

*Dancing through  
copyright*

# **Safeguarding Dance Influencers in Musical Minefield**



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# First Research - Copyrighted Music and User-Generated Content

The Copyright Act, 1957, which is the law governing copyright in India, bestows certain exclusionary rights to the owners and authors of content. There are also certain rights available to the actors, singers, and other visual and vocal performers, in their performances rendered. These rights can be broadly classified as under:

## 1. Copyright

**(i) Reproduction Right:** making a substantially similar copy of a work or storing a work in vein of making a substantially similar copy;

**(ii) Adaptation Right:** converting a work into another medium or form of representation, or trivially altering or rearranging it;

**(iii) communication to the public:** displaying/ playing or publishing the work

(iv) public performance: publicly performing the work;

(v) distribution: distributing or issuing copies of the work;

(vi) making a sound recording or cinematographic film in respect of the work: embodying the work in a sound recording or synchronizing it within a cinematographic film;

(vii) translating the work

## 2. Neighbouring Rights:

**(i) Performers Rights** - to make a sound recording or cinematograph film in respect of a “performance” by a performer; and to broadcast or communicate to the public the said performance.

**(ii) Moral Rights** - to seek attribution in respect of a work authored; and to seek protection against distortion or mutilation of a work authored.



In this digital era, many social media platforms such as YouTube, Instagram, and Facebook, offer people many ways to create, upload, and consume third-party content and user generated content . These platforms, though being a medium for the communication to the public of Third-Party Content (as a part of User Generated Content or otherwise) by providing a platform, however receive statutory protection as ‘intermediaries’ under Section 79 of the Information Technology Act, 2000 (as amended from time to time) as well as Section 52(1)(b) and (c) of the Copyright Act.



## Policies of Social Media Platforms

More recently, though, popular audio clips and songs/song clips are made available by the platform itself, under a 'library' feature of the application, for use by the users of the platform in their User Generated Content. If the platform makes available such audio clips as part of its "library" feature without obtaining appropriate licenses, the said statutory protection under Section 79 of the Information Technology Act, and Section 52 of the Copyright Act may not be available.

There are a few ways in which Third-Party Content may be used by authors in order to co-exist without disputes, and/or infringing rights of any person or entities, while also protecting freedom of speech and expression, for the most part, as indicated below:

1. By using content available in the licensed content library of social media platforms only.
2. There are certain uses which are statutorily deemed to not be infringement. The Indian

copyright law provides a detailed list of uses of Third-Party Content, which are considered limitation and exceptions to copyright protection which include fair dealing for private or personal use, or for criticism or review. Such uses are not infringing.

3. Approaching the Owners for permissions to legitimately use such Third-Party Content to create the User Generated Content.

Furthermore, platforms like YouTube and Meta (for Facebook and Instagram) have obtained blanket licenses from owners of music content for use of music on their platforms, to increase the engagement on these platforms. Such licenses typically allow the platform to offer songs from their licensed music catalogue, as a part of the aforementioned 'library' feature..

## How to prevent Copyright Claim

### YouTube

The policies of YouTube allows a copyright owner to register their content, after which they

are provided with a content ID. Once YouTube finds the unauthorised use of this content ID, on the behest of the copyright owner, it applies a copyright claim or a copyright strike to the unauthorised content. Accordingly, YouTube in its policies provides that users should only upload videos that they have made or that they're authorised to use. That means that they should not upload videos that they didn't make, or use content in their videos that someone else owns the copyright to, such as music tracks, snippets of copyrighted programmes or videos made by other users, without necessary authorisations.

To achieve a balance between respecting the rights of rightsholders, and users' freedom of expression, in addition to providing audio-library, with YouTube Shorts, users can create short videos sampling someone else's content, provided that they have permission to do so. Additionally, there are several other alternatives available to prevent content from a copyright claim.

## Ensure that 'work' is within Copyright Exceptions<sup>1</sup>

Copyright exceptions are laws that allow you to reuse someone else's copyright-protected material without getting their permission, but only under certain circumstances. By ensuring that content falls under the category of copyright exceptions, creators can successfully prevent their content from being flagged with a copyright claim. YouTube recognises that each country has its own copyright exceptions. It recognises that while there are some similarities regarding copyright exceptions across the globe, there are still considerable differences between the laws of each country. There's no one-size-fits-all answer as to whether a reuse falls within copyright exceptions, and the courts decide the applicability of such exceptions on a case-by-case basis. Therefore, YouTube asks rightsholders to consider the applicability of copyright exceptions before they submit copyright removal requests. It believes that this would strike a balance between respecting the copyright of rightsholders, and creators'

freedom of expression that may be protected by copyright exceptions.

## Use Creator Music Option of YouTube<sup>2</sup>

Creator Music is a growing catalogue of high quality music that users can use in videos (user-generated content) without losing monetization. Some songs can be licensed upfront, allowing users to retain full monetization. Other songs may be eligible to share revenue with the track's rights holders<sup>3</sup>. Under Creator Music, following options are made available to use a track:

- 1. Get a license:** Pay an upfront fee (or no fee for some tracks) to use music in monetizing video. Earn the same revenue share that applies to the monetizing videos without music.
- 2. Share revenue:** Pay no upfront fee and split video revenue with the track's rights holders.

However as per the usage details of YouTube, which defines how a song can be used, the track's rightsholders set the usage details for a track and can change them at their discretion. There are also specific restrictions on how licensed music can be used within videos.

Some Creator Music tracks may not be eligible for licensing or revenue sharing. If users use one of these tracks, their video could get a Content ID claim or a copyright removal request.<sup>4</sup> To be eligible to use Creator Music, YouTube users who wish to create content must either be in the YouTube Partner Program or been notified by Google that they're eligible. Users must also be in compliance with all applicable YouTube policies, including, but not limited to:

- Channel Monetization Policies
- Creator Responsibility Policy
- Community Guidelines
- Copyright

Creator Music is currently subjected to following restrictions<sup>5</sup>:

**1. Restricted categories:** Users must make sure tracks licensed from Creator Music aren't used in videos that contain content in any of the following restricted categories:

- Violence
- Adult content
- Inappropriate content for kids and families

**2. Commercial use:** Users are prohibited from using Creator Music tracks in a video where the creator has been paid by a brand or service to make content that's primarily dedicated to endorsing or promoting that brand or service.

**3. Usage limitations:** Users who license tracks from Creator Music must follow these usage limitations:

- No fundamentally altering the Creator Music tracks (e.g., no remixing).
- No creating new lyrics or translating lyrics into other languages.
- No using artist or songwriter name or likeness other than to identify the Creator Music track and artist or songwriter.
- No creating an Art Track (static image while the entire song plays), visualizer (simple repetitive visual while the entire song plays), lyric video, or karaoke video from the Creator Music tracks.
- Make available, distribute, or perform Creator Music tracks separately from the Creator Video(s) (e.g., standalone distribution of Music files is not permitted)
- No using the Creator Music tracks in a manner that is derogatory or casts the artist, record label, or songwriter in a negative light.

## Meta

### Use Music from Meta's Sound Collection

Meta's Sound Collection contains high quality audio sound content for creators to enhance their content on the Meta Company Products. Through this collection Meta grants users a non-exclusive, royalty-free license to use the Sound Collection Audio Content for commercial or non-commercial purposes in content created, uploaded, and distributed on the Meta Company Products (including through links to the Meta Company Products embedded in third party sites) only. However Meta prohibits the users from performing, distributing, making available or otherwise using the Sound Collection Audio Content separately from the Meta Company Products<sup>6</sup>.

### Use Music Revenue Sharing Option<sup>7</sup>

Music Revenue Sharing makes it easier for users who create content to monetize their videos that use licensed music from popular and emerging artists. This gives both users and music rightsholders a new way to earn money from videos on Facebook. However users must be eligible for in-stream ads in their content and meet Facebook's monetization eligibility standards in order to access Music Revenue Sharing. Under this scheme users will receive 20% revenue share on eligible videos, with a separate share going to music rightholders and to Meta. Additionally, the content must satisfy Facebook's monetization policies, Community Standards and music guidelines. The video must be at least 60 seconds long and there must be a visual component in the video as well; the licensed music itself cannot be its primary purpose.

## Solutions in case of Take-Down of Content

### YouTube

In case of a dispute a related to Content ID claim<sup>8</sup>

If a video gets a Content ID claim, then users can dispute a claim if they have a valid reason, such as:

- Having all the necessary rights to the content in your video.

- Using the content in a way that qualifies as a copyright exception, such as fair use.
- Believing your video was misidentified or an error was made.

When the user disputes a Content ID claim, the person that claimed infringement pertaining to the video (the claimant) is notified. The claimant has 30 days to respond. However YouTube provides that following are NOT legitimate reasons to dispute a claim:

- Giving credit to the copyright owner
- Owning a copy of the video or song
- Choosing not to monetize on the video

If the user has disputed a Content ID claim, but the claim has been reinstated, the user may be eligible to appeal<sup>9</sup> this decision. When the user appeals a Content ID claim, the person that claimed infringement pertaining to the video (the claimant) is notified and has 7 days to respond.

Additionally, videos can earn money during a Content ID dispute if both the user and the Content ID claimant want to monetize the video. If the user disputes a claim within 5 days, any revenue from the video will be held, starting with the first day the claim was placed. If the user, however, disputes a Content ID claim after 5 days from the original claim date, YouTube will start holding revenue the date the dispute is made. Throughout the dispute process, the revenue will be held separately and, once the dispute is resolved, YouTube pay it out to the appropriate party<sup>10</sup>.

### In case of a Copyright Strike

If a content gets a copyright strike, it means that a copyright owner submitted a legal copyright removal request for using their copyright-protected content. When a copyright removal request is submitted to YouTube, the platform reviews it. If the removal request is considered valid by YouTube, YouTube removes the creator's video from to comply with copyright law<sup>11</sup>.

As per YouTube's policy there are three ways to resolve a copyright strike:

- **Wait for the strike to expire:** Copyright strikes expire after 90 days.

- **Get a retraction:** the user can get in touch with the person who claimed the video and ask them to retract their claim of copyright infringement.

- **Submit a counter notification<sup>12</sup>:** If the user thinks their video was removed by mistake, or qualifies as fair use, they can submit a counter notification. This is a legal request for YouTube to reinstate content that was removed due to a copyright removal request. However a counter-claim should only be submitted if the content was removed due to a mistake or misidentification. This includes exceptions to copyright, such as cases covered under exceptions and limitations. The following should be considered before submitting a counter notification:

- **Ownership:** Is the content original and does the author own all the rights to it?

- **Evidence:** does the user have evidence of a license or permission to use that content?

- **Copyright exception:** Is the content protected by copyright exceptions?

- **Public domain:** Is the content in the public domain (outside copyright protection) or has the copyright been relinquished?

After a counter notification is submitted, it is forwarded to the claimant if it meets all the requirements, including a clear explanation of why it is believed the content was misidentified or removed in error. Counter notifications that don't meet all the requirements may be rejected. The claimant has 10 US business days, as required by copyright law, to respond to the counter notification. They must respond with evidence of legal action taken to keep your content from being reinstated to YouTube. If the claimant doesn't do this within this 10-day time period, the user's content is reinstated to YouTube (unless you deleted it) and the

associated copyright strike is cleared from the said channel.

## Meta<sup>13</sup>

According to the policies of Meta, when a rights holder takes an action on user generated content (such as applying a block, ownership link or collect ad earnings action), the user is notified and can submit a dispute if they believe the action was taken incorrectly or inappropriately. The user will receive information via Support Inbox about who initiated the action, as well as details on how they can dispute. When they submit the dispute, the user selects the reason for their

dispute and may provide additional details they wish to communicate to the rights holder.

After a dispute has been submitted, the rightsholder receives a notification in Rights Manager that the action was disputed. In response, the rightsholder may: i) uphold their original action, ii) release their claim to the content or iii) submit a takedown request. If the rightsholder does not respond (in most cases, within seven days), the user wins the dispute.

If the rightsholder upholds their claim on the content, the user has a second opportunity to appeal the action. If the user wants to submit this appeal, they must provide more information and justification for their appeal.

## References

<sup>1</sup><https://support.google.com/youtube/answer/9783148?hl=en>

<sup>2</sup>[https://www.youtube.com/intl/ALL\\_in/howyoutubeworks/policies/copyright/#overview](https://www.youtube.com/intl/ALL_in/howyoutubeworks/policies/copyright/#overview)

<sup>3</sup>[https://support.google.com/youtube/answer/11610212?hl=en&ref\\_topic=12754676&sjid=4698223141375991421-AP](https://support.google.com/youtube/answer/11610212?hl=en&ref_topic=12754676&sjid=4698223141375991421-AP)

<sup>4</sup>[https://support.google.com/youtube/answer/11611019?hl=en&ref\\_topic=12754676&sjid=4698223141375991421-AP](https://support.google.com/youtube/answer/11611019?hl=en&ref_topic=12754676&sjid=4698223141375991421-AP)

<sup>5</sup><https://support.google.com/youtube/answer/11623091?sjid=4698223141375991421-AP#restrictions&zippy=%2Crestricted-categories%2Ccommercial-use%2Cusage-limitations>

<sup>6</sup><https://www.facebook.com/sound/collection/terms>

<sup>7</sup><https://about.fb.com/news/2022/07/music-revenue-sharing-for-video-creators-on-facebook/>

<sup>8</sup>[https://support.google.com/youtube/answer/2797454?hl=en&ref\\_topic=9282678&sjid=4698223141375991421-AP](https://support.google.com/youtube/answer/2797454?hl=en&ref_topic=9282678&sjid=4698223141375991421-AP)

<sup>9</sup>[https://support.google.com/youtube/answer/12104471?hl=en&ref\\_topic=9282678&sjid=4698223141375991421-AP](https://support.google.com/youtube/answer/12104471?hl=en&ref_topic=9282678&sjid=4698223141375991421-AP)

<sup>10</sup>[https://support.google.com/youtube/answer/7000961?hl=en&ref\\_topic=9282678&sjid=4698223141375991421-AP](https://support.google.com/youtube/answer/7000961?hl=en&ref_topic=9282678&sjid=4698223141375991421-AP)

<sup>11</sup>[https://support.google.com/youtube/answer/2814000?hl=en&ref\\_topic=9282678&sjid=4698223141375991421-AP#zippy=%2Cresolve-a-copyright-strike](https://support.google.com/youtube/answer/2814000?hl=en&ref_topic=9282678&sjid=4698223141375991421-AP#zippy=%2Cresolve-a-copyright-strike)

<sup>12</sup>[https://support.google.com/youtube/answer/2807684?hl=en&ref\\_topic=9282678&sjid=4698223141375991421-AP](https://support.google.com/youtube/answer/2807684?hl=en&ref_topic=9282678&sjid=4698223141375991421-AP)

<sup>13</sup><https://rightsmanager.fb.com/#dispute-appeals>



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