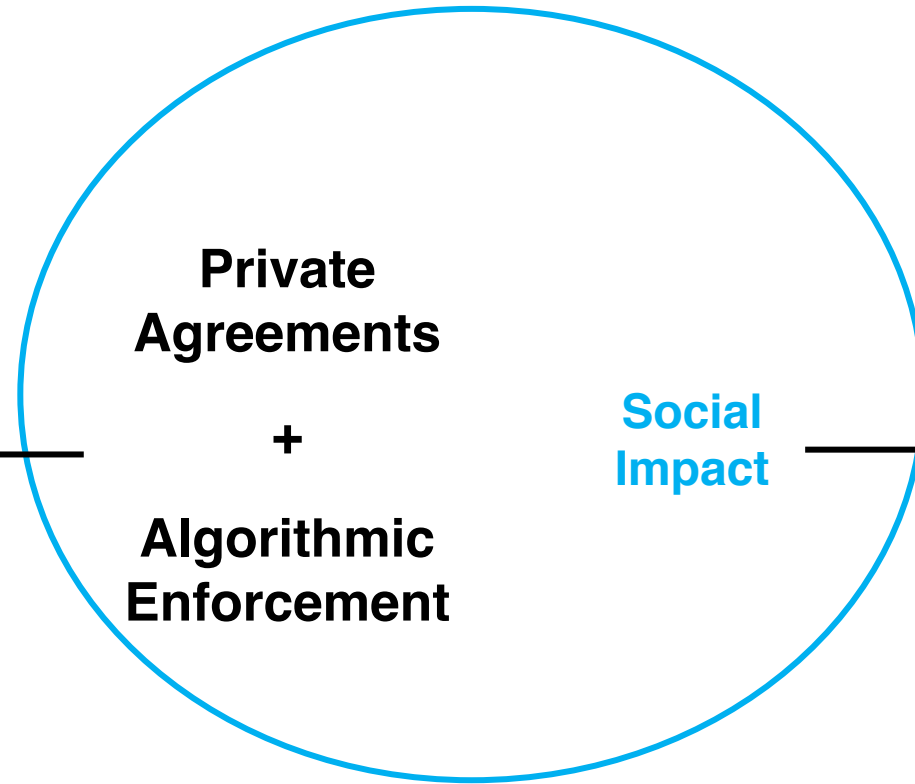
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<https://law.tamu.edu/prospective/academics/centers-clinics-programs/clip/ip-scholars-roundtable-2017>

Google & Copyright

Joanne Gray

**Google &
Copyright**



**The Public
Interest**

When private companies negotiate and enforce copyright rules that determine the scope and application of copyright across large portions of the digital environment, do they have a responsibility to act in the public interest?

Content ID on YouTube

**Revenue for
rightsholders**

**Reduced legal
risks for YouTube
users**

**Increased
availability of
content and
information**

- Unilateral and unverified claims of ownership
- Insensitivity to complexities of copyright including copyright exceptions
- Limited or ineffective recourse for YouTube users

Content ID on YouTube

“YouTube enters into agreements with certain music copyright owners to allow use of their sound recordings and musical compositions. In exchange for this, some of these music copyright owners require us to handle videos containing their sound recordings and/or musical works in ways that differ from the usual processes on YouTube ... In some instances, this may mean the Content ID appeals and/or counter notification processes will not be available.”

Google, *Videos removed or blocked due to YouTube's contractual obligations*

<https://support.google.com/youtube/answer/3045545/>.

See Tushnet, Rebecca, 'All of This Has Happened Before and All of This Will Happen Again: Innovation in Copyright Licensing' (2014) 29(3) *Berkeley Technology Law Journal* 1447-1487.

Private Regulatory Solutions



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graph LR; A[Private Regulatory Solutions] --> B[Private Actors & Private Agreements]; A --> C[Algorithmic Enforcement]; B --- D(+); C --- D; D --- E[Private interests prioritised over public interests]; D --- F[Diminished transparency]; D --- G[Diminished accountability]; D --- H[Further diminished transparency]; D --- I[Embodiment and enforcement of private, conflicts, negotiations, and power dynamics];
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Private Actors
&
Private
Agreements

- ❖ Private interests prioritised over public interests
- ❖ Diminished transparency
- ❖ Diminished accountability

+

Algorithmic
Enforcement

- ❖ Further diminished transparency
- ❖ Embodiment and enforcement of private, conflicts, negotiations, and power dynamics

Preliminary Best Practice Guidelines for Intermediaries Using Algorithmic Technologies to Enforce Copyright

1. Private copyright enforcement mechanisms, including algorithmic technologies, should **account for copyright exceptions and limitations**.
2. Intermediaries should **make public the copyright rules that govern their platforms**, including those negotiated by private agreement and implemented algorithmically.
3. When content is removed from the internet, including algorithmically, **the person or entity subject to the removal should be sent a notice. Notice should include information outlining the legal recourse available**. Recourse should include a counter-notification process that cannot be circumvented by private agreement or algorithmic processes.
4. Intermediaries should **document all copyright enforcement actions** undertaken by the intermediary, including by algorithm, and **make the data publicly available**.